



भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

MAY 2023

CREDITOR LED RESOLUTION APPROACH

CHARTERING
TROUBLED WATERS

FINDING SOLUTIONS

THROUGH MEANINGFUL
DIALOGUES

REPORT OF THE EXPERT COMMITTEE

Framework Report
on
Creditor Led Resolution Approach
in
Fast-track Corporate Insolvency Resolution
Process under the Insolvency and
Bankruptcy Code, 2016
by
The Expert Committee
May 2023

Report of the Expert Committee on a Creditor-Led Resolution Approach

Date: 24th May, 2023

To

The Chairperson
Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Shankar Market, Connaught Circus
New Delhi -110001

Dear Sir,

It is our esteemed privilege and honor to submit this comprehensive report, a product of the Expert Committee constituted by the Insolvency and Bankruptcy Board of India (IBBI) by way of Order Board-22/2/2023-IBBI/8864, dated 1st February 2023. The Committee's mandate was to examine the feasibility and appropriately recommend a regulatory framework on creditor-led resolution approach for its incorporation in the Insolvency and Bankruptcy Code, 2016.

2. Through rigorous examination and deliberations, the Committee has thoroughly explored the potential for utilizing an alternative fast-track resolution process within the Code, in addition to evaluating the regulatory approach for the proposed creditor-led insolvency resolution process (CLRP). In crafting this report, the Committee presents a new framework for 'out-of-court' initiated CLRP, taking into consideration a holistic perspective of the existing legal environment and the tangible challenges encountered by diverse stakeholders. To facilitate the effective implementation and actualization of the proposed framework, the Committee recommends key legislative amendments to the fast-track corporate insolvency process under the Code, as well as the establishment of a granular operational mechanism to be provided through regulations devised by the IBBI.

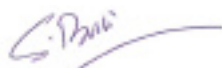
3. The Committee envisions that the CLRP will infuse greater efficiency into the insolvency resolution processes delineated within the Code, ultimately fulfilling its fundamental objectives of "time-bound reorganization" and "maximization of value."

4. We express our profound gratitude for the opportunity, extended to us as Expert Group, to present our perspectives and recommendations concerning the CLRP framework.

Yours sincerely,



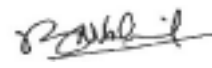
Sudhaker Shukla
Chairperson



Sumant Batra
Member



Sunil Mehta
Member



Bahram Vakil
Member



Shrimohan Yadav
Member



Rajan Jain
Member



Ashwini Kumar Tewari
Member



Sandip Garg
Member Secretary

Table of Contents

Acknowledgements	VII
Preface	IX
Scheme and Stages of ‘Out-of-Court’ Initiated Creditor-led Insolvency Resolution Process	XIII
1. Chapter I: Setting the Context	1
1.1. Introduction	1
1.2. The Committee’s Mandate and deliberations	2
1.3. Structure of this Report	3
2. Chapter II: Background	4
2.1. Evolving Insolvency Landscape	4
2.2. Colloquium on Functioning and Strengthening of the IBC Ecosystem	5
2.3. MCA Discussion Paper	6
3. Chapter III: Exploring options for CLRP	8
3.1. ‘Out-of-Court’ Resolution Processes in other Key Jurisdictions	8
A. United Kingdom	8
B. United States of America	11
C. Australia	13
D. Germany	15
E. Singapore	17
4. Chapter IV: Proposed Framework for Creditor Led Insolvency Resolution Process	19
A. Key Elements of CLRP from Implementational Learnings of RBI Framework 2019 & the Code – CIRP and Pre-packs	20
B. Initiation of CLRP – Key Elements, Participants and Criteria	22
Eligible FCs	22
Eligibility of the CD	23
Default Threshold for Initiation of CLRP & Determination Mechanism	24
Mandatory Pre-condition for Initiation of CLRP by Notified Unrelated FCs	24
C. Stage I: Conduct of the ‘out-of-court’ initiated CLRP	25
Formal Initiation of the Process: Notice of Default	25
Pre-Commencement Stage & Appointment of RP	25
No Admission Process: Application for Intimation of Initiation of CLRP & Formal Commencement of CLRP	25
Timeline for Out-of-Court initiated Stage I of CLRP	26

Moratorium	27
Control of the CD: 'Debtor-in-possession' model	28
Removal of the RP	29
Rights and duties of the RP	29
Cooperation from CD and obtaining information related to CD	30
Preparation of Information Memorandum	31
Valuation of the CD	31
Claims Collection Process	31
Constitution and Conduct of the CoC	32
Invitation of Resolution Plans and Challenge Mechanism	33
Voting Thresholds for approval of Resolution Plan	34
Avoidance Transactions and Application to the AA	34
Detection of gross mismanagement or fraudulent manner of conducting business	34
Bar against other insolvency proceedings under the Code during CLRP	35
D. Conduct of the CLRP before AA during Stage II	35
Submission of Resolution Plan by the RP for AA's Approval	35
Scope of AA's jurisdiction	35
Closure of the process	35
Bar on other proceedings under the Code upon failure of CLRP	36
Costs of Conduct of CLRP	36
E. Advantages and Comparative Features of Proposed Framework for CLRP	37
Key features and advantages of CLRP	37
Benefit over One Time Settlement under the Code	38
CLRP in comparison with the CIRP and Pre-packs	39
F. Indicative Timelines of the CLRP Process	41
Annexure – I: Constitution of the Committee	45
Annexure – II: Summary of Recommendations of the Committee	46
Annexure – III: List of Abbreviations	52
Annexure – IV: Draft Amendment to the Code	53
Annexure - V: Draft Insolvency and Bankruptcy (Fast-track Insolvency Resolution Process) Rules, 2023	58
Annexure - VI: Draft Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution For Corporate Persons) Regulations, 2023	63

Acknowledgements

I would like to express my deep sense of gratitude to the esteemed constituents of the Expert Committee for their invaluable contributions and unwavering commitment to fulfilling the mandate of this committee. I extend my heartfelt appreciation and sincere gratitude to each member of the committee for their exceptional contributions, marked by their active participation, thought-provoking debates, and the valuable perspectives they brought to the table. I am individually and collectively thankful to all the members namely Mr. Ashwini Kumar Tewari, Mr. Sunil Mehta, Mr. Bahram Vakil, Mr. Sumant Batra, Mr. Shrimohan Yadav & Mr. Rajan Jain for their enriched contributions during the discussions of the report. Thoughts coming from them germinated the idea which fortifies this report.

Their unwavering commitment to the task at hand and their willingness to engage in rigorous discussions have greatly enriched the quality and depth of this report. It is their willingness to embrace innovative ideas and their unwavering dedication to achieving consensus that has significantly enhanced the richness, comprehensiveness, and practicality of this report. It is their collective expertise, insights, and collaborative spirit that have propelled this committee towards making pathbreaking analysis and recommendations.

As the saying goes, the quality of any report hinges upon the quality of the human resources, manning the secretariat. In this context, I would like to extend my profound appreciation to Mr. Sandip Garg, Member Secretary of the Expert Committee for not only collating the nuances as emerging from the expert advice coming from the members, but more importantly thoroughly going through several iterations of the report and leading the team of dedicated professionals for ensuring internal consistency in the report. His attention to detail, critical insights, and commitment to excellence have significantly contributed to the accuracy, clarity, and overall quality of the final document. I also acknowledge the active participation and support of Mr. Ritesh Kavdia, ED, and Mr. Santosh Shukla ED.

On behalf of the committee, I place on record our appreciation towards all those who have assisted the committee in the discharge of its tasks. In particular, I want to recognize the exceptional support, excellent research, and drafting assistance provided by Mr. Sushanta Kumar Das, Deputy General Manager; Mr. Asit Behera, Manager; Mr. Om Prakash, Manager; Mr. Raghav Maheshwari, Manager; and Ms. Ajanta Gupta, Research Associate at IBBI. Their unwavering support has been crucial to the successful completion of this report.

Furthermore, I acknowledge the meticulous contributions made by Ms. Shruti Khanijow and other members from Vidhi Centre for Legal Policy in assisting the committee in attempting several drafts of this report based on inflow of advice coming from the Committee members.

I extend my heartfelt thanks to everyone for their collective efforts which has ensured the production of a comprehensive and well-informed report on the regulatory approach for the proposed **Creditor-Led Resolution Approach (CLRA)** under the Insolvency and Bankruptcy Code.



(Mr. Sudhaker Shukla)
Chairman
Expert Committee

Preface

The Insolvency and Bankruptcy Code (the “Code”) epitomizes one of India’s most illustrious economic reforms, profoundly contributing to the nation’s economy by facilitating the resolution and restructuring of distressed assets. In circumstances where a business is unable to fulfil its financial obligations, it becomes imperative for creditors to convene and ascertain whether the enterprise can be salvaged and expeditiously recuperate as much as feasible by resolving the debtor’s financial stress or initiate liquidation procedures. The IBC furnishes an efficacious platform to accomplish this objective. Over the past seven years, the positive ramifications engendered by this legislation have revolutionized the dynamics of debtor-creditor relationships in India, a metamorphosis attributable not solely to the statutory framework, but also to its proficient execution.

Within the purview of the Code, three distinct resolution processes are available to corporate entities: the Corporate Insolvency Resolution Process (CIRP), the Fast-track Corporate Insolvency Resolution Process (FCIRP or Fast-track process), and the Pre-packaged Insolvency Resolution Process (Pre-packs). The CIRP represents the primary formal procedure under the Code, wherein the management of the Corporate Debtor (CD) is entrusted to the Resolution Professional (RP) and the Committee of Creditors (CoC), which comprises unrelated financial creditors responsible for resolving the insolvency of the CD. The Fast-track process, is the option mainly designed for simpler cases such as when a CD has a dominant creditor to whom a substantial debt is owed, retains the principles of transparency and collective action through a process flow akin to the CIRP, albeit with expedited timelines. The Pre-pack process, specifically tailored for Micro, Small, and Medium Enterprises (MSMEs), is led by the CD and involves the formulation of a base resolution plan in an informal setting, with which external bidders can compete subsequently during the formal process.

Originally, the CIRP and Fast-track process under the Code are intended to be time-bound processes; however, procedural delays in practice have undermined this objective, rendering the Fast-track process more analogous to the CIRP with no apparent variation. Consequently, the Insolvency and Bankruptcy Board of India (IBBI) established an expert committee to reimagine the Fast-track process and propose an insolvency resolution mechanism that enables a specified category of CDs to be resolved expeditiously through a hybrid process, ensuring efficient outcomes for all stakeholders.

The Committee acknowledges that the delays associated with the CIRP in numerous cases have adversely affected the resolution process, resulting in value depletion and diminished stakeholder confidence in the system. This is particularly evident in the admission process, where it has taken the Adjudicating Authority (AA) over a year to commence the CIRP in certain instances. To enhance the effectiveness of insolvency resolution, it is crucial to initiate the process as swiftly as possible following a default. The Committee’s primary task was to design a process that enables rapid commencement, drawing from the experiences of other jurisdictions, such as the United Kingdom, which offers an out-of-court method for initiating the resolution process for a special class of creditors and companies.

Under the Code, unrelated financial creditors bear the responsibility of actively involving themselves in resolving the insolvency of the CD, as they possess the capacity to evaluate the CD's business viability, restructure loans, and comprehend how a distressed CD can reorganize its affairs. Consequently, the Committee concurred that a special right could be conferred upon financial creditors to initiate the insolvency resolution process through an out-of-court system adopting a hybrid approach to resolution. Additionally, financial institution agreements typically entail substantial lending sums accompanied by well-documented and clearly defined repayment plans, simplifying the process of identifying and establishing any defaults that may arise. Furthermore, the likelihood of abusing this right is diminished, as most financial creditors are regulated entities directly accountable to the Reserve Bank of India and other regulatory bodies.

In this context, the Committee diligently examined the advantages of implementing a hybrid approach to insolvency resolution, combining both out-of-court and in-court mechanisms. This approach would provide financial creditors with the flexibility to tailor the process to the unique needs of the distressed CD while ensuring transparency and safeguarding the interests of all stakeholders.

The Committee also recognized the importance of fostering innovation and adaptability in the insolvency resolution framework to better respond to the evolving needs of India's dynamic economy. As such, the Committee recommends a continuous review of the insolvency resolution processes to identify areas for improvement and to incorporate international best practices as appropriate.

In conclusion, the expert committee's recommendations aim to enhance the efficacy of India's insolvency resolution framework, preserving the value of distressed assets, and bolstering stakeholder confidence in the system. By refining the Fast-track process and integrating lessons from other jurisdictions, the Committee aspires to provide an efficient, transparent, and equitable insolvency resolution mechanism that contributes to the nation's long-term economic growth and stability.

The Committee accordingly proposes conversion of the existing fast-track process to a '*creditor led*' and '*out-of-court*' initiated insolvency resolution process. The applicability, key-participants and their reimagined roles for this process are as follows:

- i. *Applicability*: The CLRP process to be made applicable in respect of both, MSME and non-MSME CDs, with such asset size or income based criteria as may be prescribed by the Central Government.
- ii. *Financial Creditors*: In the event of a default, at an early stage itself, a financial creditor(s) (as prescribed by the Central Government) may inform the CD of the occurrence of default and its intention to commence CLRP. This option can be exhausted by the financial creditor as the default occurs or after the debt restructuring scheme is implemented by the RBI. After receipt of the CD's response (if any) and approval from at least 51% of unrelated FCs, the said unrelated FCs can appoint an RP, who will, thereafter, notify the AA and the IBBI regarding initiation of CLRP. The RP will then proceed to form the CoC, which will have powers, functions and duties akin to the one constituted under the CIRP. It is contemplated

that the CoC must approve a resolution plan within 120 days (extendable up to 45 days by order of the AA) from the date of commencement of CLRP (i.e., date of intimation of CLRP to AA). This approved resolution plan will thereafter be filed with the AA for its approval.

- iii. *Corporate Debtor*: The CLRP contemplates retention of CD's control of its affairs on an 'as is' basis, and no such transfer or vesting of management rights (as is done in CIRP) will be made to the RP. However, in case of mismanagement or fraud coming into the notice, the CoC will be empowered to convert CLRP to CIRP and transfer the management to RP, by way of an application to the AA. Thus, in CLRP, the CD's management continues and is responsible for keeping the company running as 'going concern'. It is imperative that the CD's directors and personnel must cooperate with the RP to provide required assistance, such as relevant information on the CD's affairs from time to time. Any failure to comply or an overt wrongful act would result in imposition of penalties. Since CLRP commences at the stage of early default, the bar under Section 29A regarding NPA declaration may not apply and the Corporate Applicant is incentivised with a chance to participate in the resolution process.
- iv. *Resolution Professional*: The RP is responsible for conducting the CLRP in a manner similar to the CIRP. This includes collating and preparing the IM for invitation of the resolution plans. IBBI may provide norms to enable the RP in reducing the time spent in preparing the IM by requiring the CD to provide relevant information. However, misleading information or omissions can lead to adverse consequences and the CD will be held accountable for such acts. The RP is also responsible for identifying avoidable and fraudulent transactions and seeking an appropriate remedy from the AA. Unlike the CIRP, the CoC can replace the RP on its satisfaction and discretion, and the confirmation of AA is not required.
- v. *Other Creditors*: During the CLRP, all creditors can participate by submitting claims to the RP, as it is a collective insolvency resolution process. IBBI will provide a transparent procedure for collecting and collating creditors' claims. If any creditor is in disagreement with the acceptance or rejection of their claim, they may agitate their concerns before the AA which will be considered by the AA only after submission of the resolution plan to it by the RP unless the non-consideration of the application will vitiate the process. Further, individual creditor's actions against the CD would also be restrained by the imposition of a moratorium. Upon such request and until its confirmation or rejection by the AA, the moratorium as provided under sections 14(1) and (3) of the Code will be automatically triggered.
- vi. *Adjudicating Authority*: During CLRP, AA's involvement will be limited to specific circumstances prescribed under law. This includes addressing avoidable and fraudulent transactions, adjudication upon application of moratorium, and taking action in cases of non-feasance by the CD. The CLRP contemplates that the requests made to the AA during the CLRP will be minimal and as such the process remains 'out-of-court'. Only after the CoC approves the resolution plan will the AA's main role of approving the plan come into effect. At this stage, the AA may also consider requests relating to objections regarding the admission or rejection of creditors' claims by the RP. Additionally, if the resolution plan is not approved, the CLRP may be closed, and/or CIRP may be initiated.

I am firmly convinced that the proposed guidelines for the regulatory framework, specifically tailored for an 'out-of-court' initiated Creditor Led Insolvency Resolution Process (CLRP), will substantially contribute to the fulfilment of the objective of fast-track resolution under the Code. By facilitating a more efficient resolution of insolvency matters in India, these recommendations will not only help in reducing the burden on the legal system but also bolster effectiveness of the insolvency resolution framework. Ultimately, the incorporation of these refinements into the existing framework will serve to fortify India's position within the economic landscape, promoting growth and fostering a climate conducive to foreign investment.



Sudhaker Shukla
Whole Time Member, IBBI
Chairperson of the Committee

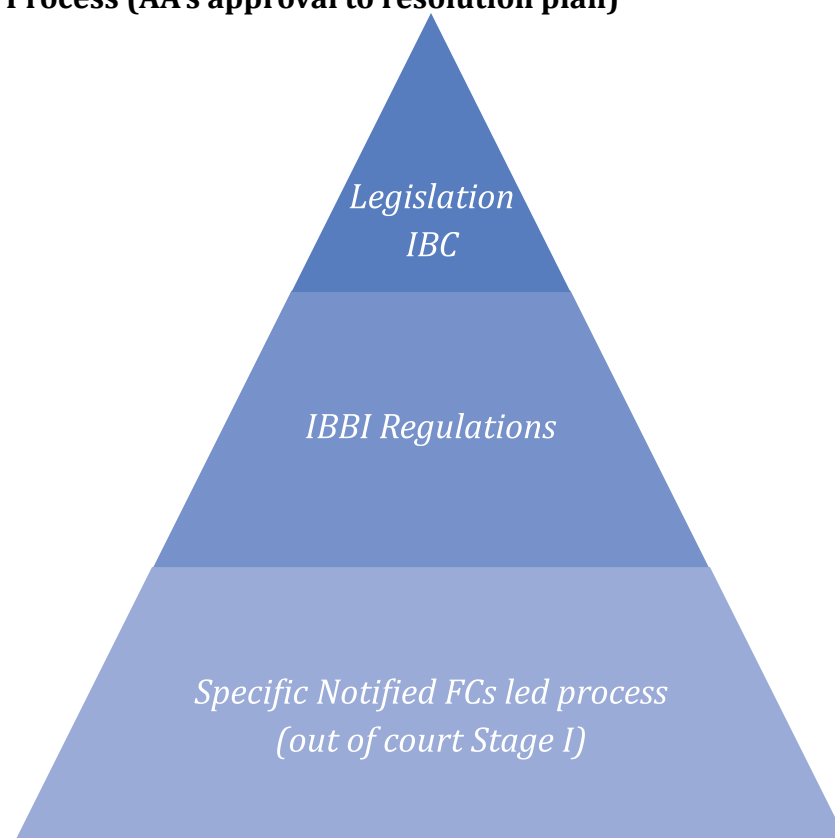
Dated 24th May 2023

Scheme and Stages of 'Out-of-Court' Initiated Creditor-led Insolvency Resolution Process

Scheme of CLRP

Stage I: Out of Court Process (FCs led process and IP's conduct of resolution plan preparation + filing of application)

Stage II: Court Process (AA's approval to resolution plan)



- Amendments to IBC enabling CLRP (revised FCIRP)
- Substantive rights provided and wider umbrella provisions
- Shorter timelines
- Core reliance on out of court initiated process for quick resolution
- (Currently) FCs who can initiate-limited to entities prescribed by the Central Government; eligible CDs to be notified based on asset size

Granular mandatory process

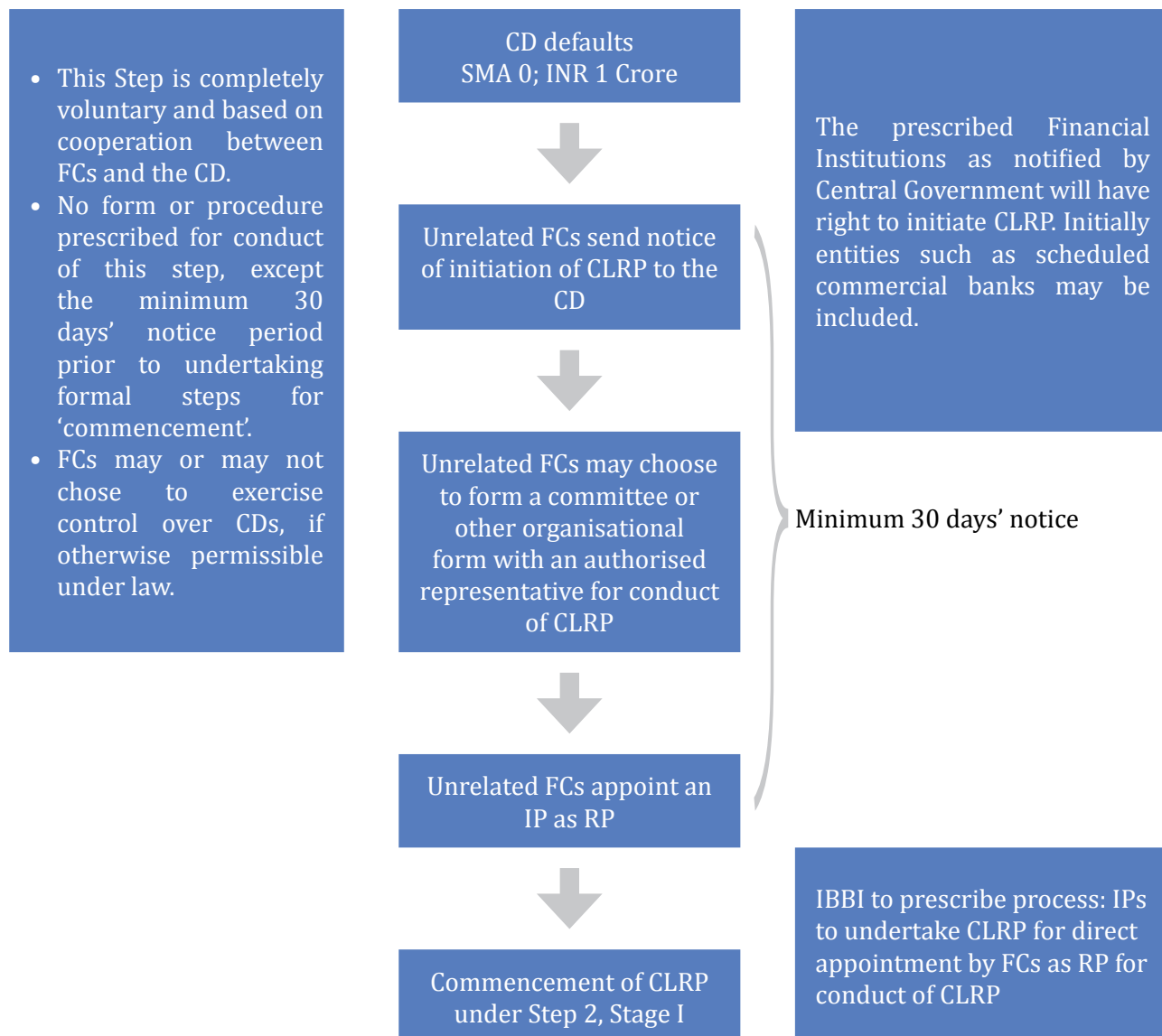
(a) qualifying criteria pre-commencement of CLRP;

(b) post-commencement guidelines for RP's conduct and pre-application (to AA) process.

- Relies on cooperation between CD and FCs.
- FCs may chose to exercise control over CD, if permissible under law or contract.

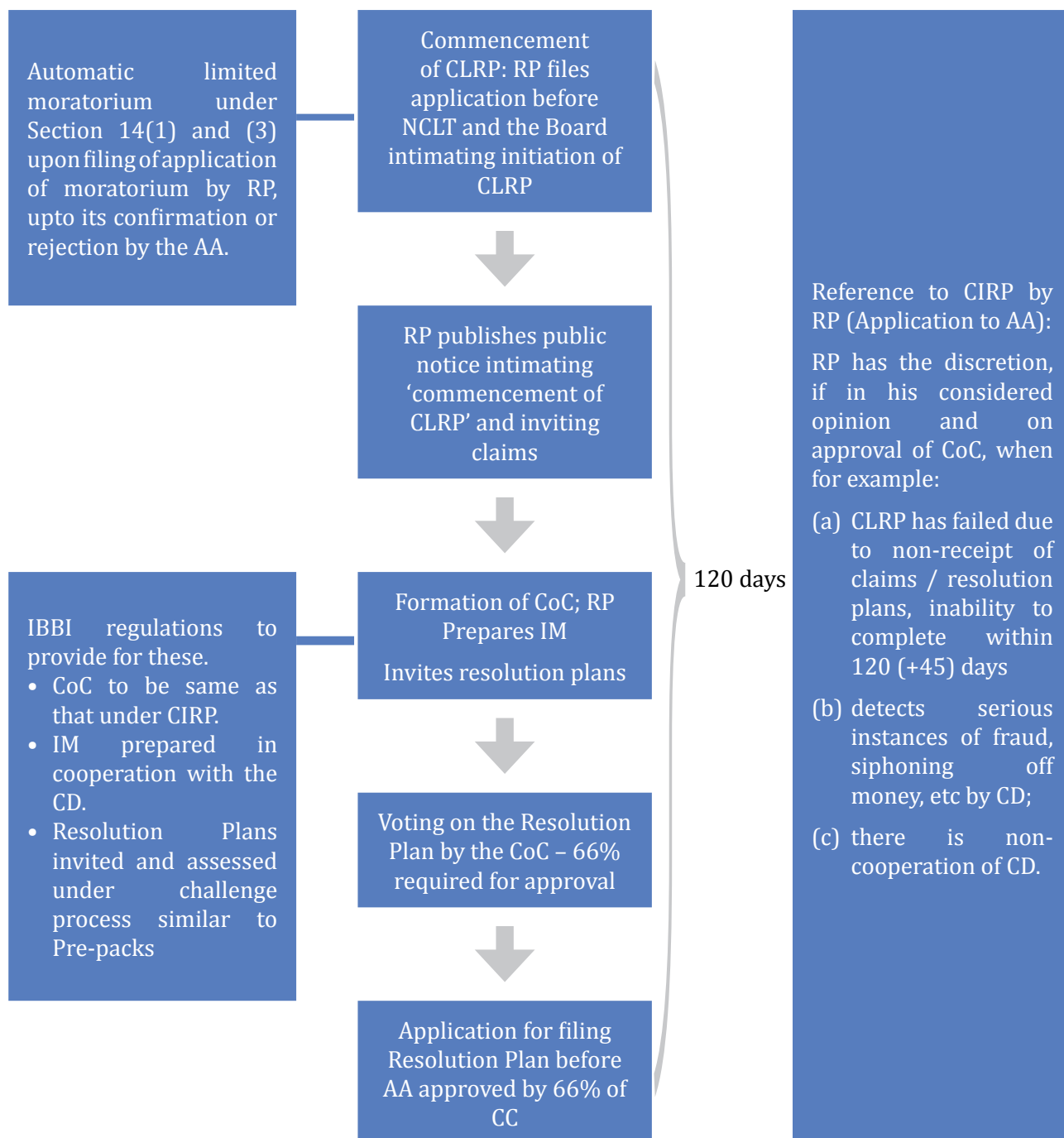
Stage 1: Out of Court Process

Step 1: Initiation and Commencement of CLRP



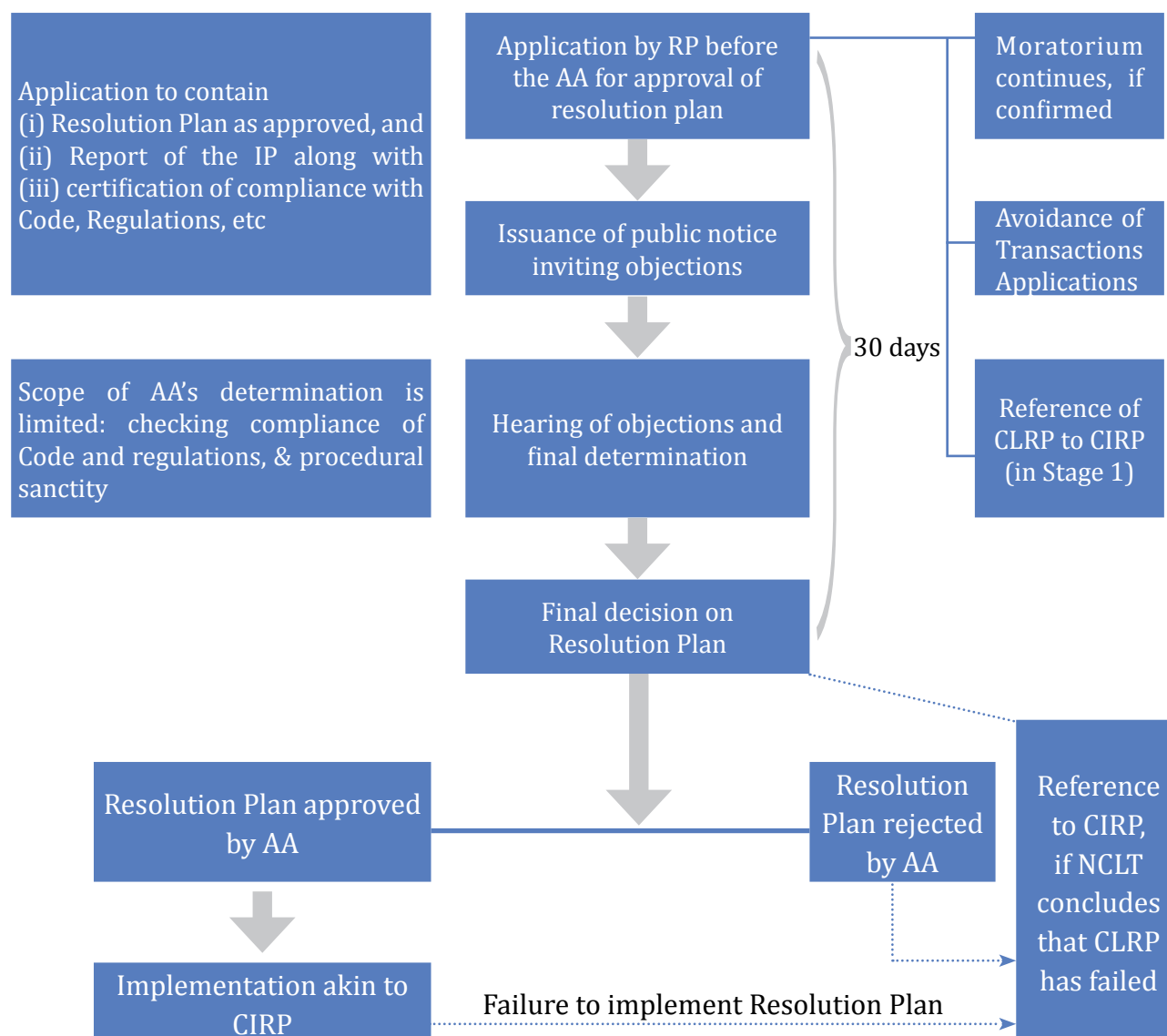
Stage 1: Out of Court Process

Step 2: Conduct of CLRP



Stage 2: Court Process

Step 3: Application before the NCLT/AA



01

CHAPTER

SETTING THE CONTEXT

1.1. Introduction

- 1.1.1. In the wake of economic reforms and concurrent transformation of the legal landscape in India over the past decade, the resolution and restructuring of stressed assets has played a key role in accelerating the country's economic growth. The Insolvency and Bankruptcy Code, 2016 ("**IBC**" or "**Code**") was enacted in May 2016 to consolidate the laws in relation to reorganization and insolvency resolution in India and to ensure a time-bound resolution of stressed assets. The Code also paved way for establishment of Insolvency and Bankruptcy Board of India ("**IBBI**") as the regulator. Within a year of its implementation, the Government of India constituted the Insolvency Law Committee ("**ILC**") to take periodic review of the functioning of the newly enacted Code and to make recommendations as and when required. The ILC was later reconstituted as a Standing Committee by the Ministry of Corporate Affairs, Government of India ("**MCA**") on 6 March 2019. The ILC has played an important role in ensuring that the insolvency framework under the Code addresses several implementation-based challenges as well as remains updated with market dynamics. The ILC's mandate has also been aided by the regulatory body established under the Code, i.e., the Insolvency and Bankruptcy Board of India ("**IBBI**"), which updates the regulatory framework with agility to keep the insolvency resolution regime in India robust and efficient.
- 1.1.2. With the advent of Covid-19 pandemic, and consequent disruption in economic activity, there were concerns about the spate of insolvencies of businesses whose operations were anticipated to be affected. Extra-ordinary times needed extra-ordinary solutions. There arose a need to regulate and implement an alternate insolvency resolution mechanism for Micro Small and Medium Enterprises affected by the pandemic. To tackle this, the pre-packaged insolvency resolution process ("**Pre-packs**" or "**PPIRP**") was introduced in the Code as a separate chapter through the Insolvency and Bankruptcy Code (Amendment) Ordinance on 4th April 2021 (which was later substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2021 on 12th August 2021).
- 1.1.3. While the slow take-off of pre-packs in India was debated, possibility of conceptualizing an 'out-of-court initiated' creditor-led resolution process ("**CLRP**") to supplement the

existing corporate insolvency resolution process (“**CIRP**”) was also discussed with the stakeholders at the Colloquium on ‘Functioning and Strengthening of the IBC Ecosystem’ organised by IBBI in November, 2022. The issue was accordingly brought forth in the discussion paper issued by the MCA¹ (“**MCA Discussion Paper**”) in January 2023. With the intent to examine the scope of use of fast-track corporate insolvency resolution process (“**FCIRP**”) and to recommend a framework for quicker and more efficient ‘out-of-court initiated’ CLRP that has minimal involvement of the adjudicating authority (“**AA**”) under the Code, an Expert Committee (“**Committee**”) was constituted in February 2023 (Annexure 1) under the chairpersonship of Mr. Sudhaker Shukla (Whole Time Member, IBBI), and comprised of Mr. Ashwini Kumar Tewari (Managing Director, State Bank of India and Member), Mr. Sunil Mehta (Chief Executive, Indian Banks’ Association and Member), Mr. Bahram Vakil (Founding Partner, AZB & Partners, and Member), Mr. Sumant Batra (Founder Partner, Kesar Dass B. & Associates and Member), Mr. Shrimohan Yadav (Former Chief General Manager, RBI and Member), Mr. Rajan Jain (Representative of the MCA and Member) and Mr. Sandip Garg (Executive Director, IBBI and Member Secretary) as its members.

1.2. The Committee’s Mandate and deliberations

1.2.1. The Committee’s mandate was broadly to examine suitable choices for regulatory framework of the proposed CLRP under the Code and submit its recommendations, *inter alia*, on the following terms:

- a. Identify international best practices on Creditor Led Resolution Approach (“**CLRA**”),
- b. To study and recommend a regulatory framework for CLRA under the Code followed by judicial oversight at the end, and
- c. Any other issue which expert committee may like to highlight.
- d. In that light, the Committee discussed threadbare the existing regime, requirement of CLRP framework under the Code and thus, proposes in this Report the framework for ‘out-of-court’ initiated CLRP. The Committee’s deliberations also considered the most recent discussions regarding CLRP at the Colloquium and in the MCA Discussion Paper.

1.2.2. In furtherance of this objective, the Committee held two meetings on 16th February 2023 and 6th March 2023, where it looked into various aspects of a quicker and more efficient process that included minimal judicial involvement. It deliberated and discussed many options that are available for the formulation of this process and considered best international perspectives that could be referred to for framing similar policies in India. It also extensively studied and discussed international best practices, existing Indian frameworks, and learnings from implementational experience of CIRP and Pre-packs

¹ MCA Discussion Paper on Invitation of Comments from the public on changes being considered for the Insolvency and Bankruptcy Code, Ministry of Corporate Affairs, Government of India; <https://www.mca.gov.in/content/dam/mca/pdf/IBC-2016-20230118.pdf>(last accessed 20 March 2023)

under the Code. Several iterations of the draft report and the draft regulations were discussed by the Committee, before its finalisation in this present form.

- 1.2.3. As part of this process, the IBBI also consulted with stakeholders including National Asset Reconstruction Company Ltd., India Debt Resolution Company Ltd. and engaged Vidhi Centre for Legal Policy for research and drafting assistance. Mr. Akash Chandra Jauhari, Ms. Shruti Khanijow and Ms. Vallari Dronamraju from Vidhi Centre for Legal Policy assisted the Committee in extensive research and analysis of the relevant legal principles and international jurisprudence, as well as in drafting of this report and the draft regulations.

1.3. Structure of this Report

- 1.3.1. This Expert Committee Framework Report (“**Report**”) focuses on setting in context the background for consideration of CLRP in *Chapter II* and presents a case for a separate framework for a fast-track creditors-led resolution. To this end, *Chapter III* broadly summarises the legal regime(s) in various relevant jurisdictions for ‘out-of-court’ or ‘out-of-court initiated’ insolvency resolution process, particularly the UK, USA, Singapore, Australia and Germany. Chapter III also focuses on delineating the advantages of CLRP over existing form of creditor led and/or ‘out-of-court’ resolution or restructuring mechanisms under the Code or otherwise under Indian law, including CIRP, pre-packs and the existing fast-tracked corporate insolvency resolution process (“**FCIRP**”).
- 1.3.2. In consonance with the MCA Discussion Paper, the options/approaches for the proposed CLRP framework aim to retain the primary elements of CIRP to ensure that the final approved resolution plan has the same sanctity and effect as a plan approved under the regular process and benefits from all protections (such as protections available to the resolved entity under the ‘clean slate’ theory under Section 32A of the Code, etc). *Chapter IV* records the deliberations and recommendations of the Committee on the procedure/process for regulation and implementation of the proposed CLRP framework by the IBBI. This Chapter details this discussion in three steps – (a) eligibility of participating entities, (b) out-of-court stage, and (c) procedure before the Adjudicating Authority (“**AA**”), i.e., the National Company Law Tribunal (“**NCLT**”) under the Code. *Chapter V* indicates the recommended stage-wise timelines for conduct of CLRP.



02

CHAPTER

BACKGROUND

2.1. Evolving Insolvency Landscape

- 2.1.1. As one of the fastest growing economies, alternative methods of financial stress resolution and restructuring of debt-ridden companies have become crucial for India. In this context, the growing role of financial institutions in facilitating the credit supply demands credible regulatory and statutory regime for protection of investment and thus, calls for a more efficient, faster and transparent insolvency resolution mechanism in place. Largely, India's growth as an attractive, vibrant investment destination, especially with increased foreign investment in India by experienced international investors and seasoned financial institutions, brings with it the expectation that India will also keep pace with other progressive economies where such resolution processes have matured over time.
- 2.1.2. A distressed asset has a life cycle and its value gradually declines with time, if distress is not addressed. With this at its core, the Code's primary objects are to ensure resolution of stressed assets in a time bound manner and for value maximisation of the stressed asset. Accordingly, the Code endeavours to close the various insolvency processes at the earliest. For example, it prescribes a maximum timeline of overall 270 days for CIRP. However, these timelines have not seen strict implementation in view of several bottlenecks in the process, especially at the admission stage. As of December 2022, the 611 CIRPs which have yielded in orders for resolution took an average of 482 days (after excluding the time excluded by the AA) for conclusion of process. Similarly, the 1901 CIRPs, which ended up in orders for commencement of liquidation, took on average 445 days for conclusion. Further, 453 liquidation processes, which have closed by submission of final reports took on average 513 days for closure. Similarly, 893 voluntary liquidation processes, which have closed by submission of final reports, took on average 413 days for closure.
- 2.1.3. With respect to FC initiated CIRPs that closed with resolution plans in 2022, a decreased value realisation of approximately 32% was recorded. The recovery may be low at this stage, but recovery in early stages of distress is much higher, and it is primarily because of the Code. Despite the above implementational challenges, experience of the past seven years suggests that the Code has led to behavioural change in debtors qua creditors'

debts due to the credible threat of the CD changing hands once the Code processes are triggered. The debtors are now resolving distress in early stages to avoid CIRP – from when default is imminent, on receipt of a notice for repayment but before filing an application, after filing application but before its admission, and even after admission of the application, and making best effort to avoid consequences of resolution process. Thus, most companies are rescued at these stages. Till December, 2022, 24,222 applications for initiation of CIRPs of CDs having underlying default of INR 7,69,037.12 crore were resolved before their admission. Only a few companies, who fail to address the distress in any of earlier stages, pass through the entire resolution process.

- 2.1.4. Therefore, a progressive insolvency resolution system for the companies in stress that provides for the FCs to initiate and lead the insolvency resolution process of the CD outside of the formal judicial process to reach a resolution plan while maintaining maximum value of the asset was considered for introduction to the Code. By driving a process through FCs and keeping it ‘out-of-court’ until necessary for AA’s approval, the resolution process is expected to be initiated and primarily self-driven by the FCs (as members of CoC) while the company in default continues to function as a ‘going concern’ on an ‘as is’ basis by the CD (“**Proposed Framework**”).
- 2.1.5. The Proposed Framework draws from the experience of existing creditor led arrangements in India, and aims at providing direct (a) statutory sanctity to such ‘out-of-court’ initiated process and (b) judicial enforceability to the resolution plans approved through CLRP, all while retaining the efficiency and flexibility expected of party-driven ‘out-of-court’ initiated resolution mechanisms. These aspects were found absent in such existing processes. For example, RBI’s Prudential Framework for Resolution of Stressed Assets dated 7th June 2019² (“**RBI Prudential Framework, 2019**”) is a reference point as it provides for an ‘out-of-court’ process for the resolution of stressed assets *via* inter-creditor agreement(s) (“**ICA**”). While these ICAs are contractually binding on the creditors (and debtors) and are enforceable as such, they lack statutory force.
- 2.1.6. It is pertinent to highlight that the key element of “cooperation” by CD during the resolution process is retained in CLRP and forms an essential distinctive feature from CIRP.

2.2. Colloquium on Functioning and Strengthening of the IBC Ecosystem

- 2.2.1. The Report of the Colloquium on ‘*Functioning and Strengthening of the IBC Ecosystem*’ published in November 2022 by the IBBI emphasizes on an alternate mode of resolution of stressed firms. At the Colloquium discussion, it was discussed that existence of alternative options for resolution of stress and restructuring of a firm can help the financial system and businesses deal with insolvencies more efficiently. A combination of an ‘out-of-court initiated’ workout procedure along with a strong formal insolvency procedure makes

²RBI Prudential Framework for Resolution of Stressed Assets dated 7 June 2019, RBI, <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/PRUDENTIALB20DA810F3E148B099C113C2457FBF8C.PDF> (last accessed 20 March 2023)

the overall insolvency system more robust. Although the recently enacted Pre-pack framework also provides for several processes that are to be completed ‘out-of-court’, it is more akin to a formal insolvency procedure with significant involvement of the AA that allows the debtor to remain in possession of the CD during process.

- 2.2.2. While independently designed, the Proposed Framework also draws inspiration from and seeks to integrate the RBI Prudential Framework 2019 that provides for informal out-of-court framework for resolution of stressed assets. However, since the outcomes of that procedure do not have the same legal sanctity as a resolution plan approved under the Code, it was thought that CLRP might help in overcoming this limitation. The Colloquium also deliberated points on the features of the Proposed Framework including the role of IP and how the debtor in possession approach might work in the CLRP framework.
- 2.2.3. The participants at the Colloquium were in consensus that there is a strong case for a more efficient out-of-court initiated insolvency procedure that is primarily creditor-led, which could be introduced by amending the fast-track insolvency process under the Code to complement the Pre-packs and the regular CIRP processes. It was suggested that a framework must be formulated to implement a creditor-led ‘out-of-court’ initiated insolvency resolution mechanism in an effective manner.

2.3. MCA Discussion Paper

- 2.3.1. The MCA Discussion Paper further built on and conceptualised the ‘out-of-court’ initiated creditor led insolvency resolution process. It contemplates CLRP to incorporate the primary elements of CIRP, while retaining the speed and efficiency of FCIRP. To formalise CLRP, it proposes that the provisions dealing with FCIRP (Chapter IV, Part II of the Code) may be amended such that unrelated FCs of a CD (as CoC) may select and approve a resolution plan through an ‘out-of-court’ process and then proceed to AA for its approval.
- 2.3.2. It proposed that in CLRP a two-stage process will be undertaken³:
- a. Stage I - ‘out-of-court initiated’ discussions: Unrelated FCs of a CD may select and approve a resolution plan through an informal out-of-court process, and
 - b. Stage II – involvement of AA: The AA would be involved only for the final approval of the resolution plan (or for obtaining a formal moratorium, if needed).
- 2.3.3. It spells out the following elements of the proposed two-stage CLRP framework:
- a. *Applicability and Eligibility*: It will be applicable/available to the CDs with asset size as notified by the Central Government.
 - b. *Process of out-of-court initiated stage and formulation of the resolution plan*:
 - i. Role of FCs: The FCs shall be responsible for overseeing the conduct of CLRP before an application is filed. The FCs will be required to appoint an Insolvency Professional (“IP”) to facilitate conduct of CLRP.

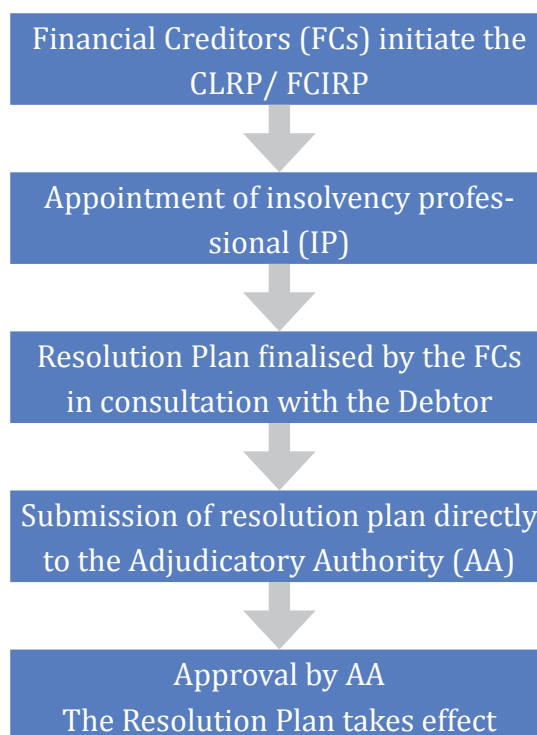
³Para 6.1, MCA Discussion Paper.

- ii. Role of IP: It contemplates that IP would *inter alia*, invite and collate claims against the CD through public announcements, ensure that the resolution applicant complies with Section 29A of IBC and invite resolution plans from prospective resolution applicants.
- iii. Option for Moratorium: To preserve the assets of the CD during the pendency of the process and to avoid any recovery actions or syphoning off of assets, the resolution professional will have the option to approach the AA to seek a moratorium (with approval of a requisite majority of unrelated FCs). The scope of the moratorium contemplated will be similar to the one provided during CIRP under Section 14(1) of the IBC.

c. *Process before court and approval of the resolution plan:*

- i. The application for approval of the resolution plan under CLRP will be made after obtaining the approval of sixty-six per cent of the unrelated FCs.⁴
- ii. Before approval of an application for approval of a resolution plan, the AA must be satisfied that (i) the procedural conditions under the IBC (which are added when this framework is introduced) and the regulations are fulfilled, and (ii) the plan complies with all mandatory requirements as approved during the CIRP.⁵

2.3.4. An indicative representation of the suggested framework under the MCA Discussion Paper is as under:



⁴This is identical to the voting threshold required for approving a resolution plan during the CIRP.

⁵Para 6.1(c), MCA Discussion Paper.

03

CHAPTER

EXPLORING OPTIONS FOR CLRP

3.1. 'Out-of-Court' Resolution Processes in other Key Jurisdictions

3.1.1. This Section provides a general outline of the 'out-of-court' initiated insolvency resolution processes in other comparative jurisdictions and their overall mechanism.

A. United Kingdom

3.1.2. The UK insolvency and restructuring process involves formal insolvency processes including liquidation, administration and company voluntary arrangement, that is governed by the Insolvency Act, 1986⁶ and the Insolvency Rules (England and Wales), 2016.⁷ Schemes of arrangement and restructuring plans are two pre-insolvency restructuring tools that can be used to compromise or reschedule debts with agreements from a statutory majority of creditors subject to the Companies Act, 2006.⁸ In the UK, procedures such as administration, company voluntary arrangement, schemes of arrangement and Part 26A of the Companies Act, 2006 i.e., restructuring plan and Part A1, Insolvency Act, 1986, i.e., moratorium, may be used to rescue a company in distress.

3.1.3. Administration is not a reorganization procedure, but a temporary measure that imposes a moratorium, appoints an administrator, and provides a gateway to other alternative routes for stress resolution.

3.1.4. Under the administration system, the administrator may be appointed by an administration order of the court or by direct appointment by the holder of a floating charge or the company or the director (out-of-court). The out-of-court mechanism enables the holder of a qualified floating charge ("QFC") or the company or its directors to appoint an administrator by filing a notice of appointment and other documents. Under the UK law, a QFC has to be over the whole or substantially the whole of the company's assets, either by itself or along with other QFCs or charges and securities held by the person. The QFC holder who has a substantial interest in the company's financial wellbeing can commence rescue proceedings for the company at any point by appointing an administrator.

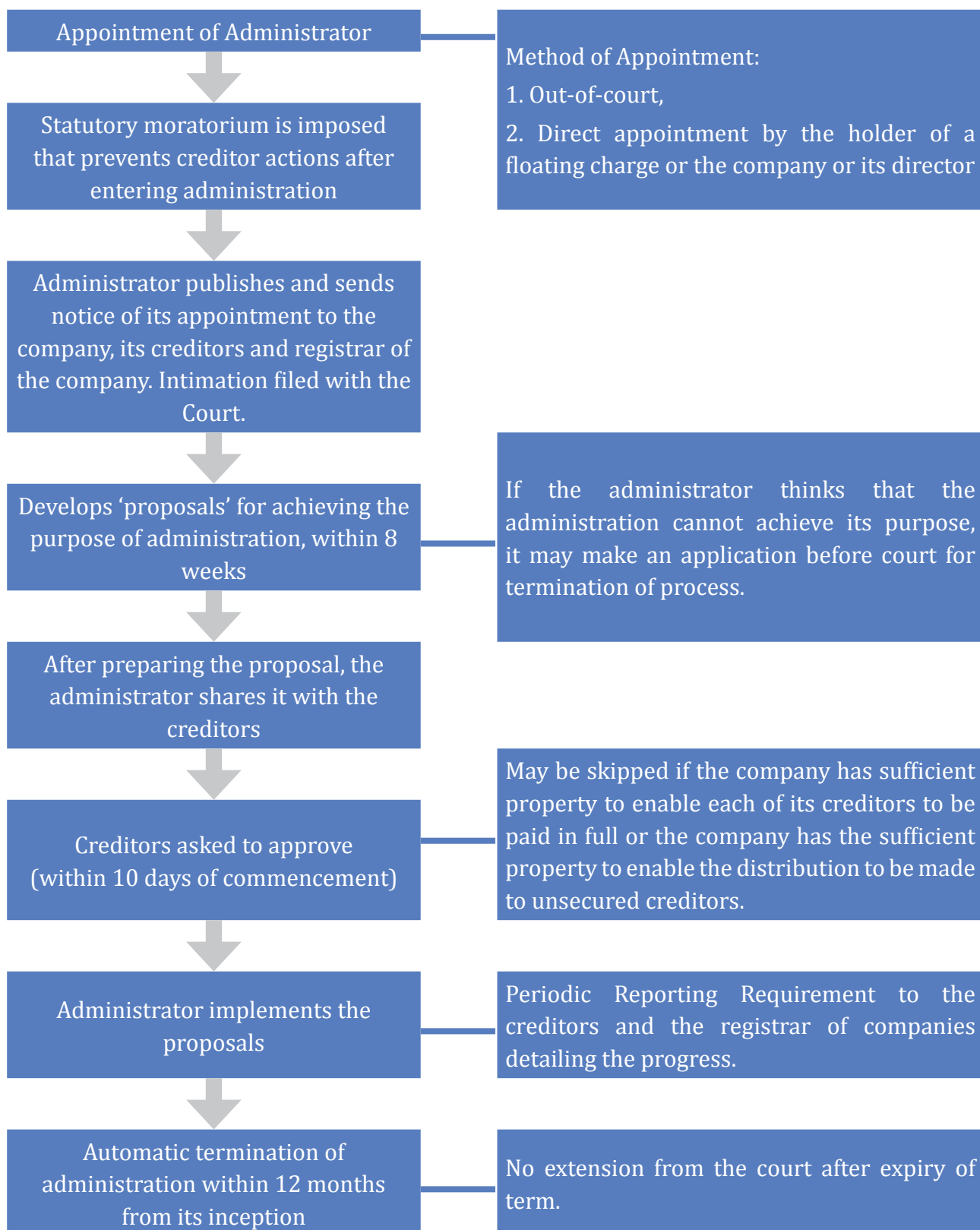
⁶(English) Insolvency Act 1986, <https://www.legislation.gov.uk/ukpga/1986/45/contents> (last accessed 13 March 2023).

⁷Insolvency Rules (England and Wales) 2016, <https://www.legislation.gov.uk/uksi/2016/1024/contents/made> (last accessed 27 March 2023).

⁸(English) Companies Act 2006, <https://www.legislation.gov.uk/ukpga/2006/46/contents> (last accessed 27 March 2023).

- 3.1.5. After the appointment, a company becomes subject to a statutory moratorium that prevents creditor actions after entering administration. It gives time to a company during which the administrator may recognize its affairs, or conduct orderly realization of its assets, without pressure from creditors. An interim moratorium may also be entered into, that provide for the same benefits as a statutory moratorium.
- 3.1.6. The administrator is to publish and send notice of its appointment to the company, its creditors, and the registrar of companies. The administrator will require any concerned person to provide a statement of the company's affairs, that includes a summary of the company's assets and liabilities and details of any fixed or floating charges. The administrator will prepare a proposal with objectives to be achieved through the administration. This is shared with the creditors for their consideration and provides a date by which the decision must be made. The creditors may then either approve the proposal without any modifications or with modifications to which the will administrator will consent. While implementing the proposals, the administrator must send periodic progress reports to the creditors and the registrar of companies that details the progress of the company.
- 3.1.7. The Insolvency Act, 1986 provides for automatic termination of administration within 12 months from its inception. This period can be extended either by a court order or with the consent of the company's creditors. However, the administrator cannot seek an extension from the court after its term is expired. The administration may also be brought to an end on an application to the court where the administrator thinks that the administration cannot achieve the purpose it was implemented for. In cases of out-of-court administration, the administrator can end administration by filing a form in the court and registrar when its purpose is achieved.

3.1.8. A broad representation of the UK out-of-court resolution process is as under:



B. United States of America (“USA”)

- 3.1.9. The US Code, 2005 under Title 11, Chapter 11⁹ provides for the procedure of a bankruptcy proceeding. Chapter 11 of the US Code comprehensively deals with ‘reorganisation of a company that is pre-empting bankruptcy’. This can be availed by both a corporate entity and an individual. The primary objective of this is to formulate a plan for reorganisation.
- 3.1.10. Primarily, a bankruptcy case commences when a bankruptcy petition is filed with the bankruptcy court. This petition may be a voluntary petition, that is filed by the debtor, or an involuntary petition, that is filed by the creditors when it meets certain requirements. The debtor automatically assumes identity as a debtor-in-possession without the appointment of a ‘Case Trustee’. A debtor will remain so until the debtor’s plan of reorganisation is confirmed. The filing of the petition creates a bankruptcy estate that includes all legal and equitable interests, profits, rent from estate and interest in property after bankruptcy. The filing of bankruptcy functions as an automatic stay. This provides for a period where all judgements, collection activities, foreclosures, and repossessions of property are suspended and may not be pursued by the creditors for any debt or claim that may have arisen before the filing of the bankruptcy petition. The stay is like a silent period for the debtor wherein negotiations can take place to resolve the difficulties in the debtor’s financial situation. Once the debtor-in-possession takes over, the US bankruptcy branch of the US Department of Justice (“DOJ”) appoints a committee of creditors, that holds unsecured claims and appoints additional committees of creditors, as he deems appropriate.
- 3.1.11. If the debtor does not act in consonance with the creditors, a Case Trustee will take over. This trustee is responsible for management of the property, operations of the business and filing of a plan of reorganisation.
- 3.1.12. The first right to file the first plan rests with the debtor. The creditors right to file a competing plan provides incentive for the debtor to file a plan within the exclusive period and acts as a check on the excessive delay that may occur. If a party of interest rejects the plan, it can object to the confirmation of the plan before the court. The court can exercise discretion on whether the plan complies with the requirement of the instant title or whether the plan has been made in good faith.
- 3.1.13. Once the plan is confirmed, all the property is with the debtor. It discharges the debtor from any debt that arises before the date of such confirmation. After the plan is confirmed, the debtor is bound by its provisions.
- 3.1.14. The US Bankruptcy Courts by statute, are units of the US District Courts and have jurisdiction over bankruptcy cases. These are courts created under Article I of the US Constitution¹⁰ and play an important role in applications filed before them for pre-arrangements. The debtor is in control in these arrangements and there is greater discretion for the debtor to renegotiate the debt contracts.

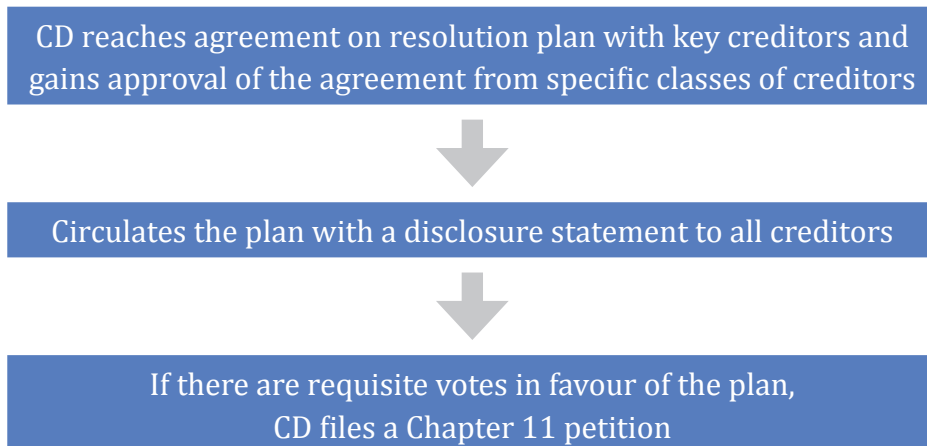
⁹Title 11, Chapter 11, US Code, 2005, <https://www.govinfo.gov/content/pkg/USCODE-2011-title11/pdf/USCODE-2011-title11.pdf> (last accessed 27 March 2023).

¹⁰Article 1, Constitution of the USA, <https://www.govinfo.gov/content/pkg/GPO-CONAN-2017/pdf/GPO-CONAN-2017.pdf>.

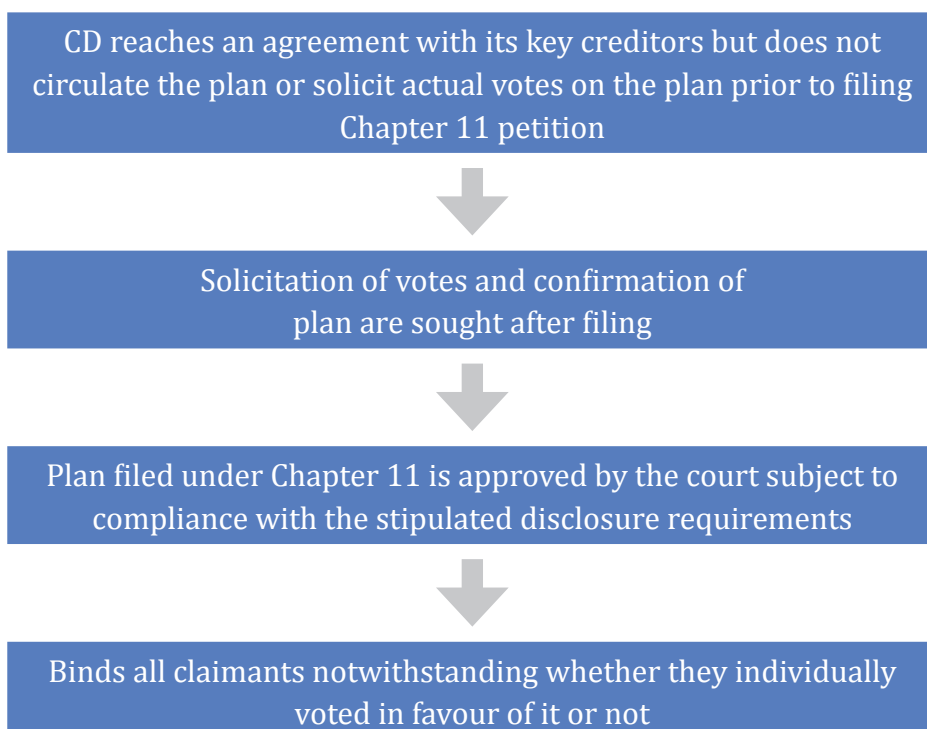
3.1.15. The US enables three forms of pre-packs that include pre-packaged bankruptcy proceeding, pre-arranged bankruptcy proceedings and pre-plan sales under Section 363 of the US Bankruptcy Code, 2005¹¹. Pre-packaged insolvency is the bankruptcy procedure wherein a restructure plan is agreed to in advance for a company that declares its insolvency. The proponents of the plan will have secured sufficient support from creditors to confirm their plan of reorganisation prior to filing for a Chapter 11 reorganisation procedure.

3.1.16. The three forms of out-of-court resolution processes are as follows:

I. Pre-packaged bankruptcy proceedings

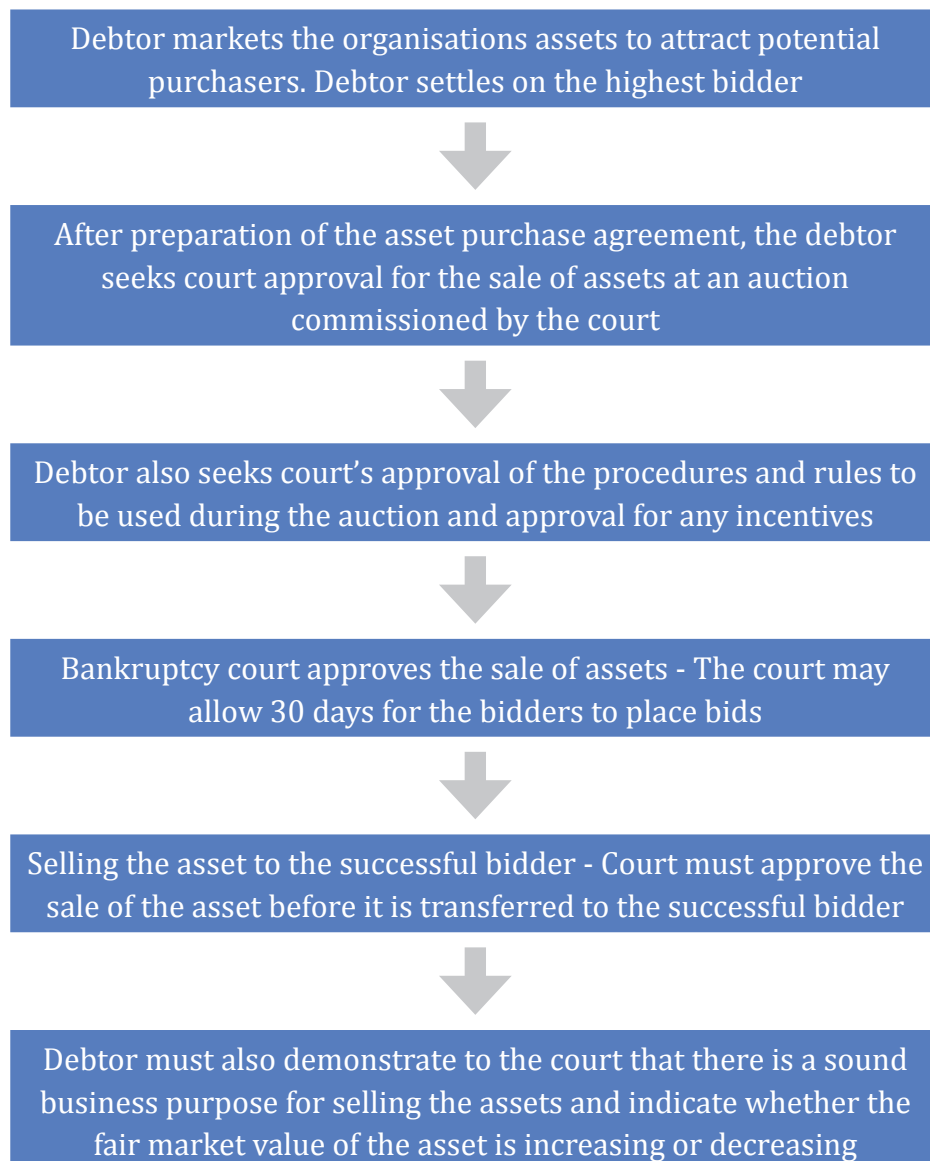


II. Pre-arranged bankruptcy proceedings



¹¹§ 363, US Code, <https://www.govinfo.gov/content/pkg/USCODE-2011-title11/pdf/USCODE-2011-title11.pdf> (last accessed 27 February, 2023).

III. Pre-sales proceedings under Section 363 (Chapter 3, Subchapter IV, US Code)



C. **Australia**

3.1.17. Australia considers the rights of creditors over debtors and is recognised as a creditor-friendly jurisdiction. The insolvency regime is focused on protecting the rights and interests of creditors over the interests of debtors.

3.1.18. In Australia, the Corporations Act, 2001¹² ("**Corporations Act**") is the primary legislation for the registration, insolvency and reorganisation of companies that are incorporated in Australia. Some formal procedures included in the Corporations Act include receivership, voluntary administration, deeds of company arrangement ("**DOCA**"), provisional liquidation, schemes of arrangement (court sanctioned) and small business restructurings and simplified liquidations.

¹²Corporations Act, 2001, <https://ca2013.com/wp-content/uploads/2015/09/Corporations-Act-2001-Australia.pdf> (last accessed 27 February 2023).

3.1.19. As examples, the two relevant out-of-court processes are as under:

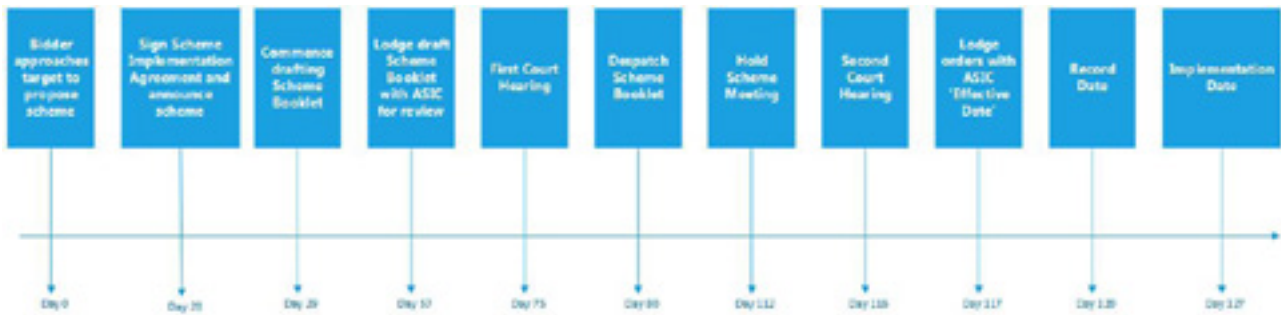
I. Deed of Company Arrangement

- i. Voluntary administration is an option that can be looked into for companies nearing insolvency. Here, a qualified insolvency professional takes control of the company to work out how it can be saved and the best way to deal with the affairs and assets of the business, if it cannot be saved.
- ii. One of the ways of entering voluntary administration is a DOCA. Here, a binding arrangement between a company and its creditors, governs the company's affairs to be dealt with and this is agreed to after the company enters voluntary administration. It is proposed by the director and is administered by a deed administrator. It aims to maximise the chances of the company to continue and also provide a better return for creditors than an immediate winding up of the company. This arrangement binds all unsecured creditors, even if they have voted against the proposal.
- iii. The Process: The voluntary administrator will propose a DOCA to the company's creditors at a meeting of creditors. It is approved by 50% in the number of creditors and 50% by value of the total value of the total amount owed to creditors. If the creditors vote for the proposal that the company entered into a DOCA, the company must sign it within 15 days after the creditors meeting. If the company fails to sign the DOCA within the time provided, the company will automatically go into liquidation.
- iv. The DOCA is binding on the company, its key managerial personnel, all unsecured creditors, owners of company property, those who leased property to the company and secured creditors who voted for the DOCA. The DOCA will terminate on the terms that it provides for, and the company can continue as a solvent company.
- v. The benefit of a deed of company arrangement is that the structure and approach can be put into any form on the condition that it achieves a return that is better than liquidation of the company.

II. Scheme of Arrangement

- i. This is a restructuring tool that sits outside of the formal insolvency procedure and the company becomes subject to a scheme of arrangement whether it is solvent or insolvent. It is a proposal that is presented for restructuring of the company in a manner that includes a compromise of rights by any or all stakeholders. The process is overlooked by the courts and needs approval to be effective. It also requires approval of all classes of creditors. Further, the management retains control of the company during the process.
- ii. The scheme must be approved by at least 50% in number and 75% in value creditors in each class of creditors. The outcome of the scheme is dependent on the terms of the arrangement or compromise agreed with the creditors, but upon implementation, a company is returned to its original state. The challenge with this arrangement includes cost, complexity, uncertainty, time crunches for court approval.

iii. Brief timeline of this process is as under:



D. Germany

3.1.20. The German legislations on out-of-court restructuring are (a) the German Act on Further Development of Restructuring and Insolvency Law, 2020, that implements the EU Directive on Preventive Restructuring Framework Directive of 20 June 2019¹³ (“EU Directive”), and (b) the Stabilisation and Restructuring Framework for Businesses, 2021¹⁴. The EU Directive is in relation to pre-insolvency frameworks, provides for standalone moratoriums out of insolvency proceedings and also gives for a safe harbour for interim financing. The German Act on the Stabilisation and Restructuring Framework for Companies, 2021 contains the requirements of the EU directive for preventive restructuring frameworks and builds on the former act. The latter that came into force on January 1, 2021, sealing the gap between a consensual out-of-court restructuring and an in-court restructuring provision. It was an imperative step in the restructuring narrative for Germany. They are intended to serve as key instruments for the reduction in the debtor’s debt at an earlier stage and in an informal insolvency proceeding.

3.1.21. The primary objective of this system is to preserve the company as a legal entity. It contains the following components:

- i. Declaration – The debtor is to attach a declaration, with reasons, relating to how the restructuring plan will eliminate imminent illiquidity and which will result in the debtor being stabilized.
- ii. Constructive details – Restructuring plans will stipulate the payment of creditors’ quotas on a pro rata basis to creditors.
- iii. Attachments – Liquidity planning and a statement of assets and liabilities will be attached to the restructuring plan.

¹³Directive (EU) 2019/1023 of 20 June 2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1023> (last accessed 27 March 2023).

¹⁴Act on Stabilization and Restructuring Framework for Businesses, 2021, https://www.schultze-braun.de/fileadmin/de/Fachbuecher/Insolvenzjahrbuecher/Insolvenzjahrbuch_2021/StaRUG_engl_YB_2021_.pdf?_=1619505067 (last accessed 27 March 2023).

3.1.22. The brief summary of its process is as under:

- i. Initiation: A restructuring plan procedure is to be initiated outside of formal insolvency proceedings. The debtor must notify the restructuring court of its intention to initiate a restructuring proceeding, and in doing so, the debtor must submit a draft restructuring plan and an explanation of the status of negotiations with the affected creditor(s), shareholder(s), or investor(s). The company can choose which creditors can take part in the plan. On the notification of the proceeding, the restructuring matter will be stayed at the restructuring court. Imminent illiquidity will be required for restructuring plan proceedings.
- ii. The restructuring plan: It will consist of a descriptive part and a constructive part, and the creditors are to be divided into creditor groups for voting purposes. Not all creditors may be covered by the plan, and the application of the plan may be limited to certain claims only. Usually, there will be an assembly of affected parties that will collectively vote on the restructuring plan. The plan will be subject to a vote by a majority of 75% of the existing (not only participating) affected parties in each group of creditors, in terms of existing claims/shares/securities. Once approved, the debtor company will file an application for confirmation of the plan, with the restructuring court. The debtor may request a preliminary review of important questions related to the plan's later confirmation by the court.
- iii. Involvement of the court: The resolution plan will be drawn up under the supervision of a restructuring expert appointed by the court. The restructuring court will also approve the restructuring plan by court resolution provided the plan complies with applicable law. The court can also refuse confirmation if there was no imminent illiquidity of the company, or if it is based on wrong circumstances etc. The court decision may also be subject to an appeal.
- iv. Supervision and control: A restructuring plan is only possible by debtor-in-possession management/self-administration, with assistance from a restructuring practitioner appointed by the restructuring court to ensure that the interests of all parties are safeguarded. There is no creditor's committee in this restructuring process. As under the Directive, the Member States will ensure that a moratorium is available as a temporary relief from creditors actions. A moratorium for 3 months may be provided as a stabilisation measure, and this may also be extended.
- v. Protection from creditors: The restructuring court may be able to halt creditor claims and collateral realisations for up to three months, if the debtor has submitted a comprehensive restructuring plan. If the restructuring plan has been approved by the creditors, but the court approval is still pending, the restructuring court may be able to extend the stay period for up to eight months and halt claim enforcement and collateral realisation actions. Therefore, the length of time required to conclude a restructuring plan can vary depending on the complexity of the situation and the cooperation of all parties involved. Once the restructuring plan has been implemented, the debtor will resume normal business operations.

E. Singapore

3.1.23. The scheme of arrangement mechanism in Singapore helps companies restructure their debts and obligations with their creditors and shareholders. It has been amended several times to bring it closer in concept to Chapter 11 of the US Bankruptcy Code.¹⁵ Further modifications to the schemes of arrangement mechanism have also been introduced in the Insolvency, Restructuring and Dissolution Act¹⁶ which was passed by the Parliament in 2018. A scheme of arrangement will be proposed in respect of a “company” that is any corporation liable to be wound up under the Companies Act, 1967¹⁷ (“Companies Act”).

3.1.24. Initiation: The company’s management proposes the scheme of arrangement in anticipation of or in response to formal insolvency proceedings against a company. The company, or any of its creditors can apply to the General Division of the High Court for an order summoning a meeting of the creditors, members of the company to consider the proposed compromise or arrangement. An ex-parte application must be made to the court for an order to hold a meeting of all creditors or all classes of creditors to approve the proposed scheme of arrangement.

3.1.25. Adjudicatory Powers of Court: The court will hear applications and decide whether the meetings of creditors should be convened. This can take 2-3 weeks of filing of applications to convene a meeting of creditors. The adjudication of proof of debt process takes at least 28 days. Further, on application for a moratorium on a scheme of arrangement, an automatic moratorium of 30 days is imposed on the company. This interim moratorium is available to a company only once within any 12-month period.

3.1.26. Disclosure: A company that is seeking a leave to call for a scheme of arrangement meeting, must unreservedly disclose all material information to assist the court in determining how the meeting is to be conducted.

3.1.27. Compromise: The court will consider matters relating to the scope of the scheme of arrangement at the “leave” stage on questions of a compromise between the company and its creditors under the Companies Act.

3.1.28. Consent and approvals: The two types of approvals required for a scheme of arrangement to be successfully implemented includes i) approval by a majority in number of those who will be bound by the scheme of arrangement and who are present and voting and represent 3/4th in value of the creditors or class of creditors, members or class of members or holders of units of shares or class of holders of units of shares and ii) the court’s approval.

¹⁵Chapter 11, US Bankruptcy Code, <https://www.law.cornell.edu/uscode/text/11/chapter-11> (last accessed 27 March 2023).

¹⁶Insolvency, Restructuring and Dissolution Act, 2018, <https://sso.agc.gov.sg/Acts-Supp/40-2018/> (last accessed 27 March 2023)

¹⁷Companies Act, 1967, <https://sso.agc.gov.sg/Act/CoA1967> (last accessed 27 March 2023).

- 3.1.29.Supervision: After the General Division of the High Court approves the company's ex parte application to summon a scheme of arrangement, a date and time is fixed for the meeting to take place. Before the meeting takes place, the company's creditors must submit their proof of debts to be entitled to attend and vote at the meeting. If a sufficient number of creditors and members vote in favour of the scheme, a further court hearing will take place where the court will decide whether to sanction the scheme. If the court approves the scheme of arrangement, it is administered by a scheme manager. In many cases, the company directors remain in control of the company to the extent that is permitted under the scheme of arrangement.
- 3.1.30.Moratorium: The Companies Act permits a company to apply for a moratorium restraining legal proceedings by any creditor when a scheme of arrangement is proposed between the company and its creditors or any class of such creditors. A notice of application, evidence of support needs to be provided for a moratorium. The courts can also grant a moratorium to prevent legal proceedings being brought against a company that seeks to propose a scheme of arrangement.
- 3.1.31. Upon successful completion of the scheme, the debtor company either continues to run its business as a going concern or is wound up under the terms of the scheme of arrangement.



04

CHAPTER

PROPOSED FRAMEWORK FOR CREDITOR LED INSOLVENCY RESOLUTION PROCESS

- 4.1. The Committee examined the existing framework for FCIRP in the context of enabling an ‘out-of-court initiated’ CLRP that further incentivises the FCs and the CD to strive towards rescue and revival of the company. In outlining the fundamental elements of the Proposed Framework, the Committee has drawn from the experience of (a) the existing ‘out-of-court’ initiated creditor led process(es) in India particularly the RBI Framework 2019, (b) the existing models of ‘out-of-court’ or ‘out-of-court initiated’ insolvency resolution processes in other jurisdictions, specifically in the UK, USA, Singapore, Australia and Germany (which are summarised in Chapter III above), and (c) the implementational experience of CIRP and Pre-packs under the Code.
- 4.2. Based on its deliberations noted below in this Chapter, **the Committee recommends a Proposed Framework for CLRP that works on a co-operative basis on a time-efficiency model, where the prescribed class(es) of eligible and unrelated FCs would drive the process and the CD would remain in control of the company (debtor-in-possession model), with a right to participate, challenge and/or bid in the resolution process.**¹⁸
- 4.3. With respect to legislative and regulatory framework for CLRP, **the Committee recommends that the amendments to the Code in Chapter IV of Part II may be minimum, which should provide for three fundamental concepts:**
- a. **‘out-of-court’ initiation of the process and application for approval of resolution plan before the AA,**
 - b. **addressing issues arising out of debtor-in-possession model or non-substitution of the management, and**
 - c. **manner of application of the moratorium.**
- Apart from these three concepts, some other issues which the Committee has highlighted as important such as the rights and liabilities of RP and the CD’s**

¹⁸This is subject to Section 29A of the Code

continuing management may be included as amendments to the Code. The remaining requirements and conditions of CLRP's implementation – procedural or otherwise may be made part of the regulations notified by the Board. This flexibility is required to ensure a regulatory sandbox, which enables IBBI to explore and apply the most appropriate and workable method in an efficient, agile manner.

A. Key Elements of CLRP from Implementational Learnings of RBI Framework 2019 & the Code – CIRP and Pre-packs

- 4.4. The Committee noted that the ICAs entered into by the creditors and the debtors under the RBI Framework 2019 are purely contractual settlements binding only on the parties that are signatories to it and not *qua* the other stakeholders. They are enforceable as simpliciter contracts and provide no consequent special treatment or classification for party-creditors under law. While these ICAs bind parties contractually, they neither have statutory force nor the sanctity of a court/ judicial authority approved resolution scheme. Accordingly, in the Proposed Framework, **the Committee recommends a mechanism that is designed to provide certainty and statutory enforceability to the resolution plans approved through CLRP, while retaining the flexibility and efficiency of an 'out-of-court' mechanism.**
- 4.5. In terms of implementational learning, the Committee also noted that apart from their role in full-fledged formal insolvency resolution process like creditors' initiated CIRP, certain institutional FCs, especially scheduled commercial banks have demonstrably played an active role in resolving stress under the RBI Framework 2019. Therefore, the Committee deliberated on whether initial implementation and operationalisation of CLRP from regulatory sandbox perspective must provide for initiation of process by only specific prescribed FCs such as scheduled commercial banks. **The Committee found this viable and recommends adoption of a phased approach where initially only specific FCs such as scheduled commercial banks may be prescribed by the Central Government for right to trigger CLRP. Similar to the RBI Framework 2019, the CLRP initiation will be through a structured but informal mechanism, which would later culminate into a final, CoC approved resolution plan that is approved by the AA prior to its implementation.**
- 4.6. In its examination of the present insolvency resolution processes under the Code, the Committee noted that the Code primarily provides two types of insolvency resolution processes for a CD – the CIRP and the Pre-packs. The CIRP is the primary resolution process envisaged under the Code, which can be commenced by filing an application before the AA by either creditors (financial and/ or operational) or by the CD itself. Post commencement, a formal process is initiated wherein the erstwhile management of the CD is displaced by an interim resolution professional (“**IRP**”) and eventually a Committee of Creditors (“**CoC**”) appointed resolution professional (“**RP**”). The entire formal process is conducted under the supervision of a CoC that is comprised primarily by unrelated FCs. On the other hand, Pre-Packs offer a comparatively debtor-friendly alternative wherein

a base resolution plan is negotiated at an informal stage between the management of the CD and the unrelated FCs, prior to approaching the AA. The CD drives this informal stage, and once a base resolution plan is agreed upon, the CD makes an application before the AA for the commencement of the process (with prior permission of the FCs). The formal process is primarily conducted to test the base resolution plan against the market forces for obtaining the best value for the CD. Such resolution plan then takes the CoC's approval, followed by AA's approval.

- 4.7. Fundamentally, the Committee deliberated for CLRP to bring in efficiency in insolvency resolution by utilising implementational experience of the existing mechanisms under CIRP and Pre-packs. Unlike Pre-packs, this process is contemplated to be driven by prescribed unrelated FCs. This also makes it different from CIRP, where a class (or classes) of FCs, as may be prescribed, will have the option to either initiate a CIRP or trigger CLRP for resolution of the qualifying CD. **Thus, in CLRP the prescribed unrelated FCs will initiate the process. In CLRP, the institutional bottleneck for efficient and timely initiation of CIRP i.e., admission stage is eliminated as there is no formal admission process and only intimation of initiation to AA and the Board.**
- 4.8. The Committee further noted that CLRP will offer greater flexibility to the FCs to conduct the informal process with the cooperation of the CD, rather than directly looking at market process for a resolution plan like in CIRP or by negotiating a plan with the management of the CD like Pre-packs. The resolution plans will be invited from the market (largely procedurally similar to the way they are invited during CIRP). The CD may be provided an opportunity to match the best resolution plan received from the market ("Market Plan") if the plan submitted by it is a credible resolution plan in comparison to the best plan received. A specified challenge mechanism will then enable the qualifying resolution applicants to improve the plan. The best plan i.e., Market Plan or the CD's resolution plan matching the best plan will be accepted by CoC based on the outcome of challenge mechanism. **Thus, the resolution plan for the CD will be finalised through an 'out-of-court' initiated mechanism, and the AA's role in the process will be limited to approving the plan (and revoking a moratorium, if required).**

Conduct of CLRP under the Proposed Framework

- 4.9. The Committee recommends that the entire process shall be largely conducted in two stages, where the *first stage* would be an 'out-of-court' process initiated by prescribed unrelated FCs. This stage would involve finalisation and approval of resolution plan by the CoC upto its submission to the AA. **It is intended that the effect of the resolution plan approved under this mechanism should be similar to the CIRP; therefore, all core elements and steps of CIRP for finalisation and CoC approval of the resolution plan will also be undertaken during the CLRP, albeit within shorter timelines and outside the court.** The Committee noted that the Board will lay down the procedure and conditions that must be complied with while completing the process in the first stage.

4.10. During the **second stage** of CLRP, the AA would have the jurisdiction to adjudicate the application for approval of resolution plan that is filed by the RP upon approval of the CoC. Primarily, **the Committee is of the view that the scope of AA/NCLT's jurisdiction in determination of the said application would be similar to CIRP. As such, the NCLT must be satisfied that (a) a default under the Code has been made by the CD, (b) the procedural conditions under the Code and the applicable regulations for CLRP are fulfilled, and (c) the resolution plan complies with all mandatory requirements under the Code and the applicable regulations.** In this manner, the 'out-of-court initiated' process will be dove-tailed with the formal process by introducing the AA/NCLT's role at the stage for final approval of the CLRP resolution plan. **The jurisdiction of NCLT prior to the second stage would be limited to specific prescribed cases, for instance application by the CD regarding wrongful commencement of CLRP against it, application by RP for imposition of moratorium, application by RP (and the CoC) dealing with non-cooperation by the existing management of CD, if required, etc.**

4.11. The paragraphs below summarise the deliberations and recommendations of the Committee regarding the primary elements comprising CLRP and for its each Stage.

B. Initiation of CLRP – Key Elements, Participants and Criteria

Eligible FCs

4.12. The Committee noted that the class(es) of eligible and unrelated FCs that can initiate CLRP bear(s) utmost importance to contextualise the purpose and scope of CLRP, given that the rights of FCs are central to initiation of this insolvency resolution process. In this regard, the Committee was also of the view that initially it will be prudent from efficiency and credibility perspective to restrict the 'class' of FCs who may be able to initiate CLRP and also limit the types/class of CDs against which CLRP would be available.

4.13. The Committee noted that in the UK, for example, a Qualified Floating Charge Holder (QFCH), which has a floating charge over the whole or substantially the whole of the company's assets – is the eligible FC. Such QFCH (typically, the UK equivalent of a substantially secured FC) appoints an administrator 'out-of-court' for the management of the company.

4.14. In India, a FC under Section 5(7)¹⁹ of the Code is defined as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to. A financial debt is a debt along with interest that is disbursed against the consideration for the time value of money and includes money borrowed against the payment of interest, amount raised as under any acceptance credit facility, purchase facility, etc., as mentioned under Section 5(8) of the Code.

4.15. It was discussed that the initiation of process by prescribed specific class of FCs as adopted by UK can be considered with due modification. This would expectedly provide

¹⁹Section 5(7), Insolvency and Bankruptcy Code, 2016, <https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf> (last accessed 12 March 2023).

for a 'regulatory sandbox' to test CLRP and also create a specific incentive for eligible FCs to opt for CLRP and lead the Stage 1 'out-of-court' initiation process. **On the FCs that can initiate the CLRP, the Committee was initially interested in involving RBI regulated banking and financial institutions. It also deliberated on the inclusion (or otherwise) of homebuyers or an association of homebuyers as FCs.**

- 4.16. However, taking into account the implementational learnings from the RBI Framework 2019 and the FCs' initiated CIRP, **the Committee recommends that initially only scheduled commercial banks and other specified FCs may be notified as eligible for initiation of CLRP**, especially to lend credibility to the process and direct transference of learnings from the RBI Framework 2019.
- 4.17. Therefore, **the Committee recommends that the Central Government be given the power to notify the class or classes of the 'financial institutions' which shall be eligible to initiate CLRP with the requisite percentage of unrelated FCs.** The term 'financial institution' is defined under Section 3(14) of the Code to include scheduled banks. This term provides adequate flexibility to the Central Government to control the applicability of CLRP to specific entities from time to time based on the implementational and operational requirements. This flexibility will be required considering the practical dynamics of 'out-of-court' initiation process that CLRP envisages.

Eligibility of the CD

- 4.18. The Committee deliberated the method of determination for the CD that may be made subject to CLRP. In this regard, the Committee noted that the MCA Discussion Paper provides that the asset size threshold will be the applicable eligibility criteria for CDs as may be notified by the Central Government. This is a direct method of setting qualifying criteria for CD against which CLRP may be initiated.
- 4.19. In any case, there are several instances of this legislative approach under the Code. Section 55 provides for the eligible CDs under the FCIRP (as currently envisaged), that includes a CD with assets and income below a level as may be notified by the Central Government, CD with such class of creditors or such amount of debt as may be notified by the Central Government or other category of corporate persons as is notified by the Central Government. Further, under Section 227 of the IBC, the Central Government may, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of them, which may be covered under the framework notified under that section. Similarly, in the present context, the Government may consider modelling the eligibility provision accordingly to determine the eligible CDs for the CLRP mechanism.
- 4.20. In view of the flexibility and efficiency required at the initial stage of introduction of CLRP, **the Committee recommends that the income or asset size of the CD involved would be best decided as per the notification from the Central Government from time to time.** The Committee noted that Section 55(2) of the Code currently provides

different categories of the CD that Central Government can notify. Under Section 55(2) (a), the categorisation is required to be simultaneously both for “assets and income”. **The Committee recommends to empower the Central Government to notify CD on “asset size” or “income”, and not both asset size and income together in this regard.** The Committee notes that this will be required for clarity of implementation of CLRP, and the Central Government may notify the CDs based solely on “asset size” under Section 55(2)(c).

Default Threshold for Initiation of CLRP & Determination Mechanism

- 4.21. Most of the frameworks dealing with the trigger stage of Non-Performing Asset (“NPA”) are belated when it comes to possibility of efficient and timely insolvency resolution. In these frameworks, usually the CD/ promoters suffer disqualification and are unable to participate in the resolution process as an applicant. The Committee noted that timely initiation will incentivise CDs to cooperate in CLRP and expectedly lead to an efficient early stress resolution process. In this regard, the Committee referred to the existing ‘default’ threshold under the Code for CIRP and Pre-packs. Since CLRP draws largely from CIRP steps albeit within shorter timelines and with necessary modifications from efficiency perspective, **the Committee recommends that the ‘minimum’ threshold for default for the CLRP framework may be kept same as that of CIRP, i.e., INR 1 Crore and above.**
- 4.22. **The Committee recommended that the database of Information Utility (“IU”) or Central Repository of Information on Large Credits (“CRILC”) may be utilised for (a) establishing default on part of the CD and (b) for identifying other such FCs who are unrelated notified entities under the Code to reach the requisite minimum debt threshold for initiation of the CLRP.**

Mandatory Pre-condition for Initiation of CLRP by Notified Unrelated FCs

- 4.23. While the Committee did not want to impede the initiation process by prescriptive mechanism for governing *inter se* discussions and deliberations of the prescribed / notified unrelated FCs, it was of the view that a provision mandating qualifying total debt threshold for triggering CLRP may be prudent. For seamless operability, **it was agreed by the Committee that the prescribed/notified unrelated FCs may initiate and / or ‘commence’ the process only when they form, either individually or collectively, voting share of not less than 51% of financial debt of the CD.**
- 4.24. That said, as good practice, before initiating the CLRP, the prescribed/ notified unrelated FCs would be expected to enter into an *inter se* arrangement similar to the ICAs to, *inter-alia*, to record occurrence of ‘default’ under the Code, express the need for restructuring / resolution, identify their lead member and record their agreement to initiate CLRP under the Code. It may also record matters considered relevant by the said FCs for smooth conduct of CLRP.

C. Stage I: Conduct of the 'out-of-court' initiated CLRP

Formal Initiation of the Process: Notice of Default

- 4.25. For formal initiation of the CLRP, **the Committee recommends that the prescribed / notified unrelated FCs with more than 51% of the total financial debt of the CD (individually or collectively) would be required to serve a notice of default to the CD, notify it of their intent to initiate CLRP in case of non-rectification or non-resolution of default and provide with a 30 days' timeline to submit a reply with a proposal to resolve the default.** Upon expiry of the said 30 days, taking into account the response of CD to the notice of default by the said FCs, the said FCs would be entitled to formally commence the process by appointing an IP to act as RP to conduct next steps in CLRP.

Pre-Commencement Stage & Appointment of RP

- 4.26. The Committee noted that the notified unrelated FCs' interests would be best served by appointment of an independent third party to conduct the CLRP, before they formally proceed for its commencement. This would procedurally make CLRP more efficient, reduce scope for objections on the basis of 'self-interest' of the said FCs and foster trust of other stakeholders, such as other FCs, OCs, government entities, etc.
- 4.27. Further, the Committee noted that distinct from the inter-creditor or debtor-creditor negotiations driven processes (RBI Prudential Framework, 2019 or the schemes for compromise or arrangement under the Companies Act, 2013), CLRP shall be a collective insolvency process. This may require some form of independent administrative and legal support – it also ensures that the due process is maintained and the mandatory requirements under law are complied with. For example, it might be appropriate to undertake the claim collection process through the regulated IP acting as an RP, who shall also prepare a compliance report indicating that due process was followed for finalising the resolution plan.
- 4.28. Therefore, **the Committee recommends appointment of an IP to act as the RP during the 'out-of-court' initiated CLRP stage after creditors decide to initiate the CLRP even after considering the reply of the CD. The RP will undertake formal steps to commence CLRP and thus trigger timelines for resolution under the Code. The Committee further recommends that the qualifications and requirements for appointment of an IP as RP may be same as CIRP.**

No Admission Process: Application for Intimation of Initiation of CLRP & Formal Commencement of CLRP

- 4.29. The Committee noted that in the case of CIRP, the delay in the admission process is a significant impediment to the resolution process, even when an application is made by an institutional FC which has extended a loan facility and the establishment of default is comparatively more apparent than the default to other creditors. **CLRP intends to avoid the delay and costs involved due to said delays in obtaining an order of**

admission from the AA by providing a limited right to certain prescribed FCs, such as scheduled commercial banks to appoint an IP outside the court and to directly submit a resolution plan before AA for its approval. The Committee is of the view that in this manner, the time spent towards admission of a case at the initiation stage can be utilised towards insolvency resolution for the CD – thus making CLRP expeditious, FC friendly and in the interest of the CD which may be under distress and losing value over time. The institutional FCs may be incentivised to explore the option of CLRP immediately after default and much before it becomes an NPA. This will also incentivise the management of the CD to cooperate with the RP and the notified unrelated FCs / the CoC, as they will be eligible to submit a plan initially and subsequently, if required, may also have the opportunity to match the ‘best’ plan from those received from the market (and thus, remain in control of the CD and avoid the CIRP where their management will be displaced).

- 4.30. It is proposed that upon appointment, **the RP would be required to file an application before the AA and Board intimating it regarding (a) its appointment as the RP and (b) commencement of CLRP against the CD, along with evidence of such appointment of the RP, the notice of default and the proof of default.** The Committee recommends that the date of filing of this application of intimation must be considered as the formal ‘commencement date’ of CLRP for all purposes, including timelines under the Code. The CD would have the right to oppose and challenge such commencement of CLRP before the AA. During the pendency of this challenge process, CLRP shall not be paused/stayed by the AA or any other authority. This is to ensure that the process continues. The AA’s jurisdiction would be limited at the stage in examining procedural correctness of the initiation and commencement of CLRP *qua* the particular CD by the specific set of unrelated eligible FCs.

Timeline for Out-of-Court initiated Stage I of CLRP

- 4.31. The Committee deliberated that CLRP should be time-bound. This time-bound approach would contribute to a smoother and more predictable insolvency system. **The Committee discussed required timelines for CLRP extensively and the detailed process required to be undertaken by the RP (and/or the CoC) to finalise a resolution plan. The Committee recommends the timeline of total 150 days for completion of CLRP. The Committee further recommends 120 days for completion of Stage I process (i.e., commencing from filing of application before the AA regarding intimation of initiation of CLRP to the application for approval of resolution plan by the RP) and 30 days for completion of Stage II. The Committee also recommends that while the said timeline should be complied with best efforts by all stakeholders, if required to do so, the time limit may be extended by a maximum of 45 days by way of approval of 66% of the CoC vide an application to the AA through the RP. During the pendency of the application for extension of timelines, the CLRP shall be continued.**

Moratorium

- 4.32. The Committee deliberated on the procedure for applicability of moratorium under the proposed mechanism. In this regard, the Committee noted the Singapore and the US models of automatic moratorium that are limited and unlimited in time, respectively. The Committee also noted the moratoriums provided under the UK law.
- 4.33. Some members opined that the declaration of moratorium is a power vested with the AA/NCLT as per Section 14 of the Code and thus, an automatic moratorium may not be appropriate, especially since the process is initiated 'out-of-court'. Other members supported the efficacy of automatic moratorium(s) and the intent of CLRP process (especially in Stage I) to enable out-of-court initiation and resolution. The said members were in favour of extending automatic moratorium to either (a) the complete term of CLRP on the lines of the US model (unlimited unless revoked by court on application of an aggrieved party) or (b) up to 90 days from commencement of the process on the lines of the Singapore model (30 days) with an application for extension of the moratorium, if required.
- 4.34. It was discussed that in case the second approach is adopted, the AA would have the power to extend or modify the moratorium beyond 90 days based on application by the eligible and unrelated FCs initiating the process or any application to modify the moratorium by any creditor. In this scenario, the pendency of application before AA may not have any effect on the moratorium until the application for the same is adjudicated by AA.
- 4.35. The Committee studied the context of moratorium in Singapore. There, it is an established process that in a scheme of arrangement, on application of stay by a company, an automatic moratorium is imposed for a period of 30 days. For this, a notice of application and evidence of support needs to be provided. This is an interim moratorium that is imposed on a company/CD only once within any 12-month period. The courts may also grant this moratorium to prevent any legal proceedings being brought against a company/CD that seeks to propose a scheme of arrangement.
- 4.36. Further, in the US, the filing of the bankruptcy application operates as an automatic stay. This provides for a time in which all the judgements, collection activities, foreclosures and repossessions of property are suspended. The debtor is not to be pursued for any claim that arose before the filing of the bankruptcy petition. The stay that is applied here, acts as a silent period for the debtor wherein the negotiations take place to resolve the difficulties for the debtor.
- 4.37. The Committee discussed the option of providing automatic moratorium which may range between 30/60/90 days from commencement of the process, on the above models. The AA may be vested with the power to extend or modify the moratorium beyond 30/60/90 days based on application by the parties initiating the process (or any application to modify the moratorium by any other stakeholder). However, the pendency of application before AA shall not have any effect on the moratorium until the application for the same is adjudicated by AA.

- 4.38. Upon extensive deliberation, **the Committee recommends that the provisions of moratorium under sub-section (1) read with sub-section (3) of Section 14 of the Code shall apply *mutatis mutandis* to CLRP. Further, that the moratorium should be applied based on the application filed by the RP, pursuant to the approval of 51% prescribed unrelated FCs (before the CoC constitution) or the CoC. On making the application, a temporary moratorium (of the same rigour) may come into the effect upto the consideration of application for moratorium as made by the RP, but the final decision should rest with the AA.**
- 4.39. Thus, overall, in the scheme of CLRP, the effect of formal commencement and application for moratorium will be an automatic bar on other proceedings for the duration of CLRP unless decided otherwise by the AA. Until disposal of such application by the AA, the moratorium would be deemed to extend to the CLRP being undertaken. Here, upon receipt of any application for revocation of the moratorium by the prescribed/ notified unrelated FCs, the jurisdiction of AA would be limited to assessing procedural fairness and continuity of the moratorium during Stage I of CLRP. If the AA, upon review of the documents and other circumstances highlighted by the RP, is of the view that moratorium is not required to be continued or revoked, **it may order so after recording its reasons in writing.** An example is consideration of 'change in control' of the CD at shareholders' level, if any, as foreseeable or obvious consequence of rejection of moratorium and assessment of impact on the distribution waterfall and CoC proceedings if an FC has assumed some control of the CD.

Control of the CD: 'Debtor-in-possession' model

- 4.40. On the kind of control that the CD will exercise, the Committee deliberated on the 'creditor-in-control' or 'debtor-in-possession' model and the issues that surround them. These issues have been dealt with in sections above and not reiterated for brevity. The Committee was initially of the opinion that the creditor must have control over the assets and the management of the debtor. However, upon discussions, the Committee was of the view that **debtor-in-possession model would be better suited for CLRP as it ensures speedy process. Here, the RP only manages the process and is not responsible for taking control of the business or running it. This saves time in dealing with the friction and/ or erosion in value/ cash flow that change of control may create.** Here, debtor-in-possession would mean that if the promoters (existing shareholders) of the CD are in control of the management at the time of initiation of CLRP, they would continue to be so and if the creditor (by way of contract or law) has come in control of the management of the CD, it will continue to be so. There will be no change in the management of the CD solely due to initiation of CLRP. This will minimise friction between the parties to CLRP, if any on account of control. To ensure transparency and informational efficiency, the Committee recommends that the RP would be responsible for overseeing the proceedings of the CD during CLRP.

Removal of the RP

- 4.41. Presently, during the CIRP and the Pre-pack process, CoC may, at its discretion, seek a replacement for the RP. The Committee deliberated the rationale of CoC's authority to replace an RP in a CIRP, if necessary, according to the Code and if the same rationale and process may be applied in CLRP. **The Committee recommends that the CoC may be given the power for replacement of RP, as in CIRP or Pre-packs. However, unlike CIRP or Pre-packs, where the RP's appointment and replacement are approved by AA, the replacement or removal of RP by CoC in CLRP need not be approved by AA.**

Rights and duties of the RP

- 4.42. The Committee noted that to conduct CLRP Stage I, the following mandatory duties may be exercised by the RP to effectively complete the process:
- i. to make a public announcement of its initiation of process, appointment and call for submission of claims as specified by the IBBI;
 - ii. to receive and collate all the claims submitted by creditors to him/ her, pursuant to the public announcement;
 - iii. to collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, as may be specified;
 - iv. to constitute a CoC and convene its meetings;
 - v. to appoint valuers, or other professionals as specified by IBBI;
 - vi. to prepare the information memorandum as specified by IBBI;
 - vii. to invite prospective resolution applicants, who fulfil such criteria as may be laid down by him/her with the approval of CoC, to submit a resolution plan or plans;
 - viii. to effectively conduct the resolution plan market challenge procedure as specified by the IBBI;
 - ix. to enable voting on the final resolution plan at the CoC;
 - x. to prepare a report in such form as may be specified by the IBBI and file it along with the approval application before the AA submitting the resolution plan; and
 - xi. to comply with the other requirements under the Code and underlying rules and regulations, as made applicable from time to time.
- 4.43. The Committee suggested that the RP needs to be empowered to have access to the relevant records and documents to enable him/ her to discharge its functions and duties effectively. **In this regard, the Committee recommends that the RP may be empowered to have amongst others (a) access all books of account, records and information available with the CD; (b) access the electronic records of the corporate debtor from an IU having financial information of the CD; and (c) access the books of account, records and other relevant documents of the CD available with Government authorities.**

Cooperation from CD and obtaining information related to CD

- 4.44. Debtor-creditor cooperation is a core element of any out-of-court or informal framework. Where such cooperation is absent, the Committee considered a legislative intervention through shifting management control (for instance, converting the process to CIRP). Similarly, even during the informal stage of the CLRP, CD's cooperation will be necessary for the success of this process. The Committee noted that incentives to the existing management of CD to withhold information should be addressed and they should be suitably incentivised to participate in the process in a *bonafide* manner. The CD that is put under the CLRP mechanism must cooperate with the FCs and provide all necessary information.
- 4.45. Since the CLRP avoids the delays of the formal process and where the eligible and unrelated FCs are nudged to utilise this process immediately after default (and much before declaration of NPA status), there will be sufficient time before the management of the CD is considered ineligible (under Section 29A of the Code) to participate in the resolution process. **This may incentivise the management to cooperate by furnishing relevant financial information related to the CD (required for invitation and preparation of resolution plan) and avoiding any asset/control transfer during this phase.** Otherwise, the prescribed or notified unrelated FCs will have the option to push the company into CIRP, thereby divesting the management of the CD and the possibility of making the erstwhile management ineligible under Section 29A.
- 4.46. Further, Section 19 of the Code states that personnel of the CD, its promoters or any other person associated with the management of the corporate debtor will extend all assistance and cooperation to the RP as and when required for the managing of the affairs of the corporate debtor. **The Committee recommends that a similar provision may be made applicable to CLRP. If this is not complied with, the RP may make an application to the AA. The prescribed/ notified unrelated FCs will have the option (with a 66 % vote) to convert the CLRP process to CIRP during the Stage I process.** Such a right will be useful when CD does not cooperate (by withholding information or furnishing wrong information) or seeks to dispose of its assets without the prior permission of the IP and/or eligible unrelated FCs. **The Committee recommended that where such an application is made to the AA, it should swiftly commence CIRP, displace the management and order a moratorium under Section 14.** In that case, the IP appointed for the CLRP may continue as an IRP during the CIRP, unless otherwise directed.
- 4.47. The Committee also considered and recommended that in case of wrong or misleading information provided by the CD or its personnel, penalty provisions may be added to the legislative amendments to cause a deterrent effect. In this regard, the Committee noted provisions under the Hong Kong insolvency law²⁰ which provide that any form of non-cooperation of the CD with the IP will result in penal liability. **The Committee recommends that the penal provisions from CIRP may be applied to CLRP *mutatis mutandis*.**

²⁰Section 18, Bankruptcy Ordinance (as amended from time to time); https://www.elegislation.gov.hk/hk/cap6!en.pdf?FILENAME=Consolidated%20version%20for%20the%20Whole%20Chapter.pdf&DOC_TYPE=Q&PUBLISHED=true (last accessed 20 March 2023)

- 4.48. Further, **the Committee recommends that to ensure smooth functioning of the CD during CLRP process, RP would be the primary point of contact with the CD and may have rights (including right to information on day-to-day business of the CD). These supervisory rights however do not mean rights to actually undertake any action in the name of the CD, unlike the CIRP.**

Preparation of Information Memorandum

- 4.49. As regards, Information Memorandum (“IM”), the primary responsibility for its preparation must be on the RP. RP will have a right to be provided with information / draft IM by the CD and CD should be mandatorily required to provide the draft IM or specified information for preparing it (“**information to form IM**”). To disincentivise omission of any material information or inclusion of any misleading information in the draft information memorandum or information to form IM submitted by the CD to the RP, **the Committee recommends that any person who has sustained any loss or damage as a consequence of misleading information or [deliberate] omission of material information may approach AA to seek appropriate remedy against the CD’s personnel. The AA on receipt and adjudication of such application would be empowered to order payment of compensation by CD to every person who has sustained such loss or damage.** Any non-cooperation by the CD shall be dealt with in the manner recommended in paras above.

Valuation of the CD

- 4.50. Under the Code, asset valuation is a paramount consideration before the initiation of the CIRP. Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 mandates the appointment of 2 registered valuers by the RP within 7 days of their appointment, and not beyond 47 days from the date of insolvency commencement, to assess the fair and liquidation value of the CD in accordance with Regulation 35. The Committee considered the need for expeditious conduct of the valuation process, and was initially of the view that if a credible report on the valuation of the corporate debtor’s assets exists within the six months preceding the date of application, and (i) is available with one of the unrelated FCs, and (ii) is accepted by all members of the CoC, such a report could be utilized under the Proposed Framework for CLRP. If not available, the normal valuation process as used for CIRP can be specified.
- 4.51. However, for procedural fairness and transparency, it was finally decided that the RP shall be required to undertake fresh valuation (similar to CIRP). **Accordingly, the Committee recommends that similar to CIRP, fresh valuation shall be required to be undertaken by the RP as on the insolvency commencement date.**

Claims Collection Process

- 4.52. The Committee deliberated on the role of RP, who after its appointment by the prescribed / notified unrelated FCs, will facilitate the procedure of collection of claims. Majority of the Committee members were of the view: since it is an ‘out-of-court initiated’ stage and

maintaining efficiency of the process is a parallel object of CLRP, the creditors will not be permitted to raise objections before AA regarding the admission or rejection of claims by the RP (and / or the CoC). For procedural fairness, such objections filed before the AA will be considered only after the application for approval of the resolution plan is filed by the RP before the AA during Stage II unless the same will vitiate the process.

- 4.53. In this regard, one member of the Committee, however, noted that initiating the process amounts to its formal commencement with legal consequences, including application of an automatic moratorium unless the AA decides otherwise. In such scenario, it may be incongruous to restrict a creditor's right through a moratorium and not provide an opportunity to approach AA to consider its claims during the CLRP. All claims of the creditors must be considered during the resolution process. Therefore, they should have the right to approach AA for any grievance. If AA's jurisdiction is restricted, the creditors might approach writ courts on the ground of non-availability of efficacious remedy. This would potentially lead to the unintended consequence of interference in CLRP by the writ courts. To avoid this, it may be appropriate to provide for scope to the parties to approach AA as it already exists under the CIRP and Pre-pack process. The member was of the view that a legislative scheme wherein objections can be raised after final approval of the resolution plan by the CoC might not be appropriate. This will further delay the approval process of the resolution plan, especially in cases where the settlement of disputes concerns the constitution of the CoC.
- 4.54. The Committee noted the member's view above and observed that the basic design of CLRP envisages the major intervention of AA at stage of application for approval of resolution plan. In situations, where no resolution plan is received, CLRP will not yield any outcome and any litigation with respect to admission/rejection of claim may prove to be futile. Besides, since creditors with more than 51% of financial debt have already come together by an agreement for initiating the CLRP, there is little chance of any dispute regarding their claims. Since, these creditors form the most significant portion of the decision-making voting of 66% of CoC, the chances that any wrong consideration or non-consideration of claim may invalidate the decision of CoC is remote. Thus, considering the relevance of timing of RP's application for approval of resolution plan, **the Committee recommends that the creditors may be permitted to raise objections before AA regarding the admission or rejection of claims during Stage I. However, the same will only be considered after the application is filed for approval of the resolution plan except in cases where the process may be vitiated on account of non-hearing of such objections. The Committee noted that the Board may provide the norms for the RP to follow while considering a claim submitted by the creditors and the process of addressing their grievances.**

Constitution and Conduct of the CoC

- 4.55. The primary decision-making regarding the invitation and selection of resolution plans will be undertaken by a CoC comprising creditors, including the prescribed / notified

unrelated FCs and formed in the same manner as CIRP. **The Committee recommends that the CoC's composition, functions, role, duties and powers under the CLRP should be the same as that under CIRP to ensure consistency and efficiency of the 'out-of-court' initiated process. IBBI may lay down the mechanism for forming and conducting CLRP vide the CoC with the core idea of ensuring transparency and protection of all stakeholders' interests.**

Invitation of Resolution Plans and Challenge Mechanism

- 4.56. With respect to invitation and selection of resolution plans, the Committee contemplated adoption of challenge mechanism as has been envisaged under Pre-packs, with suitable variations, to serve as default method under the CLRP for market discovery of value. The Committee members' view was divergent on this aspect. One view was to keep the process simplified and that a detailed process may not be prescribed. A few members were in favour of the market challenge mechanism with right to match available to the CD without any caveats. Other members were of the view that it is important to reflect deterrent in the process so that the CD is discouraged from submitting a non-serious base plan. To this end, they suggested that a threshold or mechanism for determining credibility of plan submitted by the CD should be provided to the CoC under the regulations. After much deliberation, **the Committee finally recommended that the challenge as default mechanism, may be incorporated into the CLRP Proposed Framework. The regulatory structure in this regard may be specified by the Board.**
- 4.57. The Committee has taken a view that as process, the RP may run the process to invite resolution plans from promoters and, if required, other resolution applicants. The CoC may then select the best of the plans received, which will serve as the base plan. The Committee discussed that for market discovery of value, challenge mechanism to a base plan may be relevant. This will be upto the CoC, which may invite the plans from market against the base plan. **The Committee recommends that the Board may be given powers to specify the nuances of the exact challenge mechanism to be included. It may include invitation of resolution plans from public (through market process), right to existing management to match the identified best bid under certain conditions, manner of identification of the best bid, timelines, etc.**
- 4.58. The Committee recommends that design of the challenge mechanism needs to balance the incentives and disincentives of the promoters and the bidders to ensure value maximization. In this regard, it suggested that the criteria formulated in Pre-packs, i.e., significantly better plan should be emulated here to maximise value.
- 4.59. **The Committee suggested that to assess 'significantly better' plan, the IP and the CoC may consider assessment criteria** such as that the resolution plan (i) has been received from a credible and capable resolution applicant, (ii) complies with the applicable laws, (iii) is feasible and viable, (iv) has potential to address the stress, (v) has provision for effective implementation of the plan, and (vi) maximises the value of the assets of the firm, irrespective of immediate realization for creditors under the plan. It

was also suggested by members of the Committee that a specific percentage of the value of base plan amount, if accepted, must be required to be deposited in form of a bank guarantee to deter frivolous plans.

- 4.60. The Committee further suggests that determination of ‘genuineness’ and/or ‘credibility’ of the base plan submitted or agreed to by the CD is of seminal importance to the CLRP’s success. To do so, the CoC along with the RP may assess the viability of the said resolution plan by way of a pre-determined published criteria. If the CoC has called for Market Plans, then the right of the bidders (including promoter) to match / bid against the plan received from the open should depend on the value difference in the realizable value to the FCs in the plans submitted by the promoters and the market. This may take the shape such that: (a) if the bid of promoter is less than 50% of the value of highest bid, the promoter will not have any further chances to bid; (b) if the bid of promoter is between 50% - 75% of the highest bid, the promoter will be able to participate in challenge mechanism but in step increments; and (c) if the bid of promoter is more than 75% of the highest bid, the promoter will have the right to match. This can be further illustrated as follows:

S. No.	Promoter’s bid	Market’ bid (Highest value)	Option
1.	100	200	Promoter has no right to further bid
2.	100	140	Promoter has right to further bid
3.	100	120	Promoter has the right to match

Voting Thresholds for approval of Resolution Plan

- 4.61. The Committee discussed the threshold(s) of voting share for approval of resolution plan by the CoC. The Committee kept in mind that CLRP must have procedural safeguards to make the process just and transparent to all stakeholders, despite being initiated by a particular set of unrelated eligible FCs. **The Committee further noted that the resolution plan graduating for AA’s approval should require consent of at least 66% of the CoC, same as that in CIRP for consistency of approach.**

Avoidance Transactions and Application to the AA

- 4.62. The Committee noted that financial information of the CD may reflect certain transactions which might be required to be avoided to widen the CD’s asset pool. **The Committee recommended that, if during the CLRP, the RP discovers transactions under Sections 43, 45, 50 or 66 of the Code, it may take action by filing an application under the said provisions before the AA.** The continuance of these applications shall be independent of the application filed for approval of the resolution plan (similar to Section 26 of the Code). The relevant date for determining whether the transactions can be avoided will be the date of notice of default to the CD.

Detection of gross mismanagement or fraudulent manner of conducting business

- 4.63. In case there has been gross mismanagement of the affairs of the CD or if the business has been conducted in fraudulent manner, **the Committee recommends that RP, upon**

coming to knowledge of the same and with the approval of 66% of the CoC, may file an application before AA requesting for an order of converting the CLRP to CIRP and for vesting the management of the CD with the RP. In case of such vesting of management, the role and functions of the RP will be similar to the CIRP.

Bar against other insolvency proceedings under the Code during CLRP

- 4.64. The Committee also recommends that **a particular bar against initiating further or other proceedings during currency of CLRP may be imposed on other creditors to ensure that the CLRP may be completed once initiated.**

D. Conduct of the CLRP before AA during Stage II

Submission of Resolution Plan by the RP for AA's Approval

- 4.65. During the CLRP, the jurisdiction of AA will only come into effect upon RP making an application for approval of the resolution plan finalised in the 'out-of-court initiated' process. During Stage I, once the resolution plan is finalised, it shall be approved by 66% of the CoC. **After its approval, the RP shall make the application before the AA for approval of the resolution plan along with supporting documents and information such as the procedural compliance certification and report of the RP.**

Scope of AA's jurisdiction

- 4.66. The scope of AA's jurisdiction will be limited to checking whether, amongst others, (a) the procedural requirements related to the conduct of the process as laid down under the Code and the underlying applicable rules and regulations are fulfilled, (b) the resolution plan complies with the mandatory requirements (such as timeline for completion of CLRP, approval by 66% unrelated FCs, Section 29A, distribution to the creditors, etc), and (c) formalities regarding invitation and consideration of objections from the stakeholders regarding the claims or resolution plan have been completed. **Where the AA is satisfied that the resolution plan satisfies all the requirements, it must approve it, which approval shall be binding on all stakeholders. The effect of approval of the resolution plan under the CLRP will be like that of an approval under CIRP.**

Closure of the process

- 4.67. *In cases of approval of resolution plan by AA:* Once a resolution plan is approved by CoC by requisite majority and an application for its approval is filed before the AA, process thereafter will be similar to CIRP. **In cases where resolution plan is the approved and implemented, the successful resolution applicant (if not the promoter) would take over the CD on clean slate basis as in case of CIRP. In case the resolution plan approved by the AA is contravened by the concerned CD under the new control and management of the successful resolution applicant, then any person other than the CD whose interests are prejudicially affected by such contravention may make an application to the AA for initiation of CIRP under Section 7. If the AA determines**

that the CD has contravened the provisions of the resolution plan, it shall initiate CIRP against the CD (under the successful resolution applicant).

- 4.68. *In cases where the resolution plan is not approved by AA:* In other cases where the resolution plan is not approved by the AA, the AA may refer the matter to CoC once for removal of defects (if any). Subsequent to such removal, **if the revised plan is still not approved, then the CLRP will be closed.**
- 4.69. *Closure in other cases:* **The committee noted that the CLRP may need a closure due to multiple reasons such as non-approval of any resolution plan by CoC; decision of CoC to close the process on account of regularisation of loan accounts by CD or settlement by CD. The IP, post approval of CoC may make an application to the AA, for closure of the process. In case of non-cooperation by the CD, the IP or CoC may make an application to the AA for initiation of CIRP under Section 7.** If the AA determines that the conduct of CLRP is not possible or that it has failed, it shall pass an order of initiation of CIRP against the CD and thereby terminating the CLRP. Where the AA passes an order for termination of CLRP and initiation of CIRP due to CD or its management's conduct, the CD (and not the FCs or the CoC) shall bear the costs of CLRP, if any incurred up to the stage of reference.

Bar on other proceedings under the Code upon failure of CLRP

- 4.70. It was also deliberated by the Committee that in the interest of efficiency of the process, it is imperative that the parties are barred from initiating any other process except CIRP and liquidation process for a stipulated period of time such as Pre-packs, if the CLRP mechanism fails.

Costs of Conduct of CLRP

- 4.71. The Committee discussed and noted that in CIRP, the RP and CoC are required to account for the going concern costs. Since CLRP does not contemplate a similar transfer of control and the CD continues as going concern in the same manner as it was continuing prior to the commencement of CLRP, no such going concern costs are required to be provisioned for here.
- 4.72. With respect to costs of the CLRP itself (both Stage I and Stage II), the Committee noted that as the filing of notice of appointment of the RP before the AA results in the formal 'commencement' of the process, the manner of payment of costs may be similar to Pre-pack. Apart from the costs incurred in running the company as a going concern, all costs may form part of the CLRP costs and can be paid from ongoing operations. Where the resolution plan is approved, the CLRP costs will get priority. If the consequent CIRP leads to the liquidation process, the AA may declare that such cost will form part of the liquidation costs while passing the liquidation order.
- 4.73. **It is recommended that an enabling provision may be added in the amendment act to the Code, with the details under regulations to be framed by IBBI to take care of various situations relating to determination, contribution and payment of**

CLRP costs (such as for the schedule of payment and other relevant details of its disbursement).

E. Advantages and Comparative Features of Proposed Framework for CLRP

- 4.74. This section summarises the key features of CLRP and its comparative advantage over the extant resolution process under One Time Settlement (“OTS”) scheme in the first part. In the second part, comparative features (and similarities) of CLRP as against CIRP and Pre-packs are set out.

Key features and advantages of CLRP

‘Debtor-in-control’ model

- 4.75. Guiding principle of the Code is to first attempt to resolve the stress and revive the company as a going concern. Liquidation should be the last resort. Currently, CIRP under the Code is primarily a ‘creditor-in-control’ model where upon initiation, the board of the CD is suspended, and the management powers are vested into the RP/CoC. As a result, in many cases, the CD’s operations and business significantly slows down or Stop, negatively impacting cash flow generation. Therefore, to truly achieve the ‘going concern’ objective of the Code, it is crucial to not only rescue the CD but also ensure the continuity of its business.
- 4.76. In this regard, the ‘debtor-in-possession’ and/ or ‘debtor-in-control’ bankruptcy resolution is crucial in situations where the promoters should be allowed to continue running the CD as a going concern. The ‘debtor-in-possession’(and control) model is well-defined in Chapter 11 of the US Bankruptcy Code. The underlying principle is that the existing promoter and its management may be most competent to run the business and maximize cash flows of the CD, as they might have withstood similar business shocks in the past. This model may improve the implementational experience of the Code, where realisable value of the asset at closure of successful CIRPs with resolution plans has been approximately 32% on an average for FCs, i.e., substantially eroded. In CLRP, while the FCs (as also the CoC) lead resolution process, the CD may continue under ongoing management to minimise impact on day-to-day business.

Incentivising CD to cooperate

- 4.77. Because of the shift from ‘debtor-in-control’ model in old insolvency regime under Sick Industrial Companies Act, to ‘creditor-in-control’ model under the Code, the cases under IBC experience non-cooperation from CDs at the admission stage and also at the time of handing over the control over assets and records. This has become a significant concern as it leads to delays in the insolvency process. This also results in poor quality of information memorandums (IM). Under the Proposed Framework, like the present CIRP, the process can start at SMA-0 stage where default has occurred, but the account has not become NPA. The CD being eligible under section 29A of the Code (assuming there are no other ineligibilities) is incentivised to cooperate with the FCs to provide information for timely completion of the process as the same is in its interest.

Early initiation and quick resolution by the FCs

- 4.78. Once a default has been confirmed, it is crucial to promptly initiate the insolvency proceedings. Delaying the process will lead to more significant destruction in the value of the CD's assets, resulting in a lower realizable value for the lenders. Implementation experience of the Code suggests that the recovery rate achieved through any resolution process primarily depends on factors such as time, cost, and outcome. As the time spent by the CD under CIRP increases, the process costs are also likely to increase. Further, the longer the process lasts, the more it hurts the promise of value maximisation.

Out-of-Court Initiation provides greater Time and Cost Efficiency to the Process

- 4.79. The significance of timely identification of corporate distress and enabling interventions cannot be overemphasized, particularly in situations where there has been a breakdown of trust between creditors. The Proposed Framework would provide greater efficiency than a traditional CIRP for resolving the stress in a company and realisation of debts. The CIRP can often be rigid and subject to legal regulatory requirements given the role of AA from beginning of the process, which can be time-consuming and costly. On the other hand, under the Proposed Framework, there is greater time and cost efficiency since there is no role of AA in 'admission' of CLRP – it is merely intimated of the process and therefore in this process, time taken by AA for admitting the application can be saved.

Same outcome as CIRP with faster timelines

- 4.80. The initial phase of the proposed process would involve an out-of-court approach led by FCs unrelated to the CD. The aim is for the resolution plan approved through this mechanism to have a similar impact as the CIRP. Therefore, all the fundamental components of the CIRP process would be followed during the CLRP, albeit within shorter timelines and with limited court involvement.

Benefit over One Time Settlement under the Code

- 4.81. The Proposed Framework can not only serve as a substitute over OTS under the Code, which is generally undertaken by the FCs but also provide crucial benefits over it and thus promote its case for greater usage.
- i. *Value maximisation through market mechanism:* In comparison to OTS which are generally bilateral negotiations between CD and FCs, the Proposed Framework being a market mechanism has the potential of greater value maximisation. The market mechanism ensures that the prices of distressed assets are determined by market forces, rather than being subject to the negotiation skills of a few individuals. This helps to ensure that prices are fair and transparent, and market determined.
 - ii. *Independent valuation:* The valuation of the CD rather than being done by the FCs would be done by an independent expert to arrive at the accurate value.
 - iii. *Binding nature of plan for other creditors:* In comparison to a traditional OTS wherein only the creditor participating in the process is bound by the negotiation between

the parties, the resolution plan obtained after following the market process binds all creditors once it is approved by 66% of financial creditors and obtains approval of the AA.

- iv. *Reduces reluctance in decision making:* There is abundant caution in bureaucratic decision-making, which favours the *status quo*. In context of problem of NPAs, it has been noted that public sector banks are at times reluctant to take decisions to write down loans for fear of being seen as favouring corporate interests and hence becoming the target of the referee institutions, the so-called “4 Cs”: courts, CVC (Central Vigilance Commission), CBI (Central Bureau of Investigation) and CAG (Comptroller and Auditor General). This encourages ever-greening of loans, thereby postponing a resolution of the problem. Since under the Proposed Framework the resolution plan is being selected after following market processes approved by 66% of creditors and thereafter by judiciary, the FCs would be more comfortable using this process.
- v. *Clean slate:* The Proposed Framework provides the benefit of ‘*clean slate*’ available under the CIRP. The Resolution Applicant (or the CD if it is eligible under section 29A) starts afresh as the resolution plan as approved by AA becomes binding on all stakeholders.

CLRP in comparison with the CIRP and Pre-packs

4.82. A summary of the comparison amongst the three processes is as under:

Features	Proposed CLRP	CIRP	Pre-packs
Initiation	On default, the scheduled commercial banks or other notified class of FCs comprising atleast 51% of the financial debt (in value) may initiate CLRP after a 30 days' notice to the CD. Process is formally commenced from the date of filing of application of intimation of appointment of RP before the AA and the Board. No application for initiation of the process seeking orders.	The application is presented to the AA for initiation of CIRP. On application by FC, OC or CD before AA, which passes an order for admission and the process commences.	CD convenes meetings of the unrelated FCs. Creditors representing not less than 66% in value of debt approve filing of application for initiation of PPIRP. CD files application for initiation of process before the AA and the process commences on the date of admission of the application
CDs	CDs which have asset sizes as notified by the Central Government and with a default of a minimum amount INR 1 Crore.	CDs with a default of a minimum amount INR 1 Crore.	CD that is an MSME and has committed a default of at least INR 10 lakh.
Management of CD	Party in Control of the CD (the CD's management itself or a creditor/s who may have come in possession/ control prior to initiation of CLRP)	RP-in-possession with creditor-in-control	Debtor-in-possession with creditor-in-control
Moratorium	Limited scope of moratorium. Section 14(1) and 14(3) comes into effect from the date of application for moratorium filed by the RP	Moratorium comes into effect from date of order by the AA till the completion of the CIRP.	Limited scope of moratorium. Moratorium comes into effect from date of order by the AA till the completion of the process.

Features	Proposed CLRP	CIRP	Pre-packs
Resolution plan	Public invitation of plans by IP. These are deliberated by the CoC and the best one is selected through a mandatory challenge mechanism.	The Resolution professional invites plans and the plan that is approved by the CoC will be presented before the AA	CD presents a base resolution plan. If the same is not accepted by CoC, alternate plans are invited. The best alternate plan is selected through a mandatory challenge mechanism.
Avoidance transactions	RP to file application if he / she discovers avoidance transactions during the process.	RP to examine the avoidance transactions.	RP to examine the avoidance transactions and on their existence the process to terminate.
Timeline	150 days with an extension of 45 days	180 days with an extension of 90 days	120 days from commencement date
Participation of promoter	RP to prepare the IM based on the information for IM provided by management. Incentive for CD to participate in the process if initiation at early stage. Credible threat of initiation of CIRP for non-cooperation.	IM to prepared by RP	CD to prepare preliminary IM. RP to finalise the IM. CD convenes the meeting of unrelated FCs. CD prepares the Base Resolution Plan.

F. Indicative Timelines of the CLRP Process

S. No.	Particulars of process	Indicative Timeline	Processes similar to
1	Default by the CD	Pre-commencement	CIRP
2	Intimation of default by creditor to IU	Pre-commencement	CIRP
3	Intimation of default by IU to other FCs	Pre-commencement	CIRP
4	From IU records or CRILIC, FCs find whether they are eligible to initiate CLRP	Pre-commencement	RBI Framework
5	Engagement with other FCs (and also CD) to explore suitability of CLRP for the CD	Pre-commencement	RBI Framework
6	Agreement among FCs to initiate CLRP	Pre-commencement	RBI Framework
7	Notice to CD about CLRP	Pre-commencement	SARFAESI
8	Reply from CD	Pre-commencement	SARFAESI
9	Consideration of reply from CD and negotiations, if any	Pre-commencement	SARFAESI
10	Appointment of an IP as RP	T+0	UK-Administration
11	Intimation of appointment of RP to IBBI and AA; and CD	T+0 “Date of Commencement”	UK-Administration
12	Intimation of replacement of RP to IBBI and AA; and CD	Within 3 days of replacement of RP	CIRP (replacement -without AA's approval)
13	Public Announcement	T+3	CIRP
14	Objection by CD, before AA for challenging initiation of CLRP within 30 days of initiation	<T+30	SARFAESI
15	Application to AA for moratorium	Anytime after T+0 say M	US and Singapore
16	Initiation of interim moratorium on application	M+0	US and Singapore
17	Public announcement about moratorium, if not made initially	M+3	US and Singapore
18	Order of AA reg. moratorium	N.A.	US and Singapore
19	Submission of claims	T+14	CIRP

S. No.	Particulars of process	Indicative Timeline	Processes similar to
20	Submission of information for IM by management to RP	T+14	PPIRP
21	Verification of claims received	T+21	CIRP
22	Application for appointment of AR	T+23	CIRP
23	Report certifying constitution of CoC	T+23	CIRP
24	1st meeting of the CoC	T+30	CIRP
25	Appointment of valuer	T+30	CIRP
26	Invitation of resolution plans	T+35	CIRP
29	Submission of IM by IP to CoC	T+60	CIRP
30	Providing IM by IP to resolution applicants		CIRP
30	Receipt of Resolution Plans		CIRP
31	Challenge Mechanism to find best plan		PPIRP
32	Approval of resolution plan by CoC		CIRP, PPIRP
33	Submission of CoC approved Resolution Plan to AA	T+120	CIRP
34	Non approval of resolution plan; opportunity to rectify defect	D>T+120	CIRP
35	Submission of revised resolution plan, after removing defects	D+7	CIRP
36	Final Order - Approval or rejection of resolution plan by AA. In case of rejection - order for closure of process.	T+150	CIRP
37	Progress Report/ Completion Report to the IBBI and the NCLT/ AA	N.A.	CIRP
38	Constitution of Monitoring Committee	N.A.	CIRP
39	Periodic submission of progress reports regarding plan implementation	N.A.	CIRP
40	Consideration of applications like challenging non-acceptance of claim etc.	T+120	N.A.
41	Application to AA in case of non-cooperation – Section 19(2)	N.A.	CIRP
42	Order of AA in response to the application under Section 19 (2)	N.A.	CIRP

S. No.	Particulars of process	Indicative Timeline	Processes similar to
43	Application for conversion to CIRP in case of continued non-cooperation/ fraudulent or gross mismanagement	N.A.	PPIRP
44	Avoidance Application to AA	T+120	PPIRP
45	Application reporting non implementation, if any, of plan by any aggrieved party	N.A.	CIRP
46	Order of AA for reinstatement of CLRP, in response to Application reporting non-implementation	N.A.	CIRP
47	Application to AA, for making good the loss suffered by any stakeholder due to incorrect info. shared by management under information for IM	N.A.	PPIRP



Constitution of the Committee



भारतीय दिवाला और शोधन अधिमता बोर्ड Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place, New Delhi-110001

Tel: +91 11 23462900, +91 11 23462800

Fax: +91 11 23462902, Web: www.ibbi.gov.in



Order

BOARD-22/2/2023-IBBI/8864
Dated: February 1, 2023

Subject – Constitution of Expert Committee to propose creditor-led resolution approach under the Code.

In terms of clause (1) of sub-section (1) of section 196 of the Insolvency and Bankruptcy Code, 2016, an Expert Committee is hereby constituted to examine the scope of use of alternate fast track resolution process under the Code and recommend a detailed regulatory approach for proposed creditor-led resolution as a supplement to extant corporate insolvency resolution process (CIRP). The constituents of the Expert Committee are as under:

i.	Mr. Sudhaker Shukla, Whole Time Member, IBBI	Chairman
ii.	Mr. Ashwini Kumar Tewari, Managing Director, State Bank of India	Member
iii.	Mr. Sunil Mehta, Chief Executive, Indian Banks' Association	Member
iv.	Mr. Bahram Vakil, Founder & Partner, AZB & Partners	Member
v.	Mr. Sumant Batra, Founder Partner, Kesar Dass B. & Associates	Member
vi.	Mr. Shrimohan Yadav, Former Chief General Manager, RBI	Member
vii.	Representative of MCA	Member
viii.	Mr. Sandip Garg, Executive Director, IBBI	Member Secretary

2. The terms of Expert Committee will be broadly to examine suitable choices for regulatory approach of the proposed process and submit its recommendations, *inter alia*, on the following terms:

- i. Identify international best practices on Creditor Led Resolution Approach (CLRA)
- ii. To study and recommend a regulatory framework for CLRA under the Code followed by judicial oversight at the end.
- iii. Any other issue which expert committee may like to highlight.

3. The Expert Committee may also invite or co-opt practitioners, experts or individuals who have knowledge or experience in the subject matter. The Expert Committee may also consult other stakeholders as part of its deliberations.

4. Secretariat support to the Expert Committee will be arranged by IBBI. Expenses incurred by non-official members of the Expert Committee towards travel, local conveyance and other allowances will be borne by IBBI as per extant internal policy of IBBI.

5. The Committee may submit its report in two months' time.

(Santosh Shukla)
Executive Director, IBBI
Email: Santoshs.01@ibbi.gov.in

Copy to:

1. All Members of the Expert Committee
2. Chairperson, IBBI
3. Secretary, Ministry of Corporate Affairs

Summary of Recommendations of the Committee

S. No.	Topic / Framework Element	Key Recommendations (Para number under Chapter IV)
1	Fundamental Principles of CLRP	4.2 ... the Committee recommends a Proposed Framework for CLRP that works on a co-operative basis on a time-efficiency model, where the prescribed class(es) of eligible and unrelated FCs would drive the process and the CD would remain in control of the company (debtor-in-possession model), with a right to participate, challenge and/or bid in the resolution process. 4.3 ... amendments to the Code in Chapter IV of Part II may be minimum, which should provide for three fundamental concepts: 4.4 ... ‘out-of-court’ initiation of the process and application for approval of plan before the AA, 4.5 ... addressing issues arising out of debtor-in-possession model or non-substitution of the management, and 4.6 ... manner of application of the moratorium. Apart from these three concepts, some other issues which the Committee has highlighted such as the rights and liabilities of RP and the CD’s continuing management may be included as amendments to the Code. The remaining requirements and conditions of CLRP’s implementation – procedural or otherwise may be made part of the regulations notified by the Board.
2	Who can initiate CLRP?	4.16 ... the Committee recommends that initially only scheduled commercial banks and other specified FCs may be notified as eligible for initiation of CLRP, ... 4.17 ... the Committee recommends that the Central Government be given the power to notify the class or classes of the ‘financial institutions’ which shall be eligible to initiate CLRP with the requisite percentage of unrelated FCs. The term ‘financial institution’ is defined under Section 3(14) of the Code to include scheduled banks. This term provides adequate flexibility to the Central Government to control the applicability of CLRP to specific entities from time to time based on the implementational and operational requirements. This flexibility will be required considering the practical dynamics of ‘out-of-court’ initiation process that CLRP envisages.
3	Applicability of CLRP to Corporate Debtors	4.20 ... the Committee recommends that the income or asset size of the CD involved would be best decided as per the notification from the Central Government from time to time. ... The Committee recommends that an amendment may be made in sub-section (a) of Section 55(2) to empower the Central Government to notify CD on “asset size” or “income”, and not both asset size and income together.

4	Threshold of Corporate Debtor's 'default'	4.21 ... the Committee recommends that the 'minimum' threshold for default for the CLRP framework may be kept same as that of CIRP, i.e., INR 1 Crore and above.
5	Pre-initiation mandatory requirement for default notice	4.23 ... it was agreed by the Committee that the prescribed/notified unrelated FCs may initiate and / or 'commence' the process only when they form, either individually or collectively, not less than 51% of financial debt of the CD. 4.22 ... The Committee recommended that the database of Information Utility ("IU") or Central Repository of Information on Large Credits ("CRILC") may be utilised for (a) establishing default on part of the CD and (b) for identifying other such FCs who are unrelated notified entities under the Code to reach the requisite minimum debt threshold for initiation of the CLRP.
6	Stages of CLRP	4.9 ... The Committee recommends that the entire process shall be largely conducted in two stages, where the first stage would be an 'out-of-court' process initiated by prescribed unrelated FCs. 4.10 During the second stage of CLRP, the AA would have the jurisdiction to adjudicate the application for approval of resolution plan that is filed by the RP upon approval of the CoC. Primarily, the Committee is of the view that the scope of AA/ NCLT's jurisdiction in determination of the said application would be similar to CIRP.
7	Notice of Default	4.25 ... the Committee recommends that the prescribed / notified unrelated FCs with more than 51% of the total financial debt of the CD (individually or collectively) would be required to serve a notice of default to the CD, notify it of their intent to initiate CLRP in case of non-rectification or non-resolution of default and provide with a 30 days' timeline to rectify/ correct the default.
8	Appointment of Resolution Professional and its role	... the Committee recommends appointment of an IP as the RP during the 'out-of-court' initiated CLRP stage after 30 days' of the notice of default. The RP will undertake formal steps to commence CLRP and thus trigger timelines for resolution under the Code. The Committee further recommends that the qualifications and requirements for appointment of an IP as RP may be the same as CIRP. 4.42 ... the following mandatory duties may be exercised by the RP to effectively complete the process: i. to make a public announcement of its appointment, initiation of process and call for the submission of claims as prescribed by the IBBI; ii. to collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, as may be specified; iii. to receive and collate all the claims submitted by creditors to him/her, pursuant to the public announcement; iv. to constitute a CoC and convene its meetings;

		v. to appoint valuers, or other professionals as prescribed by the IBBI; vi. to prepare the information memorandum as prescribed by the IBBI; vii. to invite prospective resolution applicants, who fulfil such criteria as may be laid down by him/her with the approval of CoC, to submit a resolution plan or plans; viii. to effectively conduct the resolution plan market challenge procedure as prescribed by the IBBI; ix. to enable voting on the final resolution plan at the CoC; x. to prepare a report in such form as may be specified by the IBBI and file it along with the Approval Application before the AA submitting the resolution plan; and xi. to comply with the other requirements under the Code and underlying rules and regulations, as prescribed from time to time. 4.43 ... the Committee recommends that the RP may be empowered to have amongst others (a) access all books of account, records and information available with the CD; (b) access the electronic records of the corporate debtor from an IU having financial information of the CD; and (c) access the books of account, records and other relevant documents of the CD available with Government authorities. 4.48 ... the Committee recommends that to ensure smooth functioning of the CD during CLRP process, RP would be the primary point of contact with the CD and may have rights (including right to information on day-to-day business of the CD). These supervisory rights do not mean rights to actually undertake any action in the name of the CD, unlike the CIRP.
9	Removal and replacement of RP	4.41 ... The Committee recommends that the CoC may be given the power for replacement of RP as in CIRP or Pre-pack. However, unlike CIRP or Pre-pack, where the RP's appointment and replacement are approved by AA, the replacement or removal of RP by CoC in CLRP need not be approved by AA.
10	'Debtor-in-possession' model	4.40 ... debtor-in-control model would be better suited for CLRP as it ensures speedy process. Here, the RP only manages the process and is not responsible for taking control of the business or running it. This saves time in dealing with the friction and/ or erosion in value/ cash flow that change of control may create.
11	Formal Commencement of CLRP	4.30 ... the RP would be required to file an application before the AA and Board intimating it regarding (a) its appointment as the RP and (b) commencement of CLRP against the CD, along with evidence of such appointment of the RP, the notice of default and the proof of default.

12	Moratorium	4.38 ... the Committee recommends that the provisions of moratorium under sub-section (1) read with sub-section (3) of Section 14 of the Code may apply mutatis mutandis to CLRP. Further, that the moratorium should be applied based on the application filed by the RP, pursuant to the approval of 51% prescribed unrelated FCs (before the CoC constitution) or the CoC. On making the application, a temporary moratorium (of the same rigour) may come into the effect upto the consideration of application for moratorium as made by the RP, but the final decision should rest with the AA. 4.39 ...Thus, overall in the scheme of CLRP, the effect of formal commencement and application for moratorium will be an automatic bar on other proceedings for the duration of CLRP unless decided otherwise by the AA.
13	Timeline for CLRP	4.31 ... The Committee recommends the timeline of total 150 days for completion of CLRP. The Committee further recommends 120 days for completion of Stage I process (i.e., commencing from filing of application before the AA regarding intimation of initiation of CLRP to the application for approval of resolution plan by the RP) and 30 days for completion of Stage II. The Committee also recommends that while the said timeline should be complied with best efforts by all stakeholders, if required to do so, the time limit may be extended by a maximum of 45 days by way of approval of 66% of the CoC vide an application to the AA through the RP. During the pendency of the application for extension of timelines, the CLRP shall be continued.
14	Valuation of CD	4.51 ... the Committee recommends that similar to CIRP, fresh valuation shall be required to be undertaken by the RP as on the insolvency commencement date.
15	Claims' Collection	Similar to CIRP, except 4.54 ... the Committee recommends that the creditors may be permitted to raise objections before AA regarding the admission or rejection of claims during Stage I. However, the same will only be considered after the application is filed for approval of the resolution plan except in cases where the process may be vitiated on account of non-hearing of such objections.
16	Formation, constitution and conduct of meetings of the Committee of Creditors	4.55 ... The Committee recommends that the CoC's composition, functions, role, duties and powers under the CLRP should be the same as that under CIRP to ensure consistency and efficiency of the 'out-of-court' initiated process. IBBI may lay down the mechanism for forming and conducting CLRP vide the CoC with the core idea of ensuring transparency and protection of all stakeholders' interests.

17	Role of Corporate Debtor during CLRP	4.46 ... Section 19 of the Code states that personnel of the CD, its promoters or any other person associated with the management of the corporate debtor will extend all assistance and cooperation to the RP as and when required for the managing of the affairs of the corporate debtor. The Committee recommends that a similar provision may be made applicable to CLRP. If this is not complied with, the RP may make an application to the AA. The prescribed/ notified unrelated FCs will have the option (with a 66 % vote) to convert the CLRP process to CIRP during the Stage I process.... The Committee recommended that where such an application is made to the AA, it should swiftly commence CIRP, displace the management and order a moratorium under Section 14.
18	Invitation for Resolution Plan	4.56 ... the Committee finally recommended that the challenge mechanism, which is currently part of Pre-pack may be incorporated into the CLRP Proposed Framework. 4.57 ... The Committee recommends that the Board may be given powers to specify the nuances of the exact challenge mechanism to be included. It may include invitation of resolution plans from public (through market process), right to existing management to match the identified best bid under certain conditions, manner of identification of the best bid, timelines, etc.
19	Approval of Resolution Plan by Committee of Creditors	4.61 ... The Committee further noted that the resolution plan graduating for AA's approval should require consent of at least 66% of the CoC, same as that in CIRP for consistency of approach.
20	Submission of Resolution Plan to NCLT for Approval	4.65 ... After its approval, the RP shall make the application before the AA for approval of the resolution plan along with supporting documents and information such as the procedural compliance certification and report of the RP.
21	Effect of Approved Resolution Plan	4.9 ... It is intended that the effect of the resolution plan approved under this mechanism should be similar to the CIRP; therefore, all core elements and steps of CIRP for finalisation and CoC approval of the resolution plan will also be undertaken during the CLRP, albeit within shorter timelines and outside the court (unlike in CIRP). 4.66 ... Where the AA is satisfied that the resolution plan satisfies all the requirements, it must approve it, which approval shall be binding on all stakeholders. The effect of approval of the resolution plan under the CLRP will be like that of an approval under CIRP.

22	Consequence of Rejection or Non-Approval of Resolution Plan	4.68 ... the AA may refer the matter to CoC once for removal of defects (if any). Subsequent to such removal, if the revised plan is still not approved, then the CLRP will either be closed. 4.69 ... The committee noted that the CLRP may need a closure due to multiple reasons such as non-approval of any resolution plan by CoC; decision of CoC to close the process on account of regularisation of loan accounts by CD or settlement by CD. The IP, post approval of CoC may make an application to the AA, for closure of the process. In case of non-cooperation by the CD, the IP or CoC may make an application to the AA for initiation of CIRP under Section 7.
23	Instances when Application can be made and entertained by NCLT during Stage I and II	4.10 ... The jurisdiction of NCLT prior to the second stage would be limited to specific prescribed cases, for instance application by the CD regarding wrongful commencement of CLRP against it, application by RP for imposition of moratorium, application by RP (and the CoC) dealing with non-cooperation by the existing management of CD, if required, etc. 4.63 ... the Committee recommends that RP, upon coming to knowledge of gross mismanagement or fraudulent conduct of business by the CD) and with the approval of 66% of the CoC, may file an application before AA requesting for an order of converting the CLRP to CIRP and for vesting the management of the CD with the RP.
24	Costs	4.73 ... It is recommended that an enabling provision may be added in the amendment act to the Code, with the details under regulations to be framed by IBBI to take care of various situations relating to determination, contribution and payment of CLRP costs (such as for the schedule of payment and other relevant details of its disbursement).
25	Penalties	4.47 ... The Committee recommends that the penal provisions from CIRP may be applied to CLRP mutatis mutandis.
26	Avoidance Application	4.62 ... The Committee recommended that, if during the CLRP, the RP discovers transactions under Sections 43, 45, 50 or 66 of the Code, it may take action by filing an application under the said provisions before the AA.
27	Bar against other proceedings during CLRP	4.64 ... a particular bar against initiating further or other proceedings during currency of CLRP may be imposed on other creditors to ensure that the CLRP may be completed once initiated.

List of Abbreviations

S. No.	Abbreviation	Meaning
1	AA	Adjudicating Authority
2	Board / IBBI	Insolvency and Bankruptcy Board of India
3	CD	Corporate Debtor
4	CoC	Committee of Creditors
5	Code/ IBC	Insolvency and Bankruptcy Code, 2016
6	CLRA	Creditor-led Insolvency Resolution Approach
7	CLRP	Creditor-led Insolvency Resolution Process
8	CIRP	Corporate Insolvency Resolution Process
9	FC	Financial Creditor
10	FCIRP	Fast-track Corporate Insolvency Resolution Process
11	ILC	Insolvency Law Committee
12	IM	Information Memorandum
13	IP	Insolvency Professional
14	MCA	Ministry of Corporate Affairs, Government of India
15	NCLT	National Company Law Tribunal
16	OC	Operational Creditor
17	OTS	One Time Settlement
18	PPIRP / Pre-pack	Pre-packaged Corporate Insolvency Resolution Process
19	QFCH	Qualified Floating Charge Holder
20	RBI	Reserve Bank of India
21	RBI Framework 2019	RBI's Prudential Framework for Resolution of Stressed Assets dated 7 June 2019
22	RP	Resolution Professional

Draft Amendment to the Code

Draft Formulations for the amendment in the Code

56. (1) Where a corporate debtor commits a default referred to in section 4 and is not undergoing any insolvency resolution or liquidation proceedings under Chapters II to V of Part II, financial creditor(s) in respect of which the default is committed, belonging to such class of financial institution as may be notified by the Central Government, may initiate the fast-track corporate insolvency resolution process by filing a notice of appointment of the resolution professional with the Adjudicating Authority and the Board, subject to such conditions as may be specified.
- (2) The financial creditor shall, before filing a notice of appointment of the resolution professional with the Adjudicating Authority and the Board:
 - (a) obtain approval of the financial creditors of the corporate debtor, not being its related parties, representing not less than fifty-one per cent in value of the financial debt due to such corporate debtor; and
 - (b) give at least thirty days' notice in writing to the corporate debtor, informing about its intention to initiate the fast-track corporate insolvency resolution process and consider any representation to such notice in such manner as may be specified.
- (3) The notice of appointment under sub-section (1) shall be filed with the Adjudicating Authority and the Board, in such form and manner as may be specified, and shall include –
 - (a) a written consent from the insolvency professional proposed to be appointed as the resolution professional in such form as may be specified;
 - (b) copy of the notice given to the corporate debtor under clause (b) of sub-section (2);
 - (c) record of the default recorded with the information utility; and
 - (d) such other information as may be specified.
- (4) The fast-track corporate insolvency resolution process shall be deemed to have commenced from date of notice of appointment to Adjudicating Authority.
- (5) Where a notice of appointment of the resolution professional is filed with the Adjudicating Authority and the Board under sub-section (1), the resolution professional so appointed shall make a public announcement of its appointment in such form and manner as may be specified.
- (6) During the fast-track corporate insolvency resolution process the committee of creditors may resolve to replace the resolution professional by a majority vote of not less than sixty-six per cent. of the voting share.
- (7) The newly appointed resolution professional shall file the resolution of replacement with the Adjudicating Authority and the Board and shall make a public announcement of its appointment in such form and manner as may be specified.

- (8) Notwithstanding anything contained under sections 7, 9, 10 and 54C, no application for initiation of the corporate insolvency resolution process or the pre-packaged insolvency resolution process in respect of the corporate debtor shall be filed during the fast-track corporate insolvency resolution process period.

Explanation. – For the purposes of this Chapter, -

- (i) “fast-track corporate insolvency commencement date” means the date of filing of notice of appointment of insolvency professional to Adjudicating Authority under sub section (3).
- (ii) “fast-track corporate insolvency resolution period” means the period beginning from the fast-track corporate insolvency commencement date and ending on the date on which an order under sub-section (2) of section 57E read with sections 31 and 33, as the case may be, is passed by the Adjudicating Authority.”.
- (iii) “fast-track insolvency resolution process costs” means –
 - (a) the fees payable to any person acting as a resolution professional;
 - (b) other costs directly relating to the fast-track corporate insolvency resolution process and approved by the committee.
 - (c) any other costs as may be specified by the Board;

57. (1) If the corporate debtor has any objection to the commencement of the fast-track corporate insolvency resolution process under section 56, it may file an application to the Adjudicating Authority within a period of thirty days from the fast-track corporate insolvency commencement date in such form and manner as may be specified, accompanied with such fee as may be prescribed.

Provided that a corporate debtor which has not filed any response to notice under clause (b) of sub section (2) of section 56, shall not be eligible to raise an objection under sub section (1).

- (2) Where the Adjudicating Authority, pursuant to an application under sub-section (1), is satisfied that the notice of appointment of the resolution professional was issued in contravention of the provision of section 56, it may, by order, declare such notice of appointment to be void ab-initio.
- (3) During the pendency of application made under sub section (1) with Adjudicating Authority, the process of fast-track insolvency resolution shall continue as per the provisions of Code.

- 57A. (1) Subject to sub-section (3), the fast-track corporate insolvency resolution process shall be completed within a period of one hundred and fifty days from the fast-track corporate insolvency commencement date.

- (2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast-track corporate insolvency resolution process beyond one hundred and fifty days if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six percent of the voting share.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the process cannot be completed within a period of one hundred and fifty days, it may, by order, extend the duration of the process by such period, as it thinks fit, but not exceeding forty-five days.

57B. (1) The resolution professional, shall have the following duties during the fast-track corporate insolvency resolution period, which shall be performed in such manner and subject to such conditions as may be specified, namely –

(a) make a public announcement of its appointment, initiation of process and call for the submission of claims;

Provided that a creditor may file objections regarding the acceptance or rejection of its claim under this Chapter, which shall be considered by the Adjudicating Authority only after the application for approval of the resolution plan has been filed, except in cases where the non-hearing of such objections may vitiate the process.

(b) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor;

(c) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement;

(d) constitute a committee of creditors and convene its meetings;

(e) prepare the information memorandum;

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

(g) invite additional plans, which fulfil such criteria as may be laid down by him with the approval of the committee of creditors;

(h) prepare a report in such form as may be specified, confirming the conduct of the fast-track corporate insolvency resolution process in accordance with the procedural requirements, and that the resolution plan, additional plan, if any, and the manner of distribution, as the case may be, filed along with it complies with the requirements of sections 29A and 30, which shall, mutatis mutandis, apply to the proceedings under this Chapter;

(i) file applications for avoidance transaction or fraudulent or wrongful trading, if any, discovered during the conduct of the process;

(j) file such report and documents with the Board as may be specified; and

(k) perform such other duties as may be specified.

(2) The resolution professional shall exercise such powers as referred to in sub-section (3) of section 54F, which shall, mutatis mutandis, apply to the proceedings under this Chapter.

57C. (1) During the fast-track corporate insolvency resolution process period, –

- (a) the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor;
 - (b) the Board of Directors or the partners of the corporate debtor, shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern.
- (2) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor, if sought by the resolution professional, shall provide a preliminary information memorandum along with all information, books of account, records to prepare and finalise the information memorandum and other specified documents, necessary to conduct the fast-track corporate insolvency resolution process, within such time and manner as may be specified.
- (3) Any person who is or has been a personnel of the corporate debtor, or its promoter, or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (2) and (3) of section 19 shall, mutatis mutandis, apply in relation to the proceedings under this Chapter.
- (4) Where during the fast-track corporate insolvency resolution process –
- (a) the affairs of the corporate debtor have been conducted in a fraudulent manner;
 - (b) there has been gross mismanagement of the affairs of the corporate debtor; or
 - (c) the Board of Directors or partners of the corporate debtor fails to assist or cooperate with the resolution professional,
- the committee of creditors, at any time after the fast insolvency commencement date but before the submission of the resolution plan, additional plans, if any, and the manner of distribution under section 57E, by a vote of not less than sixty-six per cent. of the voting shares, may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II, and for such purposes, the provisions of sub-sections (2) to (4) of section 54-O shall, mutatis mutandis apply, to the proceedings under this Chapter.

57D. (1) During the fast-track corporate insolvency resolution process period –

- (a) before the constitution of the committee of creditors, the resolution professional, after obtaining approval of the financial creditors of the corporate debtor, not being its related parties, representing not less than fifty-one per cent. in value of the financial debt due to such creditors; or
 - (b) the resolution professional with the approval of the committee of creditors, as the case may be,
- may make an application to the Adjudicating Authority for imposing a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, which shall, mutatis mutandis apply, to the proceedings under this Chapter.

- (2) On receipt of an application under sub-section (1), if the Adjudicating Authority is satisfied that the moratorium is required to be imposed for proper and efficient conduct of the fast-track corporate insolvency resolution process, it may, within thirty days from the receipt of the application, by an order, declare moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14 during the fast-track corporate insolvency resolution period, or otherwise reject the application.
 - (3) Where an application has been made in sub section (1), a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, shall commence from the date of the application and during the fast-track corporate insolvency resolution period unless the application made under sub-section (1) is rejected.
 - (4) The resolution professional shall make public announcement of the following, in such form and manner as may be specified, namely: –
 - (a) filing of application under sub-section (1); and
 - (b) order of the Adjudicating Authority under sub-section (2) either declaring the moratorium or rejecting the application.
- 57E. (1) Where the committee of creditors, by a vote of not less than sixty-six per cent. of the voting shares, approve the resolution plan, the additional plans, if any, and the manner of distribution in accordance with the provisions of section 30, the resolution professional shall simultaneously submit them to the Adjudicating Authority for approval along-with a report referred to in clause (h) of sub-section (1) of section 57B.
- (2) On receipt of the resolution plan, the additional plans, if any, and the manner of distribution, the Adjudicating Authority, may take action in accordance with the provisions of sections 31 to 33, which shall, mutatis mutandis apply, to the proceedings under this Chapter.
58. (1) Subject to the provisions of this Chapter, the process for conducting a corporate insolvency resolution process under Chapter II and the provisions of Chapters III, VI and VII shall apply to this Chapter as the context may require:

Provided that references to –

- (a) “corporate insolvency resolution process” shall be construed as reference to “fast-track corporate insolvency resolution process”;
 - (b) “insolvency commencement date” shall be construed as reference to “fast-track corporate insolvency commencement date”;
 - (c) “insolvency resolution process period” shall be construed as reference to “fast-track corporate insolvency resolution period”; and
 - (d) reference to “initiation date and ending on the insolvency commencement date” under sections 43, 46 and 50 shall be constructed as “fast-track corporate insolvency commencement date”.
- (2) The fast-track corporate insolvency resolution process of a corporate person under this Chapter shall meet such conditions and procedural requirements as may be specified by the Board.

Draft Insolvency and Bankruptcy (Fast-track Insolvency Resolution Process) Rules, 2023

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, [•], 2023

G.S.R []—In exercise of the power conferred by sub-section (1) and clause (fd) of sub-section (2) of section 239 read with sub-section (3) of section 56 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2023 (1 of 2023), the central Government hereby makes the following rules, namely:-

- 1. Short title and commencement.** – (1) These rules may be called the Insolvency and Bankruptcy (fast-track corporate insolvency resolution process) Rules, 2023.
(2) They shall come into force on the date of their publication in the Official Gazette.
- 2. Application.** – These rules shall apply to the matter relating to the fast-track corporate insolvency process.
- 3. Definitions.** (1) In these rules, unless the context otherwise requires, -
 - (a) Code means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
 - (b) fast-track corporate resolution process means the insolvency resolution process for corporate persons under Chapter [] of Part II of the Code;
 - (c) Form means a Form appended to these rules; and
 - (d) identification number means the limited liability partnership identification number or the corporate identification number, as the case may be of the corporate person.
 (2) Unless the context otherwise requires, words and expressions used and not defined herein, shall have the same meaning respectively assigned to them in the code.
- 4. Filing of application.** – (1) A resolution professional, shall make an application intimating the commencement of fast-track corporate insolvency resolution process under sub-section (3) of section 56 of the Code in Form 1, accompanied with affidavit, documents of records as referred in Annexures therein, in electronic form, along with a fee of rupees []:
 Provided that in case, electronic facility is not available for filing such application, the application and the accompanying documents may be filed in physical form, and wherever the accompanying documents are bulky, the same may be submitted in scanned portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudication Authority.
 (2) The resolution professional under sub-rule (1) shall serve a copy of the application to the Board by registered post or speed post or by hand or by electronic means, before filing it with the Adjudicating Authority.
 (3) The application shall be filed before the Adjudicating Authority in accordance with rules 20, 21, 22, 23, 24 and 26 of the National Company Law Tribunal Rules, 2016.

Form-1

[See sub-rule (1) of rule 4]

APPLICATION BY RESOLUTION PROFESSIONAL TO INITIATE COMMENCEMENT FAST-TRACK INSOLVENCY RESOLUTION PROCESS UNDER CHAPTER III-A OF THE CODE

*[Under section 56(3) of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the
Insolvency and Bankruptcy (Fast-track Insolvency Resolution Process) Rules, 2023]*

[Date]

To,

The National Company Law Tribunal [Address]

From,

[Name and address for correspondence of the Authorised Representative]

In the matter of [name of the corporate debtor]

Subject: Application to initiate fast-track insolvency resolution process in respect of [name of the corporate debtor] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

We, hereby submit this application to inform that we have initiated a fast-track insolvency resolution process in respect of [name of corporate debtor]. The details for the purpose of this application are set out below:

Part-I

PARTICULARS OF THE CORPORATE DEBTOR		
1.	NAME, ADDRESS, EMAIL ADDRESS, IDENTIFICATION NUMBER AND ADDRESS FOR COMMUNICATION OF THE CORPORATE DEBTOR	
2.	NAME, ADDRESS, EMAIL ADDRESS, IDENTIFICATION NUMBER AND ADDRESS OF THE REGISTERED OFFICE OF CORPORATE DEBTOR	
3.	NAMES AND ADDRESSES OF ALL DIRECTORS, PROMOTERS, DESIGNATED PARTNERS OF THE CORPORATE DEBTOR (AS APPLICABLE)	
4.	DATE OF INCORPORATION OF CORPORATE DEBTOR	
5.	NOMINAL SHARE CAPITAL AND THE PAID-UP SHARE CAPITAL OF THE CORPORATE DEBTOR AND/OR DETAILS OF GUARANTEE CLAUSE AS PER MEMORANDUM OF ASSOCIATION (AS APPLICABLE)	

Part-II

PARTICULARS OF RESOLUTION PROFESSIONAL		
1.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE RESOLUTION PROFESSIONAL	
2.	NAMES OF THE CREDITORS, WHO HAVE APPROVED THE PROPOSAL FOR APPOINTMENT OF THE INSOLVENCY PROFESSIONAL AS THE RESOLUTION PROFESSIONAL UNDER SECTION 54A(2)(e) OF THE CODE AND VALUE OF THEIR DEBT IN PER CENT. OF DEBT OWED TO CREDITORS REQUIRED TO APPROVE SUCH PROPOSAL UNDER THAT SECTION	

Part-III

PARTICULARS OF FINANCIAL DEBT [CREDITOR WISE, AS APPLICABLE]		
1.	NAME(S) OF FINANCIAL CREDITOR(S)	
2.	ADDRESS OF CORRESPONDENCE OF THE FINANCIAL/OPERATIONAL CREDITOR(S)	
3.	TOTAL DEBT RAISED AND AMOUNT IN DEFAULT	
4.	DATE WHEN THE FINANCIAL DEBT WAS INCURRED	
5.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)	
6.	DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS	
7.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY	
8.	LIST OF DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL/OPERATIONAL DEBT AND THE AMOUNT IN DEFAULT	

Part-IV

PARTICULARS OF ELIGIBLE FINANCIAL CREDITORS, NOT BEING RELATED PARTIES OF THE CORPORATE DEBTOR REVIEW		
1.	NAMES OF THE ELIGIBLE FINANCIAL CREDITORS, NOT BEING RELATED PARTIES OF THE CORPORATE DEBTOR	
2.	TOTAL DEBT DUE TO THE ELIGIBLE FINANCIAL CREDITORS, NOT BEING RELATED PARTIES OF THE CORPORATE DEBTOR	
3.	WHETHER ELIGIBLE FINANCIAL CREDITORS HAVE THE REQUISITE THRESHOLD FOR INITIATION OF THE FAST-TRACK PROCESS.	
4.	NAMES OF THE CREDITORS, WHO HAVE APPROVED THE FILING OF APPLICATION FOR INITIATION OF PRE- PACKAGED INSOLVENCY RESOLUTION PROCESS UNDER SECTION 54A(3) OF THE CODE AND VALUE OF THEIR DEBT IN PER CENT. OF DEBT OWED TO CREDITORS UNDER THAT SECTION	
5.	NAME OF AUTHORISED REPRESENTATIVE	

[Name of the resolution professional] has paid the requisite fee for this application through [state means of payment] on [date] and a copy of this application has been served by registered post/speed post/by hand/electronic means to the Board.

Yours sincerely

Signature of resolution professional

Name in block letters

Registration Number

AFFIDAVIT

I, [insert full name, address and occupation of deponent] do solemnly affirm and state as follows:--

1. [Name of the financial creditors] are eligible for a initiating fast-track corporate insolvency resolution process in accordance with section 56 of the Insolvency and Bankruptcy Code, 2016 (Code) and the associated rules and regulations.
2. I am fully qualified and permitted to act as a resolution professional for the fast-track corporate insolvency resolution process of the corporate debtor, in accordance with the Code and the associated rules and regulations.
3. This application is being filed within the time period stipulated for the filing of this application
4. In respect of this application for pre-packaged insolvency resolution process, I have relied on the documents specified below: [Please list the documents relied on].
5. The contents of this application along with the said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.

Solemnly, affirmed at _____ on _____ day, the _____ day
of _____ 20_____.

Before me,

Notary/Oath Commissioner

Deponent's Signature

VERIFICATION

I, the Deponent herein above, do hereby verify and affirm that the contents of para to ____ of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at _____ on this _____ day of _____ 20____

Deponent's signature

Draft Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution For Corporate Persons) Regulations, 2023

Notification

Draft Regulations

No. IBBI/2023-24/[•].—In exercise of the powers conferred under sections 58, 196 and 208 read with Section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following Regulations, namely:-

CHAPTER I

PRELIMINARY

1. Short title and commencement. -

- (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution for Corporate Persons) Regulations, 2023.
- (2) These Regulations shall come into force on the date of their publication in the Official Gazette.
- (3) These Regulations shall apply to the process under Chapter IV of Part II of the Insolvency and Bankruptcy Code, 2016 in supersession of Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution For Corporate Persons) Regulations, 2017 with effect from the date of their publication in the Official Gazette.

2. Definitions. -

- (1) In these Regulations, unless the context otherwise requires,-
 - (a) “applicant” means the person filing an application under Chapter IV of Part II of the Code;
 - (b) “Code” means the Insolvency and Bankruptcy Code, 2016;
 - (c) “Code of Conduct” means the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 as amended from time to time;
 - (d) “committee” means a committee of creditors established under section 21;
 - (e) “dissenting financial creditor” means a financial creditor who voted against the resolution plan or abstained from voting for the resolution plan, approved by the committee;

- (f) “electronic form” shall have the meaning assigned to it in the Information Technology Act, 2000 (21 of 2000);
- (g) “electronic means” means an authorized and secured computer programme which is capable of producing confirmation of sending communication to the participant entitled to receive such communication at the last electronic mail address provided by such participant and keeping record of such communication;
- (h) “eligible financial creditors” means the financial creditors of the corporate debtor that are financial institutions of such category as may be notified by the Central Government under Section 55(1) of the Code.
- (i) “evaluation matrix” means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval;
- (j) “fair value” means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the fast-track commencement date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion;
- (k) “fast-track process” or “creditor led insolvency process” means the fast-track corporate insolvency resolution process for corporate persons under Chapter IV of Part II of the Code. The terms “fast-track process” or “creditor led insolvency process” may be considered as being used interchangeably;
- (l) “fast-track process period” or “creditor led insolvency process period” means the period of one hundred fifty days beginning from the fast-track commencement date and ending on the one hundred and fiftieth day, subject to the provisions of Section [•] of the Code;
- (m) “Form” means a Form specified in the Schedule;
- (n) “identification number” means the Limited Liability Partnership Identification Number under the Limited Liability Partnership Act, 2008, or the Corporate Identity Number under the Companies Act, 2013, as the case may be;
- (o) “fast-track commencement date” or “creditor led insolvency commencement date” means the date of filing of an intimation by the insolvency professional before the Adjudicating Authority regarding his appointment and the initiation of the fast-track process under Chapter IV of Part II of the Code;
- (p) “insolvency professional” means a person or an entity recognised as such under the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 as amended from time to time;
- (q) “liquidation value” means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the fast-track commencement date or the creditor led insolvency commencement date.

- (r) “participant”, unless otherwise prescribed by the Board, means a person entitled to attend a meeting of the committee under section 24 or any other person authorised by the committee to attend the meeting;
 - (s) “registered valuer” means a person registered as such in accordance with the Companies Act, 2013 and the rules made thereunder;
 - (t) “significantly better” means the process specified under regulation [●] and includes but is not limited to satisfaction of the committee that the resolution plan (i) has been received from a credible resolution applicant, (ii) complies with the applicable laws, (iii) is feasible and viable, (iv) has potential to address the default, (v) has provision for effective implementation of the plan, and (vi) maximises the value of the assets of the corporate debtor, irrespective of immediate realization for creditors under the said plan.
 - (u) “Schedule” means a schedule to the regulations;
 - (v) “section” means section of the Code;
 - (w) “video conferencing or other audio and visual means” means such audio and visual facility which enables the participants in a meeting to communicate concurrently with one another and to participate effectively in the meeting.
- (2) Unless the context otherwise requires, words and expressions used and not defined in these Regulations, but defined in the Code, shall have the meanings assigned to them in the Code.

CHAPTER II

GENERAL

3. Meetings and communication.-

- (1) The meetings required under these Regulations may be held either in physical or electronic mode or in a combination of both.
- (2) Unless otherwise specified under these Regulations, all communications required under these Regulations shall be made by electronic means as far as possible.

CHAPTER III

INITIATION OF PROCESS

4. Authorized Representative of the eligible financial creditors.-

- (1) Where more than one eligible financial creditor initiates the fast-track process under Section 56, the eligible financial creditors shall appoint an authorized representative from amongst them by a resolution in writing passed by the eligible financial creditors representing more than fifty percent of the financial debt of the corporate debtor.

- (2) The authorized representative under sub-regulation (1) shall represent eligible financial creditors, during the fast-track insolvency resolution process.
- (3) The authorized representative shall ascertain that the eligible financial creditors have the requisite threshold for initiation of the fast-track process as per the records of information utility.
- (4) Whenever, there is any change in the authorized representative, new authorized representative shall intimate the same, within three days to the corporate debtor, the resolution professional, and the Board

5. Notice of default.-

- (1) For the purpose of Section 56, the authorized representative shall duly serve a notice in Form A to the corporate debtor and the Board.
- (2) The corporate debtor may respond to the notice under sub-regulation (1) within thirty days from its receipt. The corporate debtor shall, in its response, include its proposed manner of resolution of default..

CHAPTER IV

RESOLUTION PROFESSIONAL

6. Appointment of Resolution Professional.-

After consideration of the reply of the corporate debtor under Regulation 5(2), if any, the eligible financial creditors may decide to start the fast-track process by appointing a resolution professional.

7. Filing of reports and forms.-

The resolution professional shall file such forms, along with enclosures thereto, on an electronic platform or otherwise, as may be required by the Board.

8. Removal and replacement of resolution professional. –

- (1) Where, at any time during the fast-track process, the committee of creditors or, in its absence due its non-constitution, the eligible financial creditor is of the opinion that a resolution professional appointed under Regulation [●] is required to be replaced, it may remove and replace a resolution professional in the manner provided under this regulation.
- (2) The committee of creditors or the eligible financial creditors, as the case may be, may, at a meeting, by a vote of [sixty-six] per cent. of voting shares, propose to replace the resolution professional appointed under sub-regulation (1) with another resolution professional, against whom disciplinary proceeding is not pending and who has consented for appointment.

Provided that where a resolution professional is proposed to be replaced, he shall continue to work till his replacement.

- (3) Upon replacement, the committee of creditors or the eligible financial creditors, as the case may be, shall file an application through the insolvency professional appointed as resolution professional before the Adjudicating Authority and the Board intimating the removal and replacement under sub-regulation (1) along with the name and details of the insolvency professional appointed as resolution professional.
- (4) The insolvency professional appointed as resolution professional shall be required to undertake publication of removal and replacement under sub-regulation (1) in accordance with Regulation [•] under Chapter V within three days of the intimation to the Board.

CHAPTER V

COMMENCEMENT OF PROCESS

9. Intimation to the Board and Adjudicating Authority.-

- (1) Upon expiry of thirty days under Regulation [•], the eligible financial creditors of the corporate debtor may commence the fast-track process in accordance with Section 56(1) by appointing a resolution professional in accordance with sub-regulation (2).
- (2) Subject to other requirements as may be prescribed by the Board, the fast-track process shall be commenced against the corporate debtor under sub-regulation (1) by the resolution professional filing an intimation regarding his appointment before the Board and the Adjudicating Authority as provided hereunder. The intimation shall include:
- (a) notice of appointment of the resolution professional under Form [•];
 - (b) a written consent from the insolvency professional proposed to be appointed as resolution professional in Form [•];
 - (c) a copy of notice to the corporate debtor under Regulation [•] in Form [•] along with all further correspondence from or with the corporate debtor including but not limited to the resolution plan submitted by the corporate debtor and minutes of the meetings if any with the corporate debtor;
 - (d) a copy of record of default issued by an information utility;
 - (e) a copy of the resolution of eligible financial creditors appointing authorized representative under Regulation [•]; and
 - (f) proof of payment of fee as prescribed by the Board.

CHAPTER VI

COMMITTEE OF CREDITORS

10. Constitution of the Committee. –

- (1) The resolution professional shall take steps for constitution of the committee in accordance with Section [•] and Regulation [•] of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, immediately upon his appointment and not later than [•] days from the date of submission of proof of claims under Regulation [•].

- (2) The provisions of Sections [•] of Part II of the Code shall be applicable *mutatis mutandis* to the committee.

11. Filings by the resolution professional.-

- (1) The resolution professional shall file a report certifying the constitution of the committee to the Adjudicating Authority on or before expiry of [•] days from its constitution.
- (2) The resolution professional shall convene the first meeting of the committee within [•] days of filing the report(s) under this regulation.
- (3) Based on records of the corporate debtor and claims, if the resolution professional is of the opinion that the fast-track process is not applicable to the corporate debtor as per notifications under section 56 he shall file an application to the Adjudicating Authority along with the report in sub-regulation (1), to pass an order for closing the fast-track process.
- (4) For the purposes of initiation of corporate insolvency resolution process in respect of the corporate debtor under sub-section (4) of section 57C, the resolution professional shall make an application in Form I.

CHAPTER VIII

CONDUCT OF THE FAST-TRACK PROCESS

12. Information memorandum.-

- (1) The corporate debtor, its promoters or any other person associated with the management of the corporate debtor as may be designated by the board of directors of the corporate debtor shall provide the necessary information, books of account, records as may be required by the resolution professional to finalise the information memorandum under sub-regulation (3) and other specified documents necessary to conduct the fast-track process to the resolution professional within [•] days from the date of public notice of commencement of fast-track process under regulation [•].

Provided if the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as may be designated by the board of directors of the corporate debtor fail to provide any such information required by the resolution professional in accordance with sub-regulation (1), the resolution professional may duly inform the committee under Section [•] and accordingly file an application before the Adjudicating Authority to convert the fast-track process into corporate insolvency resolution process under Part II of the Code.

- (2) After receipt of the information under sub-regulation (1), the resolution professional shall prepare and submit the information memorandum in electronic form to each member of the committee within 60 days of commencement of the fast-track process.
- (3) The provisions of sub-regulation (2), (3), (3A) and (4) of regulation 36 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall, *mutatis mutandis* apply.

13.Management during the process.-

- (1) The corporate debtor shall not manage the affairs of the corporate debtor in a manner prejudicial to the creditors of the corporate debtor or in a fraudulent manner.
- (2) The corporate debtor shall not undertake any of the following actions without obtaining prior approval of the committee, namely:-
 - (a) transaction above a threshold as decided by the committee; and
 - (b) any other matter as decided by the committee and not covered under section 28.
- (3) The corporate debtor shall provide to the resolution professional, within seven days of the event, the following details having material impact on the business of the corporate debtor:-
 - (a) details of legal proceedings;
 - (b) details of key contracts executed; and
 - (c) any other relevant matter(s).
- (4) The resolution professional shall exercise the following powers in terms of subsection (2) of section 57B read with clause (g) of sub-section (3) of section 54F of the Code:
 - (a) call for information related to operations of the corporate debtor, including payments made;
 - (b) visit premise(s) of the corporate debtor;
 - (c) inspect the assets of the corporate debtor;
 - (d) call for information related to compliances applicable to the corporate debtor and its status;
 - (e) ask for details related to litigation initiated by or against corporate debtor; and
 - (f) ask details for ascertaining the conduct of corporate debtor during the process.

CHAPTER IX

RESOLUTION PLAN

14. Invitation of Resolution Plans.--

- (1) For the purposes of Section [●], the resolution professional shall issue brief particulars of the invitation, in Form [●] not later than thirty five days from the date of commencement of fast-track process.
- (2) The resolution professional shall publish brief particulars of the invitation in Form [●] of the Schedule:
 - (a) on the website, if any, of the corporate debtor;
 - (b) on the website, if any, designated by the Board for the purpose; and
 - (c) any other manner as may be decided by the committee.

(3) The Form [•] shall-

- (a) state where the invitation for resolution plans can be downloaded or obtained from, as the case may be; and
- (b) provide the last date for submission of resolution plan which shall not be less than [•] days from the date of issue of invitation for resolution plan under sub-regulation (2).

(4) The invitation for resolution plans shall-

- (a) detail each step in the process, and the manner and purposes of interaction between the resolution professional and the resolution applicant including seeking and providing information memorandum, along with corresponding timelines;
- (b) include-
 - (i) the basis for evaluation;
 - (ii) basis for considering a resolution plan significantly better than another resolution plan;
 - (iii) tick size;
 - (iv) the manner of improving a resolution plan as specified in sub regulation (4) of Regulation [•]; and
 - (v) the right to bid against or match the resolution plans received by the resolution professional; and
- (c) not require any non-refundable deposit for submission of or along with resolution plan.

Explanation 1. The term “basis for evaluation” referred above in sub clause (i) of clause (b), includes the parameters to be applied and the manner of applying such parameters, as approved by the committee, for evaluating a resolution plan to assign a score to the plan, and disclosed in the invitation for resolution plans.

Illustration 1

The committee may identify three parameters, namely, X, Y and Z for evaluation of resolution plans. It may apply these parameters in the form of a formula, namely, $1.5 X + 2 Y + 2.5 Z$. Where the values of X, Y and Z are 20, 25, and 30 respectively, the score of the resolution plan is $1.5 (20) + 2 (25) + 2.5 (30) = 155$.

Illustration 2

The committee may identify three parameters, namely, X, Y and Z for evaluation of resolution plans. It may apply these parameters in the form of a formula, namely, $1.5 X + 2 Y + 2.5 Z$, subject to X being not less than 20. Where the values of X, Y and Z are 20, 25, and 30 respectively, the score of the resolution plan is $1.5 (20) + 2 (25) + 2.5 (30) = 155$. It may apply these parameters

in the form of a formula, namely, $2Y + 2.5Z$, subject to X being not less than 20. Where the values of X , Y and Z are 20, 25, and 30 respectively, the score of the resolution plan is $2(25) + 2.5(30) = 125$. Where the values of X , Y and Z are 15, 40, and 50 respectively, the resolution plan does not meet the minimum value of X and hence this plan will not be evaluated;

Explanation 2. The term “significantly better” referred above in sub clause (ii) of clause (b) in relation to resolution plan, means that the score of the resolution plan is higher than that of another resolution plan by a certain number or percentage, as approved by the committee and disclosed in the invitation for resolution plans.

Illustration 1

The committee may consider a resolution plan to be significantly better than another resolution plan, if the score of the former is higher than that of the latter by 10. Where resolution plans ‘A’ and ‘B’ have scores of 100 and 110 respectively, ‘B’ is significantly better than ‘A’. Where resolution plans ‘A’ and ‘B’ have scores of 100 and 108 respectively, ‘B’ is not significantly better than ‘A’.

Illustration 2

The committee may consider a resolution plan to be significantly better than another resolution plan, if the score of the former is higher than that of the latter by 5 per cent. Where resolution plans ‘A’ and ‘B’ have scores of 100 and 107 respectively, ‘B’ is significantly better than ‘A’. Where resolution plans ‘A’ and ‘B’ have scores of 100 and 104 respectively, ‘B’ is not significantly better than ‘A’.

Explanation 3. The term “tick size” referred above in sub clause (iii) of clause (b) means minimum improvement over another resolution plan in terms of score, as approved by the committee and disclosed in the invitation for resolution plans.

Illustration 1

On the basis for evaluation, resolution plans ‘A’ and ‘B’ have scores of 105 and 108, respectively. Resolution applicant of ‘A’ may wish to improve ‘A’ over ‘B’. It must improve ‘A’ such that the score of ‘A’ exceeds that of ‘B’ at least by tick size. If tick size is 5, resolution applicant of ‘A’ must improve ‘A’ such that the score of ‘A’ is at least $108 + 5 = 113$.

Illustration 2

In the example under Illustration 1, if tick size is 5 per cent., resolution applicant of ‘A’ must improve ‘A’ such that the score of ‘A’ is at least $108 \times 1.05 = 113.4$.

Explanation 4. The term “right to bid” referred above in sub clause (v) of clause (b) means the right of the corporate applicant to participate in the challenge mechanism and the term “right to match” means the right of the corporate applicant to participate in the challenge mechanism under regulation [2] as per the matrix provided below:

S. No.	Corporate applicant's bid in its Resolution Plan (in percentage)	Market' bid (highest value in percentage of Corporate applicant's Resolution Plan)	Option
1.	100	200	Bidder has no right to further bid
2.	100	140	Bidder has right to further bid
3.	100	120	Corporate applicant has the right to match

- (5) Where the invitation does not contain the evaluation matrix, the resolution professional shall issue, with the approval of the committee, the evaluation matrix to the prospective resolution applicants at least [eight] days before the last date for submission of resolution plans.
- (6) The resolution professional may modify the invitation, the evaluation matrix or both with the approval of the committee within the timelines given under sub-regulation (●) as the case may be.
- (7) The resolution professional shall require the resolution applicant, in case its resolution plan is approved under section [●], to provide a performance security within [seven] days' time from the approval and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

Explanation 1.-For the purposes of this sub-regulation, "performance security" shall mean security of such nature, value, duration and source, as may be specified in the invitation for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

Explanation 2.-A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.

15. Evaluation of resolution plans.--

- (1) The resolution plans received under regulation [●], which comply with the requirements of the Code and these Regulations, shall be evaluated on the "basis for evaluation".
- (2) The resolution plan(s) with score equivalent to or higher than the score of plan submitted by corporate applicant shall be selected for challenge process, subject to explanation 4 of clause 4 of regulation [●].

16. Approval of resolution plan.--

- (1) The resolution professional shall disclose the scores of the resolution plan to all the resolution applicants selected for challenge process to improve their resolution plans in accordance with sub-regulation (2).

- (2) The resolution applicants under sub-regulation (1) shall have an option to participate in the challenge process where in each participant will improve its plan in the following manner till the time there is no further improvement in the score of the best plan.
- (a) The resolution applicants shall have an option to improve their plan over the best plan where in their score is better than the score of the best plan by at least a “tick size”.
- (b) The corporate applicant, if eligible as per initial bid to match, shall have an option to submit a plan having score equal to the score of the best plan and if so submitted, it shall be considered to be best plan.
- (3) All iterations of the challenge process under sub-regulations (1) and (2) shall be completed within a time-window of forty-eight hours.
- (4) The best plan identified under sub-regulations (2) post all iterations shall be considered by the committee for approval.
- (5) The committee may approve any resolution plan that conforms with this regulation and the Code, with such modifications as it deems fit.

17.Approval of resolution plan.-

- (1) The resolution professional shall submit the resolution plan approved by the committee to the Adjudicating Authority, at least thirty days before the expiry of the maximum period permitted under section [●] for the completion of the fast-track process, with the copies of his report and the approved resolution plan as provided under Section [●], along with the certification that-
 - (a) the contents of the resolution plan meet all the requirements of the Code and the Regulations; and
 - (b) the resolution plan has been approved by the committee:

Provided that the timeline specified in this sub-regulation shall be applicable to an ongoing fast-track process in accordance with any extension granted by the Adjudicating Authority under Regulation [●].
- (2) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.
- (3) The resolution professional shall, within [●] days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formula, as the case may be, for payment of debts under such resolution plan.
- (4) 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.

- (7) No proceedings shall be initiated against the resolution professional, as the case may be, for any actions of the corporate debtor, prior to or during the fast-track commencement date.
- (8) 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 Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.
- (9) Where no resolution plan is approved by the committee or where the committee has approved the closure of process, the resolution professional shall file an application before the Adjudicating Authority for closure of process.

18. Extension of the fast-track process period.-

- (1) In case, the committee is of the opinion that the fast-track process cannot be completed within the stipulated one hundred and fifty days, it may instruct the resolution professional to make an application to the Adjudicating Authority under section [•] to extend the fast-track process period.
- (2) The resolution professional shall, on receiving an instruction from the committee under this Regulation, make an application to the Adjudicating Authority for such extension.

CHAPTER X

FAST-TRACK PROCESS COSTS

19. Fast-track process costs.-

“Fast-track process costs” shall mean-

- (a) the amount of any interim finance and the costs incurred in raising such finance;
- (b) the fees payable to any person acting as a resolution professional;
- (c) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section [•];
- (d) expenses incurred on or by the resolution professional fixed under Regulation [•];
and
- (e) other costs directly relating to the fast-track process and approved by the committee.

20. Costs incurred on or by Resolution professional.

- (1) When no committee has been constituted under the fast-track process at the time of commencement, the eligible financial creditors commencing the fast-track process shall, individually or collectively, as the case may be, fix and bear the expenses to be incurred on or by the resolution professional upto the constitution of the committee.
- (2) After the constitution of the committee, these costs may be reimbursed by the committee to the extent it ratifies them.

- (3) Once the committee is constituted, the committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute fast-track process costs.

Explanation-For the purposes of this Regulation, “expenses” mean the fee to be paid to the resolution professional and other expenses incidental or ancillary to the conduct of fast-track process, including the cost of engaging professional advisors.

21. Disclosure of costs.--

The resolution professional shall disclose item wise process costs in such manner as may be required by the Board.

22. Application of provisions of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) to the fast-track process

- (1) Save as provided under this Chapter, the provisions of Regulation 3, 4, 4B, 4C, 5, 27, 28, 29, 30, 37, 38, 39A, Chapter IV and Chapter VI of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall, mutatis mutandis apply, to the fast-track resolution process, subject to the following, namely:—
- (a) “corporate insolvency resolution process” shall be construed as reference to “fast-track corporate insolvency resolution process”;
 - (b) “insolvency commencement date” shall be construed as reference to “fast-track corporate insolvency commencement date”;
 - (c) “insolvency resolution process period” shall be construed as reference to “fast-track corporate insolvency resolution period”; and
 - (d) in sub-regulation (1) of Regulation 27 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 “seven days of his appointment but not later than forty seventh day” to be read as “thirty fifth day”

(SCHEDULE)

FORM A

Notice of Default

(Under Regulation [•] of the Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution Process for Corporate Persons) Regulations, 2023)

[Date]

To

[Name and address of the corporate debtor]

From

[Name and address of the eligible financial creditor(s)]

Subject: Demand notice in respect of unpaid debt in default due from [corporate debtor] under the Code.

Madam/Sir,

1. This letter is a demand notice of unpaid debt in default due from [name of corporate debtor].
2. Please find particulars of the unpaid debt in default below:

PARTICULARS OF DEBT		
1.	Total outstanding debt (including any interest or penalties)	
2.	Amount of debt in default	
3.	Date when the debt was due	
4.	Date when the default occurred	
5.	Nature of the debt	
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor, and details of securities	
7.	Unsecured debt (if any applicable)	
8.	Requisite threshold of 50% for initiation of the process and its proportion to total debt.	
9.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	
10.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	

11.	Record of default with the information utility, if any (attach a copy)	
12.	Provision of law, contract or other document under which debt has become due (attach a copy)	
13.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred	
14.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	

3. If you believe that the debt has been repaid before the receipt of this notice, please demonstrate such repayment by sending to us, within thirty days of receipt of this notice, the following:--

- (a) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the guarantor; or
- (b) evidence of encashment of cheque for the unpaid amount issued by the corporate debtor; or
- (c) an attested copy of any record that [*name of the eligible financial creditor*] has received the payment.

4. The undersigned request you to unconditionally pay the unpaid debt in default in full within thirty days from the receipt of this letter failing which fast-track insolvency resolution process under the Code shall be commenced against you

Yours sincerely,

Signature of Authorised Representative of the eligible financial creditors [<i>Please enclose the authorisation document</i>]
Name in block letters
Address and contact details of person signing

Instructions

1. Please serve a copy of this notice on the corporate debtor, thirty days in advance of filing an application under section [56] of the Code.
2. Please attach a copy of such served notice with the application made by the eligible financial creditor through resolution professional before the Adjudicating Authority.

FORM B

Consent of Resolution Professional

(Under Regulation [•] of the Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution Process for Corporate Persons) Regulations, 2023)

To

The Adjudicating Authority

[_____ Bench]

From

[Name of the insolvency professional]

[Registration number of the insolvency professional]

[Address of the insolvency professional registered with the Board]

Subject: Written consent in the matter of [name of corporate debtor]

1. I, [name], an insolvency professional enrolled with [name of insolvency professional agency] and registered with the Board. I have been proposed for appointment as the resolution professional under section [•] of the Insolvency and Bankruptcy Code, 2016 (“Code”) for fast-track resolution process of [name of the corporate debtor].
2. I hereby give consent to the appointment and undertake to perform duties and functions of resolution professional under sections [•] to [•] of the Code.
3. I have the following processes in hand:-

S. No.	Role as	Number of processes on the date of consent
I	II	III
	Interim Resolution Professional	
	Resolution Professional in- a. Insolvency resolution processes for corporate persons b. Pre-packaged insolvency resolution processes c. Insolvency resolution processes for individuals d. Fast-track insolvency resolution processes	
	Liquidator of- a. Liquidation Processes b. Voluntary Liquidation Processes	
	Bankruptcy Trustee	
	Authorised Representative	
	Any other (Please state)	

4. I declare and affirm as under:-

- a. I am not subject to any disciplinary proceeding initiated by the Board or the Insolvency Professional Agency.
- b. I do not suffer from any disability to act as a resolution professional.
- c. I am eligible to be appointed as interim resolution professional / resolution professional of the corporate debtor under regulation [●] of the Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution Process for Corporate Persons) Regulations, 2023 and other applicable provisions of the Code and the Regulations.
- d. I shall make the disclosures in accordance with the code of conduct for insolvency professionals set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

Date:	(Signature of the insolvency professional)
Place:	Registration No. _____
	Authorisation for assignment (AFA) No. _____ Date of expiry of AFA _____
	(Name in block letters)
	(Name of insolvency professional entity, if applicable)

FORM C

Notice of Appointment of Resolution Professional

(Under Regulation [•] of the Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution Process for Corporate Persons) Regulations, 2023)

1	Name of Insolvency Professional			
2	Registration Number			
3	No. and Date of Issue/Renewal of AFA Date of Expiry of AFA Name of IPA which has issued the AFA			
4	Address and contact details, as registered with the Board:			
	a.	E-mail		
	b.	Mobile		
	c.	Address		
5	*Number of Processes as on date:		Ongoing	Completed
	a.	As IRP of CIR Process		
	b.	As RP of CIR Process		
	c.	As RP of Fast-track Process		
	d.	As Liquidator of Liquidation/Voluntary Liquidation Process		
	e.	As RP of Individual Insolvency Resolution Process		
	f.	As Bankruptcy Trustee		
6	Whether IP has been convicted at any time in the last three years by a court of competent jurisdiction? (Give details)			
7	Whether IP is serving a suspension or debarment from serving as an IP? (Give details)			
8	Whether any disciplinary proceeding, whether initiated by the Board or the IPA, is pending against the IP? (Give details)			

**CIR Process shall include Pre-packaged Insolvency Resolution Process*

Declaration

I hereby: -

confirm and declare that the information given herein above is true and correct to the best of my knowledge and belief, and express my interest to act as RP and perform duties and functions under Sections [•] to [•] of the Code.

undertake that if my name is included in the Panel, I shall abide by the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2021.

undertake that submission of this form is my unconditional consent to act as an RP at the sole discretion of the eligible financial creditor(s) or the committee of creditors, as the case may be, during the validity period of the Panel under the Guidelines (July 1, 2021 - December 31, 2021).

Signature of Insolvency Professional

Place: Date:

FORM D

Public Announcement

(Under Regulation [●] of the Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution Process for Corporate Persons) Regulations, 2023)

FOR THE ATTENTION OF THE CREDITORS OF [Name of Corporate Debtor]

S. No.	Relevant Particulars	Details
1.	Name of corporate debtor	
2.	Date of incorporation of corporate debtor	
3.	Authority under which corporate debtor is incorporated/registered	
4.	Corporate Identity Number/Limited Liability Identification Number of corporate debtor	
5.	Address of the registered office and principal office (if any) of corporate debtor	
6.	Fast-track Commencement Date with respect to the Corporate Debtor	
7.	Estimated date of closure of Fast-track process	
8.	Name, address, email address and the registration number of the resolution professional	
9.	Last date for submission of claims	

Notice is hereby given that the Eligible Financial Creditors (listed below) of [name of the corporate debtor] identified above have filed an application before the National Company Law Tribunal commencing fast-track process against the [name of the corporate debtor] on [fast-track commencement date].

Members of general public and stakeholders are hereby notified accordingly.

The creditors of [name of the corporate debtor], are hereby called upon to submit a proof of their claims on or before [insert the date falling [●] days from the publication and notification of Form [●]] to the specified resolution professional at the address mentioned against item 8.

The creditors classifying themselves as financial creditors shall submit their proof of claims by electronic means only at the email address mentioned against item 8.

The creditors classifying themselves as operational creditors, including workmen and employees, may submit the proof of claims by in person, by post or electronic means at the email address mentioned against item 8.

Submission of false or misleading proofs of claim shall attract penalties.

Name and Signature of the Resolution Professional:

Date and Place:

FORM E

PROOF OF CLAIM BY AN OPERATIONAL CREDITOR

(Under Regulation [•] of the Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution Process for Corporate Persons) Regulations, 2023)

To

The Resolution Professional

[Name of the Resolution Professional]

[Address as set out in the public announcement]

From

[Name and address of the operational creditor]

Subject: Submission of proof of claim in respect of fast-track insolvency resolution process of *[name of corporate debtor]* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the operational creditor] hereby submits this proof of claim in respect of the fast-track insolvency resolution process of *[name of corporate debtor]*.

The details for the same are set out below:

1.	NAME OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION, IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
2.	ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	
3.	TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST, AS ON FAST-TRACK PROCESS COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM	PRINCIPAL : INTEREST : TOTAL : CLAIM :
4.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED	
5.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OF SUIT OR ARBITRATION PROCEEDINGS	
6.	DETAILS OF HOW AND WHEN DEBT INCURRED	
7.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE OPERATIONAL CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
8.	DETAILS OF ANY RETENTION OF TITLE IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE DEBT REFERS OR ANY OTHER SECURITY	

8A.	WHETHER SECURITY INTEREST RELINQUISHED	YES / NO
9.	DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR	
10.	DETAILS OF THE BANK ACCOUNT TO WHICH THE OPERATIONAL CREDITOR'S SHARE OF THE PROCEEDS OF FAST-TRACK INSOLVENCY PROCESS CAN BE TRANSFERRED	
11.	LIST OUT AND ATTACH THE DOCUMENTS RELIED ON IN SUPPORT OF THE CLAIM.	(i) (ii) (iii)

Signature of operational creditor or person authorised to act on his behalf (Please enclose the authority if this is being submitted on behalf of the operational creditor)
Name in BLOCK LETTERS
Position with or in relation to creditor
Address of person signing

*PAN, Passport, AADHAAR Card or the identity card issued by the Election Commission of India.

AFFIDAVIT

I, *[name of deponent]*, currently residing at *[address of deponent]*, do solemnly affirm and state as follows:

The above named corporate debtor was, at fast-track process commencement date, that is, the ___ day of 202___ and still is, justly and truly indebted to me or to me and *[insert name of copartners]*, my co-partners in trade, or, as the case may be in the sum of Rs. ___ for *[please state consideration]*.

In respect of my claim of the said sum or any part thereof, I have relied on and the documents specified below:

[Please list the documents relied on as evidence of debt.]

The said documents are true, valid and genuine to the best of my knowledge, information and belief.

In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/ our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the operational creditor which may be set-off against the claim.]

Solemnly, affirmed at _____ on _____ day, the _____ day of 20____

Before me,

Notary / Oath Commissioner

Deponent's signature

VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para to of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at____on this day of_201____

Deponent's signature

FORM F

PROOF OF CLAIM BY A FINANCIAL CREDITOR

**(Under Regulation [•] of the Insolvency and Bankruptcy Board of India
(Fast-track Insolvency Resolution Process for Corporate Persons) Regulations, 2023)**

To

The Resolution Professional

[Name of the Resolution Professional]

[Address as set out in the public announcement]

From

[Name and address of the registered office and principal office of the financial creditor]

Subject: Submission of proof of claim in respect of the fast-track insolvency resolution process of *[name of corporate person]* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the financial creditor] hereby submits this proof of claim in respect of the fast-track insolvency resolution process of *[name of corporate person]*. The details for the same are set out below:

1.	NAME OF FINANCIAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION, IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
2.	ADDRESS AND EMAIL OF FINANCIAL CREDITOR FOR CORRESPONDENCE.	
3.	TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST, AS AT THE FAST-TRACK PROCESS COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM (WHETHER TERM LOAN, SECURED, UNSECURED)	
4.	DETAILS OF ANY ORDER OF A COURT OF TRIBUNAL THAT HAS ADJUDICATED ON THE NON-PAYMENT OF DEBT	
5.	DETAILS OF HOW AND WHEN DEBT INCURRED	
6.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE FINANCIAL CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
7.	DETAILS OF ANY SECURITY HELD, THE VALUE OF THE SECURITY, AND THE DATE IT WAS GIVEN	
8.	DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR	
9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE FINANCIAL CREDITOR'S SHARE OF THE PROCEEDS OF CAN BE TRANSFERRED	
10.	LIST OUT AND ATTACH THE DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED AND IN SUPPORT OF THE CLAIM.	

Signature of financial creditor or person authorised to act on his behalf (please enclose the authority if this is being submitted on behalf a financial creditor)
Name in BLOCK LETTERS
Position with or in relation to creditor
Address of person signing

*PAN, Passport, AADHAAR Card or the identity card issued by the Election Commission of India.

AFFIDAVIT

I, *[name of deponent]*, currently residing at *[address of deponent]*, do solemnly affirm and state as follows:

The above named corporate person was, at the fast-track process commencement date, that is, the ____ day of _20____ and still is, justly and truly indebted to me or to me and *[insert name of co-partners]*, my co-partners in trade, or, as the case may be for a sum of Rs.____ *[please state consideration]*.

In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: *[Please list the documents relied on as evidence of debt and of non-payment.]*.

The said documents are true, valid and genuine to the best of my knowledge, information and belief.

In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/ our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the financial creditor which may be set-off against the claim.]

Solemnly, affirmed at on ____ day, the ____ day of _20____

Before me,

Notary / Oath Commissioner.

Deponent's signature.

VERIFICATION

I, the Deponent herein above, do hereby verify and affirm that the contents of para __ to ____ of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed there from.

Verified at ____ on this day of _202____.

Deponent's signature.

FORM G

PROOF OF CLAIM BY A WORKMAN OR EMPLOYEE

(Under Regulation [•] of the Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution Process for Corporate Persons) Regulations, 2023)

[Date]

To

The Resolution Professional

[Name of the Resolution Professional]

[Address as set out in public announcement]

From

[Name and address of the workman / employee]

Subject: Submission of proof of claim.

Madam/Sir,

[Name of the workman/employee], hereby submits this proof of claim in respect of the fast-track process in the case of [name of corporate debtor]. The details for the same are set out below:

PARTICULARS		
1.	NAME OF WORKMAN / EMPLOYEE	
2.	PAN NUMBER, PASSPORT, THE IDENTITY CARD ISSUED BY THE ELECTION COMMISSION OF INDIA OR AADHAAR CARD OF WORKMAN / EMPLOYEE	
3.	ADDRESS AND EMAIL ADDRESS (IF ANY) OF WORKMAN / EMPLOYEE FOR CORRESPONDENCE	
4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE FAST-TRACK COMMENCEMENT DATE)	
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE CLAIM CAN BE SUBSTANTIATED.	
6.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	
7.	DETAILS OF HOW AND WHEN CLAIM AROSE	
8.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
9.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	
10.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE WORKMAN / EMPLOYEE	

Signature of workman / employee or person authorised to act on his behalf <i>[Please enclose the authority if this is being submitted on behalf of workman / employee]</i>
Name in BLOCK LETTERS
Position with or in relation to creditor
Address of person signing

AFFIDAVIT

I, *[name of deponent]*, currently residing at *[insert address]*, do solemnly affirm and state as follows:

[Name of corporate debtor], the corporate debtor was, at the fast-track commencement date, being the _____ day of _____ 20__, justly and truly indebted to me in the sum of Rs. *[insert amount of claim]*.

In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: *[Please list the documents relied on as evidence of claim]*

The said documents are true, valid and genuine to the best of my knowledge, information and belief.

In respect of the said sum or any part thereof, I have not nor has any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim.]

Solemnly, affirmed at *[insert place]* on _____ day, the _____ day of _____ 20__

Before me,

Notary/ Oath Commissioner

Deponent's Signature

VERIFICATION

I, the Deponent herein above, do hereby verify and affirm that the contents of paragraph __ to __ of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom.

Verified at _____ on this _____ day of _____ 20__

Deponent's Signature

FORM H

INVITATION FOR RESOLUTION PLANS

(Under Regulation [•] of the Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution Process for Corporate Persons) Regulations, 2023)

S.No.	Particulars	Details
	Name of the corporate debtor	
	Former name(s), if changed in last two years	
	Date of incorporation of corporate debtor	
	Authority under which corporate debtor is incorporated /registered	
	Identification number	
	Address of the registered office and principal office (if any) of corporate debtor	
	Pre-packaged insolvency commencement date	
	Date of invitation for resolution plans	
	Eligibility for resolution applicants	
	Norms of ineligibility applicable under section 29A	
	Basis for evaluation (including details related to significant improvement, right to bid or match and tick size)	
	Manner of obtaining •invitation of resolution plan', basis for evaluation (including details related to significant improvement and tick size), information memorandum and further information	
	Last date for submission of resolution plans	
	Manner of submitting resolution plans to resolution professional	
	Estimated date for submission of resolution plan to the Adjudicating Authority for approval	
	Name and registration number of the resolution professional	
	Name, address and e-mail of the resolution professional, as registered with the Board	
	Address and email to be used for correspondence with the resolution professional	
	Further details are available at or with	
	Date of publication of Form	

I (Name of Resolution Professional) hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

(Signature)

Name of the Resolution Professional:

IP Registration No:

Address as registered with the Board:

Email id as registered with the Board:

Date:

Place:]

FORM H

APPLICATION FOR VESTING MANAGEMENT WITH RESOLUTION PROFESSIONAL (Under Regulation [•] of the Insolvency and Bankruptcy Board of India (Fast-track Insolvency Resolution Process for Corporate Persons) Regulations, 2023)

[Date]

To

The Adjudicating Authority
(_____ Bench)

From

[Name of the insolvency professional]
[Registration number of the insolvency professional]
[Registered address of the insolvency professional]
In the matter of [name of the corporate debtor]

Subject: Vesting of management of [name of corporate debtor] with resolution professional.

Madam/Sir,

[Name of the corporate debtor], had filed an application bearing [particulars of application, having, diary number/ case number] on [date of filing] before the Adjudicating Authority under [under section 57C,] of the Insolvency and Bankruptcy Code, 2016 (Code). The said application was admitted by the Adjudicating Authority on [date] bearing [case number].

2. The committee of creditors has, in its meeting held on _____, decided to vest the management of the [Name of the Corporate Debtor] with the resolution professional under section 57C of the Code for the following reason(s):

a.

b.

3. I hereby attach the minutes of the meeting of committee of creditors held on _____.

(Signature)

Name of the Resolution Professional:

IP Registration No:

Address as registered with the Board:

Email Id as registered with the Board:

Date:

Place



भारतीय दिवाल्य और सोपन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India