

Question 1 Does liquidator take physical charge of assets?

Answer: As per section 36 of IBC 2016 “the liquidator shall hold the liquidation estate as fiduciary for the benefit of all the creditors”. During the liquidation process, a trust is created which becomes the owner of the assets of the entity. The trust will hold the assets on behalf of the entity. The trust will be managed by the Insolvency professional appointed by the Adjudicator, who has the role of managing the assets, assets sales and the distribution of the realisations.

Question 2 What are penal provisions if timelines are not followed?

Answer: Section 68 to 77 of Code prescribes the penalties for several types of offences. The penal provision includes penalty and prosecution both. However, no specific provision relating to timelines has been prescribed. The penalties are presented for insolvency professionals, insolvency professional agencies and information utilities.

Question 3 Role of insolvency professional in framing the resolution plan?

Answer: As per section 29 of Code, the resolution professional shall prepare an information memorandum for formulating a resolution plan. The information memorandum will be the basis of the preparation of resolution plan. The information memorandum shall contain such relevant information as specified by the Board. The relevant information would be:

- The financial position of the corporate debtor
- All information related to dispute by or against the corporate debtor
- Any other matter pertaining to corporate debtor as may be specified

Question 4 Operational creditors are large in number. Who will have the power?

Answer: The Resolution Professional identifies the financial creditors and constitutes a creditors committee. Operational creditors above a certain threshold are allowed to attend meetings of the committee but do not have voting power. Each decision of the creditors committee requires a 75% majority vote. Decisions of the creditors committee are binding on the corporate debtor and all its creditors. The resolution professional shall examine each resolution plan received by him and confirm that each resolution plan confirms the creditors referred to in section 30(2) of IBC. The resolution professional shall present to the committee of creditors such resolution plans.

The creditors committee considers proposals for the revival of the debtor and must decide whether to proceed with a revival plan or liquidation within a period of 180 days (subject to a one-time extension by 90 days).

Question 5 Multiple resolution plans. What will be the way forward?

Answer: The creditors committee considers proposals for the revival of the debtor and must decide whether to proceed with a revival plan or liquidation within a period of 180 days (subject to a one-time extension by 90 days). Anyone can submit a revival proposal, but it must be approved by 75% majority votes of committee of creditors

Question 6 Raise interim finances. Can he raise finances from the bank?

Answer: Interim finance means any financial debt raised by the resolution professional during the insolvency resolution process period. Therefore, interim finance can be raised by the resolution professional from bank.

Question 7 What if there is no consensus on resolution plan?

Answer: Where the Adjudicating Authority, — (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall— (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter; (ii) issue a public announcement stating that the corporate debtor is in liquidation; and (iii) require such order to be sent to the authority with which the corporate debtor is registered.

Question 8 Can a secured creditor be outside the liquidation process?

Answer: Secured creditors can remain outside liquidation proceedings and enforce securities, but in that case, their claim is not given priority over other claims, including government dues;

Question 9 Who is the adjudicating authority?

Answer: For corporate persons, National Company Law Tribunal (NCLT) and for Individuals and partnership firms Debt Recovery tribunal(DRT) is adjudicating authority.

Question 10 How the adjudicating authority will see the resolution plan?

Answer: If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors is meets the requirements of sub section (2) of Section 30 of the Code, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders.

Question 11 Can there be more than one Resolution Plan before committee of Creditors?

Answer: Yes, As per Section 30 of the IBC, 2016, read with regulation 39 of the Insolvency & bankruptcy Board of India (Insolvency Resolution Process for corporate person) Regulations, 2016 the resolution applicant shall endeavor to submit a resolution plan to the resolution professional in accordance with the code & these regulations to the resolution professional.

The resolution professional shall present all the resolution plans that meet the requirements of the code and these regulations to the committee for its consideration. The committee may approve any resolution plan with such modifications as it deems fit.

The resolution professional shall submit the resolution plan to the Adjudicating Authority approved by the committee of creditors with the certification that;

- a.) The content of the resolution plan meet all the requirement of the code and the regulations; and
- b.) The resolution plan has been approved by the committee of the creditors.

Question 12 Is it the same thing if borrower goes to NCLT. Can lender change IP after 30 days?

Answer: Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

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

Question 13 What other opportunities are available with the secured creditors and the advantages of NCLT over other processes?

Answer: Secured creditors are allowed to enforce security on verification of security interest by liquidator. Secured creditors can remain outside liquidation proceedings and enforce securities. This is a time bound plan for resolution of stressed assets under IBC 2016. This is a major advantage over other processes.

Question 14 What is the process (of implementation) once the resolution plan is accepted by the adjudicating authority?

Answer: If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

After the order of approval under sub-section (1),— (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

Question 15 What will be the way forward in case of failure of approved resolution plan?

Answer: Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order.

On receipt of an application, if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order.

Question 16 How the dissenting secured creditor get his value. Does this creditor have any other option/ remedy?

Answer :-

- a) Secured creditors are allowed to enforce security on verification of security interest by liquidator;
- b) Secured creditors can remain outside liquidation proceedings and enforce securities, but in that case, their claim is not given priority over other claims, including government dues;
- c) But, if secured creditors join liquidation proceedings and relinquish security interests to liquidation assets, their claims, along with workmen's dues for 24 months, are given priority over all other claims;
- d) To claim priority over taxation dues, secured creditors need to relinquish securities;

Question 17 What happens to the subsidiary companies?

Answer: Assets of Indian and foreign subsidiary of the corporate debtor shall not be used for recovery in case of liquidation.

Question 18 Dilution of right of secured creditors. How will it happen?

Answer: On the admission of resolution application, there will be stay on SARFAESI proceedings as may be ordered by the NCLT. the provisions of SARFAESI stand diluted to the extent It seems that the priority has been given to revival of the Company so that the interest of all the stakeholders could be protected. The Banks and Financial Institutions will not be allowed to take any action under SARFAESI, for enforcement of security, upon admission of the application for initiating the resolution process and until the period as may be decided by the NCLT. Upon a liquidation order being passed, the moratorium will be deemed to be lifted and the secured creditors may enforce their security interests under SARFAESI.

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