

Corporate Insolvency Resolution Process (CIRP) under Insolvency & Bankruptcy Code, 2016 (IBC)

(Except Pre- packaged CIRP for MSMEs introduced from 4.4.2021)

1	Item	Particulars
2	Minimum default amount	Rs. 1 crore
3	Who can trigger	-Financial Creditor (FC) (e.g., lender)- for default with it or with any others -Operational creditor- (OC) (e.g. supplier)- for default with it only -Corporate Debtor itself Note: Home Buyer is since regarded as Financial Creditor and Home Buyers minimum 100 in number/ 10% in amount can initiate corporate insolvency.
4	Trigger to whom	Adjudicating Authority (AA) i.e. National Company Law Tribunal (NCLT)
5	Admission by AA	Within 14 days
6	Effect of admission	Announcement of it by AA
7		Moratorium start to continues till approval/ rejection of CIR Plan by AA
8	Effect of moratorium	-No suit shall lie, no alienation of propriety, no recovery/ security enforcement action (before civil courts, DRT, under SARFAESI etc.) against the Corporate Debtor or Corporate Debtor's property. -Personal Guarantor's insolvency could be taken up together with the insolvency of corporate -Recovery from personal guarantor/ enforcement of assets of personal guarantor given as security is NOT covered under the moratorium and can continue (via- civil courts, DRT, SARFAESI & u/s 138)
9	IRP's Role	Gather info on the company and feed it to IU's
10		Raise interim finance if needed. Consent of prior charge holder not needed if cover is 2x and above
11		Form Committee of Creditors (CoC)
12	CoC's composition	Only FC to member CoC. No seat for OC. No seat for related parties. Home Buyer as FC gets representation in the CoC
13	CoC's decision making	66% of voting share of FC. No say to OC
14		Decide whether to continue IRP as RP or appoint a new RP
15	RP's Role	Act as directed by CoC
16		Prepare information memorandum (IM) for CIR
17		Receive resolution plans (Plan) from outsiders viz Resolution Applicants (RA)
18		Place the Plan before CoC and have it passed by 66% voting share
19		To submit the Plan passed by CoC to AA and have it approved by AA
20		To act as Liquidator if liquidation is ordered by AA
21	AA's Role	Pass or reject the Plan
22		Plan approved by AA would bind all like a court decree
23		If no Plan is received or approved within the prescribed time, then order liquidation
24*	Priority Ranking in liquidation	1. Interim finance+ Insolvency resolution/ liquidation cost 2. (A) Secured creditor's dues with security having been relinquished; and (B) Workmen's dues for last 24 months 3. Wages/ Dues to non- workmen for 12 months. 4. Unsecured FC dues 5. (A) Government dues; and (B) Balance secured creditors' after having done security enforcement 6. Any other dues 7. Preference shareholders 8. Equity shareholders
25	Secured FC's choice	2 or 5 (under 24* above) -Security enforcement is time consuming. Thus, unless security is substantial and easily enforceable it is better to go for 2 under 24* above -It would be good strategy to be a secured creditor with small security, relinquish it and yet get priority (see 2 under 24* above) ahead of governmental dues and unsecured creditors!