

# VMK PROFESSIONALS PRIVATE LIMITED

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## INSOLVENCY AND BANKRUPTCY CODE, 2016

Sections covered in the Article: 11 to 15.

### Section 11: Persons not entitled to make an application. –

*The following persons shall not be entitled to make an application to initiate CIRP namely:*

- (a) a corporate debtor undergoing a CIRP or a pre-packaged insolvency resolution process; or*
- (b) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or*
- (c) a corporate debtor having completed CIRP within twelve months preceding the date of making of application; or*
- (d) a corporate debtor in respect of whom a resolution plan has been approved twelve months preceding the date of making the application; or*
- (e) a corporate debtor or a financial creditor who has violated any of the terms of the resolution plan which was approved twelve months before the date of making an application; or*
- (f) a corporate debtor in respect of whom a liquidation order has been made.*

*The word pre-packaged insolvency resolution process and clause (d) has been inserted by notification IBBI (Amendment) Act, 2021 dated 12.08.2021. For more detail refer the link –*

*<https://ibbi.gov.in/uploads/legalframework/0150ec26cf05f06e66bd82b2ec4f6296.pdf>*

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## **RELATED CASELAW -**

### **INDIABULLS HOUSING FINANCE LTD. V. SHREE RAM URBAN INFRASTRUCTURE LTD (NCLAT)**

**FACTS** - NCLAT examined judgments governing the issue to hold that the High Court of Bombay has **already ordered for winding-up** of corporate debtor, which is the second stage of the proceeding.

**JUDGEMENT** – NCLAT held that question of initiation of ‘Corporate Insolvency Resolution Process’ which is **the first stage** of resolution process **against the same corporate debtor doesn’t arise** (Order dated 9<sup>th</sup> February 2018).

### **Section 11A: Disposal of applications under section 54C and sections 7, 9 or 10.**

(1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7, 9 or 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.

(2) Where an application under section 54C is filed within fourteen days of the filing of any application under section 7, 9 or 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.

(3) Where an application under section 54C is filed after fourteen days of the filing of any application under section 7, 9 or 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under section 7, 9 or 10.

*Section 11A has been inserted through inserted by notification IBBI (Amendment) Act, 2021 dated 12.08.2021.*

*For more detail refer the link –*

<https://ibbi.gov.in/uploads/legalframework/0150ec26cf05f06e66bd82b2ec4f6296.pdf>

Disclaimer: Only for Knowledge, Not for legal use  
Crafted By: Mr. Hardik Gujar

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## Section 12: Time-limit for completion of insolvency resolution process.

(1) The corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the CIRP beyond 180 days if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 66% of the voting shares.

(3) On receipt of an application, if the Adjudicating Authority is satisfied that the subject matter of the case is such that the corporate insolvency resolution process can't be completed within 180 days, it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding 90 days.

Provided that any extension of the period of CIRP under this section shall not be granted more than once.

Provided further that the CIRP shall be mandatorily completed within a period of 330 days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings concerning such resolution process of the corporate debtor.

### **RELATED CASELAW -**

### **ARCELORMITTAL INDIA PVT. LTD. V. SATISH KUMAR GUPTA & ORS. (SUPREME COURT)**

**LEGAL ISSUE - Time limit** for completion of the insolvency resolution process as laid down under Section 12 is **directory or mandatory**?

**JUDGEMENT - Time limit** for completion of the insolvency resolution process as laid down under Section 12 of the Code is **mandatory** (Order dated 4th October, 2018).

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## Section 12A: Withdrawal of application admitted under sections 7, 9 or 10. –

The Adjudicating Authority may allow the withdrawal of application admitted under sections 7, 9 or 10, on an application made by the Financial, Operational Creditors or Corporate Debtor with the approval of a 90% voting share of the committee of creditors, in Form FA (Specimen of Form FA attached as annexure D).

### RELATED CASELAW -

#### COAL INDIA LTD. v. GULF COIL LUBRICANTS INDIA LTD & ANR. (NCLAT)

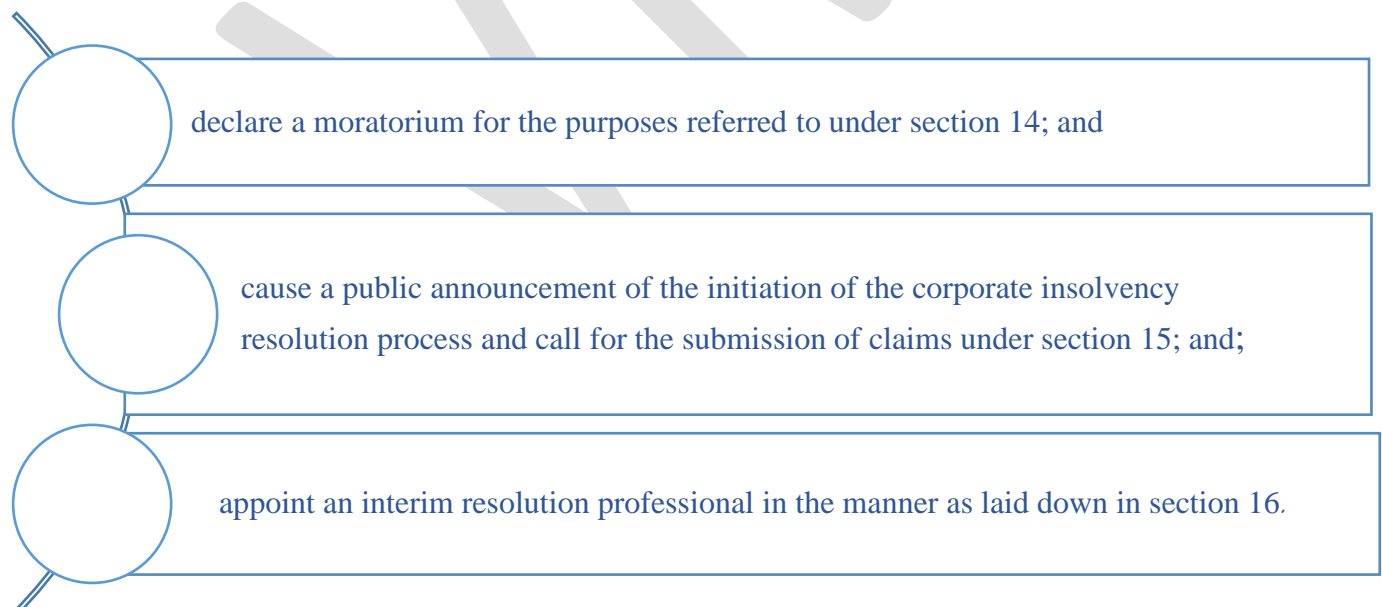
**FACTS** - An application under Section 9 of IBC was filed by Operational Creditor for initiation of the 'Corporate Insolvency Resolution Process' against corporate debtor. The said application has been admitted by NCLT

✚ Meanwhile the Operational Creditor and Corporate Debtor **reached a settlement** and the Corporate Debtor paid the amount agreed;

✚ Now the **application for withdrawal** was filed to NCLT, which NCLT rejected and hence this appeal was preferred.

**JUDGEMENT** - Case **can be withdrawn** under IBC if a settlement is reached before constitution of the COC (Order dated 23th December 2018).

## Section 13. Process after admission of application for initiating CIRP. –



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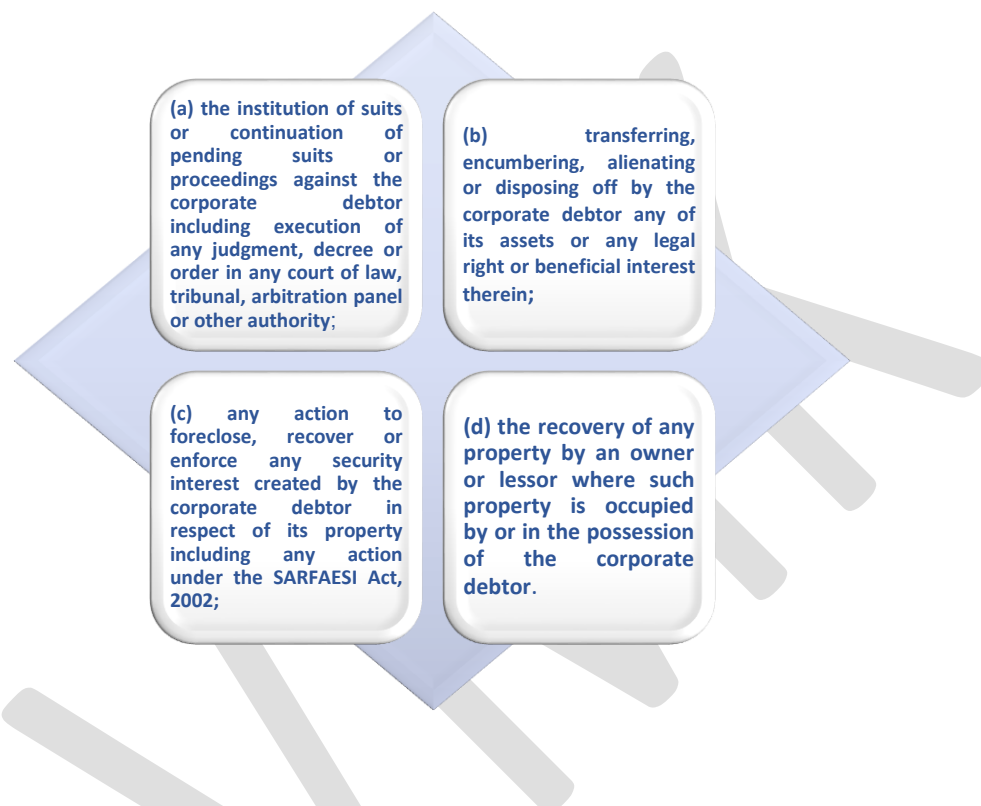


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## Section 14: Moratorium. –

The Moratorium period is a concept whereby it ensures that the status quo of the corporate debtor is maintained during CIRP.

(1) The following acts are prohibited during the Moratorium Period –



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

(2) The following shall not be affected by an order of Moratorium —

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(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor;

(c) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended or interrupted during moratorium period. *Except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances.*

(3) The order of moratorium shall have effect from the date of such order till the completion of the CIRP or termination of CIRP, as the case may be.

## PURPOSE OF MORATORIUM PERIOD

To ensure that multiple proceedings are not taking place simultaneously and thus avoid the possibility of conflicting outcomes of related proceedings;

To keep the corporate debtor's assets together during the insolvency resolution process and facilitate orderly completion of the process;

To ensure that the company may continue as a going concern while the creditors assess the option for resolution of default;

Prohibition on disposal of the corporate debtor's assets so that the corporate debtor/management doesn't transfer its assets, thereby stripping the corporate debtor of the value during the CIRP.

### ***RELATED CASELAW –***

**ANAND RAO KORADA RESOLUTION PROFESSIONAL v. M/S VARSHA FABRICS (P) LTD.**

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**FACTS** - In the writ petitions filed by the workers Union, the **High Court** passed **order** directing certain properties of the corporate debtor to put on **auction sale** and the determined dues to be paid to workers.

✚ Meanwhile, one financial creditor initiated corporate insolvency proceedings against the corporate debtor and the **NCLT ordered the moratorium**. The sale of the properties was to be made during the period of moratorium and the resolution professional challenged the orders of the High Court;

✚ The Appellant Resolution Professional filed the present Civil Appeals to challenge the Interim Orders passed by the Odisha High Court on the ground that since the CIRP against Respondent had commenced, the proceedings before the High Court is ought to be stayed.

**JUDGEMENT** – Once application has been admitted by NCLT, **no order regarding the assets of the Corporate Debtor can be passed by any court** (Supreme Court Order dated 18th November 2019).

## **Section 15: Public announcement of corporate insolvency resolution process.**

(1) The public announcement of the CIRP shall contain the following information, namely: –

- (a) name and address of the corporate debtor under the CIRP;
- (b) name of the authority with which the corporate debtor is incorporated or registered;
- (c) the last date for submission of claims;
- (d) details of the interim resolution professional who shall be vested (d) with the management of the corporate debtor and be responsible for receiving claims;
- (e) penalties for false or misleading claims; and
- (f) the date on which the CIRP shall close, which shall be 180 days from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

(2) The public announcement under this section shall be made in Form A (Specimen of Form A attached as annexure II).

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## ANNEXURE I

### FORM FA

#### APPLICATION FOR WITHDRAWAL OF CORPORATE INSOLVENCY RESOLUTION PROCESS

[Under Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

[Date]

To  
The Adjudicating Authority

[Through the Interim Resolution Professional / Resolution Professional]  
[Name of corporate debtor]

**Subject:** Withdrawal of Application admitted for corporate insolvency resolution process of [name of corporate debtor]

I, [Name of applicant], had filed an application bearing [particulars of application, i.e, diary number/ case number] on [Date of filing] before the Adjudicating Authority under [Section 7 / Section 9/ Section 10] of the Insolvency and Bankruptcy Code, 2016. The said application was admitted by the Adjudicating Authority on [date] bearing [case number].

2. I hereby withdraw the application bearing [particulars of application, i.e, diary number/ case number] filed by me before the Adjudicating Authority under [Section 7 / Section 9/Section 10] of the Insolvency and Bankruptcy Code, 2016.

3. I attach the required bank guarantee as per sub-regulation (2) of regulation 30A.

(Signature of the applicant)

Date:

Place:



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## ANNEXURE II

### FORM A

#### PUBLIC ANNOUNCEMENT

(Under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

FOR THE ATTENTION OF THE CREDITORS OF [NAME OF CORPORATE DEBTOR]

NAME OF CORPORATE DEBTOR	
DATE OF INCORPORATION OF CORPORATE DEBTOR	
AUTHORITY UNDER WHICH CORPORATE DEBTOR IS INCORPORATED / REGISTERED	
CORPORATE IDENTITY NUMBER / LIMITED LIABILITY IDENTIFICATION NUMBER OF CORPORATE DEBTOR	
ADDRESS OF THE REGISTERED OFFICE AND PRINCIPAL OFFICE (IF ANY) OF CORPORATE DEBTOR	
INSOLVENCY COMMENCEMENT DATE IN RESPECT OF CORPORATE DEBTOR	
ESTIMATED DATE OF CLOSURE OF INSOLVENCY RESOLUTION PROCESS	
NAME AND REGISTRATION NUMBER OF THE INSOLVENCY PROFESSIONAL ACTING AS INTERIM RESOLUTION PROFESSIONAL	
ADDRESS AND E-EMAIL OF THE INTERIM RESOLUTION PROFESSIONAL, AS REGISTERED WITH THE BOARD	
ADDRESS AND E-MAIL TO BE USED FOR CORRESPONDENCE WITH THE INTERIM RESOLUTION PROFESSIONAL	
LAST DATE FOR SUBMISSION OF CLAIMS	
CLASSES OF CREDITORS, IF ANY, UNDER CLAUSE (B) OF SUB-SECTION (6A) OF SECTION 21, ASCERTAINED BY THE INTERIM RESOLUTION PROFESSIONAL	
NAMES OF INSOLVENCY PROFESSIONALS IDENTIFIED TO ACT AS AUTHORISED	

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REPRESENTATIVE OF CREDITORS IN A CLASS (THREE NAMES FOR EACH CLASS)	
(A) RELEVANT FORMS AND (B) DETAILS OF AUTHORIZED REPRESENTATIVES ARE AVAILABLE AT:	(A) WEBLINK: (B) PHYSICAL ADDRESS:

Notice is hereby given that the National Company Law Tribunal has ordered the commencement of a Corporate Insolvency Resolution Process against the [name of the corporate debtor] on [insolvency commencement date].

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 fourteen days from the appointment of the interim resolution professional to the interim resolution professional at the address mentioned against item 8.

The financial creditors shall submit their proof of claims by electronic means only. All other creditors may submit the proof of claims in person, by post or by electronic means.

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

Name and Signature of Interim Resolution Professional:

Date:

Place: