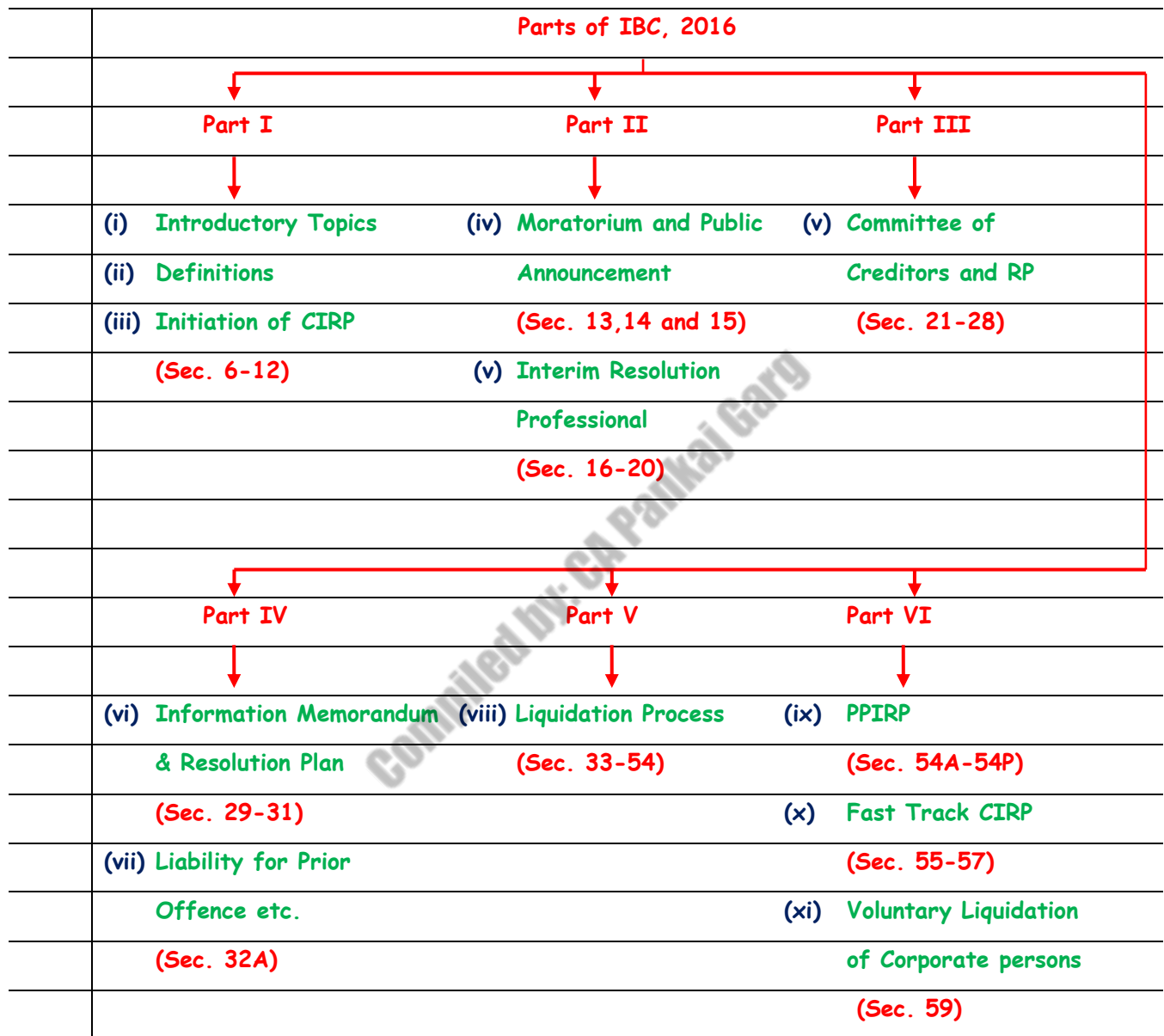


**Lecture  
40**

**Chapter - 20  
"Insolvency and Bankruptcy Code, 2016"**



**(i) Introductory Topics:**

**Sec. 2 - Applicability of IBC, 2016**

**Sec. 3 - Definitions**

**(Will be discussed with Concepts)**

**Sec. 4 - Applicability of Part II (Insolvency Resolution & Liquidation for Corporate Persons)**

**Sec. 5 - Definitions for Part II of IBC, 2016**

**(Will be discussed with Concepts)**

**(i) Applicability of IBC, 2016 - Sec. 2**

Provisions of IBC, 2016 applies to following, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be:

- (a) Companies incorporated under Companies Act, 2013 or under previous company law;
- (b) Companies governed under special Act;
- (c) Limited Liability Partnership (LLP);
- (d) Other body corporates as may be notified by Central Government
- (e) Personal guarantors to corporate debtors;
- (f) Partnership firms and proprietorship firms; and
- (g) Individuals, other than persons referred to in clause (e).

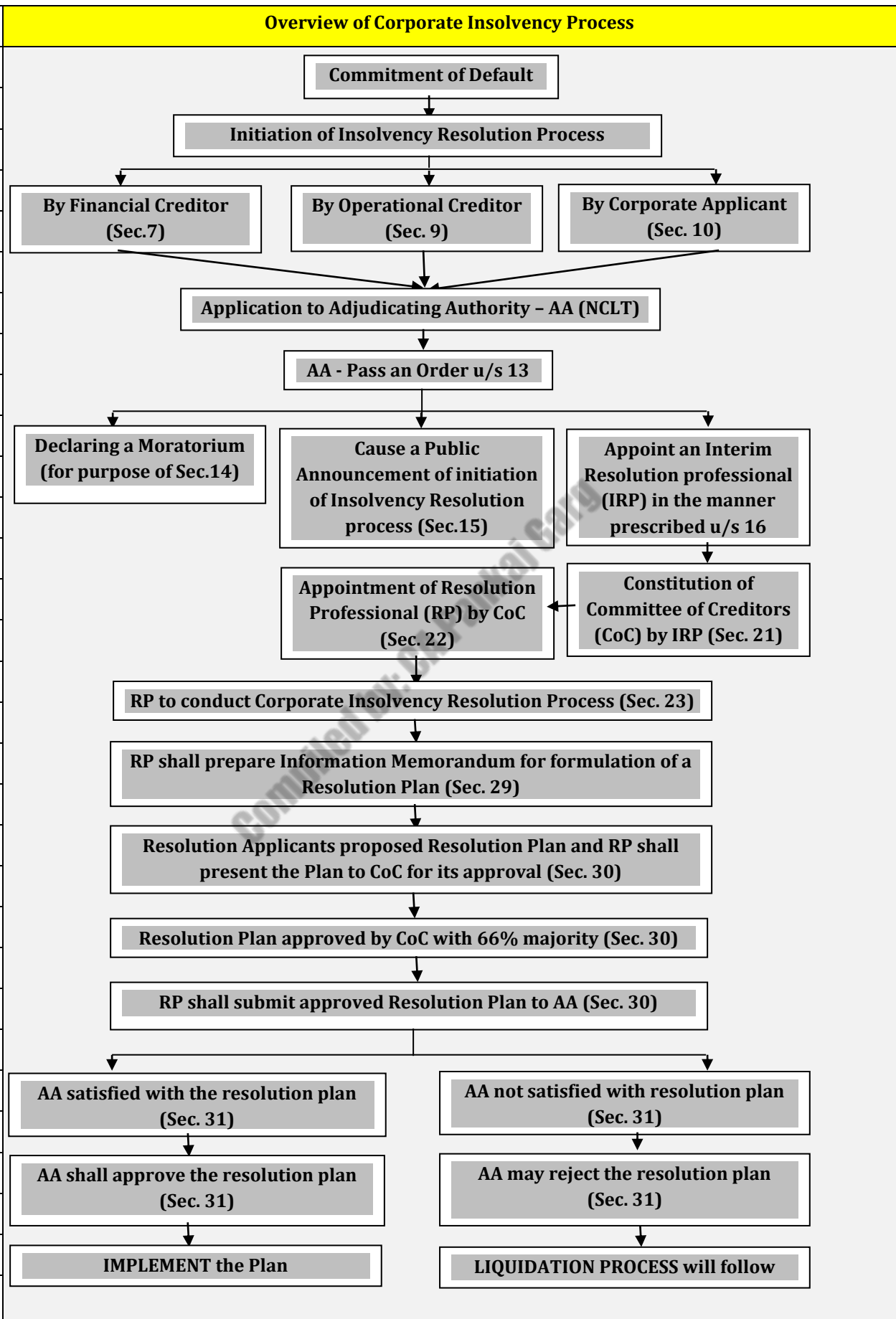
**Code not applicable to financial service providers:**

- IBC is not applicable to corporates in finance sector.
- As per Sec. 3(7), "Corporate person" shall not include financial service provider. Thus, IBC does not cover Bank, Financial Institutions, Ins. Company, ARC, Mutual Funds, Collective Investment Schemes or Pension Funds.
- NBFC is not excluded from definition of 'corporate person' as it is engaged in various activities.
- C.G. in consultation with the RBI notifies that insolvency resolution and liquidation proceedings of NBFC (including housing finance companies) with asset size of ₹ 500 crore or more, as per last audited B/S, shall be undertaken in accordance with the provisions of IBC, 2016 read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers & Application to Adjudicating Authority) Rules, 2019 and the applicable Regulations.

**(ii) Applicability of Part II of IBC, 2016: [Sec. 4]**

- ⇒ Provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is ₹ 1 crore or more.
- ⇒ For matters relating to the pre-packaged insolvency resolution process of corporate debtors under Chapter III-A, provisions will be applicable only when the amount of the default is ₹ 10 lakh.

(ii)	<b><u>Important Definitions:</u></b>
	<b>(A) <u>Corporate Person</u> - Sec. 3(7)</b>
	Means:
	(a) a company as defined u/s 2(20) of the Companies Act, 2013;
	(b) a LLP as defined u/s 2(1)(n) of Limited Liability Partnership Act, 2008; or
	(c) any other person incorporated with limited liability under any law;
	but shall not include any financial service provider.
	<b>(B) <u>Corporate Debtor</u> - Sec. 3(8)</b>
	means a corporate person who owes a debt to any person.
	<b>(C) <u>Debt</u> - Sec. 3(11)</b>
	means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.
	<b>(D) <u>Default</u> - Sec. 3(12)</b>
	means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable <b>and</b>
	is not paid by the debtor or the corporate debtor, as the case may be.
	<b>(E) <u>Financial Service Provider</u> - Sec. 3(17)</b>
	means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator.
	<b>(F) <u>Financial creditor</u> - Sec. 5(7)</b>
	means any person to whom a financial debt is owed <b>and</b>
	includes a person to whom such debt has been legally assigned or transferred to.
	<b>(G) <u>Insolvency commencement date</u> - Sec. 5(12)</b>
	means the date of admission of an application for initiating corporate insolvency resolution process (CIRP) by Adjudicating Authority u/s 7, 9 or 10.
	<b>(H) <u>Insolvency resolution process period</u> - Sec. 5(14)</b>
	means the period of 180 days beginning from the insolvency commencement date.
	<b>(I) <u>Operational creditor</u> - Sec. 5(20)</b>
	means a person to whom an operational debt is owed <b>and</b>
	includes any person to whom such debt has been legally assigned or transferred.
	<b>(J) <u>Other Definitions</u> - Will be discussed from book along with related concepts</b>
Do practice - Questions on Introductory Topics	



(iii)	<b><u>Initiation of CIRP: [Sec. 6 - 12]</u></b>
	<b>(A) <u>Persons who may initiate CIRP - Sec. 6</u></b>
	(a) a financial creditor;
	(b) an operational creditor; or
	(c) the corporate debtor itself
	<b>(B) <u>Filing of application by Financial Creditor - Sec. 7</u></b>
	<b>(i) <u>Persons eligible to file application: Sec. 7(1)</u></b>
	A financial creditor either by <u>itself</u> or <u>jointly with other financial creditors</u> , or <u>any other person on behalf of the financial creditor</u> , as may be notified by the C.G. may file an application for initiating CIRP against a corporate debtor before the AA (NCLT) when a <b>default</b> has occurred.
	<b><u>Persons Notified by C.G.:</u></b>
	✦ a guardian;
	✦ an executor or administrator of an estate of a financial creditor;
	✦ a trustee (including a debenture trustee); and
	✦ a person duly authorized by the Board of Directors of a Company.
	<b>Notes:</b>
	<b>(1) Applicant shall serve a copy of the application to the registered office of the corporate debtor and to the Board, by registered post or speed post or by hand or by electronic means, before filing with the AA.</b>
	<b>(2) In case of financial creditors who are allottees under a real estate project, an application for initiating CIRP against corporate debtor shall be filed jointly by not less than 100 of such allottees under the same real estate project or not less than 10% of the total number of such allottees under the same real estate project, whichever is less.</b>
	<b>(ii) <u>Evidence in support of default: - Sec. 7(3)</u></b>
	The financial creditor shall, along with the application furnish:
	(a) Record/evidence of the default;
	(b) Name of RP proposed to act as IRP; and
	(c) Any other information as may be specified by the Board.

	<b>(iii) <u>Process by Adjudicating Authority - Sec. 7(4) to Sec. 7(7)</u></b>
	⇒ AA shall, within 14 days of receipt of application, ascertain existence of a default from the records or on the basis of other evidence furnished.
	⇒ AA if, satisfied that default has occurred, it may, admit application; or if, default has not occurred, it may, reject such application.
	Provided that before rejecting the application, AA give a notice to applicant to rectify the defect within 7 days of receipt of such notice.
	⇒ CIRP shall commence from the date of admission of the application.
	⇒ AA shall communicate the order to the financial creditor within 7 days of admission or rejection of such application and to the corporate debtor.
	<b>(C) <u>Insolvency resolution by operational creditor - Sec. 8</u></b>
	✚ Operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor.
	✚ Corporate debtor shall, within 10 days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor:
	(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice;
	(b) the payment of unpaid operational debt.
	✚ In case corporate debtor have already paid unpaid debt, corporate debtor shall inform within 10 days:
	(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
	(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.
	<b>(D) <u>Application for initiation of CIRP by operational creditor - Sec. 9</u></b>
	⇒ After expiry of 10 days from date of delivery of notice or invoice demanding payment, if operational creditor does not receive payment/notice of dispute operational creditor may file an application before AA for initiating a CIRP.
	⇒ Operational creditor shall, along with the application furnish:

	(a) Copy of the invoice demanding payment or demand notice delivered by operational creditor to the corporate debtor;
	(b) An affidavit that there is no notice given by corporate debtor relating to a dispute of the unpaid operational debt;
	(c) Copy of the certificate from financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;
	(d) Copy of any record with information utility confirming that there is no payment of unpaid operational debt by corporate debtor, if available; &
	(e) Any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor.
⇒	<b>Appointment of IRP:</b> An operational creditor initiating a CIRP, may propose a RP to act as an IRP.
⇒	AA shall, within 14 days of the receipt of the application, by an order:
	(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if:
	(a) the application made is complete;
	(b) there is no payment of the unpaid operational debt;
	(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
	(d) no notice of dispute has been received by the operational creditor or
	(e) there is no record of dispute in the information utility; and
	(f) there is no disciplinary proceeding pending against RP proposed.
	(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if-
	(a) the application made is incomplete;
	(b) there has been payment of the unpaid operational debt;
	(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;
	(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
	(e) any disciplinary proceeding is pending against any proposed RP.

	<p><b>(E) <u>Initiation of CIRP by corporate applicant - Sec. 10</u></b></p> <p>✚ Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating CIRP with AA.</p> <p>✚ Corporate applicant shall, along with the application, furnish-</p> <p>(a) information relating to its books of account &amp; other specified documents;</p> <p>(b) information relating to the RP proposed to be appointed as IRP; and</p> <p>(c) SR passed by shareholders of corporate debtor or the resolution passed by at least 3/4<sup>th</sup> of total number of partners of the corporate debtor, as the case may be, approving filing of the application.</p> <p>✚ AA shall, within a period of 14 days of receipt of application, by an order:</p> <p>(a) admit the application, if it is complete and no disciplinary proceeding is pending against the proposed RP; or</p> <p>(b) reject the application, if it is incomplete or any disciplinary proceeding is pending against the proposed RP.</p> <p>Before rejecting an application, AA shall give a notice to the applicant to rectify the defects within 7 days from the date of receipt of notice.</p>
	<p><b>(F) <u>Persons not entitled to make Application - Sec. 11</u></b></p> <p>(i) a corporate debtor undergoing a CIRP or a PPIRP; or</p> <p>(ii) a financial/operational creditor of a corporate debtor undergoing a PPIRP; or</p> <p>(iii) a corporate debtor having completed CIRP, 12 months preceding the date of making of the application; or</p> <p>(iv) corporate debtor in respect of whom a resolution plan, has been approved u/c III-A (PPIRP), 12 months preceding the date of making of application; or</p> <p>(v) a corporate debtor or financial creditor who has violated terms of resolution plan which was approved 12 months before date of making of application; or</p> <p>(vi) a corporate debtor in respect of whom a liquidation order has been made.</p>
	<p><b>(G) <u>Disposal of applications u/s 54C and u/s 7 or 9 or 10 - Sec. 11A</u></b></p> <p>✚ Where an application filed u/s 54C is pending, AA shall pass order to admit or reject such application, before considering any application filed u/s 7 or 9 or 10, in respect of the same corporate debtor.</p>



	✚	Where an application u/s 54C is filed within 14 days of filing of application u/s 7 or 9 or 10, which is pending, in respect of the same corporate debtor, then, AA shall first dispose of the application u/s 54C.
	✚	Where an application u/s 54C is filed after 14 days of filing of application u/s 7 or 9 or 10, in respect of the same corporate debtor, AA shall first dispose of the application u/s 7, 9 or 10.
		<b>(H) <u>Time-limit for completion of CIRP - Sec. 12</u></b>
	-	CIRP shall be completed within 180 days from the date of admission of application to initiate such process.
	-	RP shall file an application to AA to extend the period of CIRP beyond 180 days, if instructed to do so by a resolution passed at a meeting of CoC by a vote of 66% of the voting shares.
	-	If AA is satisfied that subject matter of case is such that CIRP cannot be completed within 180 days, it may extend the duration by such further period as it thinks fit, but not exceeding 90 days.
	-	Any extension of the period of CIRP shall not be granted more than once.
		Note: CIRP shall mandatorily be completed within 330 days from the insolvency commencement date, including any extension granted and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.
		<b>(I) <u>Withdrawal of application admitted under section 7, 9 or 10 - Sec. 12A</u></b>
		AA may allow the withdrawal of application admitted u/s 7 or 9 or 10, on an application made by the applicant with the approval of 90% voting share of the CoC, in specified manner.
		<b><u>Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:</u></b>
		<b>(A) <u>Withdrawal of Application Before admission of application:</u></b>
		An application initiating CIRP may be withdrawn before its admission, at any time with the permission of AA.

**(B) Withdrawal of Application after admission of application:**

**(a) Before Constitution of CoC:**

Applicant shall make an application for withdrawal to AA through IRP.

**(b) After Constitution of CoC but before issue of Invitation for Expression of Interest ("EOI"):**

Application for withdrawal shall be firstly considered by the CoC, within 7 days of receipt. Such application shall be approved by the CoC with 90% voting share, upon which RP shall submit such application along with CoC approval, to AA, within 3 days of such approval.

**(c) After issue of invitation for EOI:**

Procedure as stipulated for 'b' above shall apply. However, applicant shall state reasons justifying withdrawal after issue of invitation.

**Do Practice - Questions on Initiation of CIRP (Secs. 6 to 12)**