

(vi)	<u>Information Memorandum and Resolution Plan (Secs. 29 to 31)</u>
	(i) <u>Preparation of Information Memorandum - Sec. 29</u>
	✚ RP shall prepare an information memorandum in form and manner containing such <u>relevant information</u> as specified by the Board for formulating a resolution plan.
	✚ RP shall provide to resolution applicant (RA) access to all relevant information.
	<u>Relevant Information</u> : Information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include
	(a) the financial position of the corporate debtor,
	(b) all information related to disputes by or against the corporate debtor, and
	(c) any other matter pertaining to the corporate debtor as may be specified.
	(ii) <u>Persons not eligible to be Resolution Applicant (RA) - Sec. 29A</u>
	A person shall not be eligible to submit a resolution plan, if such person:
	(a) is an <u>undischarged insolvent</u> ;
	(b) is a <u>wilful defaulter</u> in accordance with the RBI guidelines.
	(c) at the time of submission of resolution plan has an account, <u>classified as NPA</u> in accordance with RBI guidelines, and ≥ 1 year has lapsed from date of such classification till date of commencement of the CIRP of corporate debtor:
	However, such person shall be eligible if payment of all overdue relating to NPA accounts made before submission of resolution plan.
	Nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

	(d) has been convicted for any offence punishable with imprisonment -
	(i) for ≥ 2 years under any Act specified under the 12th Schedule; or
	(ii) for ≥ 7 years under any law for the time being in force:
	This clause shall not apply:
	(i) to a person after the expiry of a period of 2 years from the date of his release from imprisonment; or
	(ii) in relation to a connected person.
	Connected person: means
	(i) any person who is promoter or in the mgnt. or control of the RA; or
	(ii) any person who shall be the promoter or in mgnt. or control of the business of the corporate debtor during the implementation of the resolution plan; or
	(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii).
	(e) is disqualified to act as a director under the Companies Act, 2013;
	(f) is prohibited by SEBI from trading in securities or accessing securities markets;
	Other criteria: ----- Self Study from the book -----
	(iii) Resolution Plan - Sec. 30
	(A) Factors to be considered before taking Resolution Plan to CoC:
	RP shall examine each resolution plan received to confirm that resolution plan:
	(a) provides for payment of insolvency resolution process costs in a specified manner, in priority to the payment of other debts of the corporate debtor;
	(b) provides for payment to operational creditors in specified manner which shall not be less than:
	(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor u/s 53; or
	(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in Sec. 53(1),
	whichever is higher; and

	provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in specified manner which shall not be less than the amount to be paid to such creditors in accordance with Sec. 53(1) in the event of liquidation of corporate debtor.
	(c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;
	(d) provides for the implementation and supervision of the resolution plan;
	(e) does not contravene any provisions of the law for the time being in force;
	(f) conforms to such other requirements as may be specified by the Board.
	(B) <u>Submission of Resolution Plan:</u>
	✚ RP shall present resolution plans to the CoC for approval.
	✚ CoC may approve a resolution plan by a vote of $\geq 66\%$ of voting share of the financial creditors, after considering its feasibility and viability, and other specified requirements.
	✚ Resolution Applicant may attend the meeting of the CoC in which resolution plan is considered but shall not have any voting right unless such resolution applicant is also a financial creditor.
	✚ RP shall submit the resolution plan as approved by the CoC to the AA.
	(iv) <u>Approval of Resolution Plan - Sec. 31</u>
	✚ If AA is satisfied that the resolution plan as approved by CoC meets specified requirements, it shall by order approve the resolution plan which shall be binding on corporate debtor and its employees, members, creditors, including the C.G., any S.G. or any local authority to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.
	✚ AA shall, before approval of resolution plan, satisfy that the resolution plan has provisions for its effective implementation.
	✚ After the order of approval:
	(a) Moratorium order passed by the AA u/s 14 shall cease to have effect; and
	(b) RP shall forward all records relating to conduct of CIRP and the resolution plan to the Board to be recorded on its database.

	<p>✚ Resolution applicant shall, obtain the necessary approval within a period of 1 year from the date of approval of resolution plan by AA.</p>
	<p>✚ If AA is satisfied that the resolution plan does not confirm to the requirements, it may, by an order, reject the resolution plan.</p>
	<p>(v) <u>Appeal</u> - Sec. 32</p>
	<p>Appeal against an order approving a resolution plan u/s 31 may be filed if:</p>
	<p>(i) the approved resolution plan is in contravention of the provisions of any law;</p>
	<p>(ii) there has been material irregularity in exercise of the powers by the RP during the corporate insolvency resolution period;</p>
	<p>(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;</p>
	<p>(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or</p>
	<p>(v) the resolution plan does not comply with any other criteria specified by Board.</p>
	<p>Do practice - Questions on Information Memorandum & Resolution Plan - Secs. 29 to 32</p>
	<p>(vii) <u>Liability for Prior Offences</u> - Sec. 32A</p>
	<p>(a) <u>Ceasing of Liability for Prior Offences</u> - Sec. 32A(1)</p>
	<p>Liability of a corporate debtor for an offence committed prior to commencement of the CIRP shall cease, & corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by AA u/s 31, if resolution plan results in change in mngt. or control of corporate debtor to a person who was not-</p>
	<p>(a) a promoter or in the mngt. or control of the corporate debtor or a related party of such a person; or</p>
	<p>(b) a person with regard to whom the relevant investigating authority has reason to believe that he had abetted or conspired for the commission of the offence, and has submitted/filed a report/complaint to relevant statutory authority or Court.</p>

(b) Action against property of Corporate Debtor - Sec. 32A(2)

No action shall be taken against property of the corporate debtor in relation to an offence committed prior to commencement of CIRP of the corporate debtor, where such property is covered under a resolution plan approved by AA u/s 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets to a person, who was not:

(a) a promoter or in the mngt. or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has reason to believe that he had abetted or conspired for the commission of offence, and has submitted/filed a report/complaint to relevant statutory authority or Court.

Explanation: For the purposes of Sec. 32A(2), it is clarified that,

(i) action against property of corporate debtor shall include attachment, seizure, retention or confiscation;

(ii) nothing in Sec. 32A(2) shall be construed to bar an action against property of any person, other than corporate debtor or a person who has acquired such property through CIRP or liquidation process.

Do practice - Questions on Liability for Prior Offences etc. - Sec. 32A

