

**COMPILATION OF ARTICLES PUBLISHED IN THE BRANCH  
NEWSLETTER MARCH-2018 TO FEBRUARY 2019**

# **ALLIED LAWS & TECH(U)NIQUE**

**THE BHUJ BRANCH OF WIRC OF ICAI**

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# The Insolvency and Bankruptcy Code: Introduction

By Harsh Joshi

B.Com.,  
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A hypothetical situation: I have borrowed ` 5 Crore from you. Also assume that I am not paying it back to you. What can you do? The general answer would be "Of course I will sue you!" Then again assume that I have no money to repay back. What the court will do? Again this time your answer would be "Court will sell off your assets and give us money!" Now this same statement has been written in so many different laws governing different entities, that one had to check which law to apply for the situation in hand. The companies Act, 2013 deals with winding up of Companies, SARFAESI Act majorly deals with recovery from securitised assets, The Partnership Act deals with dissolution in case of partnerships, but there was no single window legislature from where an aggrieved creditor can initiate the proceeding.

Also continuing the above hypothetical situation, you dragged me to Court. The court sold off my assets and paid you your dues. But now I don't have anything. So I will cease to continue business. I will stop providing employment to the many people who are currently working under me. I will stop contributing to the GDP of the country. In short, selling of someone's assets and paying debts is the last

2. The provisions of this Code shall apply to—
  - (a) any company incorporated under the Companies Act, 2013 or under any previous company law;
  - (b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
  - (c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;
  - (d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and
  - (e) partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

Section 2 of Insolvency and Bankruptcy Code, 2016

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The Insolvency and Bankruptcy Code, 2016 (referred to as IBC hereafter) is a new legislature for the Insolvency and Bankruptcy which tries to provide a solution to both of these above situation. It provides for insolvency process to be followed for Companies, Partnerships, LLPs, Individuals, etc... all under one legislature as under:

It also provides solution to grave problem of cessation of business by introducing a concept of insolvency resolution process. As the name suggests, the insolvency resolution process objects to resolve the insolvency rather than leading to insolvency. In the Insolvency Resolution process, a resolution plan is made and business of the defaulter debtor is run by the creditors for a certain period to recover the amount. After which it is handed back to the debtor to run. It also alters the priority levels of repayment of debt while in the course of winding up.

But before we start discussing the nitty-gritty of the IBC, let us understand three terms we will be using in the discussion.

### Insolvency

- Insolvency is a STATE where assets are insufficient to meet liabilities.

### Bankruptcy

- Bankruptcy is a PROCESS where in application is made to appropriate authority declaring insolvency and seeking to be declared bankrupt, which will continue until discharge.

### Liquidation

- Liquidation is Winding up of Corporate or Non-Corporate entity

Keeping that background in mind, let's start discussing The Insolvency And Bankruptcy Code, 2016.

## Basic Mechanism of Insolvency and Bankruptcy Code:

The basic mechanism of the code bifurcates the Administration and Adjudication authorities. The IBC is just an Act and therefore, there has to be a body governing the Act, like CBDT for Income Tax, MCA for corporate laws. Similarly, the Insolvency and Bankruptcy Board of India (hereafter referred to as Board) is regulatory body under IBC. While the IB Board is the administering authority, the Adjudicating authorities are National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), Dispute Resolution Tribunal (DRT) and Dispute resolution Appellate Tribunal (DRAT). The working of Board and Adjudicating Authorities can be seen from the following diagram.

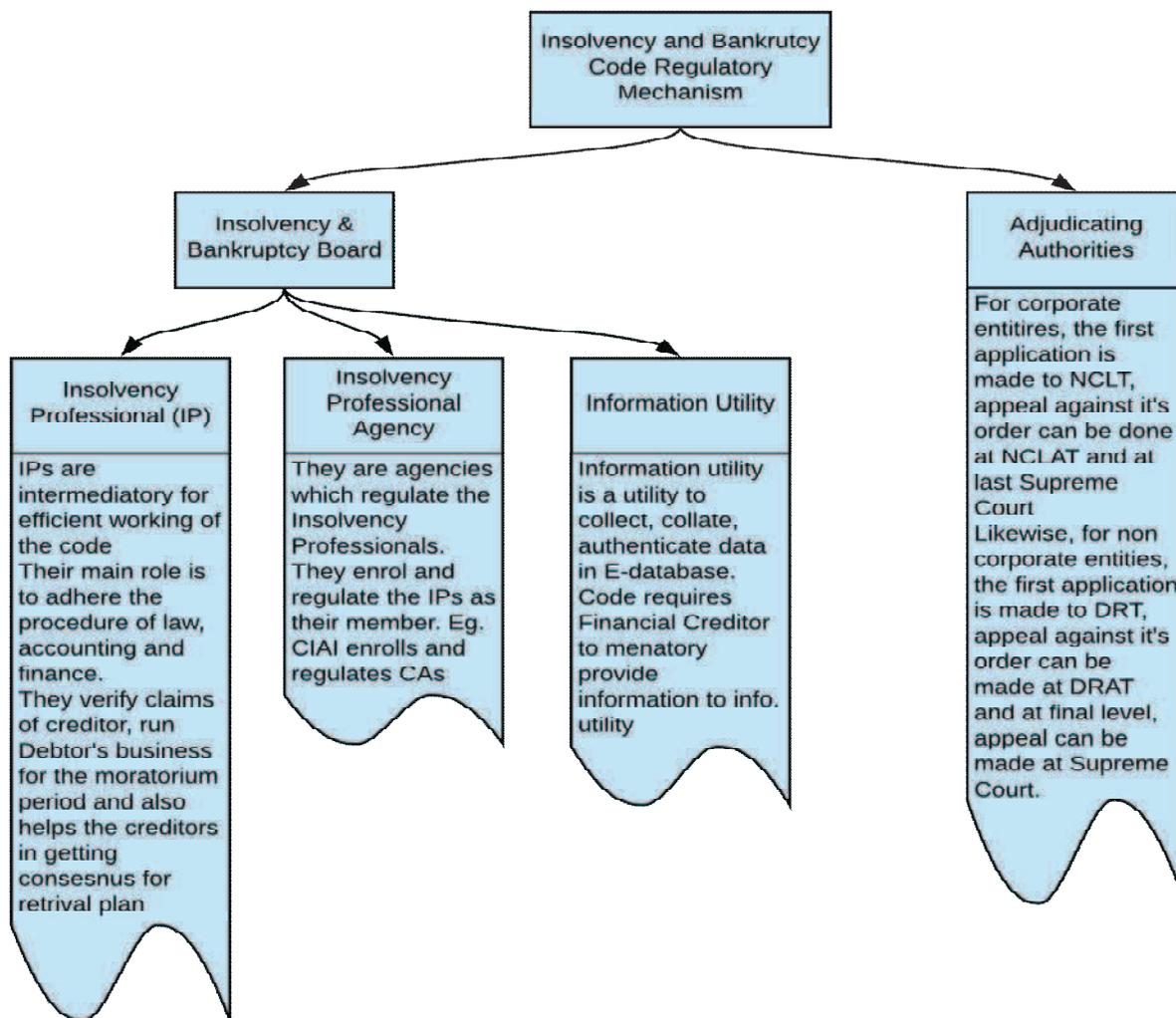


Diagram 1: Mechanism of IBC

## Insolvency of a Corporate Entity

### When can Corporate Insolvency resolution process initiate

Chapter II of IBC deals with insolvency of Corporate Entity. Now, section 6 states the circumstances under which corporate insolvency resolution process can be initiated. It says, there should be a default.

6. Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter

Section 6 of Insolvency and Bankruptcy Code, 2016

The term default has been defined in IBC as under:

3.(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be

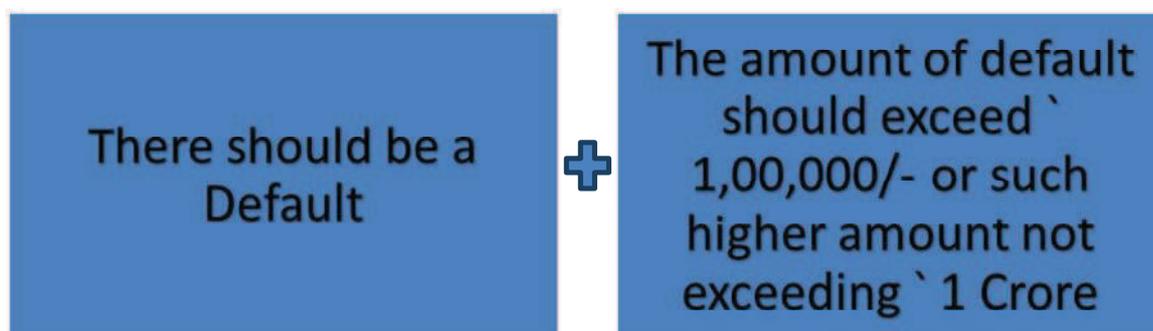
Section 3(12) of Insolvency and Bankruptcy Code, 2016

Also, section 4 of the IBC states that...

4. This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees: provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Section 4 of Insolvency and Bankruptcy Code, 2016

So to sum up, the following conditions should be satisfied to initiate the corporate insolvency resolution process:



### Who can initiate Corporate Insolvency Resolution Process

IBC states that following set of persons can make application to adjudicating authority and initiate the process: (Also refer to section 6 stated above)

Financial Creditor	Operational Creditor	Corporate Debtor
<ul style="list-style-type: none"> <li>Eg. providers of finance, i.e. Banks, Financial Institutes etc</li> </ul>	<ul style="list-style-type: none"> <li>Eg. Supplier of goods or Services</li> </ul>	<ul style="list-style-type: none"> <li>The corporate entity itself</li> </ul>

All these processes are covered by Section 7 (Financial Creditors), Section 8 (for Operational Creditor) and Sec 9 & 10 (For corporate debtor), which we shall cover in the next article.

# The Insolvency and Bankruptcy Code: Introduction

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## A brief recap on Insolvency and Bankruptcy Code:

- The Insolvency and Bankruptcy Board regulates the code.
- The Adjudicating Authority accepts the application for Insolvency Resolution Process
- The application for initiation of Corporate Insolvency Resolution Process (hereafter called as resolution process) can be start in event of a “Default” by any of the following
  - Financial Creditor
  - Operational Creditor
  - Corporate Debtor itself

Now that we know who can start the resolution process, let’s see how the process can be initiated by each one of the above. The initiation of Resolution Process is covered by Section 7 to 10 of the code.

## Section 7 : Initiation of corporate insolvency resolution process by financial creditor.

7. (1) A financial creditor **either by itself or jointly with other** financial creditors **may file an application** for initiating corporate insolvency resolution process against a corporate debtor **before the Adjudicating Authority when a default** has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, **along with the application** furnish—

(a) **record of the default** recorded **with the information utility** or such other record or evidence of default as may be specified;

(b) the **name of the resolution professional** proposed to act as an interim resolution professional; and

(c) any **other information** as may be specified by the Board.

(4) The **Adjudicating Authority** shall, **within fourteen days of the receipt** of the application under sub-section (2), **ascertain the existence of a default** from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the **Adjudicating Authority is satisfied** that—

(a) a **default has occurred** and the **application** under sub-section (2) **is complete**, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, **admit such application**; or

(b) **default has not occurred** or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, **reject such application**:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency **resolution process shall commence from the date of admission** of the application under sub-section (5).

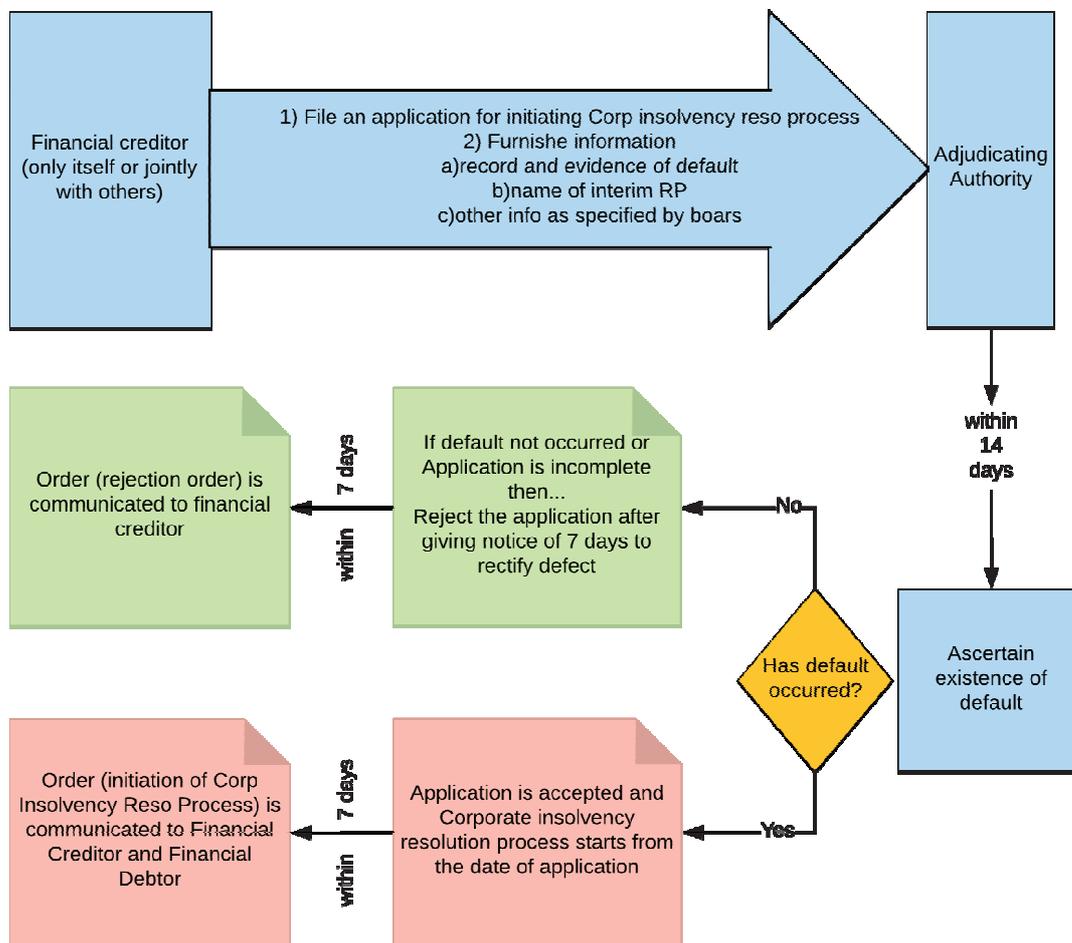
(7) The **Adjudicating Authority shall communicate**—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

Section 7 of IBC, 2016

This section can be easily understood with the following diagram



The above diagram explains the process for application by a Financial Creditor. Please note that the Financial Creditor need not prove that he has given enough opportunity to the Debtor for satisfaction of claim. The reason being that Financial Creditor are required to submit data regarding details of its debtors to the information utility. So enough data would be available to determine

whether any actual default has occurred or not. However the same is not in the case of Operational Creditors. So let's see how their process works!

## Section 8 : Insolvency resolution by operational creditor.

The text of section 8 is produced as under

**8. (1)** An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

**(2)** The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the repayment of unpaid operational debt—

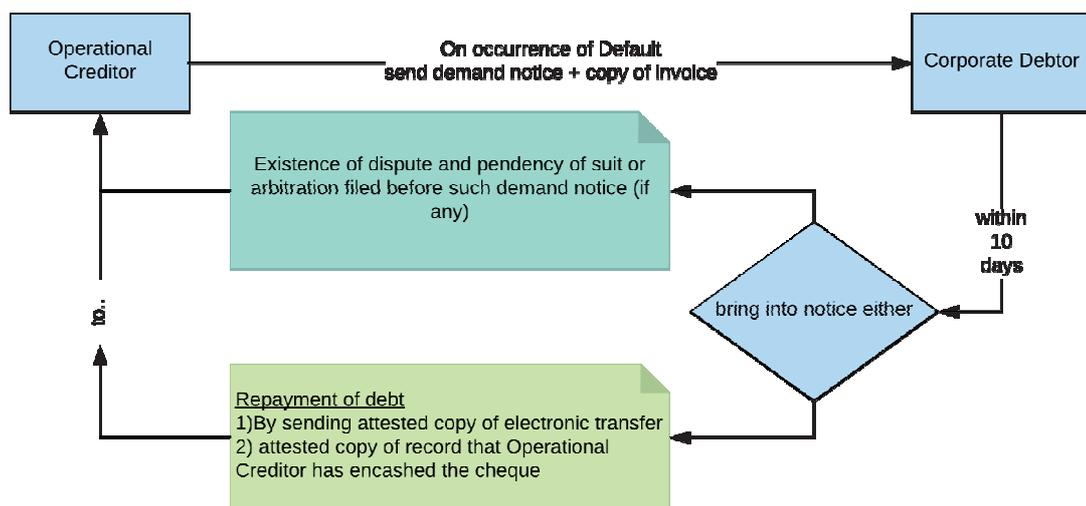
(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

*Explanation.*—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

Section 8 of IBC, 2016

This section can be easily understood with the following diagram



In case after 10 days, Operational creditor does not receive any notice of Dispute or Payment, then he may go ahead and file application to Adjudicating Authority as per Sec 9

If you read the section after having the backstory of section 7, you will realise that Operational Creditor can not file Application for initiation of Resolution Process. But he has to follow the above additional steps to be eligible to initiate the Resolution Process. In case the Creditor can not pay the amount within 10 days of giving of notice, or fails to bring into notice any dispute relating to the Operational Creditor, then he may go further and take help of section 9 to initiate the insolvency resolution process.

## **Section 9 : Application for initiation of corporate insolvency resolution process by operational creditor.**

9. (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and

(d) such other information as may be specified.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no repayment 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 there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been repayment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

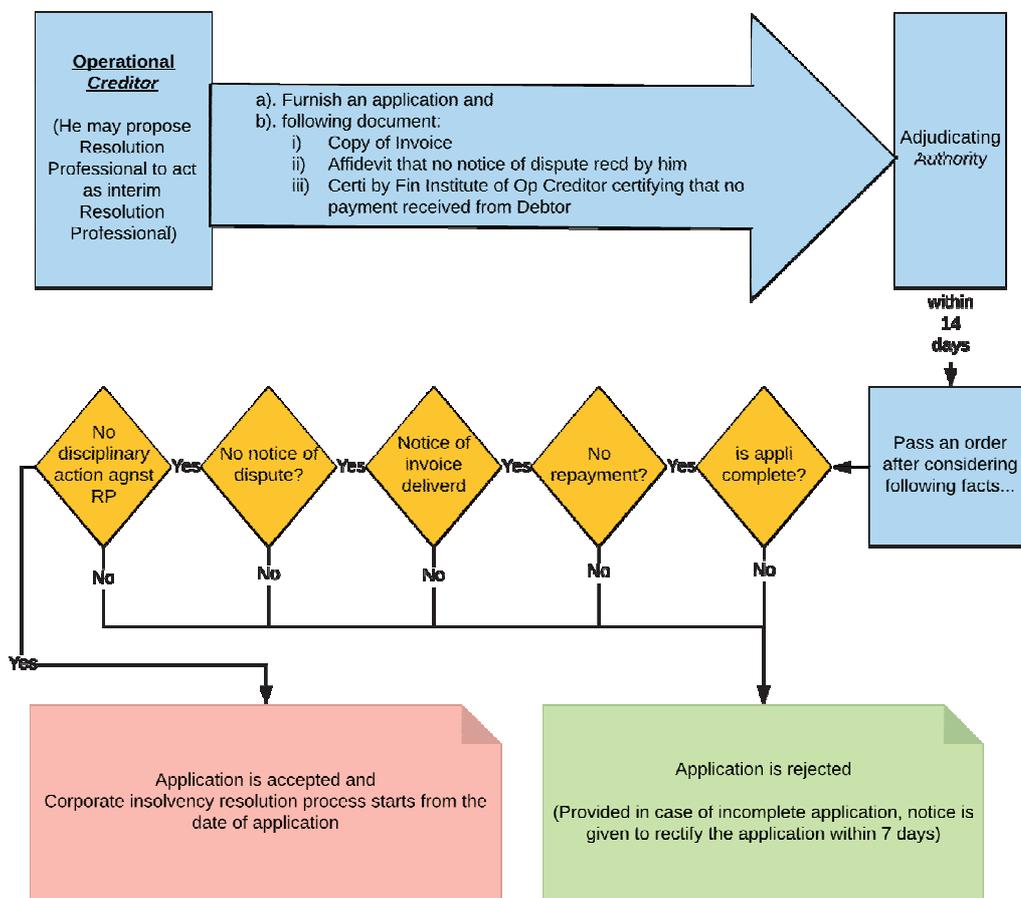
(d) notice of dispute has been received by the operational creditor or there

is a record of dispute in the information utility; or  
 (e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section. Section 9 of IBC, 2016

This section can be easily understood with the following diagram



Unlike section 7, where there were only 2 conditions regarding admission of application, there are 5 conditions here. The additional 3 conditions are whether notice has been delivered to debtor, whether any notice of dispute received and whether any disciplinary action is taken against the Resolution Professional proposed.

## Section 10 : Initiation of corporate insolvency resolution process by corporate applicant.

10. (1) 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.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application furnish the information relating to—

(a) its books of account and such other documents relating to such period as may be specified; and

(b) the resolution professional proposed to be appointed as an interim resolution professional.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

(a) admit the application, if it is complete; or

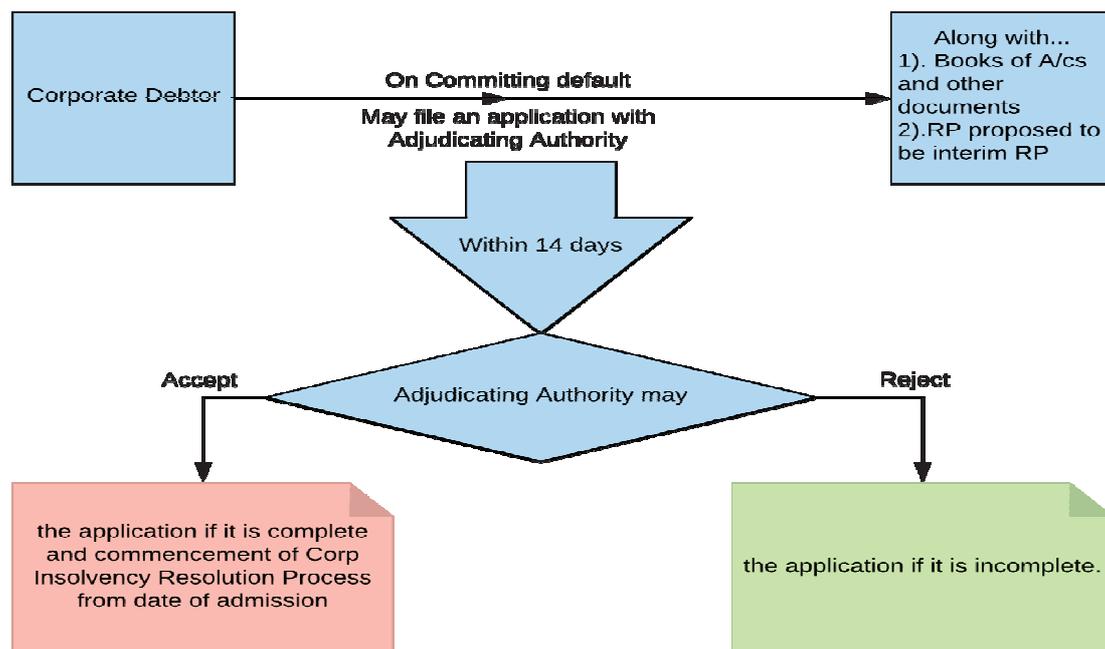
(b) reject the application, if it is incomplete:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.

Section 10 of IBC, 2016

The following diagram will simplify the provision.



It is natural that if a Corporate Debtor itself want to follow the resolution procedure, then the formalities should be minimum. Therefore, the only requirement here is to complete the application form and submit your books of accounts.

Till now we understood how the Corporate Insolvency Resolution Process starts. In the next article, we shall dive into the Insolvency Resolution Process itself.

# The Insolvency and Bankruptcy Code

## Introduction : Part 3

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In the last article, we saw how the Corporate Insolvency Resolution Process starts. In this article, we will look at some of the aspects of the Resolution process itself.

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

The time limit for completion of corporate Insolvency Resolution Process is 180 days from the date of admission of application. However, the extension can be provided by Adjudicating Authority if such resolution is passed by 75% votes of creditors. Such extension will be provided once only and also up to the maximum limit of 90 days.

### Section 13: Declaration of moratorium and public announcement

Adjudicating Authority, after admission of application....

1. Declare moratorium period as per Sec 14
2. Public announcement of initiation of Corp. Insol. Reso. Process. And calls for admission of claims as per sec 15
3. Appoints interim Resolution Professional (R.P.) as per Sec 16

### Section 14: Moratorium.

Moratorium is a calm period of 180 days. During this period, all the suits and legal proceedings etc. against the Corporate Debtor are held in abeyance.

What things are stopped	What things are not stopped
<ul style="list-style-type: none"> <li>• Institution / continuance of suit</li> <li>• Transfer of asset / legal right / beneficial interest</li> <li>• Any action to enforce security interest (including under SARFAESI )</li> <li>• Recovery of property by owner / lessor in possession of Company.</li> </ul>	<ul style="list-style-type: none"> <li>• Supply of essential goods and service</li> <li>• Transactions as notified by government.</li> </ul>

The moratorium period is effective...

From: the date of order declaring Moratorium period

Till: Completion of Corp. Insol. Reso. Process

OR

Till: Date of passing of order by Adjudicating Authority approving resolution plan or liquidation

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

Public announcement is made by interim R.P. immediately (but not later than 3 days) after his appointment (His appointment is done under Sec 16, which is the next section)

**What to announce u/s 15?**

1. Name and Address of Corporate Debtor
2. Authority with which it is registered / incorporated
3. Details of Interim RP (i.e. self)
4. Penalty for false claim
5. Last date of submission of claim
6. Date on which Corp. Insol. Reso. Process ends

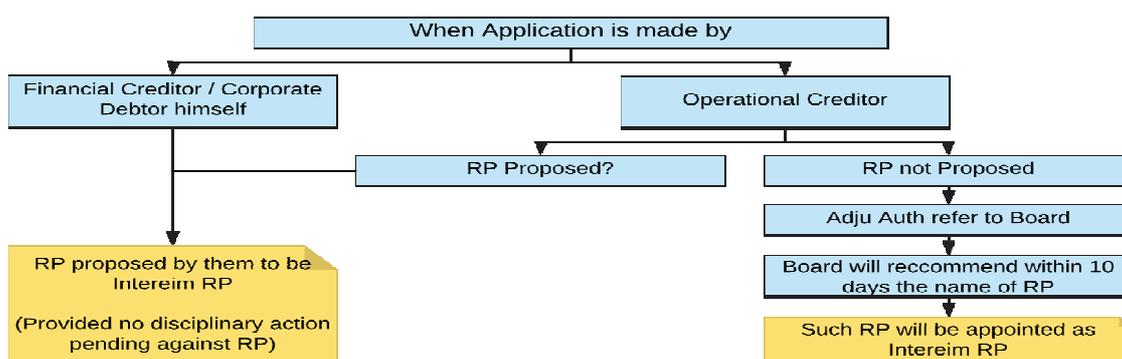
**Section 16 & 17: Appointment and tenure of interim resolution professional and his powers**

Interim RP is appointed by Adjudicating Authority within 14 days from commencement of Insolvency resolution process. He is appointed for 30 Days from his date of appointment. His role includes Issuance of public notice, collection of claims, Constitution of committee of creditors and conduct of first meeting of creditors.

**The powers of Interim RP are as follows:**

- Management of affairs of Corporate debtor
- Powers of BoD or Partners (in case of LLP)
- Reporting of officer and manager to him & access to all documents and records of corporate debtor
- Financial institution with whom the Corp. Debtor maintains his account, shall act on intimation of Interim RP only.

The appointment of Interim RD depends on whether the RP is proposed while making application for initiation of Resolution Process. In case of operational creditor it is



optional to propose interim RP. Hence help of Insolvency Board is taken. The process is explained in the chart as under.

### **Section 21: Committee of Creditors**

The committee of creditor is created by interim RP. It comprise of only Financial creditors (and not operational creditor). This discrimination has also been subject matter of debate that the Insolvency code was ultra-virus to the Constitution as it does not let Operational creditors have a say in the proceedings of Committee of creditors. However it has been held that the differentia is reasonable and hence, the code is not invalidated.

The first meeting is held within 7 days of constitution of committee. All the decisions are taken by not less than 75% of votes. The voting share is decided by the financial debt (Not operational debt) owned by them.

### **Section 22 & 23: Appointment and Function of RP**

In the very first meeting of committee of creditors, the RP is appointed. Here wither the existent Interim RP is appointed as RP or it is replaced by another RP. That decision is again taken by 75% or more majority.

Functions of RP include conducting the resolution process, managing operations of corporate debtor, taking over the management of corporate debtor and operate business as going concern.

### **Section 29: Preparation Of Information Memorandum**

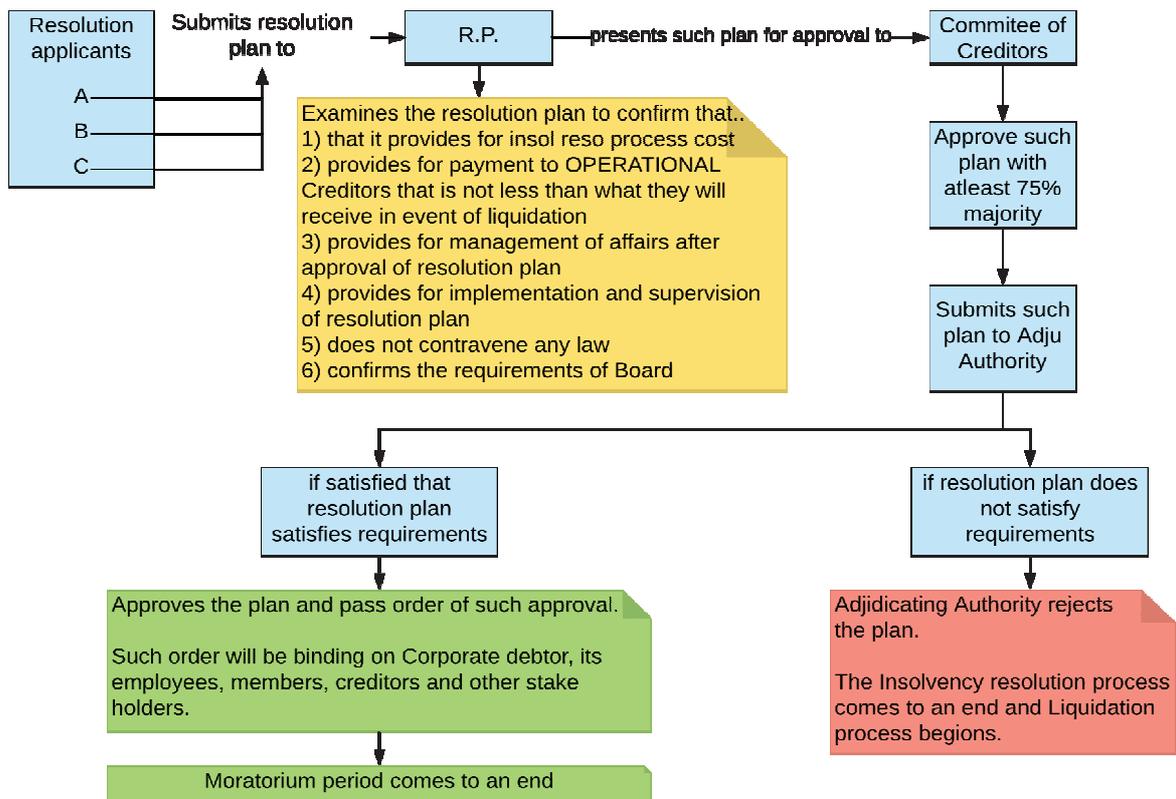
The RP prepares the information memorandum containing information required to make resolution plan including...

1. Financial position of Corporate Debtor
2. Information related to dispute by or against corporate debtor
3. Any other matter as may be specified

### **Section 30 & 31: Submission and Approval of Resolution Plan**

Finally, the resolution plan for the corporate debtor is prepared and sent to the adjudicating authority. If the Plan fulfils all the requirement, then the plan is approved. Thus the plan is carried out and the corporate debtor is saved from insolvency. But, if the plan is not approved, then the corporate debtor is sent to liquidation. The process is described in

the following chart:



**Section 33: Initiation of Liquidation**

The following are the cases under which the corporate debtor would go into liquidation.

1. On rejection by Adjudicating authority of Resolution Plan
2. Adjudicating authority does not receive any Resolution Plan within the specified time limit (i.e. 180 + 90 days)
3. Committee of creditors decides to liquidate during the resolution process before confirmation of resolution plan by 75% majority
4. After Adjudicating Authority accepts the resolution plan, Corporate debtor contravenes such plan and person prejudicially affected by it applies to Adjudicating Authority

The insolvency and Bankruptcy Code has brought about a paradigm shift in the insolvency law in India. The changes here are made for the smooth running of the economy. It provides a chance to the business to recover from the insolvency state. As a Chartered Accountant, it is our duty to understand a legislature and help our clients when one happens to be facing something related to that legislature.

# RERA



*Prepared by: CA Vaibhav Sheth, B.Com, ACA*

The Indian real estate sector has witnessed a rapid growth in the graph of Indian economy. People from rural areas are shifting to urban areas to find better living opportunities, resulting in the increase of disposable incomes and demand for all forms of real estate in the country.

While the real estate sector was showing a continuous growth, people were facing various problems in buying homes due to the unethical practices and immoral activities of a few across the country. Due to delays in the project approvals and dispute resolution, the long-standing demand of the industry and consumers was not getting fulfilled. This called for an amendment and the need for reforms and a regulated sector in the real estate market.

Counting for the world-class facilities to its citizen by providing home for all, developing smart cities and advancement in infrastructure development, the Indian government came up with the Real Estate Act. This Real Estate (Regulation and Development) Act, 2016 (RERA) became effective from May 1, 2017 where each State and Union Territory would be having their own Regulatory Authority (RA) which will frame regulations and rules according to the requirement of their own State and UT.



RERA has been established for regulation and promotion of the real estate sector and to ensure sale of properties, in an efficient and transparent manner. Following are its objectives:

- a. To ensure accountability towards allottee;
- b. To infuse transparency and to reduce frauds and delays in delivery of properties;
- c. To impose strict responsibilities on builders, real estate brokers and consumers;
- d. To establish regulatory oversight mechanism to enforce contracts;
- e. To establish fast track dispute resolution mechanism;
- f. To promote good governance in real estate sector.,

These objectives are the pillars of the RERA which will aim to provide the following remedies after their implantations:

- a. To deliver the possession of the properties in time;
- b. To strictly develop the properties as per the plans approved by the authorities;
- c. To held builder liable for structural defects for 5 years after delivering the possession of the properties;

- d. To park all the bookings received in separate bank account of a schedule bank and to withdraw them in proportion of completion of the project;
- e. To charge with interest where builder delays in refunding the bookings amount to the consumer. Also, consumer can ask for compensation if the builder is unable to deliver the property within time or the property is not developed as per the plan.

Starting from the launch of a project to post-sales issues of plots, apartments, shops, offices and other such properties, the Act covers a vast range of regularities of the real estate market.

Being an author of this article, I would like to bring clarity on following matters before discussing on RERA:



1. RERA is applicable in planning areas only. The authority has well listed out the planning areas of Gujarat among which following areas are the planning areas of Kutch district:

- a. Bhuj Area Development Authority (BHADA);
- b. Rapar Area Development;
- c. Bhachau Area Development;
- d. Anjar Area Development;
- e. Mandvi Municipality;
- f. Gandhidham Development Authority;
- g. Kandla SEZ;
- h. Mundra Port & Special Economic Zone;
- i. Nagarpalika declared under Gujarat Municipalities Act, 1963 and;
- j. All industrial estates or industrial areas under the jurisdiction of Gujarat Industrial Development Corporation Act, 1962.

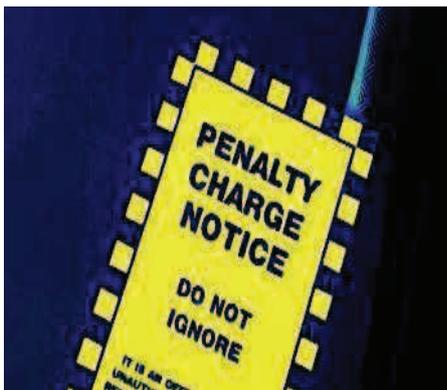
- 2. RERA is also applicable on sale plotting projects i.e. where a piece of land is purchased and plotted into various plots and thereafter plots are sold.
- 3. RERA is applicable only when there is a sale of real estate project. It means that RERA is not applicable on rent and lease transactions.
- 4. RERA has put more emphasis on promoter means a builder of the real estate project. It is not necessary that the builder should possess the land. If the builder develops a real estate project in a Joint Development Agreement with a person who owns the land, then in this case both the builder and the owner of the land shall be consider as a promoter for the purpose of RERA. Further, a contractor who constructs the real estate project as per the direction and requirement of the builder is not a promoter for the purpose of RERA.
- 5. Promoter shall not do advertisement in any manner or offer for sale or invite persons to purchase in any manner any plot, shop, building, as the case may be, under any planning area within Gujarat, without registering the real estate project with the Gujarat Real Estate Regulatory Authority(GUJRERA).

All commercial and residential real estate projects in any planning area will have to register where it satisfies any one or more of the below mentioned conditions:

- a. area of land proposed to be developed exceeds 500 sq mtrs;
- b. number of apartments proposed to be developed exceeds 8 inclusive of all phases;
- c. renovation or repair or re-development projects which involve marketing, advertising, selling to new allotment any apartment, plot or building, as the case may be;

Ongoing projects in the planning area which satisfies any one or more of the conditions as stated above which has not received completion certificate (occupancy certificate/ B U permission) as on 01<sup>st</sup> May 2017, shall register their project with RERA authorities within 3 months from 01<sup>st</sup> May 2017 i.e. before 1<sup>st</sup> July 2017. However, GUJRERA authority has extended the date of registration of ongoing projects from 1<sup>st</sup> July to 31<sup>st</sup> December 2017 wide order no. 2 dated 28.11.2017.

GUJRERA wide its order no. 3 dated 30.12.2017 has ordered that any such ongoing projects which failed to get registered upto 31<sup>st</sup> December 2017 and had registered thereafter, will attract 2.5 times of regular fees as a penalty.



Above penalty was for those real estate projects which were ongoing as on the date of 01<sup>st</sup> May 2017 and which failed to register before 31<sup>st</sup> December 2017. If any promoter commenced any real estate projects in any planning area on or after 01<sup>st</sup> May 2017 but failed to get it register, then he shall be liable for penalty upto 10% of estimated cost of such real estate project. Further, if the promoter also does not comply with any order or directions issued by the RERA Authority with respect to its registration, he shall be liable for penalty upto 10% of estimate cost of such real estate project, imprisonment upto 3 years or both.

Where any real estate project is developed in phases, every such phase shall be considered a standalone real estate project and the promoter shall obtain registration under this Act for each phase separately.

The act also given powers to the Authority that in the interest of allottees, the Authority may order / direct the promoter to register projects even if its real estate project is falling beyond the planning area.

RERA does not ends here, there are provisions relating to revocation of registration granted, extension of registration and their procedures, registration of real estate agents and its procedure, functions and duties of promoter, consumer and real estate agents and most importantly the procedure of withdrawal of money from separate bank account kept, all these will be discussed in the later editions.

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# RERA



Prepared by: CA Vaibhav Sheth, B.Com, ACA

## **REGISTRATION OF REAL ESTATE PROJECTS:**

As discussed in the previous article, we have understood the conditions on satisfying of which a Real Estate Project is required to get registered with the RERA authority. Now in this article, we will understand how to register Real Estate Project with the RERA authority.

Before going through the procedure, it shall be noted that the Real Estate *Project* is getting registered and not the *Promoter* of the Real Estate Project. It means that if a Promoter is engaged in different Real Estate Projects, each such Real Estate Project is required to get registered with *designated* RERA authority subject to all those conditions stated in previous article. Here, designate RERA authority means say for an example, if a Promoter is engaged in 2 Real Estate Projects one is at Gujarat and other is at Maharashtra and both of these Real Estate Projects are satisfying the conditions of registration then, a Real Estate Project at Gujarat is required to be registered with Gujarat RERA

authority i.e. GUJRERA and Real Estate Project at Maharashtra is required to be registered with Maharashtra Authority i.e. MAHARERA.

On understanding the above *funda*, we are now ready to move towards understanding the process of registration of Real Estate Project. Application for registration of Real Estate Project is to be made in Form A and Form B. Form A is the application form and Form B is an affidavit cum declaration form. Both of these forms are required to be physically submitted in *triplicate* copies at *designated* RERA office. Within 7 days of physical submission of this application, an online application is also required to be done on [www.gujrera.gujarat.gov.in](http://www.gujrera.gujarat.gov.in).

It is correctly said that "*there is no such thing as a free lunch in this world*", then how come registration of Real Estate Project can be done at a free of cost? RERA authority has specified different type of registration fees depending upon different type of Real Estate Project. This registration fees is required to be paid at the time of submission of application. It can be paid either through Demand Draft or through internet banking and its relevant payment details are required to be stated in Form A.

Registration Fees of any Real Estate Project is calculated as under:

Type of Project	Development Area	Registration Fees
Housing Project	Area of land proposed to develop does not exceeds 1000 sq. mtrs	Rs. 5 per sq. mtr
	Area of land proposed to develop exceeds 1000 sq. mtrs	Rs. 10 per sq. mtr
	Subject to maximum Rs. 5 lacs.	
Commercial Project	Area of land proposed to develop does not exceeds 1000 sq. mtrs	Rs. 20 per sq. mtr
	Area of land proposed to develop exceeds 1000 sq. mtrs	Rs. 25 per sq. mtr
	Subject to maximum Rs. 10 lacs.	
Mixed Project (Residential + Commercial)	Area of land proposed to develop does not exceeds 1000 sq. mtrs	Rs. 10 per sq. mtr
	Area of land proposed to develop exceeds 1000 sq. mtrs	Rs. 15 per sq. mtr
	Subject to maximum Rs. 7 lacs.	
Plotted Development Project	Any Area	Rs. 5 per sq. mtr
	Subject to maximum Rs. 2 lacs.	

Now the main thing of discussion is Form A and Form B. Let us understand both of these forms.

**Form A:**

Following are the information required to be submitted in Form A:

In case of Individual	In Other Case
a. Name	a. Name
b. Father's name	b. Address
c. Occupation	c. Copy of registration certificate (partnership deed/Certificate of Incorporation of Company etc.)
d. Photograph	d. Name, photograph and address of chairman of the governing body/partner/directors etc.

- Name and address of the bank with which account will be maintained;
- Details of the projects launched by the promoter in the last five years;
- Detail of demand draft for payment of registration fees;
- Any other information the applicant likes to furnish.

Along with the above information, following are the documents required to be submitted with Form A:



- Copy of the PAN card;
  - Audited Balance Sheet and ITR for 3 preceding financial years;
  - If Promoter is the owner of land: Copy of the legal title and ownership related documents;
  - If promoter is not the owner of Land: Consent letter of owner of the land, development agreement entered between the promoter and owner and copies of legal title and other documents of owner of land;
  - Details of encumbrances on the land;
  - Copy of the approvals and commencement certificate from the competent authority;
  - Sanctioned and layout plan;
  - Plan of development works to be executed and the proposed facilities to be provided including fire-fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- Location details of the project;
  - Performa of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
  - Carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any;
  - the number and areas of garage for sale in the project;
  - the number of open parking areas available in the real estate project;
  - the names and addresses of the real estate agents, if any, for the proposed project;
  - the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
  - Declaration in Form B.

On looking at the above mentioned information and documents which are required to be submitted in Form A it may look like *its not a big deal*. But the *deal* begins with the Form B. As stated above, Form B is declaration cum affidavit. Here the Promoter of the Real Estate Project is required to declare and swear on many things which are discussed below. Since affidavit is involved, Promoter should fill up the details with great precaution. Form B requires to swear Promoter on following declaration:



- Time period within which the project shall be completed;
  - 70% of the amounts realized for the project from the allottees, from time to time, shall be deposited in a separate account maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose;
  - amounts from the separate account, to cover the cost of the project, shall be withdrawn in proportion to the percentage of completion of the project.
- amounts from the separate account shall be withdrawn after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project
  - Promoter shall get the accounts audited within six months after the end of every financial year by a CA in practice, and shall produce a statement of accounts duly certified and signed by such CA and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.
  - Promoter shall take all the pending approvals on time, from the competent authorities.
  - Promoter has furnished such other documents as have been prescribed by the rules and regulations made under the Act.

If all the particulars of the information and documents are found to the satisfaction of the RERA authority, registration will be granted to the Real Estate Project. Now, these registration certificate is valid only for the period which the Promoter has declared in Form B (*Time period within which the project shall be completed*) or for such period the RERA authority may found deem fit. If the Real Estate Project is not completed within the validity period of registration, RERA authority may extend the validity of the registration. Further, RERA authority also has to power to revoke the registration of the Real Estate Project.

Now, how RERA authority will extend the validity of the Real Estate Projects or on what grounds validity of registration can be extended and how RERA authority can revoke the registration, all these *fundas* will be discussed in the next article.

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# RERA

Prepared by: CA Vaibhav Sheth, B.Com, ACA

### 3. REVOCATION OF REGISTRATION & REGISTRATION OF REAL ESTATE AGENTS

In the previous article, we had discussed the fundamentals of registration of Real Estate Project. Registration once granted can be lapsed(expired) or revoked. There is wide difference between these terms. Registration is said to get lapsed if the period of which it is granted is completed but the real estate project is not yet completed. However, there are provisions in the act regarding extending the period of registration. Revocation of registration means cancellation of registration. Registration can be revoked during the validity of the project (real estate project) or when the project is completed. In this article, we will only discuss about who has the authority to revoke the registration granted to the project and what would be its consequences on its revocation.

The RERA Authority has power to revoke the registration granted to Promoter. Authority can exercise this power either suo-motu or on any complaint received against any Real Estate Project or the Promoter of the Real Estate Project and where the Authority is satisfied that the promoter has:



- Defaulted in doing any act which was required to be done under the RERA Acts or its Rules;
- Violates the terms or conditions of approval which was levied by the RERA Authority at the time of granting registration under RERA;
- Is involved in unfair practice or irregularities for the promoting sale or development of real estate project;

then, the RERA Authority may revoke the registration of such project. Before revoking the registration, the Authority needs to issue a show cause notice in writing stating why the registration of the project shall not be revoked? On receipt of such show cause notice, the Promoter should reply to the Authority within the period of 30 days. If the reply made by the Promoter is found suitable, then the Authority may either not take any actions or may impose further terms and conditions on existence of registration of the project to protect the interest of the allottees. If the reply of the Promoter is not found suitable then in worst case, the Authority may cancel the registration of project.

On Revocation of such project, the Authority will take all the necessary actions as it deems fit to protect the interest of public or allottees and remaining development work, if any, will be carried by competent authority or by association of allottees after consulting to appropriate government. However, the association of allottees will be having right of refusal for carrying out remaining

development work. The Authority will also take harsh actions against the promoter by debarring the promoter from accessing its website and displaying promoter's name and photograph in the list of defaulters on its website. The Authority will also freeze the bank account of the project as stated in Form A at the time of registration for facilitating the remaining development work as may be required.

The Authority also has power to extend the validity of registration of real estate project. However, the total extension that can be granted by the RERA Authority is of 1 year in total. This extension in the period of registration will be granted by the RERA Authority only in reasonable circumstances or due to *force majeure*. For this, the promoter needs to apply in Form E and is required to pay fees for such extension as stated by the authority.



Now moving toward real estate agents. The role of Real Estate Agent with relation to Real Estate Project is very interesting. RERA states that, " No real estate agent shall facilitate sale or purchase of any plot, apartment or building in a real estate project, registered under this act, being sold by the promoter in any *planning area* without obtaining registration. This means that where any agent (real estate) who want to facilitate any purchase or sale of real estate project which is in planning area and the project also registered with the RERA Authority, then in such case, agent should also apply for his registration with the RERA Authority otherwise he cannot indulge in facilitating purchase and sale of registered real estate projects. This simply means that "where project is registered, agents need to be registered".

But at the same time, registration process of agents with the RERA Authority is simple enough as compared to the promoter. Agents desirous for applying for registration needs to apply in Form G both online and offline (in triplicate copies) along with payment of registration fees. Registration fees as prescribed by the Authority is Rs. 10,000/- in case of Individual and Rs. 50,000/- in any other cases. Along with Form G, agents need to submit the ITR for 3 preceding financial years (If applicant was exempted from filing ITR then declaration to such effects) and its address proof of place of business.

If the application of agent is found satisfied by the Authority than it will grant single registration number which will be valid for entire state or union territory as the case may be. This registration number is required to be quoted by such agent in every sale facilitated by him under this Act. Here also, the Authority has power to revoke or suspend the registration granted to agent for such period as it thinks fit if it is satisfied that any registered real estate agent:

- has commits breach of any terms or conditions under this act;
- registration has been secured through misrepresentation or fraud.

after providing an opportunity of being heard shall be given to the real estate agent.

On agent being registered with the Authority, he shall NOT facilitate the sale or purchase of any plot, apartment or building being sold by the promoter in any planning area, which is not registered with the Authority. The agent should also require to maintain and preserve such books of account, records and documents as may have prescribed by the RERA Authority. The agent should also not involve himself in any unfair trade practices but should facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be.

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## **SAP: AN INTRODUCTION**

**CA Jigar Thacker**  
**M.Com.,ACA,DISA(ICAI)**

Hello..! Today, let's talk about some technology and how it affects you. Technology has progressed a lot in recent years. But,so what..! Like many other things are progressing, technology has progressed, what's so important in that? Well, it is IMPORTANT as it has changed the way we live in the most unprecedented ways. Have you ever imagined how much time do we spend looking at our mobile or computer screen each day for work or personal use? I bet it would be more than 62% of the time we are awake (i.e. 10 hours out of 16 hours for which we are awake each day).

So, the point behind detailing the above information is that since we are spending such huge amount of time interacting with different technologies, why not use it wisely? Let's discuss it today keeping in mind our profession and use of technology.

For professionals the key important factor is information. So how to get it? I read the definition somewhere and from my experience, I found the definition correct, it says – "Data in structured (required) form is information". If we think well, the definition holds good in almost all cases. For example, almost all of us might have done physical verification of assets. So, we have quantity, asset name and asset value. We know that location was not getting captured in tally in most of the cases. So now suppose, what would happen if exact location is captured against that same asset and the department to which it belongs. Will it make our work easier? Of course, YES.

So to get the key important factor information, we need to get data. Okay, so how to get the data all in one place so that it can be put into proper perspective and can serve as useful information. From financial records point of view, what we are generally do in traditional information systems is that, we prepare separate working for the transaction in excel and then pass the entry. Due to this, the key data which is the basis of entry is not available in financial record keeping system, be it tally or any other system. Just imagine what if all the other data which serves as the basis of financial entry is available from the same system that gives us various financial reports. It will certainly add a lot more value seeing the financial data in context of operational data or any other descriptive data. So, we need a system that provides us relevant data as much as possible.

Another aspect has emerged with the evolution of technology is that of system controls. The controls which we were taught during our professional learning are

being implemented through use of technology. If such controls are implemented by some robust system then assurance can be derived by validating the system checks. And to validate the system, it is important to understand the system itself first.

So, as discussed above, we need help of a system that does two things

1. It provides relevant supporting data for financial transactions.
2. It ensures internal control checks which satisfy our concept of audits (e.g. maker-checker, etc.)

I would like to share my experience with one such information system and explain a bit about its workings. I guess we all have heard name of SAP at one or another point of time. So, what exactly SAP is? In a nutshell, it is a relational database management system. To explain you that, I would like to give you example of some its procurement system, which is as follows.

**PR (Purchase Request / Requisition)** – The starting point of procurement is demand. Users of the organization, who are working on field require many materials and services. It's not that they can directly go out and get them. They have to raise a PR in SAP. In simple words, it is a screen which provides them to enter the details about the things they want to get. Some fields in the screen are,

- Material/ Service Code (e.g. for ball pens there is one code 1000001)
- Material/ Service Description ( e.g. ball pen blue, cello)
- Qty
- Space to enter text to justify that request (the need for the material, it's use, etc.)

Now, there is a functionality where a check can be kept that the request must be approved by a certain person (e.g. Head of the department of the person making the request). In that case, the HOD has to approve the PR from a screen in his id and only after he puts an "OK" tick in that screen, that PR becomes a valid request. Also, permutation combinations of releasers can be made according to the value of the PR, say in case the value of PR exceeds 50 lacs, it needs to be approved by CEO.

**PO (Purchase Order)** : -It is interesting to note that the person who is raising PR and the one who is approving PR cannot contact to the vendor. There is a separate commercial department where there are persons who are attending to valid PRs (PRs approved at all required levels). So, once a PR is released, it will go to the person who has responsibility to procure that item. In huge organizations, there are various purchase groups. So, a PR for keyboard will go to purchase group of computers which will be headed by say Mr. A and it will not go to Mr. B who is handling purchase group of spares for vehicles. It all will be decided automatically by the system since every item has to be mapped with a particular purchase group.

In SAP, system authority is given as per roles. Here, the role of the commercial person attending to the PR is to find a suitable vendor for the item, for which he generally invites quotation and then places the PO to appropriate vendor. So, as per his role, he has the right to decide the rate at which the item / service needs to be procured but he cannot exceed the quantity for which PR is raised. Suppose, Mr. Ram has raised PR for 100 ball pens, so Mr. Shyam who is the commercial guy looking for the procurement can place order of 100 ball pens and not more than that. Mr. Shyam can partly place the order to two vendors, say Vendor A for 60 ball pens and Vendor B for 40 ball pens as per guidelines of his department. Mr. Shyam needs to take care that the specification which are mentioned in PR are met.

**SES (Service Entry Sheet – for services) / GRN (Goods Receipt Note- for materials):** -So order is placed to vendor as above. Now, when the requested material arrives at location. At that time, the stores person receives the goods and after enters them into system marked for quality check. Once the quality check is completed, entry is made into the system to transfer the material from quality check to available for use and it is showing in inventory in balance sheet. So finally, when Mr. Ram goes to store to get the 2 pens for use out of 100 lying in inventory. The store guy will reduce the inventory and expense will be booked for 2 pens consumed. Here, the store guy will make entry in his screen to issue two pens, the screen will be a normal screen which will be familiar to him and it would not be a screen having debit or credit fields. Entry will be done automatically by SAP as per logic defined.

So, here SAP is one such system which integrates day to day functionality of various departments in different screens and makes appropriate entries in books of accounts. Here each department gets a user-friendly screen in SAP where he captures data necessary for his records and need not worry about it's financial entry. The beauty of the system is that if professional while reviewing the financial entry wants to see some more information, can see directly in SAP. Say for 2 pens issued by Mr. Ram, the finance professional can see the entire chain explained above in SAP and he need not depend on anyone / external excel files for information.

So, let's try to leverage technology in our profession to save time and efforts and get more value addition in our endeavors.

Thank you for reading the article.

## **SAP: AN INTRODUCTION-PART 2**

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Hello friends, hope you had a wonderful and safe Diwali and the new year has just begun so lots of wishes for the year ahead. So yes, where were we in discussion? We had discussed about the financial control point of view of SAP functionalities. Now let's have a look at how it works when financial transactions recording, analysing and presenting is concerned.

Success of any software depends on the information that it can provide to various stake holders. The challenge while auditing and reporting for a big organisation having different businesses in one company is that there is a lot of data to be analysed and verified.

Having been auditee representing a large organisation, I got a chance to work with three of the BIG4 for statutory and internal audits and I could see that focus has shifted from vouching based audit to segregation of data into various categories and comparing the same with previous data and industry standards for identifying any abnormalities and area of focus.

Management in such organisations also demands various informations which are more than just financial numbers. It wants data supporting the numbers by which it can understand and analyse the present scenario and arrive at some conclusion.

This is strength of SAP, it collects so much of the data from its various users. And how does it do it? Of course by providing so many fields for entering data in each screen. Let's have a look the various fields provided for analysing and presenting with the help of an example.

Say, ABC Ltd. is a company having port facilities located at location X and a refinery for processing of soya and palm oil at location Y. At location X, it handles various types of cargoes and each type of cargo handling requires different type of equipment, different activities and manpower having special skill. So, it has prepared various departments as per type of cargo. Such as for dry bulk – Dry Cargo department, for liquid cargo – Liquid department and for container cargo – Container Terminal department. At location Y, there is one refinery where there are two separate units, one for soya oil processing and one for palm oil processing. So it imports crude oil and refines it in the refinery and sells in bulk as well as packed form. Both the product lines being different, separate costing for each product is required for pricing and decision making.

So, what to do in the above case where there is a lot of diversity and different data requirements. Well, of course SAP can be of some use here. Below mentioned are some of the most common and most used data fields of SAP which can help to segregate the information effectively in diversified organisations.

1. GL (General Ledger) – Each income and expense is assigned a GL code. GL codes can be created as per requirement of business. Let's say for each different type of cargo handling a different GL can be created, i.e., one GL for dry cargo handling income, one GL for liquid cargo handling income and so on. But by that, so many GL codes will be created. So it can be done that only one GL can be created for each income, i.e., one GL for handling income and one GL for storage income and to identify department, another separating field can be added.
2. Profit Centre – Each type of cargo handling can be assigned one profit centre. Say one profit centre for dry cargo, one for liquid cargo and so on. Now, say income from storage from dry cargo and liquid cargo will be booked in "Storage Income" GL only. But in each line there will be one additional field for profit centre, i.e., either dry or liquid or other respective profit centre. So every income of the whole company can be viewed department wise with the help of profit centres.
3. Cost Centre – To identify profitability of a department, cost of that department is also required along with income. There will be one GL for each expense. Say for repairs, GL can be "Repairs and Maintenance" so in data for expenses there will be field of cost centre in each line. Say for dry bulk, cost centre will be of "Dry Cargo" and so on. Even for further segregation, more cost centres can be created. E.g., one for "Dry Cargo Cranes" & another for "Dry Cargo Godowns". So, if one wants to see repair cost of dry bulk godowns and dry cranes separately than it can be done just in a click. But by doing so, among many profit centres and cost centres, it will be difficult to match cost centre and profit centre for one department to ascertain profitability. But to resolve this issue, cost centres are compulsory assigned to one profit centre and more than one cost centres can be assigned to one profit centre which means cost centre "Dry Cargo Cranes" and "Dry Cargo Godowns" will be grouped under profit centre "Dry Cargo".
4. BusinessArea – So we talked about Ports and discussed segregation of its income and expenses. But what about refinery business in the same organisation. Well, no need to worry, we can add another segregator of business area, one each for location X and for location Y. So all the above mentioned fields, i.e., GL codes, profit centres and cost centres will each be there in data but one more field will be of business area on the basis of which location X and Y will be segregated.

To sum up all the above details, let's have a bird's eye view on what we discussed. There is a report in SAP to view TB (Trial BALANCE). Any of the above mentioned categories can be applied as filter.

1. Viewing TB with locationX as filter – It will show income, expenses, assets and liabilities of Port Business only on the basis of which everything related to port can be analysed.
2. Viewing TB with profit centre Dry Cargo as filter – It will show income, expenses, assets and liabilities of Dry Cargo department only. Accordingly, profitability of each department can be ascertained.
3. Viewing TB with Cost Centre as filter – It will show expenses and assets related to each cost centres which can be analysed for cost control.

Accordingly each report will have option to apply any of the criteria as filter and extract the required data. Above is just an example, various permutations and combinations can be applied and data can be extracted as per requirement.

But let's not forget one thing that all the systems work on GIGO (Garbage in, Garbage Out) principal, which means that the quality of information depends on the data provided to system. A system designed to provide information by processing certain logics on the data will show incorrect information if the data entered into it is not correct.

So the responsibility lies here on all the stake holders. Be it stores, be it equipment maintenance personnel or be it HR, all the departments have little to work on excel or any other media and more to work on SAP since it provides standard screens and in some cases custom designed screens as per requirement of the users. So, if everyone enters the data fields correctly, SAP will take good care of the reports.