



IBC KNOWLEDGE CAPSULE

Framework for “*Claims in CIRP under IBC*”

Introduction:

Claim means a right to payment and right to remedy as defined under the code in Section 3(6) of the Insolvency and Bankruptcy Code, 2016. Right to Payment underlines the claim. If there is no right to receive payment, no claim exists, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured. To fall under claim, right to remedy must give rise to right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, matured, un matured, secured or unsecured. Any creditor (operational or financial), workmen, employees, home buyers or any other creditor can submit their claims under the Code.

The available framework with important provisions under the Code and orders passed are summarized in the color coded table below:

Provisions of the Code	
Rules/Regulations under the Code	
Orders passed by NCLT/NCLAT/Supreme Court	
Circulars/Notifications/Reports	

TABLE: “Claims in CIRP” under IBC

Source	Details /Excerpts	Explanation/Remarks
Section 3(6)	<i>(6) “claim” means – (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured; (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;</i>	Definition of the claim is applicable to the entire code.
Section 13(1)	<i>(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order –(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and</i>	The claims are called for when the public announcement is made.
Section 15 (1)	<i>(1) The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely: – .. (c) the last date for submission of [claims, as may be specified]; (d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims; (e) penalties for false or misleading claims; and</i>	The date for last date of submission of claims is also given in the public announcement. The announcement will also contain details about how and where to send the claims to as well as disclaimer for being honest with the claims.
Section 18	<i>The interim resolution professional shall perform the following duties, namely: - .. (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;</i>	The IRP has the duty to collate the claims received. The claims before collation are also verified by the IRP based on the proofs provided to them by the creditors. The COC is formed based on the collation of such claims.
Section 25	<i>the resolution professional shall undertake the following actions, namely: - ... (e) maintain an updated list of claims;</i>	The RP has to maintain an updated list of creditors and claims, if any claims are received later or verified later after preparation of initial list of claims.
Section 60(5)	<i>Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company</i>	The Adjudicating Authority (NCLT) has the power to adjudge claims or disputes relating

	<p><i>Law Tribunal shall have jurisdiction to entertain or dispose of –</i></p> <p><i>...(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and</i></p>	to claims.
Section 184	<p><i>184. Punishment for false information etc. by creditor in insolvency resolution process. –</i></p> <p><i>(1) If a debtor or creditor provides information which is false in any material particulars to the resolution professional, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five lakh rupees, or with both.</i></p> <p><i>(2) If a creditor promises to vote in favour of the repayment plan dishonestly by accepting any money, property or security from the debtor, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three times the amount or its equivalent of such money, property or security accepted by such creditor, as the case may be, or with both:</i></p> <p><i>Provided that where such amount is not quantifiable, the total amount of fine shall not exceed five lakh rupees.</i></p>	Any creditor who will give false particulars specifically in respect of claim verification or furnish false claims will be liable for punishment.
Regulation 6 (2) of IBBI (CIRP) Regulations, 2016	<p><i>The public announcement referred to in sub-regulation (1) shall:</i></p> <p><i>...(ba) state where claim forms can be downloaded or obtained from, as the case may be;</i></p> <p><i>...(c) provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.</i></p>	<i>The public announcement shall include details as mentioned in the regulation.</i>
Regulation 7 of IBBI (CIRP) Regulations, 2016	<p><i>Claims by operational creditors. (1) A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit claim with proof to the interim resolution professional in person, by post or by electronic means in Form B of the Schedule: Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee</i></p>	Form B of Schedule of CIRP Regulations needs to be filed by Operational Creditor with IRP so that their claim could be processed.
Regulation 8 of IBBI (CIRP) Regulations 2016	<p><i>8. Claims by financial creditors.</i></p> <p><i>(1) A person claiming to be a financial creditor, other than a</i></p>	Form C of Schedule of CIRP Regulations needs to be filed by Financial Creditor with

	<i>financial creditor belonging to a class of creditors, shall submit claim with proof to the interim resolution professional in electronic form in Form C of the Schedule: Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.</i>	IRP so that their claim could be processed.
Regulation 8A of IBBI (CIRP) Regulations 2016	<i>8A. Claims by creditors in a class. (1) A person claiming to be a creditor in a class shall submit claim with proof to the interim resolution professional in electronic form in Form CA of the Schedule.</i>	Form CA of Schedule of CIRP Regulations needs to be filed by Creditors in a class with IRP so that their claim could be processed.
Regulation 9 of IBBI (CIRP) Regulations 2016	<i>9. Claims by workmen and employees. (1) A person claiming to be a workman or an employee of the corporate debtor shall submit claim with proof to the interim resolution professional in person, by post or by electronic means in Form D of the Schedule:</i>	Form D of Schedule of CIRP Regulations needs to be filed by Workmen and employees with IRP so that their claim could be processed
Regulation 9A of IBBI (CIRP) Regulations 2016	<i>9A. Claims by other creditors. (1) A person claiming to be a creditor, other than those covered under regulations 7, 8, or 9, shall submit its claim with proof to the interim resolution professional or resolution professional in person, by post or by electronic means in Form F of the Schedule.</i>	Form F of Schedule of CIRP Regulations needs to be filed by any other type of creditor with IRP so that their claim could be processed
Regulation 10 of IBBI (CIRP) Regulations 2016	<i>10. Substantiation of claims. The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.</i>	Proof of claim needs to be attached along with the Form for submitting claims. IRP/RP can also ask for additional documents.
Regulation 12 of IBBI (CIRP) Regulations 2016	<i>12. Submission of proof of claims. ..(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.]</i>	Even though the last date for submission of a claim is mentioned in the public announcement, the AA had many matters for admission to claims after the last date for submission. This provision was inserted to remedy that.
Regulation 13 of IBBI (CIRP) Regulations 2016	<i>13. Verification of claims. (1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of</i>	The IRP/RP have to verify the claims from the evidence/documentation provided to them. They also have to keep updating the same as and when more claims are received or altered.

	<i>creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.</i>	
Regulation 14 of IBBI (CIRP) Regulations 2016	<i>14. Determination of amount of claim. (1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.</i>	The amount of claim will be verified and can also be revised based on the documents received or found by them through the CD or the creditors.
Insolvency Law Committee Report, February 2020	<i>As the right to simultaneous remedy is central to a contract of guarantee, the Committee suggested that in cases where both the principal borrower and the surety are undergoing CIRP, the creditor should be permitted to file claims in the CIRP of both of them. Since, as the Code does not prevent this, the Committee recommended that no amendments were necessary in this regard</i>	The Report while clarifying treatment of claims in cases of principal borrower and guarantor both undergoing CIRP.
IBBI Circular No. IBBI/CIRP/36/2020 dated 27.11.2020	<i>The Board has made available an electronic platform at www.ibbi.gov.in for filing of list of creditors as well as updating it thereof. The platform permits multiple filings by the interim resolution professional or the resolution professional, as the case may be, as and when the list of creditors is updated by him. The format of list of creditors for the purpose of filing has been finalised in consultation with the insolvency professional agencies was also attached.</i>	Filing of list of creditors under clause (ca) of sub-regulation (2) of regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
Andhra Bank v. F.M. Hammerle Textile Ltd Dated: 13.07.2018	<i>All claims submitted are not required to have matured. Debt owed for payment in future, if not taken into consideration, does not extinguish automatically. Creditor may choose to submit claim on maturity, subject to survival of the CD.</i>	An appeal was preferred by Andhra Bank claiming to be an FC, being guarantor of the CD. The claim was not mature at the time of initiation of CIRP. The AA rejected the claim in view of language of s. 3(6), IBC, as the Appellant has no right to claim any amount. The AA further observed that the right of remedy of Appellant can arise only in case of breach of contract. NCLAT held that it is not necessary that the claims submitted by the Creditor should be a claim matured on the date of initiation of

		Resolution Process/ admission. Even in respect of a debt, which is due in future on its maturity, the FC or OC or a Secured Creditor or an Unsecured Creditor can file such claim. Therefore, any indemnity obligation in respect of a guarantee also comes within the meaning of 'Financial Debt' as per Section 5(8) of the Code (IBC) as the debt has been disbursed against "consideration for time value of money".
Axis Bank Limited v. Edu Smart Services Private Limited Dated: 14.08.2018	<i>Any person who has a right to claim payment, whether matured or otherwise, can file their claim.</i>	An appeal was preferred by Axis Bank Limited (Appellant) against an order passed by AA, Principal Bench, New Delhi, rejecting the claim of the Appellant on the grounds that the claim of the Appellant was contingent as on the date of commencement of CIRP in respect of the CD, and therefore, the same cannot be treated as a Financial Debt and moratorium imposed u/s. 14 in respect of the CD applies at the time of invocation of the Corporate Guarantee. The Appellate Tribunal held that the claim of the parties should be as on the date of initiation of the CIRP. Any person who has right to claim payment, as defined u/s. 3(6), is supposed to file its claim, whether matured or unmatured. It does not mean that the persons whose debt has not matured cannot file claim. The maturity of a claim or default of debt is not the guiding factors to be noticed for collating or updating the claims.
Dr. Ramakant Suryanath Pande v. C. S. Prakash K. Pandya, Resolution Professional Dated: 26.10.2018	<i>Resolution Professional has the right to verify the claims to be admitted.</i>	An appeal was preferred by Ramakant Suryanath Pande (Appellant) challenging the order of AA whereunder it upheld the decision of the RP not approving the claim of the appellant even though the amount given by Appellant to the CD was shown as a loan in

		<p>the records of CD itself and for which interest had accrued and TDS was deducted. During the course of the hearing, RP had contended that the Resolution Plan was approved by CoC and submitted before the AA u/s. 31, IBC for orders.</p> <p>After considering the facts and circumstances of the case, the NCLAT disposed-off the appeal directing the RP to reconsider the issue as to whether the claim made by the Appellant is proper or not, and decide the question whether the Appellant is entitled for any amount. It was further held that if the Resolution Plan is sanctioned by the AA, it shall be subject to the decision as may be taken by the RP regarding claims to be considered</p>
<p>Consolidated Engineering Company & Anr. v. Golden Jubilee Hotels Pvt. Ltd. Dated: 12.12.2018</p>	<p><i>If the claim of Operational Creditors, on verification is found to be less than 10%, the Operational Creditors have no right to claim representation in the meeting of the Committee of Creditors</i></p>	<p>The AA in the impugned order had held that 10% of the total debt for the purpose of representation in the CoC is to be calculated on the basis of the claim as collated and noticed by the RP. NCLAT upheld the impugned order and stated that if the claim of OC(s), on verification, is found to be less than 10%, the OC(s) have no right to claim representation in the meeting of the CoC. However, NCLAT allowed the representative of the OC(s) to observe the CoC proceedings but without any right to object or participate in the said proceedings, and if any contrary decision is taken, in such a case, the OC may move proper application before appropriate forum at proper stage.</p>
<p>Cooperative Rabobank U.A. Singapore Branch Vs. Mr. Shailendra Ajmera Dated: 29.04.2019</p>	<p><i>Operational Creditor, who has assigned or legally transferred any Operational Debt to a Financial Creditor, the assignee or transferee shall be considered as an Operational Creditor to the extent of such assignment or legal transfer.</i></p>	<p>In cases wherein an OC, has assigned or legally transferred any Operational Debt to an FC, the assignee or transferee thereof shall be considered as an OC to the extent of such assignment or legal transfer, and not an FC.</p>

		NCLAT held that in this case, Bills of Exchange relates to supply of goods and whatever finance given by the Appellant is to Avanti Industries Pte Ltd., Singapore and not to the CD. Therefore, the Appellant is not a FC and can claim only as an OC.
Roma Enterprises v. Martin S.K. Golla (Resolution Professional) Dated: 06.05.2019	<i>Resolution Professional can only collate claims. He has no jurisdiction to decide the claim of one or other party.</i>	An appeal was preferred by the person claiming to be FC (Appellant) against the application filed by RP to take over the hypothecated goods which has not been accepted by AA, Mumbai Bench. NCLAT relied on the order of Hon'ble Supreme Court passed in the matter of <i>Swiss Ribbons Private Limited and Others Vs. Union of India and Others</i> wherein it held that RP has no jurisdiction to decide the claim of one or other party. The Appellate Tribunal had also held earlier that the RP can only collate the claims. Apart from the fact that earlier the same issue was raised and the Appellate Tribunal had not entertained the appeal and had observed that the Appellant could raise such issue and claim at an appropriate stage i.e. after moratorium is over, Appellate Tribunal dismissed the appeal.
Capri Global Capital Ltd. v. Value Infracon India Pvt. Ltd. Dated: 14.05.2019	<i>Financial Creditor can claim its voting shares based only on the amount actually disbursed in favour of Corporate Debtor.</i>	Appellant 'Capri Global Capital Limited' (FC) by way of the instant appeal had challenged the order dated 17th December, 2018 passed by the AA, Principal Bench, New Delhi. Appellant had preferred this appeal based on the grievance that the RP had reallocated voting share to the Appellant in the CoC by considering only the amount disbursed to the CD as against the total loan amount which was due and payable by the CD and its two sister concerns in terms of the Agreement between the parties. NCLAT found no merit in the appeal as it

		observed that the amount was separately disbursed in their respective bank accounts. Therefore, it was held that the Appellant cannot claim all the payments from the CD and observed that the AA had rightly held that the FC can claim its voting shares based only on the amount actually disbursed in favour of CD and dismissed the appeal.
Sri Krishna Constructions v. Vasudevan, R.P. of Tiffins Barytes Asbestos & Paints Ltd. Dated: 12.06.2019	<i>The NCLT, acting on a CIRP process, cannot be converted into an Adjudication Forum to settle claims which are already in dispute in the Court.</i>	NCLAT, while dismissing the appeal, observed that “under section 18 of the I & B Code, 2016 the IRP is required to receive and collate all the claims submitted by the Creditors. This is not a process of sitting and deciding disputed claims. For collating, the IRP has to receive the claim and examine the same. While examining, the IRP did not find that the claim was made out with support of appropriate documents. As such, the IRP may not have considered the claim and the AA has looked into it and did not find anything wrong with the act of collating done by IRP. CIRP process cannot be converted into adjudication Forum to settle claims already in disputes in Court”
Darshak Enterprise (P) Ltd. v. Chhapparai Industries (P.) Ltd. Dated: 04.07.2019	<i>AA cannot interfere with CoC's decision on percentage of claim amount payable to different creditors unless there is some discrimination practiced.</i>	Appeals were preferred by two OC(s) against the order passed by the AA, Mumbai Bench, approving the Resolution Plan wherein Appellants were given 5% of their principal outstanding. NCLAT held that, in absence of any discrimination or perverse decision, it is not open to AA or the Appellate Tribunal to modify the resolution plan.
State Bank of India Vs. Surya Pharmaceuticals Limited Dated: 17.05.2019	<i>Provision in IBC with regard to filing of claim within the stipulated period of 90 days is not mandatory</i>	In this matter, RP rejected claim of State Bank of India (Appellant) on the ground of delay as it was filed beyond 90 days. Hon'ble NCLAT, while disposing- off an application made the following important observation:

		<u><i>“In various judgments, we have clarified that the provisions with regard to the filing of claim within the stipulated period is not mandatory’.</i></u>
L&T Infrastructure Finance Company Ltd. Vs Gwalior Bypass Project Ltd. Dated: 19.08.2019	<i>Financial Creditor cannot challenge the order of admission of CIRP filed by another Financial Creditor merely on the ground that it has a superior claim over the claim of the other Financial Creditors</i>	Hon’ble NCLAT held that L&T claiming to be one of the financial creditor and not being a Member/ Shareholder of the Corporate Debtor Gwalior Bypass has no right to intervene to oppose admission of the application under Section 7 preferred by the ICICI Bank against the Corporate Debtor. In view of the aforesaid observation, NCLAT further held that if the Appellant claims to be one of the Financial Creditor, it can file claim before the Resolution Professional, but it cannot challenge the order of admission in absence of any challenge by the Corporate Debtor, on the ground that it has first charge on the asset of the Corporate Debtor or has superior claim over the claim of the other Financial Creditors. Accordingly Hon’ble NCLAT dismissed the appeal.
Akshar Properties v/s. Reliable Exports (India) Private Limited Dated: 30.07.2019	<i>An operational creditor cannot raise its claim under Section 9 of the code under a joint venture agreement</i>	An application was moved under Section 9 of the Code. The applicant had entered into a joint venture agreement with the respondent for developing certain properties in an agreed ratio among themselves. As per the agreement the applicant had paid Rs. 19,80,00,000/- to Reliable Exports, a related firm to the corporate debtor towards a refundable deposit. The agreement was later revised and it was agreed that the applicant would get a full payment of fifteen crores upon cancellation of the agreement. The applicant contended that the firm failed to honour the cheques provided, which made them liable to pay interest as agreed upon.

		This firm was later taken over by the corporate debtor. The applicant also sent a demand notice claiming the unpaid money. The applicant claimed the interest to be paid by the respondent as per the joint venture agreement entered into by the parties.
Subodh Kumar Agrawal. Vs. EIH Ltd. Dated: 24.10.2019	<i>The claim of the creditor cannot be determined by the Arbitral Tribunal during the period of Moratorium passed by the Adjudicating Authority</i>	In the appeal matter before Hon'ble NCLAT, the question before the Hon'ble Appellate Tribunal was whether in view of the fact that claim and counter claim stands on the same footing, no distinction can be drawn with regard to pendency of the Arbitral proceeding by the claimant and pendency of the arbitration in the same proceeding by the Respondent (Counter claimant).
Apeejay Trust Vs. Aviva Life Insurance Company India Limited Dated: 04.11.2019	<i>The corporate debtor cannot use the provisions of Section 3 of the Insolvency and Bankruptcy Code as a blanket cover to claim exclusion from IBC proceedings on the ground that it is a Financial Service Provider</i>	The NCLT observed that definition of financial service under section 3(16) of IBC, clearly includes the transactions effecting contract of insurance. However, in the present case, the OC did not have any claim in respect of contract of insurance, the claim was in respect of the outstanding license fees and service tax amounts.
Sunil Kumar Jain Vs. Sundaresh Bhatt Dated: 31.05.2019	<i>In an application made by Workmen and Employees, a claim over their Gratuity and Provident Fund cannot be made subject to determination by RP/Liquidator as the same are not the Assets of the Corporate Debtor.</i>	Hon'ble NCLAT, however observed that an order of liquidation has already been passed in the matter and that a disputed question of fact as to whether the Appellants actually worked during the CIRP or the period earlier to that, cannot be dealt with by AA till such information could be obtained from the RP or the claim is decided by the liquidator. Hon'ble NCLAT, while declining to interfere with the impugned order, allowed the Appellants (272 workmen and employees) to file their individual claims before the Liquidator for

		<p>determination of their claims.</p> <p>As regards Appellant's claim over <i>Gratuity and Provident Fund</i>, Appellate Tribunal held that such funds cannot be treated as asset of the CD, and thus, they are to be disbursed amongst the employees/workmen as per their entitlement.</p>
<p>Principle Director of Income Tax (Admn. And TPS) Vs. Synergies Dooray Automative Limited</p> <p>Dated: 20.03.2019</p>	<p><i>Central Government, State Government or the legal authority having statutory claim can be entitled as Operational Creditor under Insolvency and Bankruptcy Code, 2016.</i></p>	<p>Hon'ble NCLAT held that (1) all statutory dues including 'Income Tax', 'Value Added Tax' etc. come within the meaning of 'Operational Debt' and (2) 'Income Tax Department of the Central Government' and the 'Sales Tax Department(s) of the State Government' and 'local authority', who are entitled for dues arising out of the existing law are 'Operational Creditor' within the meaning of Section 5(20) of the 'I&B Code'</p>
<p>Cortica Manufacturing (India) Pvt. Ltd. Vs. Victory Electricals Limited</p> <p>Dated: 10.04.2019</p>	<p><i>Adjudicating Authority can take cognizance of a decree passed by the Civil Court under which the claim has been crystallised.</i></p>	<p>The Tribunal was convinced that the application (under consideration) is neither for execution of the decree nor for recovery of the decretal amount, but for initiating the CIRP which is on the basis of default by the CD in making payment of decretal amount which is in nature of operational debt.</p> <p>Thus, concluding, NCLT rejected the objections raised by CD holding that it can take cognizance of the decree passed by the Civil Court under which claim has been crystallized, and further directed for commencement of CIRP and declaration of moratorium.</p>

Relevant forms to be filed by the creditors for submission of claim.

Type of Creditors	Form as per Schedule I
Operational Creditors	Form B
Financial Creditors	Form C
Person claiming to be creditor in a class	Form CA
Workman or an Employee	Form D
Authorized Representative of Workman or an Employee	Form E
Person claiming to be creditor other than operational/financial creditors, workmen and employees	Form F

Note:**Abbreviations used:**

IBBI: Insolvency and Bankruptcy Board of India
 IPA: Insolvency Professional Agency
 ICSI IIP: ICSI Institute of Insolvency Professionals
 IP: Insolvency Professional
 CIRP: Corporate insolvency resolution process
 IRP: Interim Resolution Professional
 AR: Authorised Representative
 COC: Committee of Creditors
 CD: Corporate Debtor
 FC: Financial Creditor
 OC: Operational Creditor
 Code: Insolvency and Bankruptcy Code, 2016

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