

# CHALLENGES DURING CIRP

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- The Insolvency Resolution : Preparing for the unknown  
( A discussion )
  - 21<sup>st</sup> November 2024
  - IPA ICMAI jointly with ACAE

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# SOME IMPORTANT MATTERS :

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- Identification of Assets,
- Preparation of EOI,
- IM and RFRP ,
- Resolution Applicant and negotiation , Resolution plan Appraisal.

# IDENTIFICATION OF ASSETS – PRIME OBJECTIVE

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- Information from lenders
- Search
- Associated information- Auditor , IT return
- Land survey
- Security imposition
- Assets lying with customers & vendors
- Control over assets

# INFORMATION MEMORANDUM

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- Important Sections

- Sec 5(10 ), (23 A) – Definition
- Sec 25 (2)(g) Duty
- Sec 29 – Preparation
- Sec 30(1) – Critical
- Sec 33(2) , Sec 240 (2) (u) for Regulation

- Important Regulations:

- Reg 4 (3)
- Reg 36 , Reg 40 (A)

# INFORMATION MEMORANDUM

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- Section 29 of IBC
- Regulation 36 of CIRP Regulation
- Sec 29 (2) (b) ( provided such resolution applicant undertakes ) to protect any intellectual property of the corporate debtor it may have access to
- *Explanation.* – For the purposes of this section, “relevant information” means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified
- Regulation 36 : Issue to CoC by 95<sup>th</sup> days – to the extent prepared

# IM – KEY POINTS

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- During plan petition hearing – information in IM becomes critical
- Reg 36(2) (ka ) – fair value – whether to disclose or not ?
- Reg 36 ( 3) – lenders to share information
- Continuously amendable- use VDR
- Contingent Assets – Arbitration or other awards
- Contingent Liabilities
- Assets – to the best extent possible along with associated risks and legal disputes , under possession with third parties.
- Security details of Banks
- Claim – Numbers to be given carefully
- Whether to share with the Management

# EXPRESSION OF INTEREST

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- Regulations
  - 36A , 30 (A)
  - modification , re issue
  - Undertakings
  - Reissue : Reg 36 A( 10 ),(11),(12)
- the word “ with in “
- Key focus
  - Enable better participation- initial time frame (minimum)
  - Eligibility Criteria – accommodative
  - Marketing of asset
  - Extension of last date of EOI
  - Delayed submission

# REQUEST FOR RESOLUTION PLAN

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- Reg – 36 B ,39 (I) , ( IA)

Reg – 40 A - with in (T+105 days )

Reg -11

- 1. Need to approve from CoC – performance security , challenge mechanism
- 2. Specific inclusion
- 3. Post publication implication
- 4. Extension , modification
- 5. Consideration from RA

# SOME KEY POINTS IN RFRP

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- EMD to be taken along with plan
- How to open the plan
- Duration of the Performance Security
- Right to reject any bidding process for a fresh bid
- Right to negotiate after the bidding has been ended
- Evaluation matrix is a reference only , CoC's commercial decision is final

# RESOLUTION PLAN

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- Sections
- Sec 30 ,
- Sec 31
- Sec 32 A
- CIRP Regulations
- 36 A , 36 B , 36 C
- 37
- 38
- 39

# BEFORE INVITATION

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Eligibility Criteria

Information Memorandum

Valuation to be disclosed

RFRP

- Enable better participation
- Marketing of asset
- Extension of last date of EOI
- Delayed submission
- RFRP – challenge mechanism
- EMD and Performance BG
- Approval of RFRP ?
- Extension of Plan submission

## RESOLUTION PLAN

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Health check

Value maximisation

FC distribution

Asset identification

Voting on distribution

Feasibility and viability

- Check all compliances – Sec 30(1), ( 2)
- CIRP Reg 38, 37
- Sale of asset
- Implementation phase
- Board Replacement
- Capital reduction – at which stage
- Fresh issue of shares -Listing

## CRITICAL POINTS

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Assets of the CD

Legal Status of the CD

Arbitration Awards

Contingent assets

Maintenance post CoC Approval

- Implementation Challenges
- Custodian of information.
- Continuous updation

# CRITICAL NOTE ON RESOLUTION PLAN

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- **Reg 39 (3) The committee shall-**
- i) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;
- ii) record its deliberations on the feasibility and viability of each resolution plan; and
- iii) vote on all such resolution plans simultaneously.

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# • Thank You

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