

Chapter-3 : CIRP

Topic-8 : CIRP and Resolution Plan

Persons not eligible to be Resolution Applicant [Sec. 29A of IBC]

If Section 30(1) of IBC is perused, it requires Resolution Applicant to state that he is eligible under Section 29A of IBC. As per Sub-Section (2) of Section 30, Resolution Professional has to examine each Resolution Plan received by him to confirm that each Resolution Plan, inter alia, “does not contravene any of the provisions of the law for the time being in force” (which would also include Section 29A). If the Resolution Professional lets the Resolution Plan go ahead to Committee of Creditors(CoC), it is for COC to consider if Section 29A is attracted, and if yes, it may act as per provisions under Section 30(4).

Following persons are not eligible to be Resolution Application:

(a) A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is an undischarged insolvent. **[clause (a)]**

(b) A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949. **[clause (b)]**

(c) A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset[NPAs] in accordance with the guidelines of the RBI issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the CIRP of the corporate debtor.

Exceptions:

1. The person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;
2. A resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor. The expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.
3. For the purposes of this clause, where a resolution applicant has an account, or an account of a

corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code. **[clause (c)]**

(d) A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person has been convicted for any offence punishable with imprisonment:

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any law for the time being in force:

Exceptions:

1. This clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment.
2. This clause shall not apply in relation to a connected person means referred to in clause (iii) of Explanation I. **[clause (d)]**

(e) A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is disqualified to act as a director under the Companies Act, 2013;

Exception:

This clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I. **[clause (e)]**

(f) A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets. **[clause (f)]**

(g) A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code.

Exception:

This clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction. **[clause (g)]**

(h) A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code 10[and such guarantee has been invoked by the creditor and remains unpaid in full or part. **[clause (h)]**

(i) A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or **[clause (i)]**

(j) A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person has a connected person not eligible under clauses (a) to (i). **[clause (j)]**

Explanations:

Explanation I – For the purposes of this clause, the expression “connected person” means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression “related party” shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares 14[or completion of such transactions as may be prescribed], prior to the insolvency commencement date;

Explanation II – For the purposes of this section, “financial entity” shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio

investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);

(d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(e) an Alternate Investment Fund registered with Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.