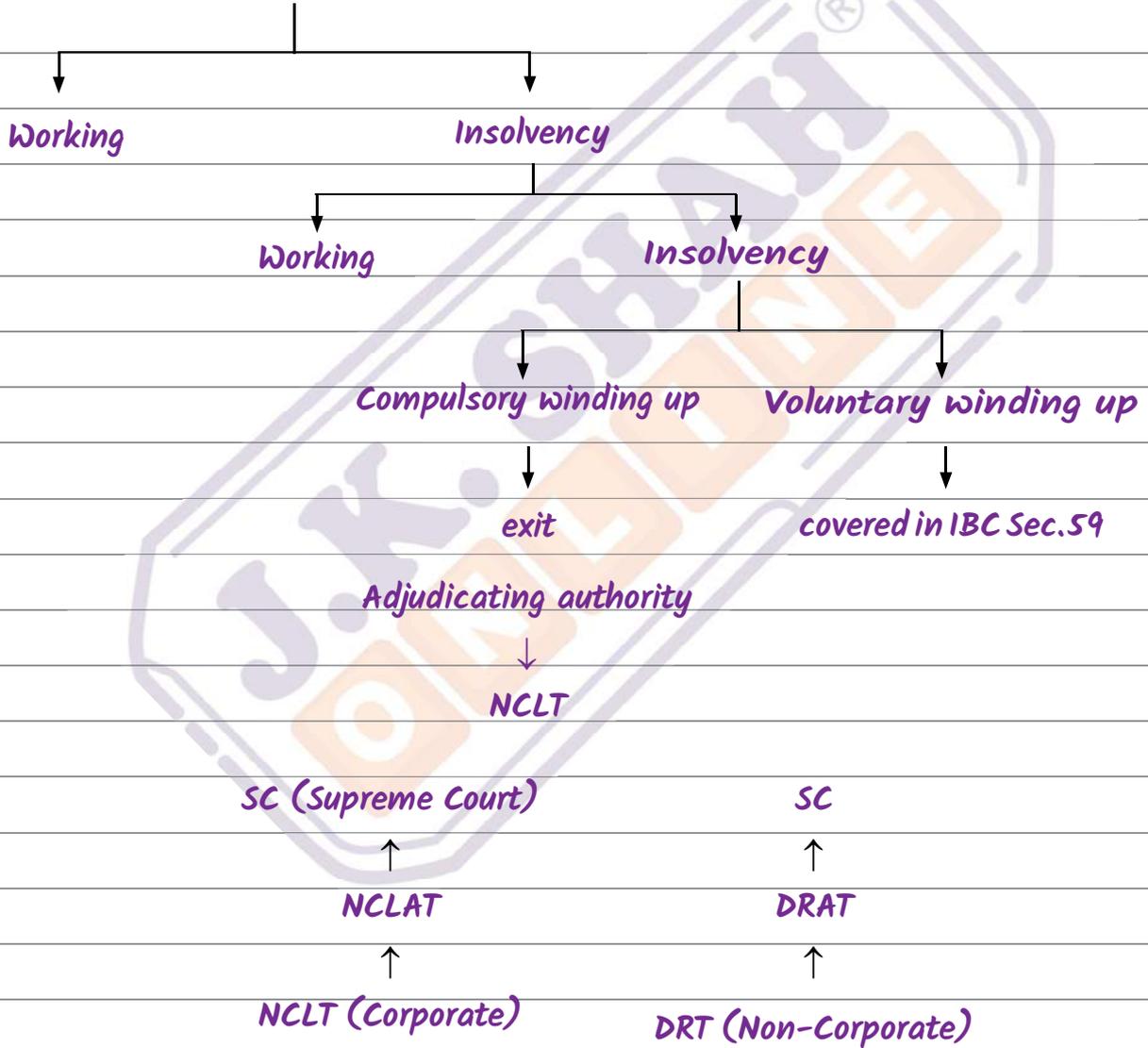


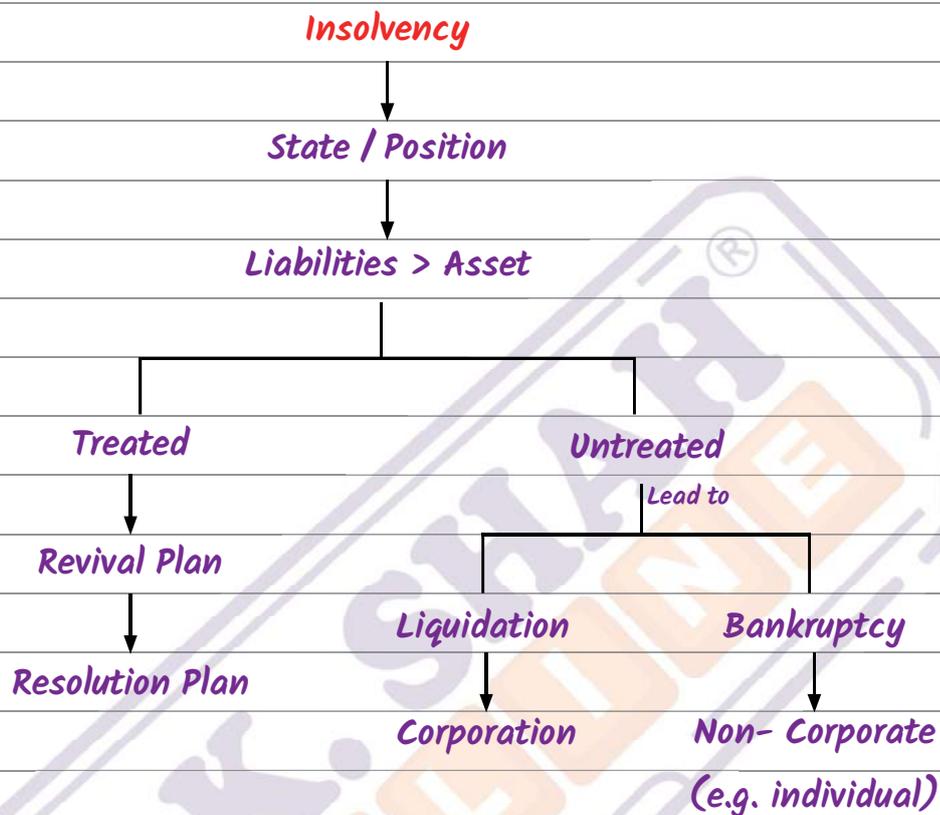
IBBI - Insolvency Bankruptcy Board of India

↓
1.10.2016 Regulatory authority of IBC

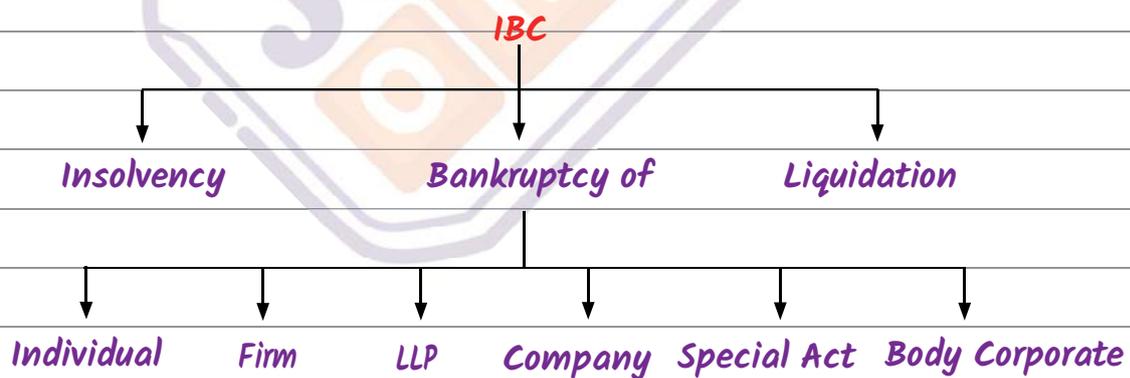
Company's Act



(ii)



(iii)



Except → Bank / financial institution / mutual fund / ARC (Asset Reconstruction Company).

BASIC STEPS FOR RESOLUTION PROCESS :

IP – Insolvency Professional (Qualification)

IRP – Interim Resolution Professional (Designation)

COC – Committee of Creditors.

Financial Creditor

or

Operational Creditor

or

Corporate debtor

(company)

(1) Name of IP

NCLT

(2) Appoint

IP

as

IRP

(3) Public Announcement

Standing

Creditors

(4) Submit

Claim

IRP
(verify)

* Name of company

* Name of IRP

* Last date of making claim

* Penalty of false claim

* Last date of resolution process

Form

Constitute

COC

(6) COC will
(66% voting
power) appoint
resolution

Professional
in meeting
Can be either
or this IRP or
any other IP

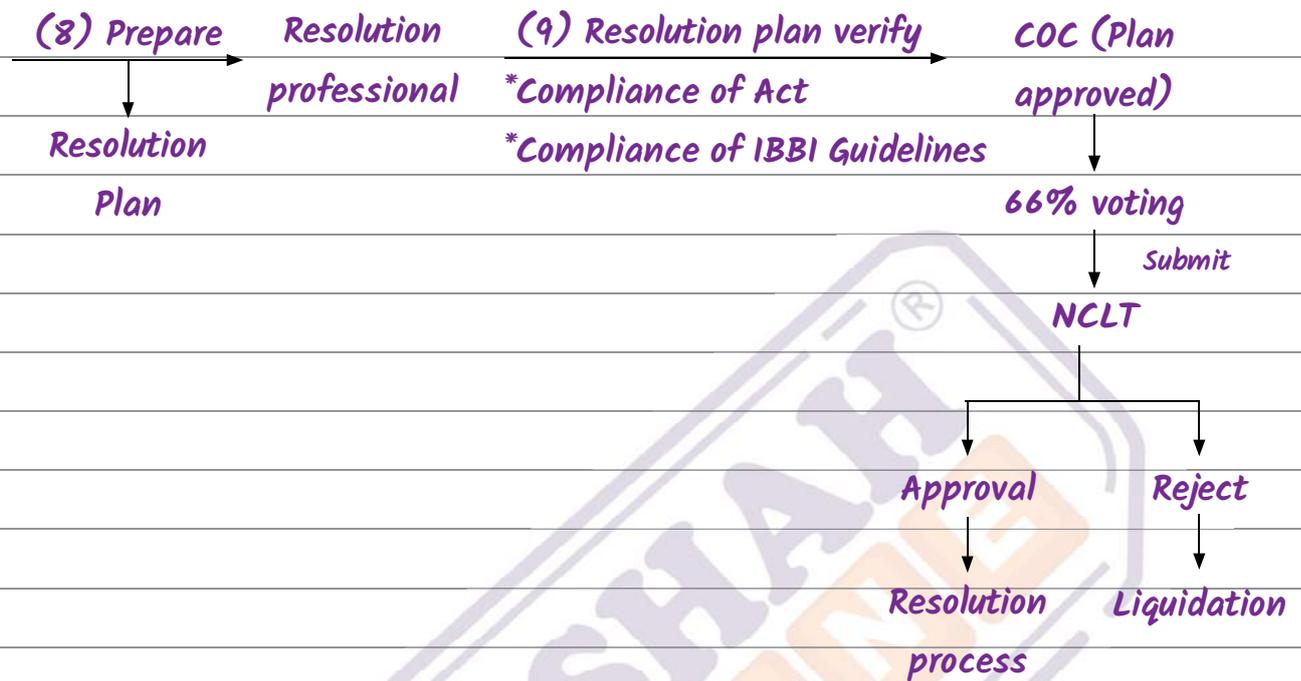
(7) RP prepares

Information
Memorandum

* Financial
information
* Info required
by applicant

Resolution

Applicant



Features of Insolvency and Bankruptcy Code :

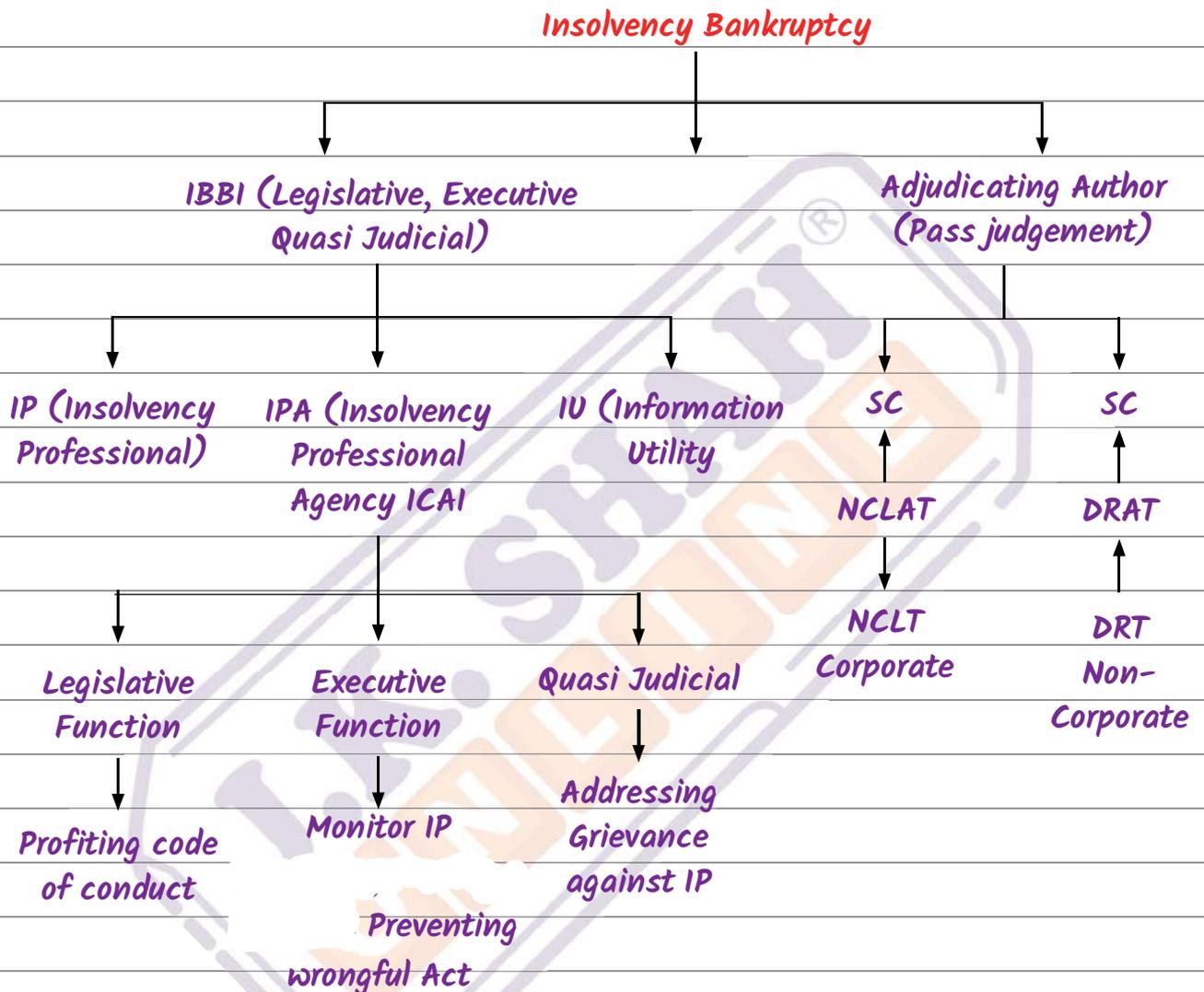
Features of Insolvency and Bankruptcy Code :

- (1) Comprehensive Law.
- (2) No multiplicity of laws
- (3) One window clearance
- (4) One chain authority
- (5) Law time resolution
- (6) Priority to the interest of workmen and employees.
- (7) New Regulatory Authority

Objective of the Code :

- (1) Consolidate and amend the law
- (2) IBBI
- (3) Time bound closure
- (4) Promote entrepreneurship
- (5) Availability of credit
- (6) Maximise the value of asset of interested person
- (7) Balance all stakeholders

Regulatory Mechanism



Insolvency Professional (IP)

IP shall comply with following code of conducts :

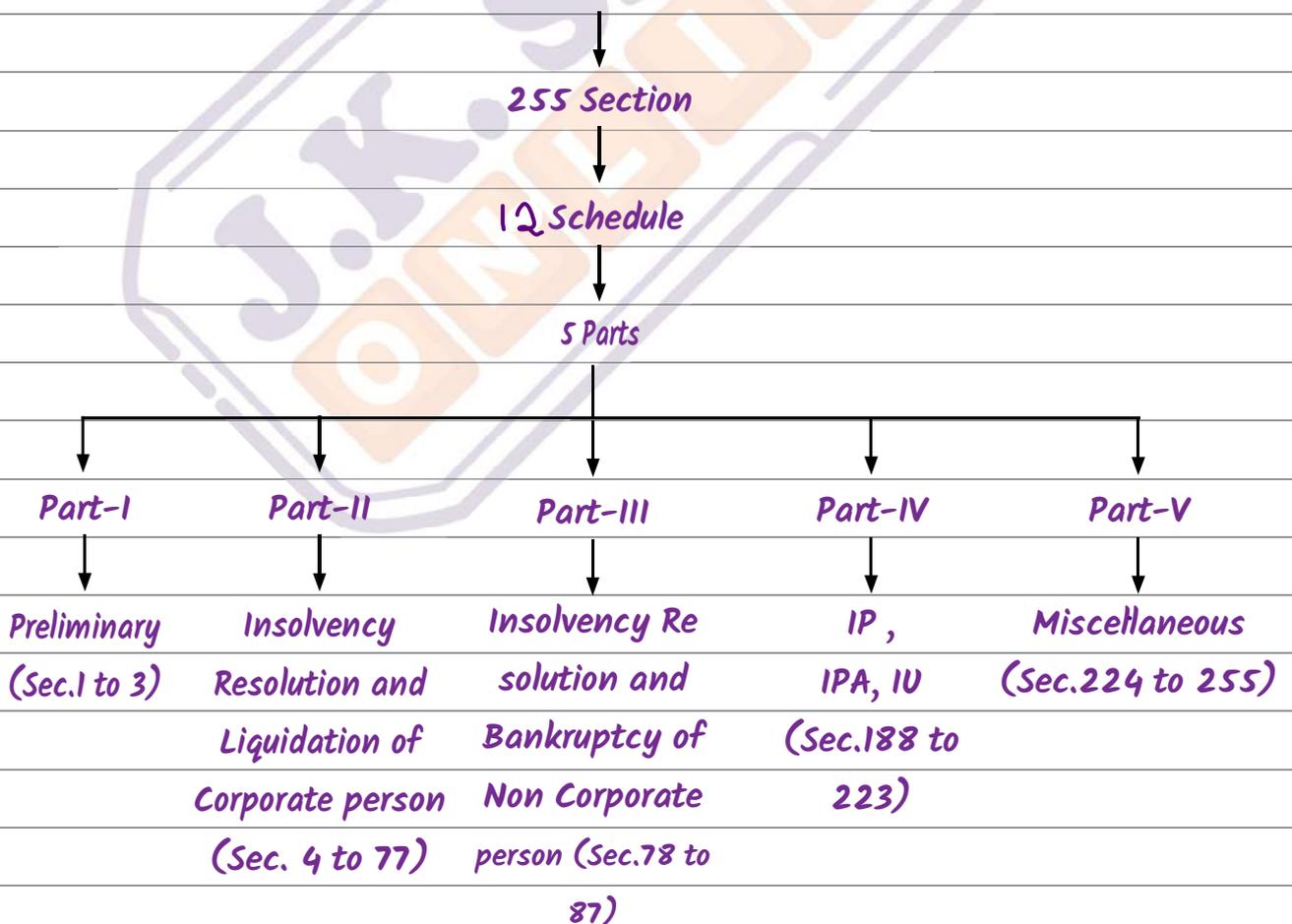
- (1) Exercise due diligence.
- (2) Comply with by laws of IPA
- (3) Allow IPA to inspect records
- (4) Submit records during investigation
- (5) Such other functions as may be notified.

Information Utility (IU)

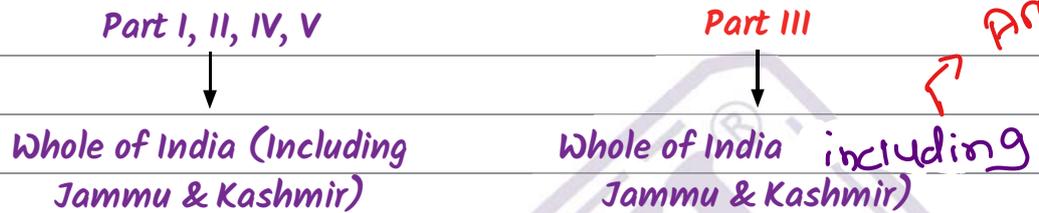
Functions

- (1) Centralised Electronic database.
- (2) Collect, collate, authenticate and disseminate financial information
- (3) Store information on universal accessible format
- (4) Accept information from a person who require and voluntarily submit information.
- (5) Maintain quality standards and authenticate all information.
- (6) Publish statistical information.
- (7) Maintain inter-operability between IU's.

Structure of the Code



Extent of Law



Applicability

- (1) Individual
- (2) Personal Guarantor
- (3) Proprietorship firm
- (4) Partnership firm
- (5) LLP
- (6) Company
- (7) Special Act
- (8) Body corporate

Non Applicability

- (1) Bank (But applicable to NBFC)
 - (2) Financial Institute
 - (3) ARC (Asset Reconstruction company)
 - (4) Mutual Fund
 - (5) Collective Investment Scheme
 - (6) Insurance company
 - (7) Pension Fund
- ₹ 500 Cr or more* (handwritten note pointing to item 1)

CORPORATE INSOLVENCY RESOLUTION PROCESS

**(Financial Creditor (FC)
(Himself Jointly)**

↓
Form No.1

- 1. Record of default (i.e. Information utility)
- 2. Name of insolvency professional
- 3. Other information

↓
NCLT.
(reply within 14 days)

↓
**Application
Accept**

(Communicate within 7 days)

↓
Financial creditor and corpo-
rate debtor

↓
**Application
Reject**

→ Application incomplete
(grounds of)

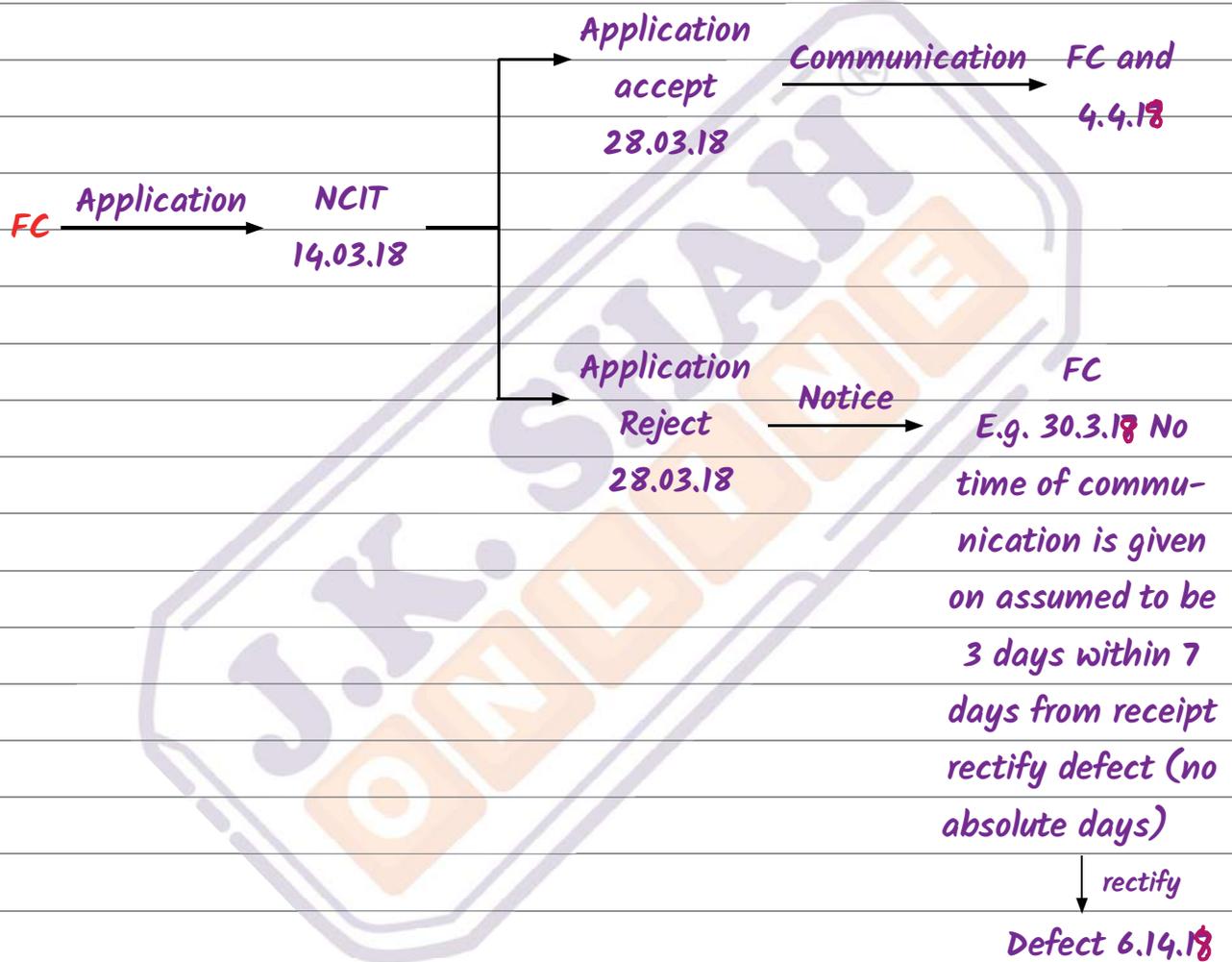
→ Disciplinary proceeding pendency
against IP

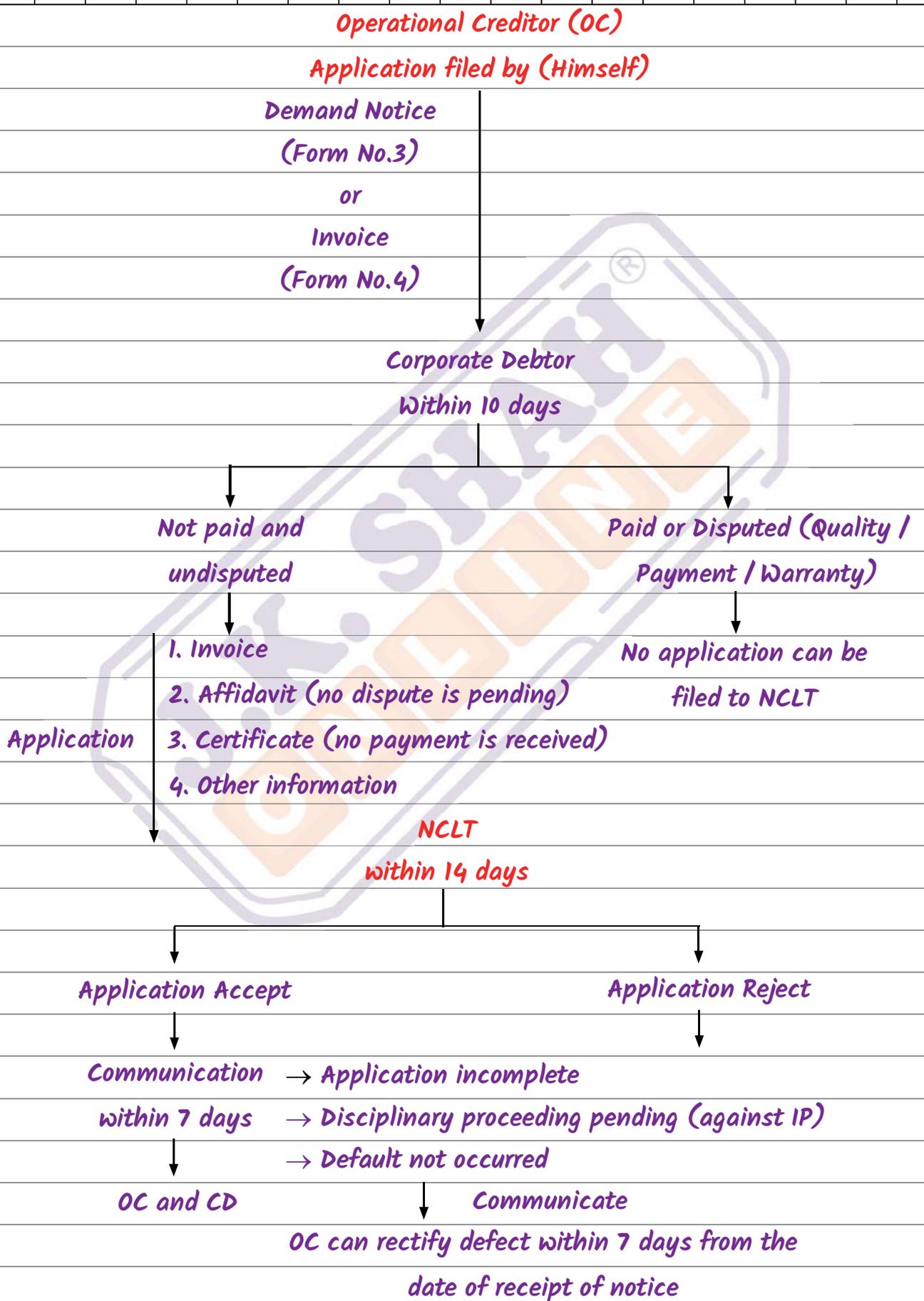
→ Default not occurred

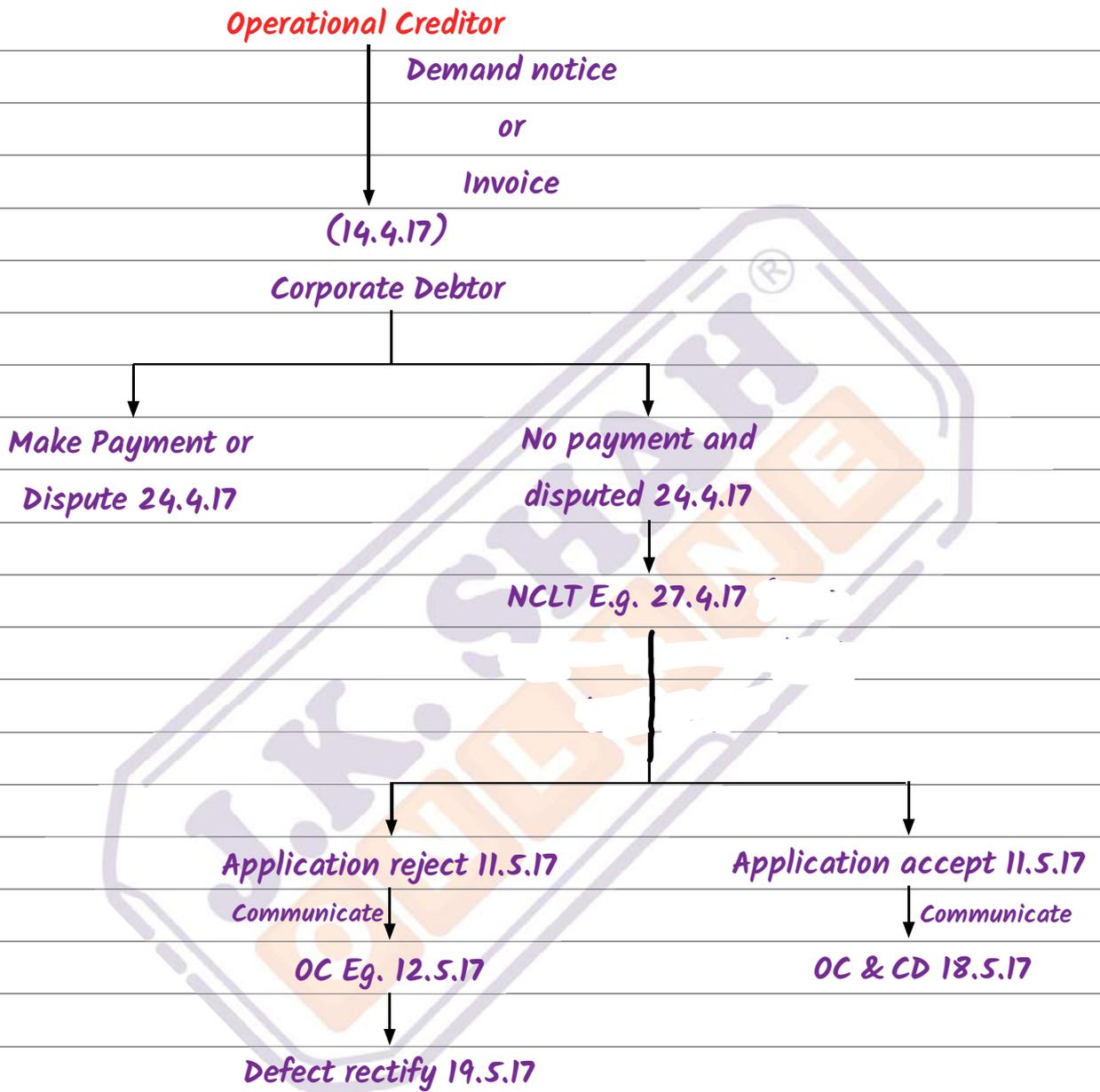
↓ (Communicate)

FC can rectify defect within 7 days
from the date of receipt of notice

Example :

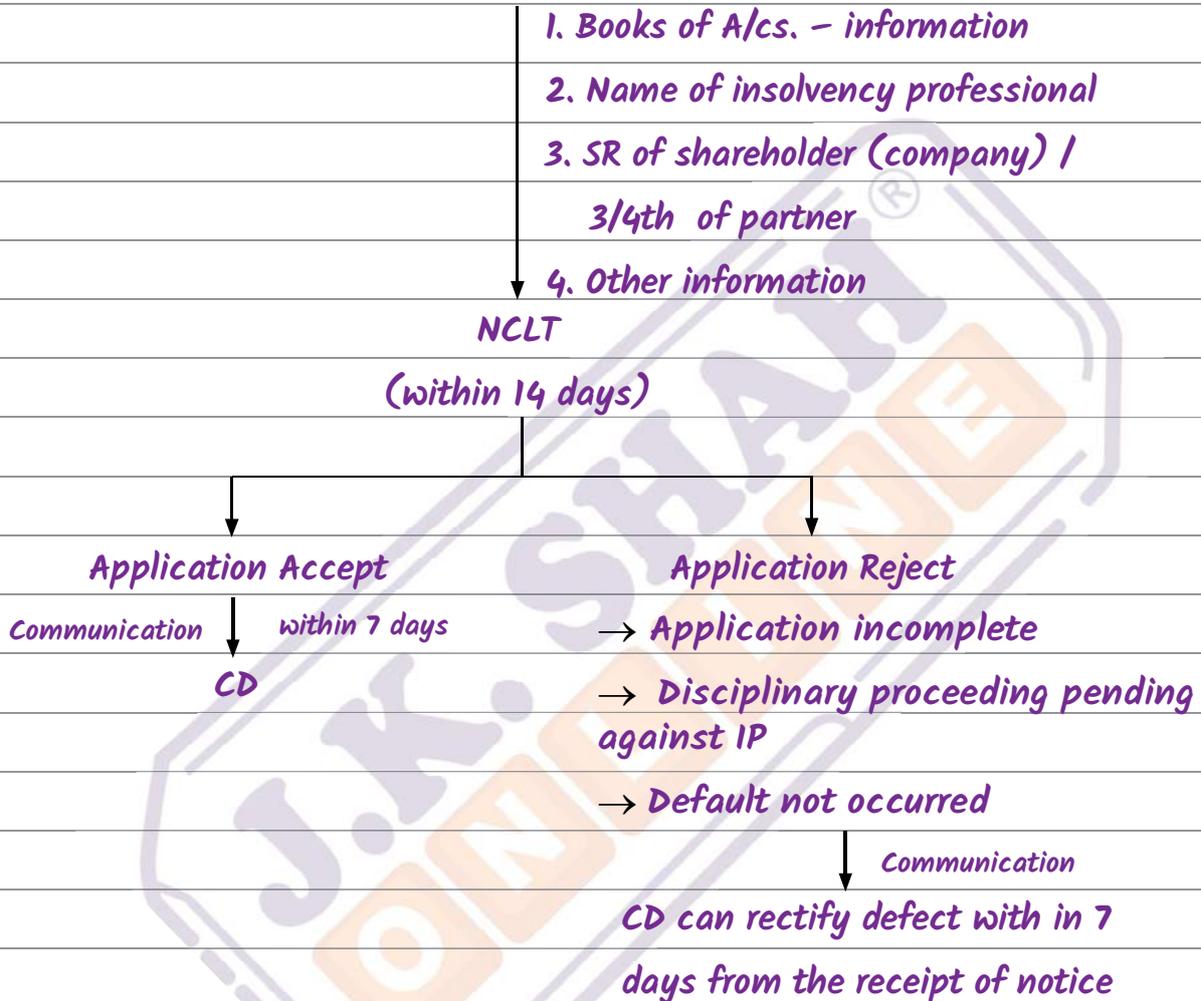






Corporate Debtor (CD)

(on commission of Default)



Notes :

(i) In the following situation application cannot be filed :

- (1) Company is already under resolution process.
- (2) Resolution process completed in last 12 months.
- (3) FC and CD has violated resolution plan in last 12 months.
- (4) Company is already under liquidation.

(ii) **Date of commencement of resolution process :**

→ date of commencement will be acceptance of application by NCLT.

Moratorium :

Certain activities in moratorium will be in absence (on hold) usually for 180 days (cannot do any activity)

- (1) Cases against corporate debtor.
- (2) Dealing in assets
- (3) Enforcement of security interest b ARC (Asset reconstruction company)
- (4) Recovery of asset which is in possession of CD.

Exemption :

Following activity will continue during moratorium.

- (1) Supply of goods and services which is essential
- (2) Activity permitted by Central Government in consultation with financial sector regulator (RBI, SEBI).
- (3) Activity against guarantor.

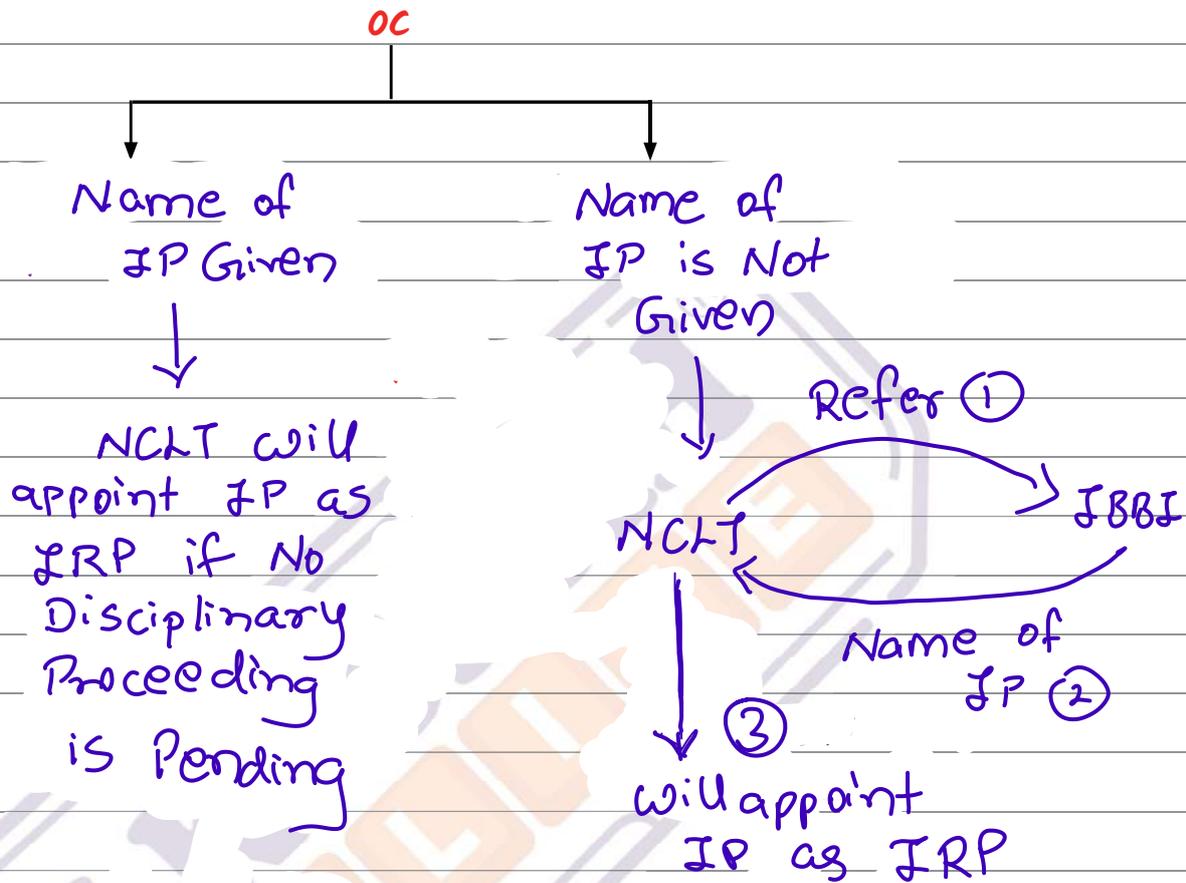
Refer amendment (Last page)

FC and CD

Name of IP

NCLT

It will appoint IP as IRP if No Disciplinary Proceeding is pending



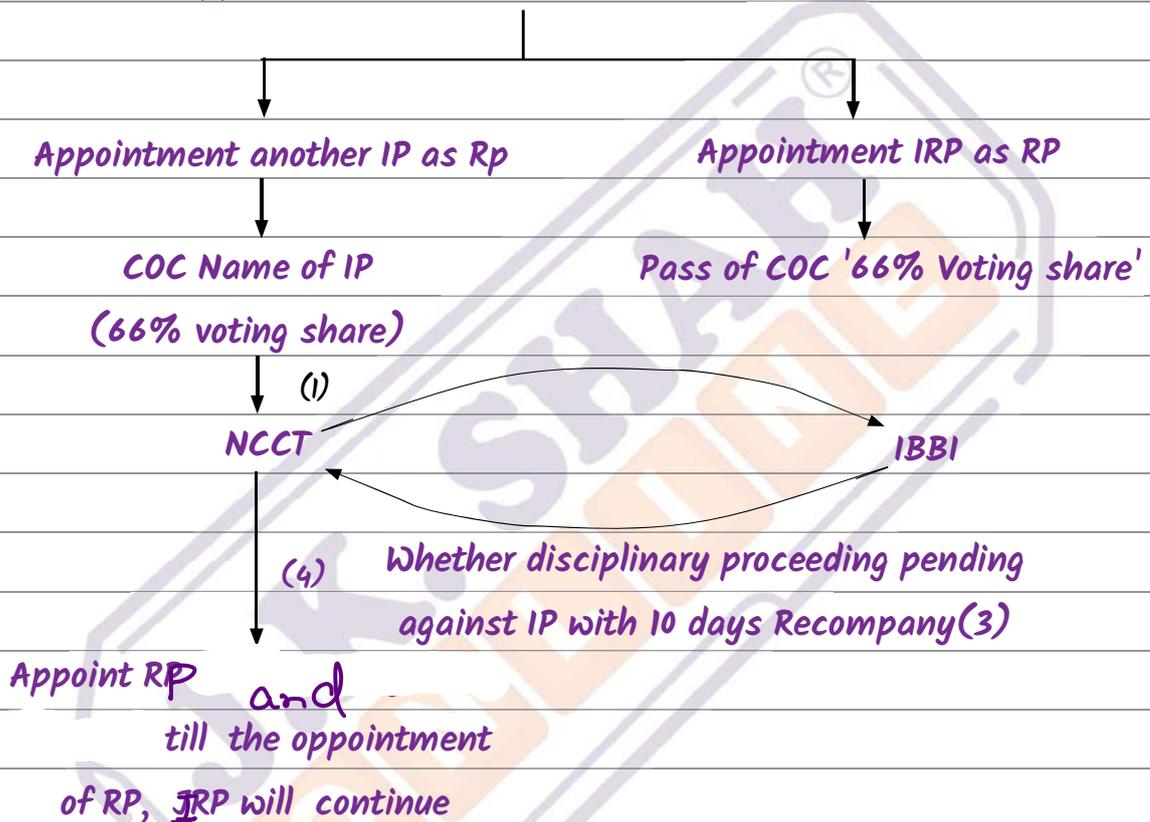
Powers of IRP (C-MERI)

- (1) Complications of Act
- (2) Management of affairs
- (3) Exercise of power of BOD / Partner
- (4) Reporting of officer or manager
- (5) Instruction to financial institute

Tenure of IRP

IRP shall continue till the appointment of RP

Appointment of Resolution Professional (RP)



Powers (Duties) of RP

Custody of asset

Act on behalf of corporate debtor

List of claims

Information Memorandum (prepare)

Interin finance raised

Invite prospective lenders investors

Resolution plan present to COC

Appoint professional (with seven days

Avoidance of transaction

M-attending meeting of COC

Conditions for appointment of RP

- (1) He shall satisfy conditions of independent director (Sec.149(6)).
- (2) He should not be related party.
- (3) He should not be employee or proprietor or partner of a firm (CA, CS, CMA who is conducting statutory audit, legal audit or cost audit of corporate debtor in last 3 financial years.
- (4) He shall not be employee, proprietor, partner of a firm which provides legal or consultancy services to corporate debtor and receives atleast 5% of the total receipt (firm) in last 3 financial year.

Replacement of Resolution Professional



Public Announcement :

Exp borne by applicant reimbursed by COC.

IRP will make public announcement within 3 days from the date of appointment of IRP.

- (1) Name and Address of Corporate Debtor.
- (2) Details of IRP.
- (3) Authority under which CD is registered.
- (4) Last date of submission of claims.
- (5) Penalty for misleading claims.
- (6) Last date of Resolution process.

Committee of Creditors (COC)

COC (Includes)

Where financial creditor Exist

No financial creditor exist

COC = All Financial
Creditor (FC)

≠ Related party

e.g. Vijay (Director)

(1) When Co. has less than 18 oc (All OC
= members) 18 largest operational creditor

(2) Representative of workmen

(3) Representative of employee

≠ Related party

Kingfisher

Loan → FC → COC ≠
Can be related party

When any FC has become related party due to conversion of debt not shares then it is still eligible to vote in that COC

Note :

- (1) When a person is FC as well as OC he shall submit his information separately in COC, he will get voting only to the extent of FC share, his priority of payment will be determined on the basis of the share.

Note:- Provision Related to AR is given in last Part of this sheet

- (2) FC can represent OC but in that situation it will represent in the capacity of OC to the extent of share of OC and it can vice versa.

Notice of Meeting

(a) Member of COC.

(b) Member of suspended directors

(c) OC debt value atleast 10% of total OC.

Not voting / share discussion /
participate

Quorum of the Meeting :

(1) Quorum will be 33% in value of voting shares. They can attend either in physical or through audio / visual means.

(2) If the quorum is not present then it will be adjourned to next day, some time, same place and if it is national holiday then succeeding day.

(3) In case of adjourned meeting if the quorum is not present then existing number will form quorum.

Formulation of Resolution Plan (Sec.28)

Resolution
professional

Information
memorandum

Resolution
application

Prepare Resolution
plan

(1) Financial Position

[C BALD2]

C - Cash Flow Statement

B - Balance Sheet

A - Asset

L - Liabilities

D - Debt

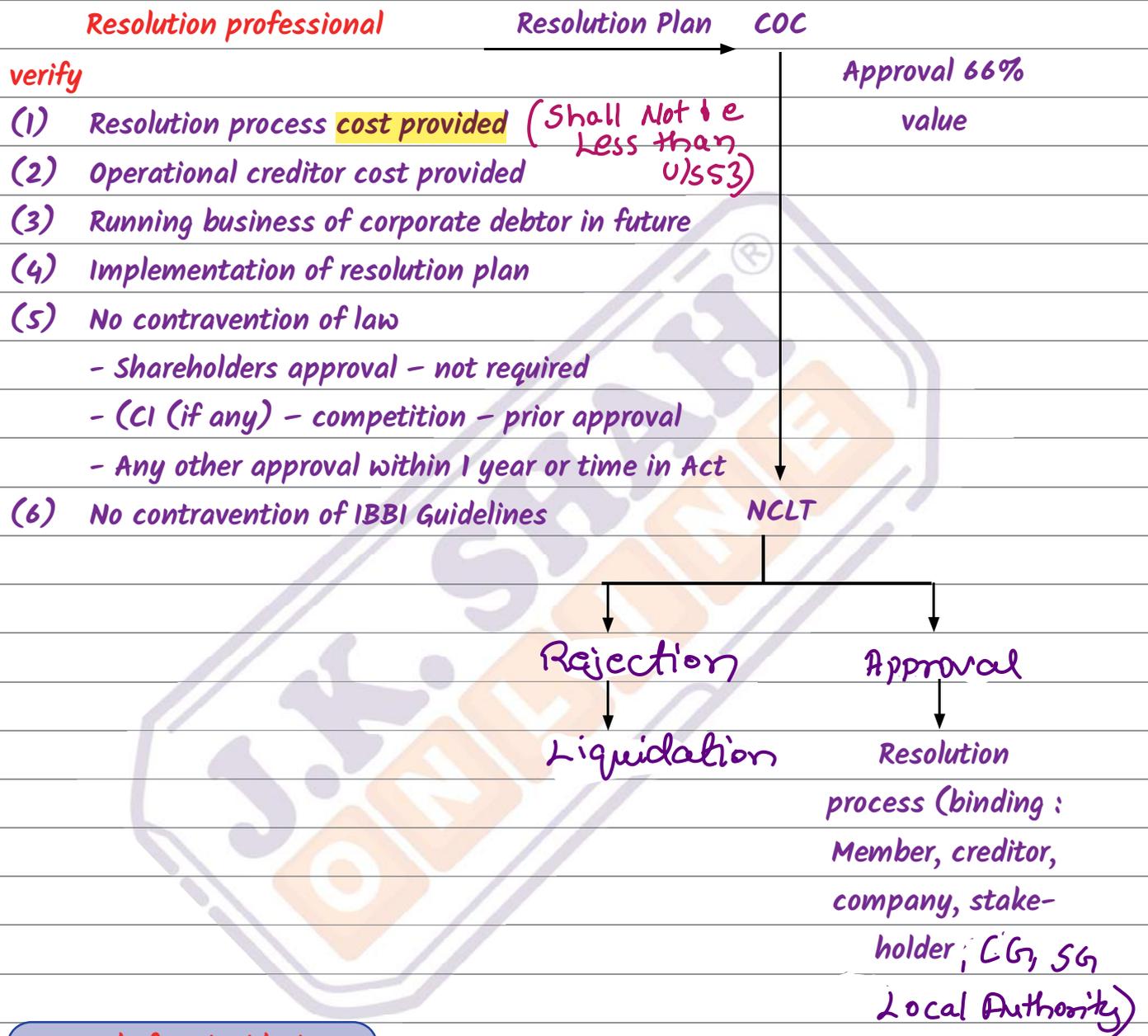
D - Default

(2) Information required

by resolution

applicant

(3) Other information



Grounds for Liquidation :

- (1) Resolution plan not submitted within time limit.
- (2) COC has resolved for liquidation by passing 66% in value within time limit.
- (3) Corporate debtor has contravene in resolution plan and affected person has filed an application and NCLT has passed liquidation order.

Time limit for resolution plan.



Legal Proceeding : 330 Days Insolvency and Bankrupt Code, 2016

Disqualification of Resolution applicant U/S. 29A.

- (1) Undischarged insolvent
- (2) Willful defaulter.
- (3) Either he or his company where he is a promoter has been classified to NPA and 1 year lapsed from such period (not applicable to financial entity).
- (4) Convicted for imprisonment for atleast 2 years in 12th schedule.
OR
Atleast 7 years for other offence and 2 years not lapsed from the date of coming out of jail.
- (5) Disqualified U/s.164 of Co. Act (directors disqualified).
- (6) Prohibited by SEBI to enter into security market.
- (7) Promoter of a company which is engaged in preferential transaction, undervalued transaction, extortionate transaction or fraudulent transaction
Though he will not be disqualified if it is concluded before he become promoter or without his convenience.
If the above transaction is conducted by the person himself in that situation as well it will be covered.
- (8) He has given executable guarantee which is unpaid.
- (9) Similar offences outside India.
- (10) Connected person of above persons.

Liquidator

Appointment of Liquidator

Any person who is already RP of a company can become liquidator unless he is prohibited by NCLT. However he should satisfy following conditions.

However, he should satisfy following conditions.

- (1) Satisfy Sec.149(6)
- (2) Not a related party
- (3) Not a employee, proprietor or partner of a firm which is auditor or legal firm of corporate debtor.

Liquidation estate :

It is list of asset from which liability can be paid during liquidation.

Following assets will be included in the liquidation estate,

- (1) Asset having ownership right.
- (2) Asset under ownership whether having possession or not.
- (3) Tangible asset
- (4) Intangible asset
- (5) Asset under dispute
- (6) Asset recover in avoidance of transaction
- (7) Asset on which secured creditor has relinquished his right
- (8) Asset vested with corporate debtor
- (9) Any proceeds realised from above assets.

Exclusions :

- (1) Asset owned by third party which is in possession of corporate debtor.
E.g. held as trustee, bailment contract.
- (2) Workmen due to provident fund, pension fund, gratuity fund.
- (3) Lease.

(4) Any asset which is excluded by Central Government in consultation with financial sector regulator.

(5) Asset held as collateral by financial sector provider (in case of non payment of loan).

(6) Asset of the partner or shareholder.

(7) Asset of subsidiary company

(8) Asset subject to mutual set off.

Consolidation of Claim :

Financial Creditor (FC) should submit his claim by way of information utility and in case of operational creditor it should be by way of invoice.

If information of IU is not available then FC may send details of claim in invoice.

Liquidator shall consolidate the claim within 30 days. Once claim made then it can be withdrawn within 14 days.

Liquidator may reject the claim within 7 days.

Appeal can be filed within 14 Days

Preferential Transaction :

Any transaction which create preference of one creditor over another creditor will be treated as preferential transaction if it is prejudicial in nature.

Effect of Preferential transaction :

Any preferential transaction which is conducted in last 2 years (related party) or last 1 year (others) will be cancelled by NCLT (Restore the Position)

Exception :

(1) Transaction in the ordinary course of business.

(2) Security interest created for new asset which is registered within 30 days.

(3) Any transaction conducted due to court order will not be treated as preferential transaction.

Under value transaction

If any transaction conducted at free of cost (gift) or at any substantially low price then it shall be treated as under value transaction.

Any under value transaction conducted in last 2 years (related party or in last 1 year (others) should be reported by IP or liquidator which is subject to cancellation by NCLT and if RP (liquidator fail to make such report then disciplinary proceeding can be initiated against him. NCLT may order to protect the right of victim.

Any transaction conducted in good faith will not be cancelled.

Extortionate Credit Transaction

It is similar like under value transaction. However, in these situation company has Acquired loan at substantial higher Rate (Treatment will be same as under value transaction).

Time Limit : 2 yrs for All Person

Secured Creditor in Liquidation Proceeding :

Where secured creditor want to realise the secured asset, it can take possession of such secured asset.

If any resistance created by the corporate debtor the application can be filed to NCLT & NCLT may pass such order as it require to enforce the security interest.

After realisation of secured asset, creditor will adjust selling expenses and his share debt and any excess amount will be given to liquidator.

In case of insufficient realisation, it will be received in the order of unpaid amount of secured creditor.

Priority of Water Fall :

(I) Resolution process cost and liquidation.

(II) Pro-rata (Proportionate)

- Workmen dues last 24 months
- Secured Creditor.

(III) Employee dues last 12 months.

(IV) Unsecured Financial Creditor.

(V) Pro-rata :

- Government dues of last 2 years
- Unpaid amount of secured creditors

(VI) Any other remaining Debt

e.g. Workmen dues before 20 months

Employee dues before 12 months

Unsecured Operational Creditor

Government dues before 2 years, etc.

(VII) Preference Shares

(VIII) Equity Shares

Fast Track Insolvency :

Under normal situation resolution period is 180 days and extension is 90 days.

However, in case of fast track resolution process is for 90 days and extension can be granted for 45 days. Such extension will be granted if 75% of COC has applied for extension and NCLT has granted extension.

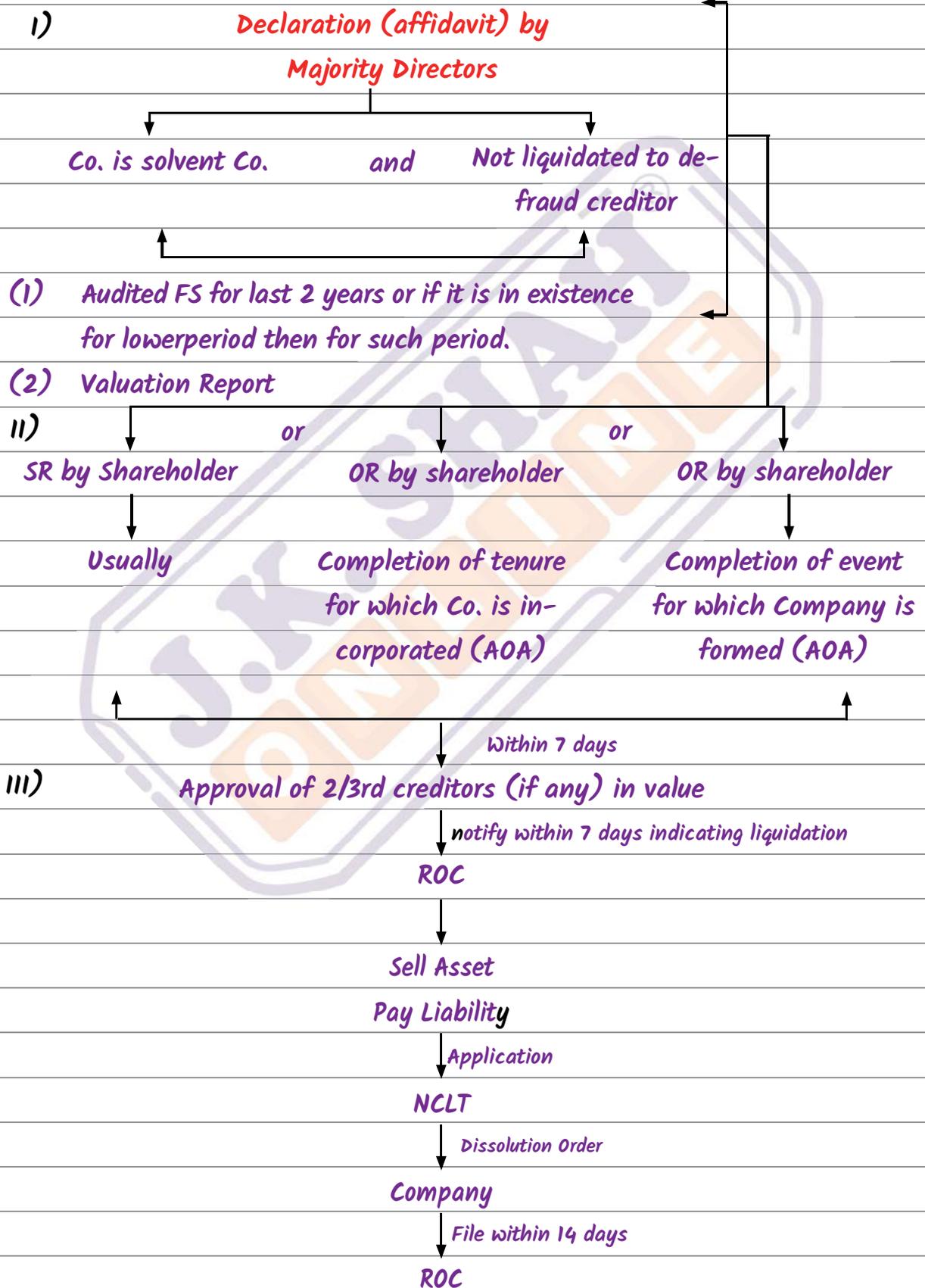
Following person can be notified for fast track insolvency process.

- (1) CD whose total asset or total income is below the specified limit by CG.
- (2) CD who is having such class of creditor as may be notified.
- (3) Such category of person as may be notified.

Following person has been notified by Central Government :

- (1) Small company
- (2) Start-up other than partnership firm
- (3) Unlisted company whose total asset not exceed 1 crore.

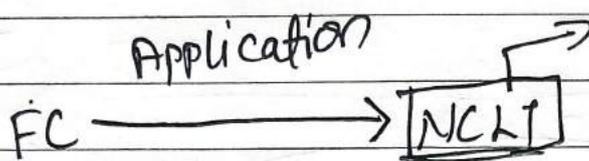
Sec.59 - Voluntary Liquidation :



Insolvency and Bankruptcy Code, 2016

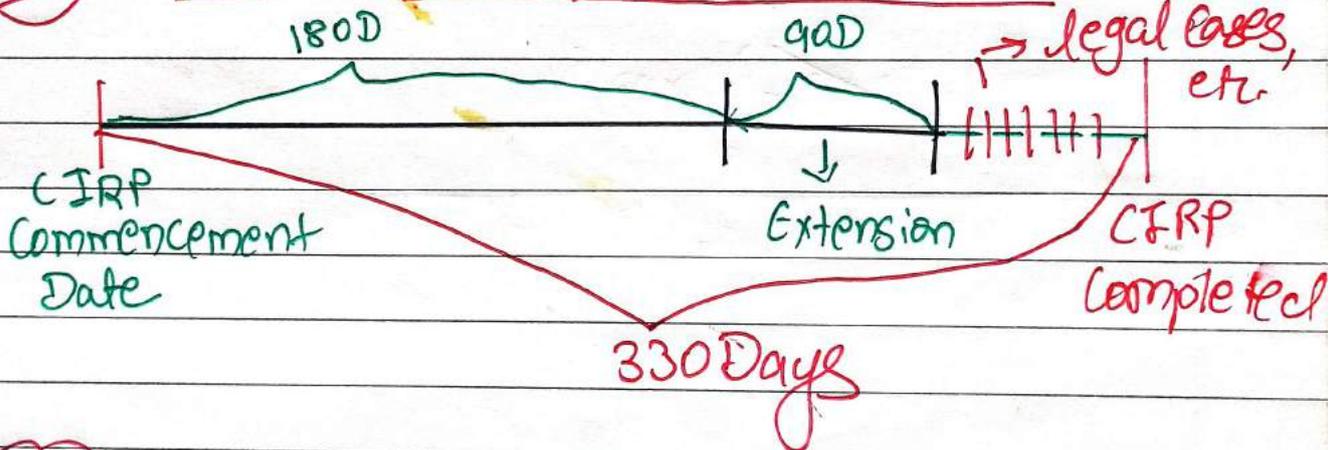
(I) R-Plan 5(26) → It includes
"merger, Amalgamation and
Demerger."

(II) Sec. 7(4)



If within 14D without verifying the default reject the application then It shall record reasons in writing.

(III) Sec. 12 Time limit for CIRP



(IV) Submission of R-Plan

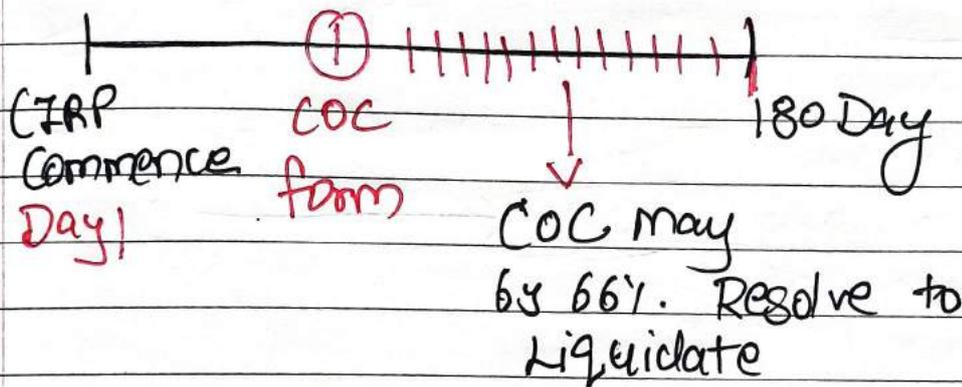
R-Plan shall contain → OC Debt shall be at least payable
u/s 53

⇒ The pending CIRP at the time of commencement shall also comply with Provision.

V Approval of R-Plan

It shall also binding on CG, SG and local Authority.

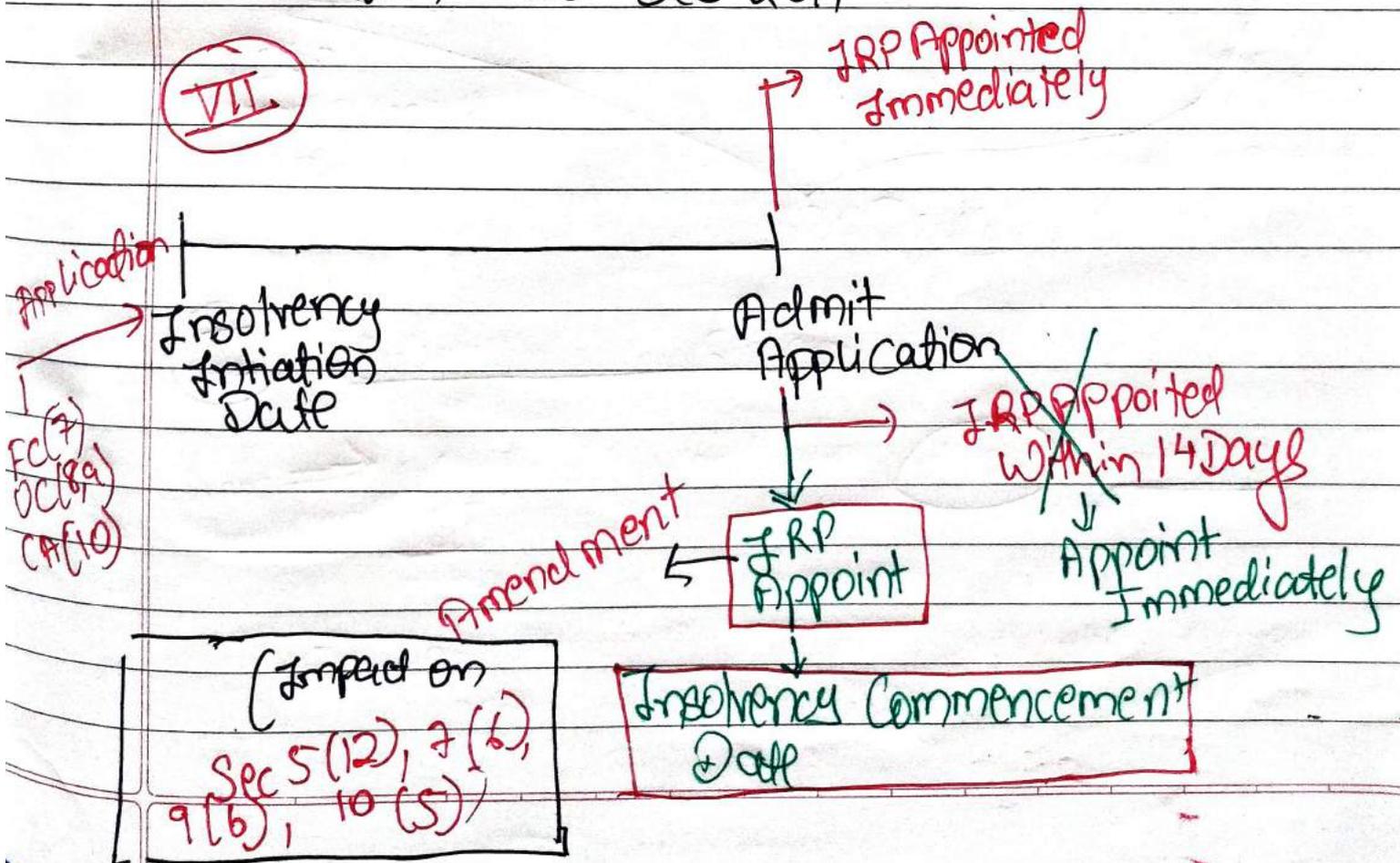
VI Initiation of Liq.



VI IBC (Amendment) Act 2020

Notified on 13 March 2020 retroactively from 28th Dec 2019

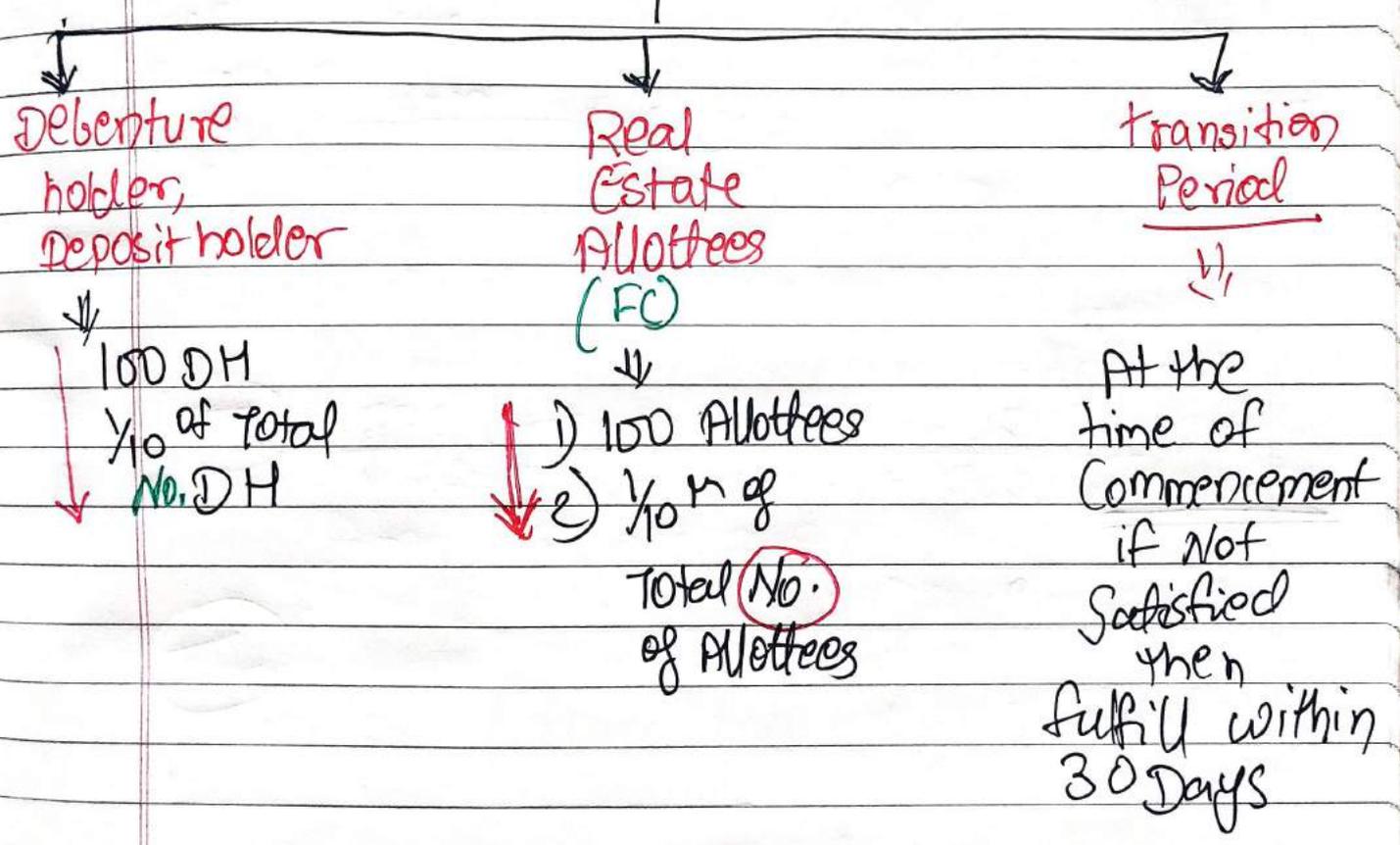
VII



VIII Interim Finance

↳ Include other debt as specified.

IX Application by FC



X → Person Not Entitled to file application

CD under CFRP can file application for another CD.

(XI) Moratorium

- During Moratorium License, etc. will not be suspended

- Critical Goods (e.g.:- Supply of Raw material) will not be suspended

↓
shall
continue
during
Moratorium

(XII) Appointment of IRP

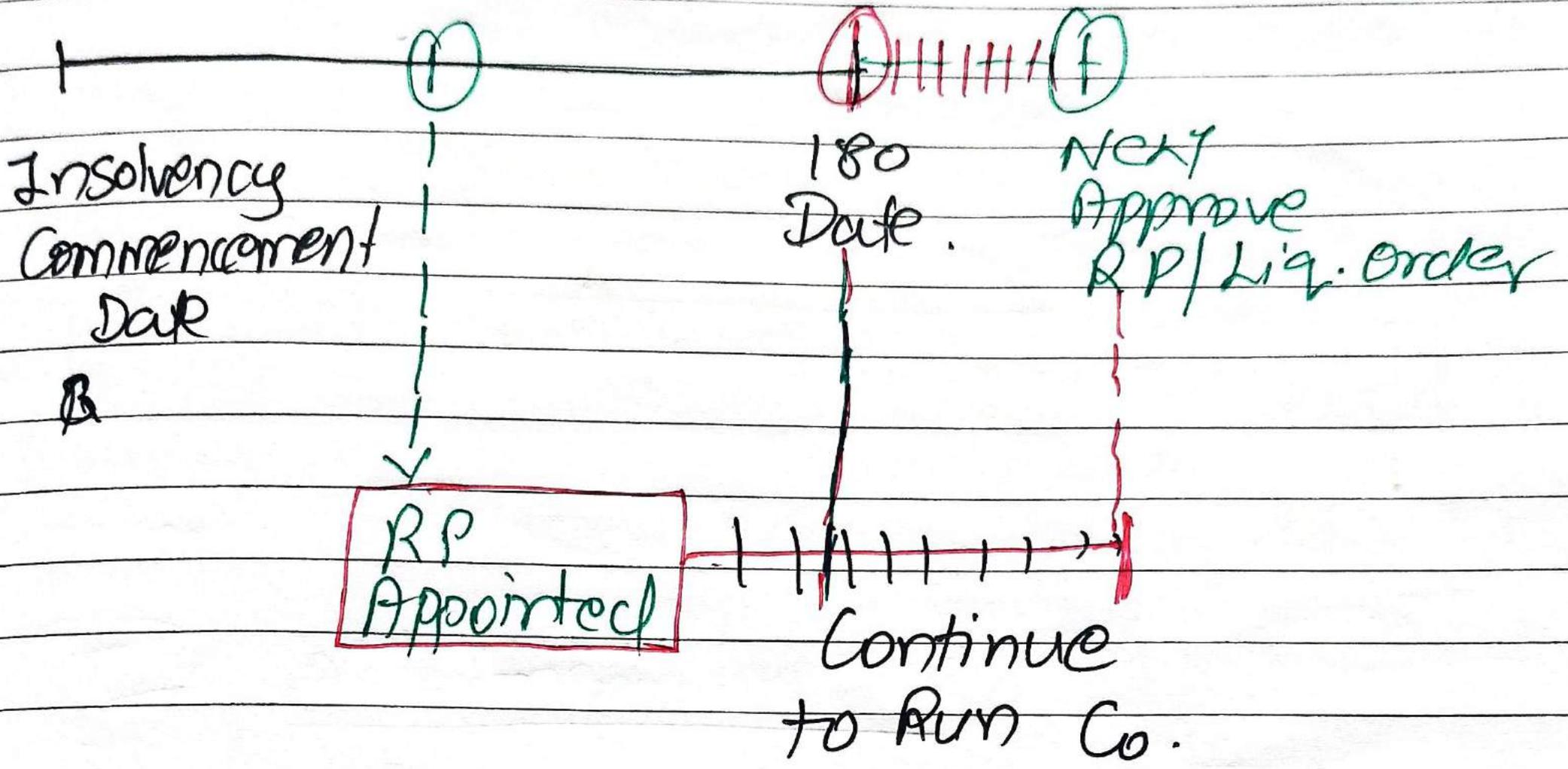
On the Insolvency Commencement Date (~~within 14 days~~)

(XIII) COC

SDR (Loan into Eq. Shares)

Added: or Completion of such transactions as specified

XIV → RP to Conduct CIRP



A/R = Authorised Representatives

Sections

Details of A/R

Costs

21(6)

Consentum
Advance

BK1

BK2

- 1) Single AR → Loan Agreement
- 2) Attend himself →
- 3) Appoint separate A/R → Own
- 4) Vote Jointly / Separately → -

21(6A)(a) Debentureholder / Debenture Trustee → Deed
Depositor → Depositor trustee → Deed

(b) specific class
of FC
≥ 10

→

Pickout of
3 IP → CIRP
mentioned in last
Public Announcement
to act as their A/R

(c) FC

Represented
by

→ Guardian
Executor
Administrator

⇒

Loan
Agreement

Majority vote will be considered.

24(5)

Any FC ~~May appoint~~ an IP as Authorised Representative \rightarrow own costs

FC Instruction \rightarrow Vote according \rightarrow COC

share the details

Authorised Representative
to ease vote sec 25(A)(3A)
(For) \rightarrow 21(6A)

