

-Fast Track, and Voluntary Liquidation for Corporates.
-Insolvency Resolutions and Bankruptcy for Individuals and Partnership Firms, Fresh Start Process.

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ABBREVIATIONS USED IN THE PRESENTATION AND IBC

- ▶ IBC- Insolvency and Bankruptcy Code
- ▶ CD - Corporate Debtors
- ▶ FC – Financial Creditors
- ▶ OC- Operational Creditors
- ▶ CoC- Committee of Creditors
- ▶ AA- Adjudicating Authorities like NCLT or DRT
- ▶ IP- Insolvency Professional
- ▶ IRP- Interim Resolution Professional
- ▶ RP- Resolution Profession
- ▶ CIRP- Corporate Insolvency Resolution Process.
- ▶ IBBI- Insolvency and Bankruptcy Board of India.
- ▶ IUs – Information Utilities.

Fast Track Corporate Insolvency Resolution Process (Sec.55-58)- Chapter IV

1) Applicable in respect of following Corporate Debtors :

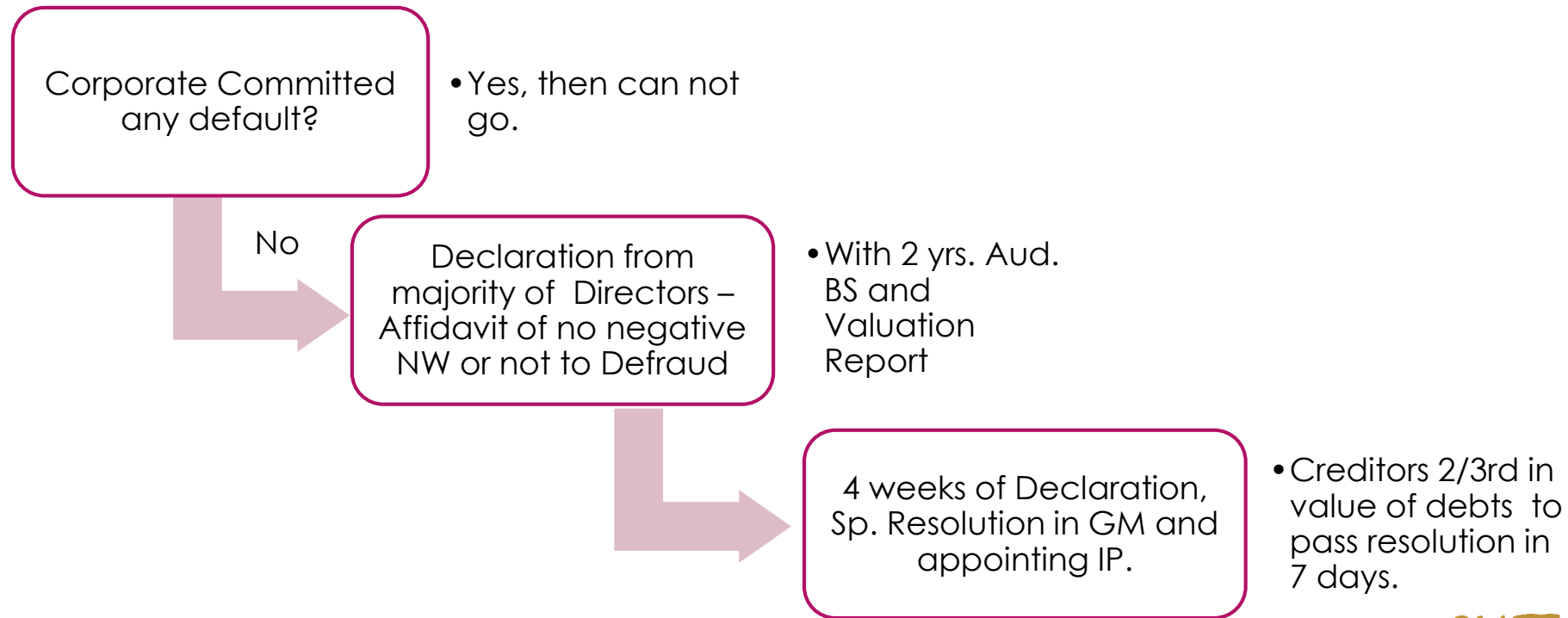
- a) Assets and Income below a level. or
- b) With such class of Creditors or such amt. of debts. or
- c) Such Other Category of Corporate persons,

As may be notified by the Central Govt.

2) Completed with in a period of 90 days.

extension- if RP apply for the same, with 75% vote by CoC, extension of 45 days by AA only once.

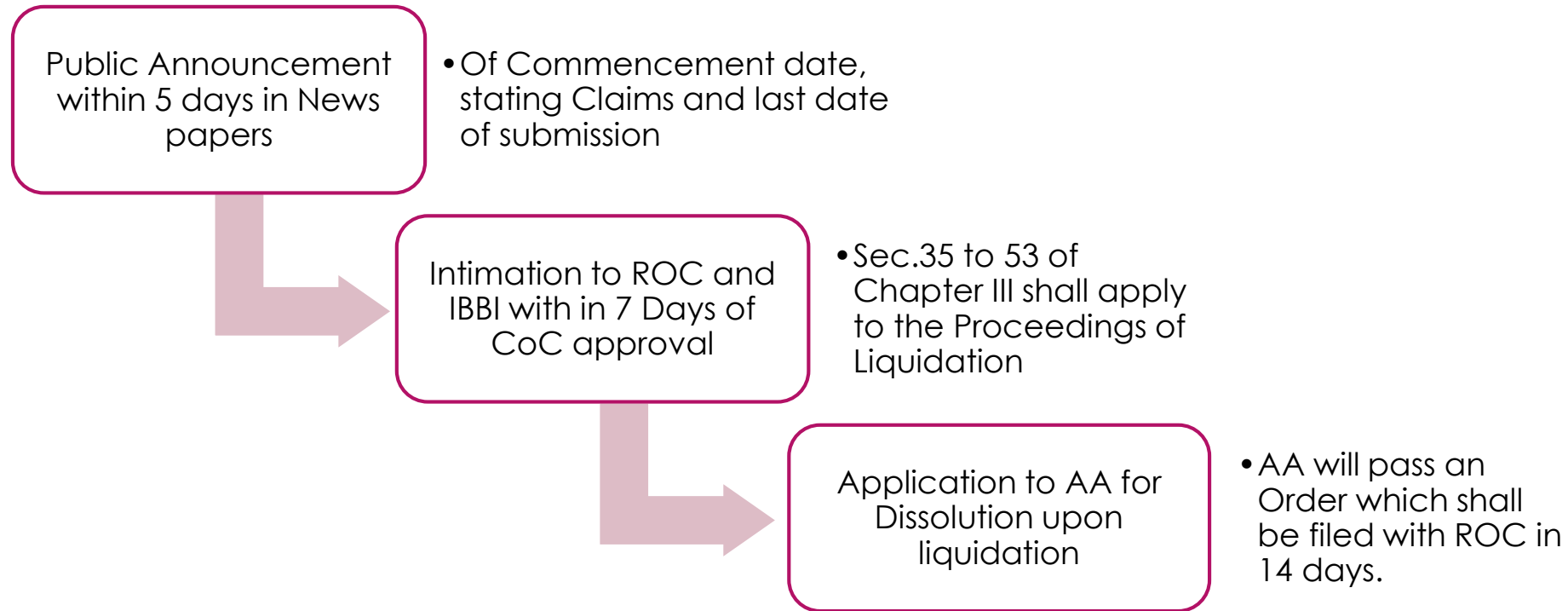
Voluntary Liquidation of Corporate Persons Sec. 59 (Chapter V)



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Voluntary Liquidation of Corporate Persons Sec. 59 (Chapter V) Contd...2



INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AND PARTNERSHIP FIRMS (Section 78 & 79)

- ▶ Amount of default – Not less than Rs. 1,000/- (Central Government may modify which shall not be less than Rs. 1,00,000/-)
- ▶ Important Definitions
- ▶ Adjudicating Authority here refers to Debt Recovery Tribunal
- ▶ "excluded assets" for the purposes of this part includes—
 - (a) unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation,
 - (b) unencumbered furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family;
 - (c) any unencumbered personal ornaments of such value, as may be prescribed, of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;
 - (d) any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family; and

INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AND PARTNERSHIP FIRMS (Section 78 & 79)

(e) an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed;

Relevance – Section 155 (2) estate of Bankrupt shall not include excluded assets along with other assets specified therein.

► "excluded debt" means—

(a) liability to pay fine imposed by a court or tribunal;

(b) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;

(c) liability to pay maintenance to any person under any law for the time being in force;

(d) liability in relation to a student loan; and

(e) any other debt as may be prescribed;

Relevance – Section 94 (3) where debtors cannot apply for excluded debts and Section 139 (d) where the order does not discharge the bankrupt from excluded debt.

INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AND PARTNERSHIP FIRMS (Section 78 & 79)

- ▶ "partnership debt" means a debt for which all the partners in a firm are jointly liable;
- ▶ "qualifying debt" means amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time and does not include—
 - (a) an excluded debt;
 - (b) a debt to the extent it is secured; and
 - (c) any debt which has been incurred three months prior to the date of the application for fresh start process

FRESH START PROCESS (Sec.80-93)

(Chapter II Of Part III)

- ▶ Eligibility – A debtor unable to pay his debts and fulfil the conditions specified under sub section 2 of Section 82 entitled to make an application (either personally or through Resolution Professional) for a fresh start for discharge of his qualifying debt under this Chapter
- ▶ Conditions for discharge of his qualifying debts under this Chapter –
 - (a) the gross annual income of the debtor does not exceed Rs. 60,000/-
 - (b) the aggregate value of the assets of the debtor does not exceed Rs. 20,000/-
 - (c) the aggregate value of the qualifying debts does not exceed Rs. 35,000/-
 - (d) he is not an undischarged bankrupt;
 - (e) he does not own a dwelling unit, irrespective of whether it is encumbered or not;
 - (f) a fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; and
 - (g) no previous fresh start order under this Chapter has been made in relation to him in the preceding twelve months of the date of the application for fresh start

Fresh Start Process – I (Debtor's Application)

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Debtor unable to pay debts

Eligibility for FSP

Application to AA supported by an Affidavit

Interim Moratorium Starts

Filed personally or Filed through RP

Appointment of RP

RP examines application. Submits Report to AA recommending acceptance/rejection. Sends copy of the report of debtor

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Order of AA

Admission

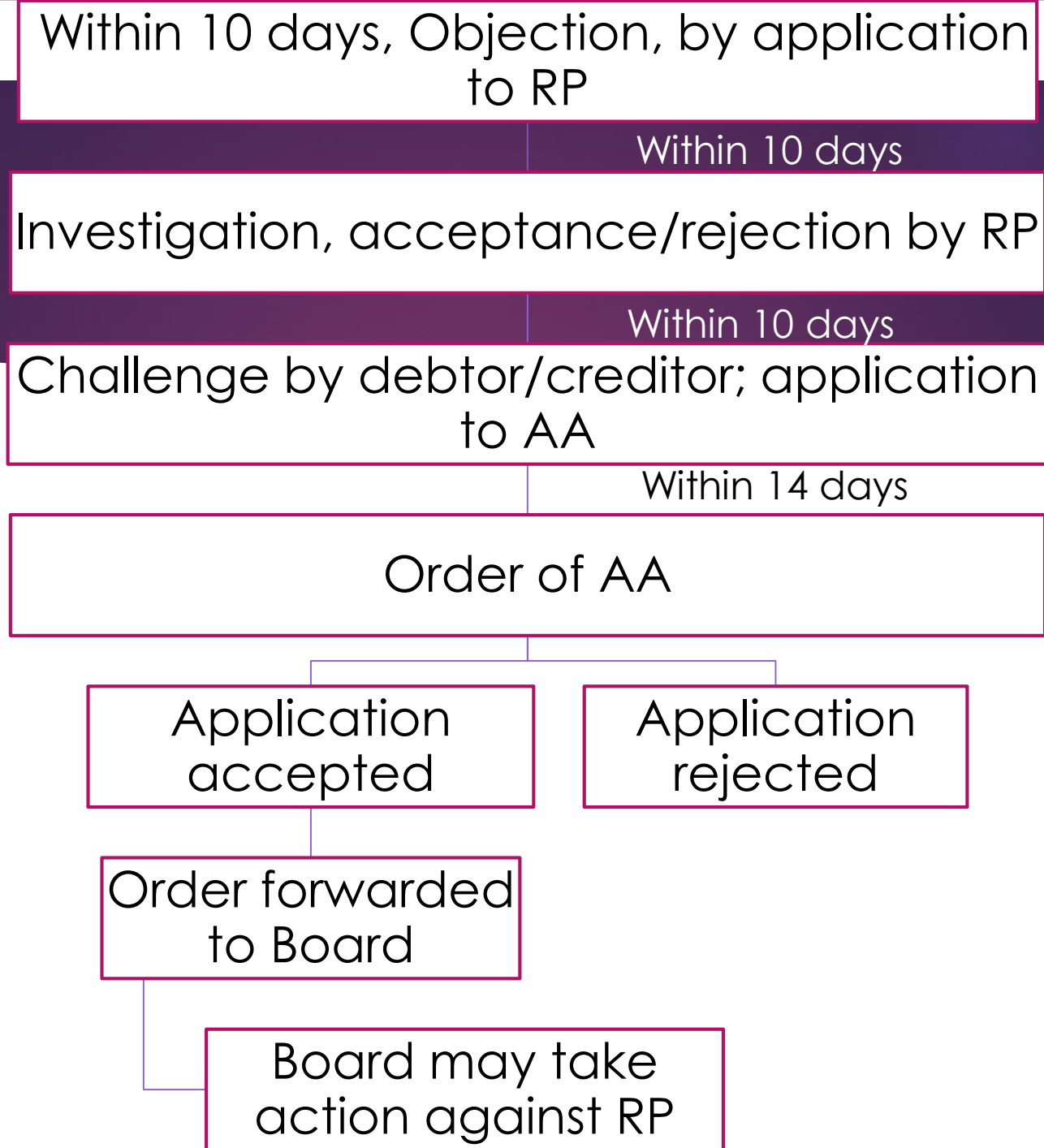
Rejection

Interim Moratorium Ends

State the amounts accepted as Qualifying debts/other amounts eligible for discharge for Fresh Start

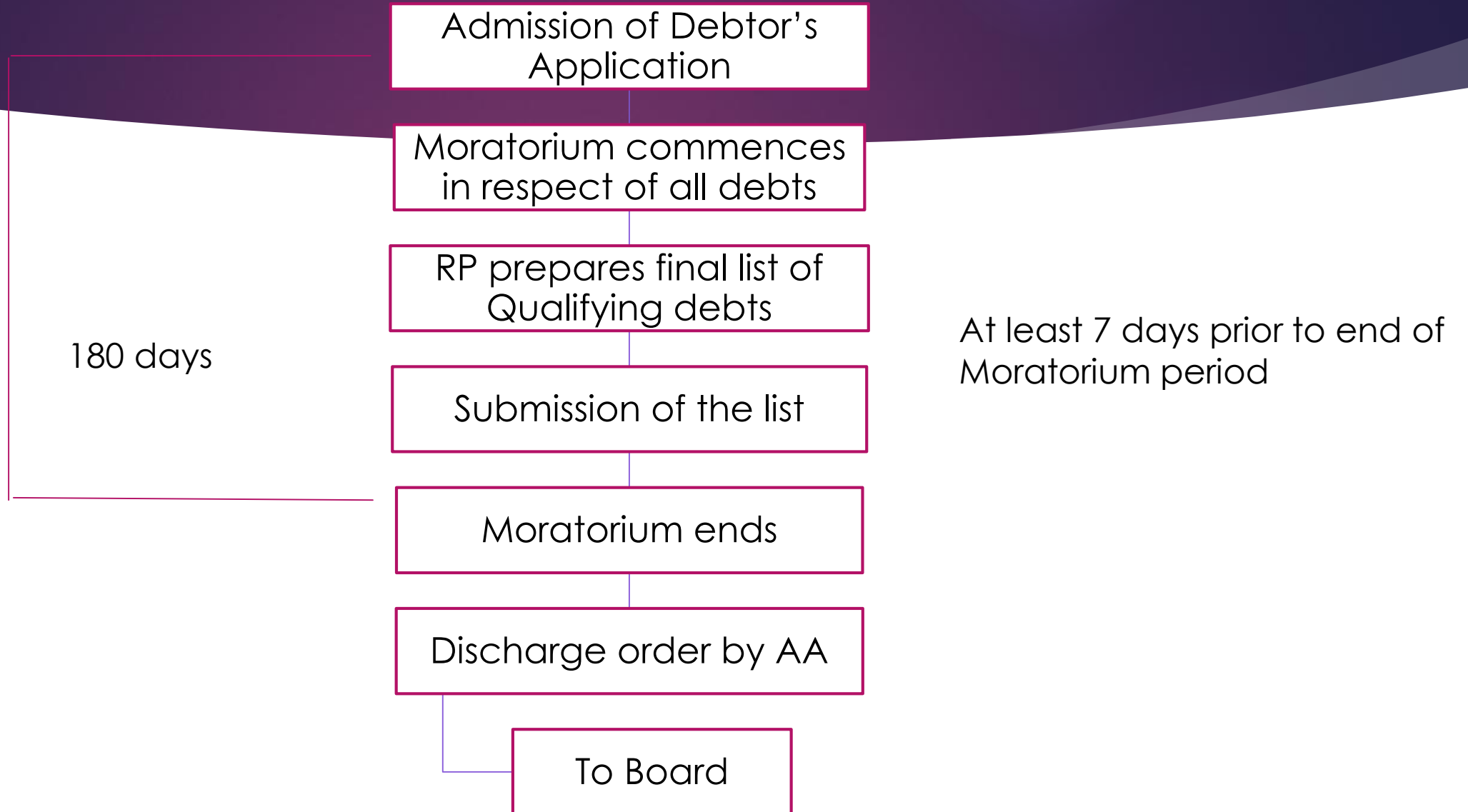
AA to pass such order as deems fit

Within 7 days
Copy of order + copy of applications to creditors



Fresh Start Process – II (Discharge Order)

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Insolvency Resolution Process – Sec.94-120

Application to AA

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By debtor committing the default –Other than Fresh Start

- ▶ Debtor Personally or through RP
- ▶ In respect of a partnership firm, all or majority of the partners shall jointly apply; single partner is not eligible.
- ▶ Only in respect of debts which are not excluded debts
- ▶ An undischarged bankrupt, or a debtor already undergoing FSP, IRP or Bankruptcy order not eligible to apply. Also, if there is an existing IRP, admitted during 12 months preceding the date of submission of application

By creditor

- ▶ Personally, or jointly with other creditors, or through RP
- ▶ Against the firm or any one or more partners of the firm
- ▶ Copy of application to the debtor

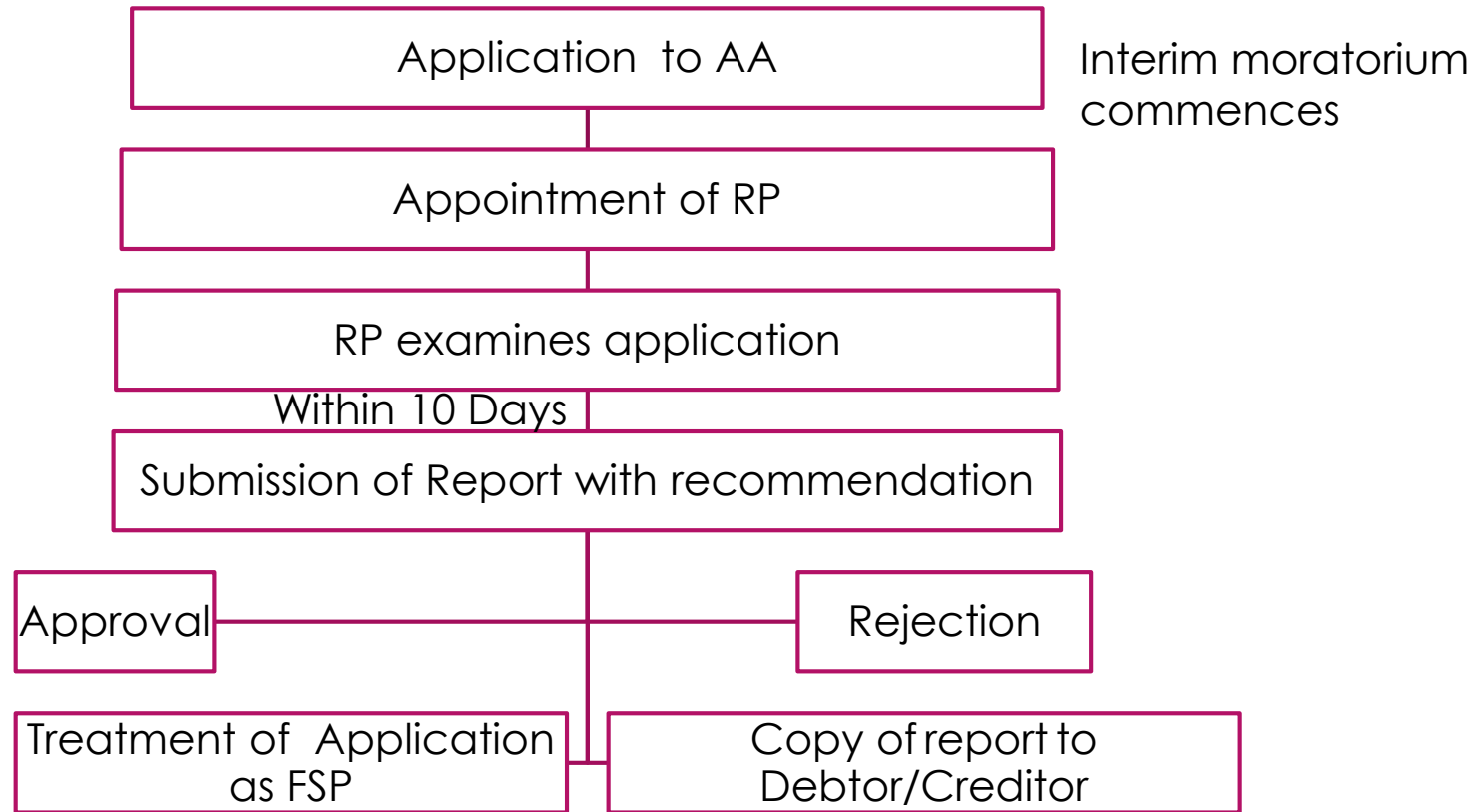
Manner of appointment of RP - Same as that in FSP

Effect of filing application - Commencement of interim-moratorium

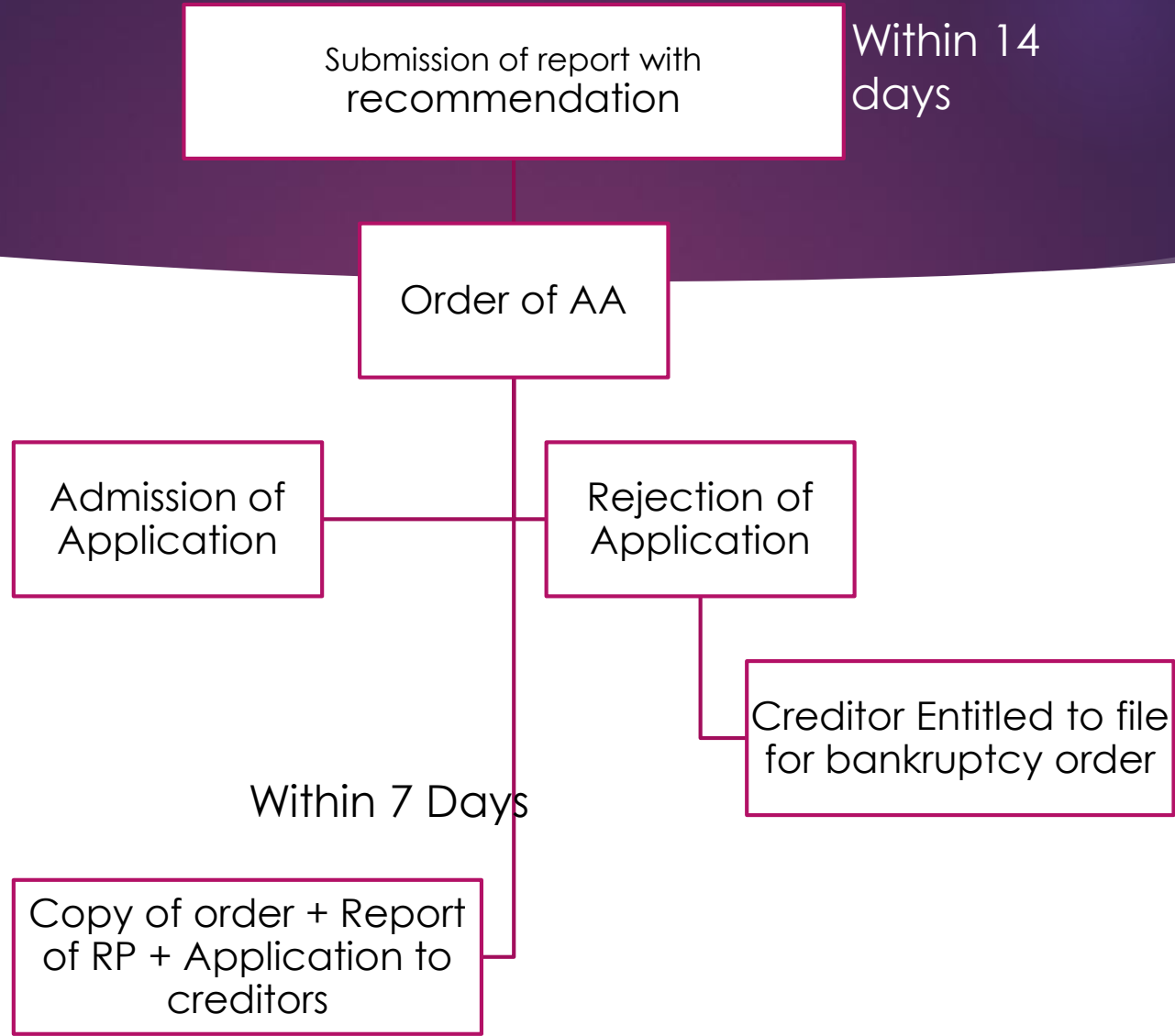
- ▶ To end on admission of such application

Insolvency Resolution Process : First Phase (Sec 94-120)

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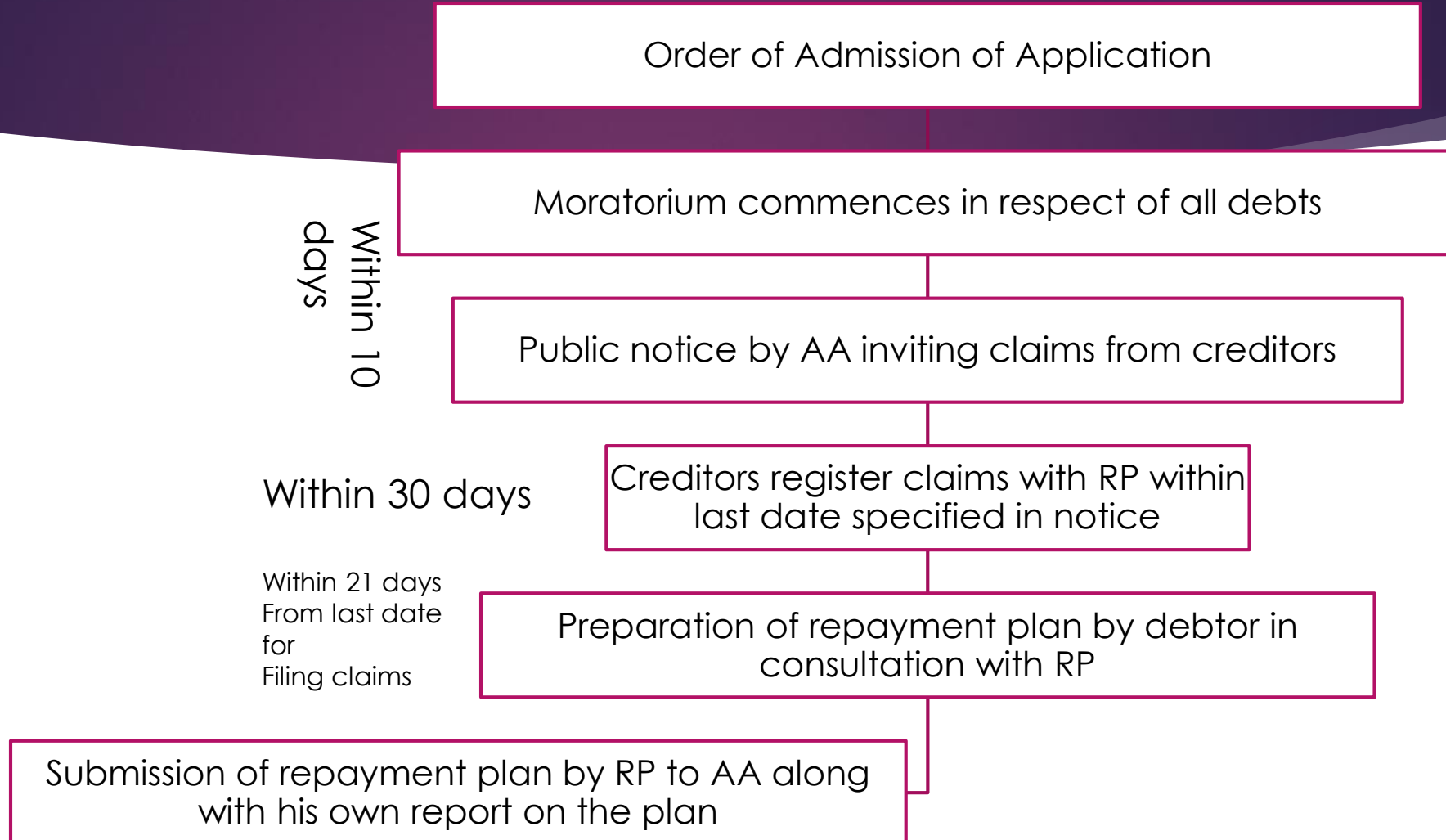


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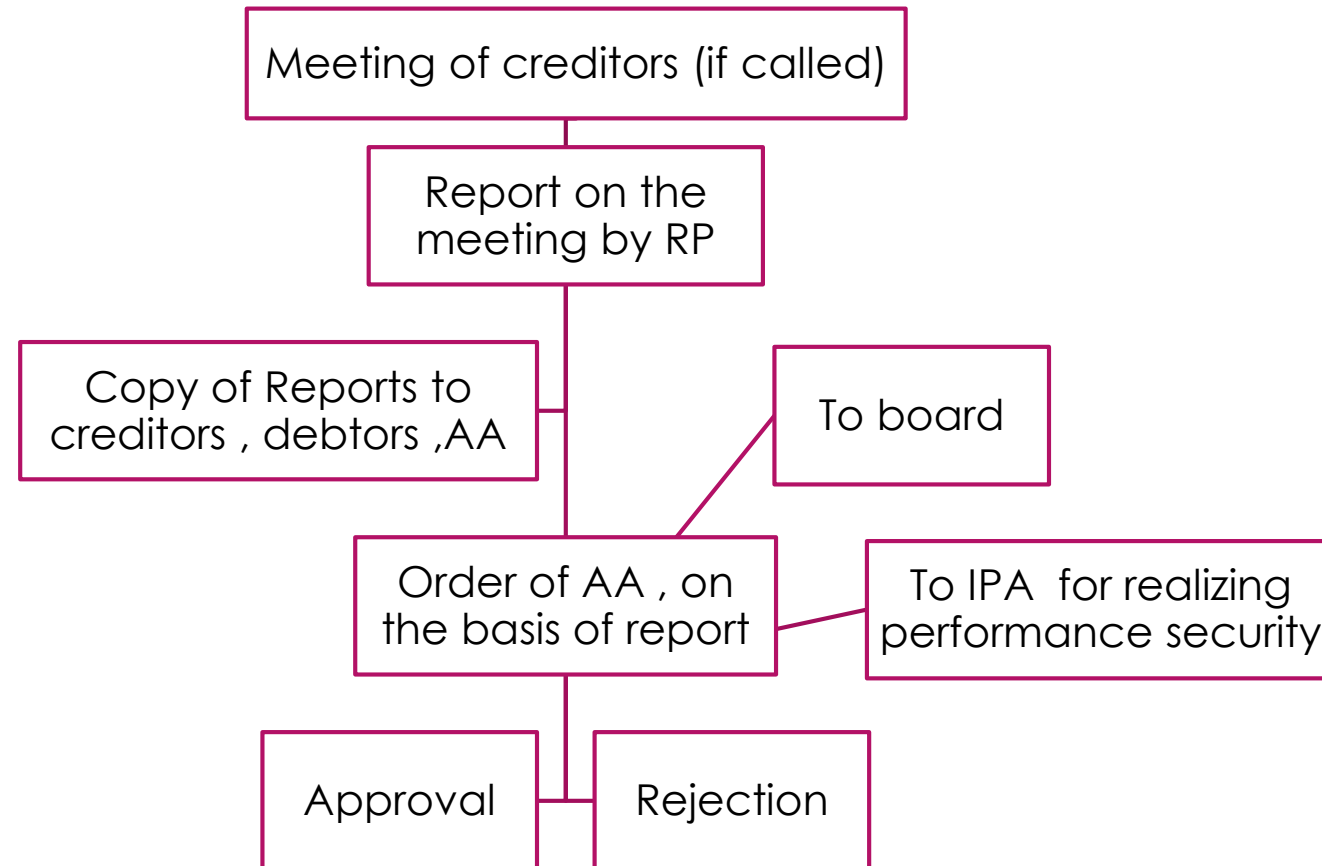
Insolvency Resolution Process : Second Phase

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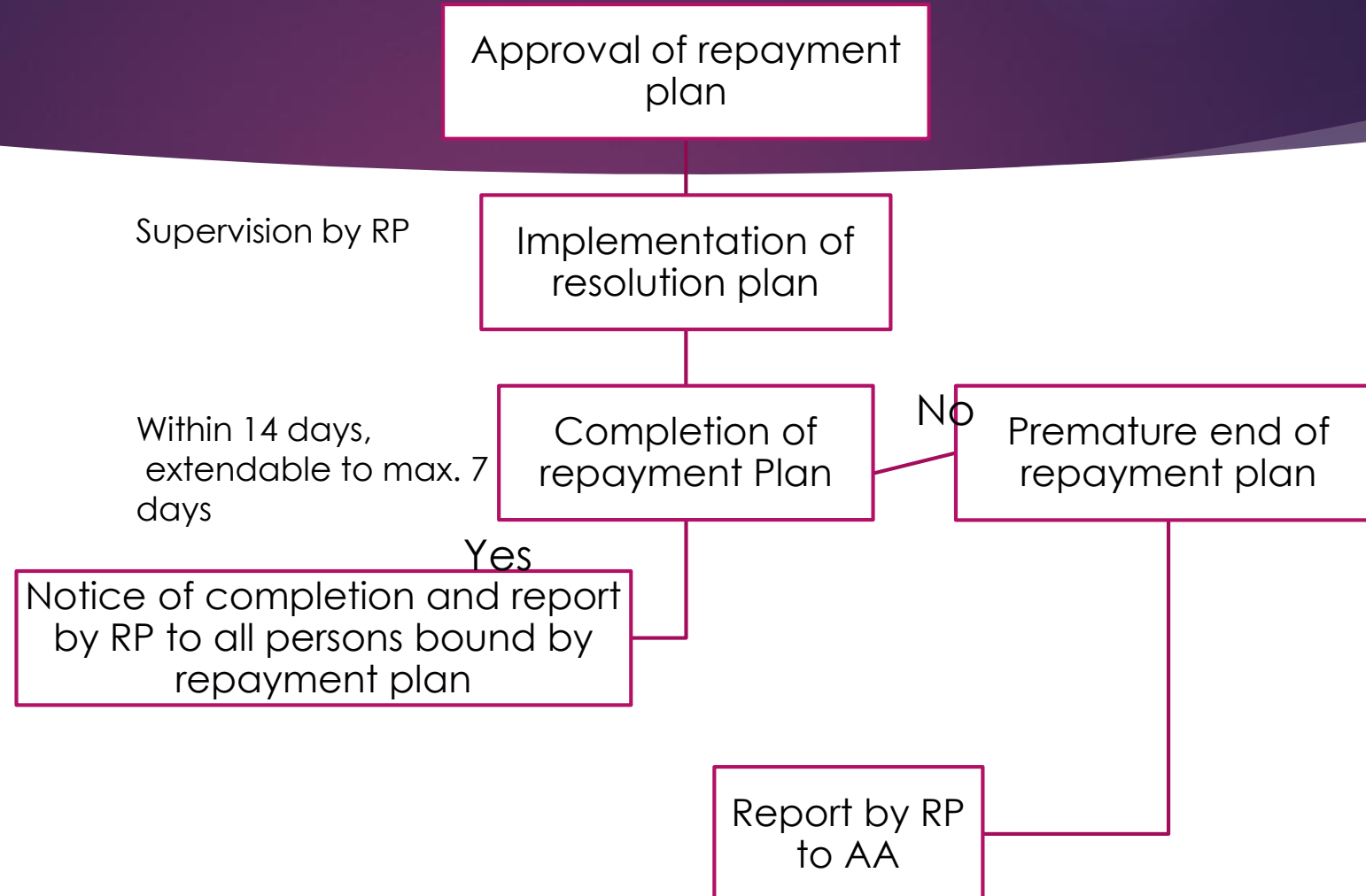
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Insolvency Resolution Process : 3rd phase

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Order by
AA

Dr./Cr. Whose claims not satisfied, eligible
to apply for a bankruptcy order

Application for discharge order by RP to AA

Before completion of repayment plan

After Completion of repayment

Discharge order by AA

To the Board and the IPA for
releasing performance security

Application for bankruptcy order

Sec : 121- 148

To AA

By a creditor, individually or jointly with other creditors

By debtor

▶ In case of a firm, application may be filed by any of its partners

Within 3 months of the order passed by AA under Section 100(4), or 115(2), or 118(3), as the case may be (refer succeeding slide)

Applicant may propose an insolvency professional to act as bankruptcy trustee

Application shall not be withdrawn without the leave of AA

Interim moratorium commences once application is filed

▶ Terminates on bankruptcy commencement date

▶ Such interim-moratorium provisions not to apply to transactions notified by the Central Government in consultation with any financial sector regulator

When can one apply for Bankruptcy Order? Order by AA

Creditors entitled to file

**Application for IRP is
rejected by AA under
Section 100(4)**

Both debtor and creditor
entitled to apply

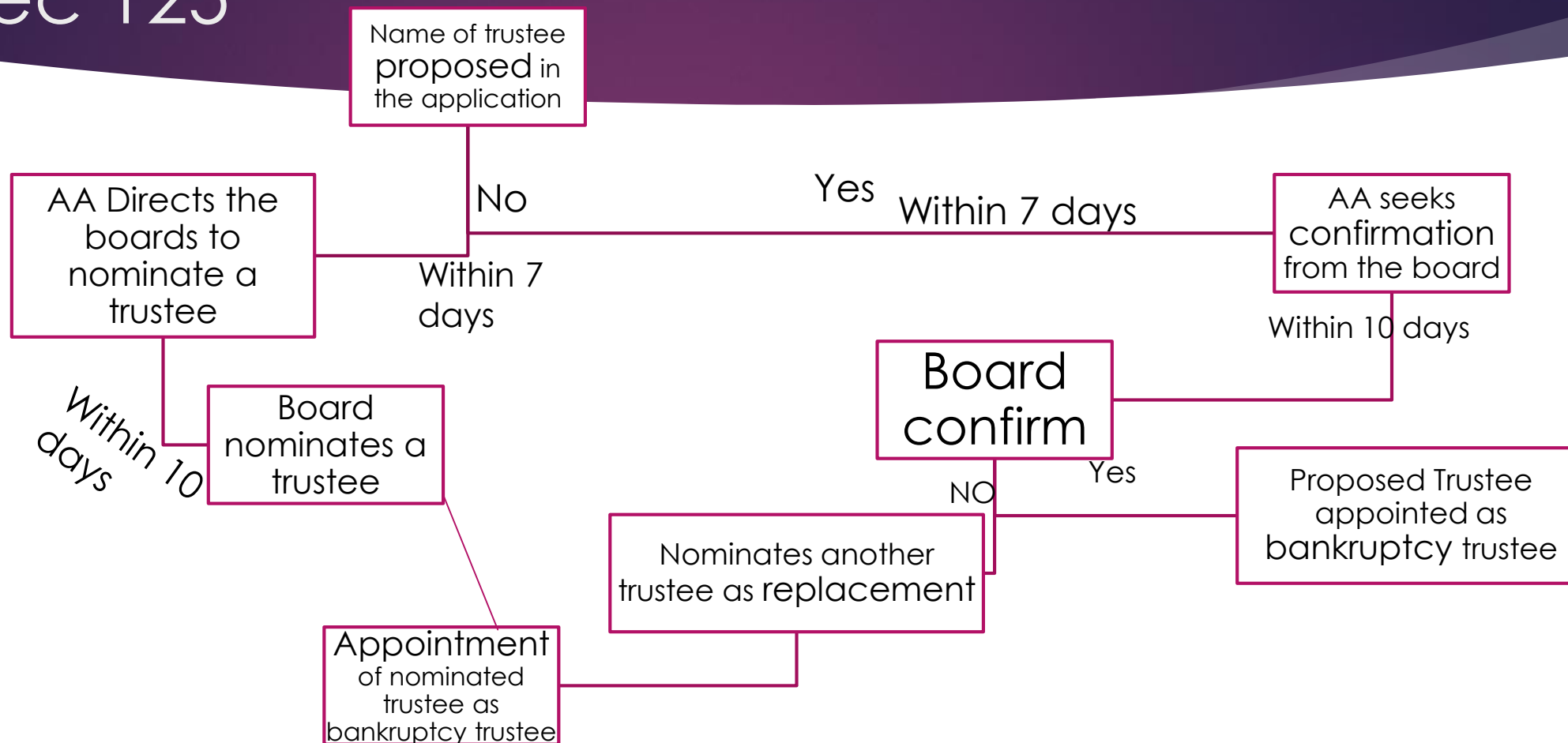
**Order by AA recording
rejection of repayment plan
by meeting of creditors
(Section 115(2))**

The debtor or the creditor, whose claims
have not been fully satisfied entitled to
apply

**Order of AA on premature ending of the
repayment plan under Section 118(3)**

Appointment of bankruptcy Trustee

Sec 125



Bankruptcy Order (1/2) Sec 126

By AA, within 14 days of nomination of bankruptcy trustee

Effective till discharge of the bankrupt

Effects

- ▶ the estate of the bankrupt to vest in the bankruptcy trustee
- ▶ the estate of the bankrupt to be divided among his creditors
- ▶ bar on a creditor to commence proceedings in respect of a debt claimed as bankruptcy debt
- ▶ right of a secured creditor to realize or otherwise deal with his security interest not affected
- ▶ No entitlement to any interest in respect of debt after the bankruptcy commencement date if no steps are taken to realise the security within 30 days from the said date.

Modification or recall of bankruptcy order is possible under Section 142

Bankruptcy Order (2/2)

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Application for Bankruptcy order

Interimmoratorium

Nomination of bankruptcy trustee

Within 14 days

Bankruptcy order by AA

Within 10 days

Notice/ Public notice by AA
inviting claims from creditors

Within 7 days

Creditors to register claims with
bankruptcy trustee

Bankruptcy to submit
statement of
financial position to the
bankruptcy
Trustee if the application was
filed by a creditor within 7
days

Continued..

Preparation of list of creditors trustee

Within 14 days of
bankruptcy
commencement date

Notice to summon meetings of creditors

Within 21 days of bankruptcy
commencement date

Completion of administration and distribution of the estate of
bankruptcy

Report of the administration by trustee

Within 7 days

To be presented in

Meetings of creditors

Approval of trustee's report by Crs. Committee and
determination of whether bankruptcy trustee shall be
released

Estate of Bankrupt Sec 155

Vesting

- ▶ In the bankruptcy trustee immediately from the date of his appointment
- ▶ Effective without any conveyance, assignment or transfer

Inclusions in the estate

- ▶ All property belonging to or vested in the bankrupt at the bankruptcy commencement date
- ▶ Capacity to exercise powers over such property (or capacity to initiate proceedings for exercising such powers) existing at the bankruptcy commencement date or before the date of discharge order
- ▶ Property, which by virtue of this law, is comprised in the estate

Exclusions from the estate

- ▶ Excluded assets
- ▶ Property held on trust
- ▶ Assets as notified by the Central Government in consultation with financial regulator

Undervalued transaction (Sec 45 – Corporate & Sec 164 – Individuals)

- ▶ What is not an arm's length transaction is an undervalued transaction
- ▶ Imply unequal exchange

What constitutes an „undervalued transaction“?

- ▶ Gift
- ▶ Significantly less value

Not of „proportionate value“ but „ordinary course of business“ – Is it covered under undervalued transaction?

- ▶ In *Hill vs Spread Trustee Co Limited*- creation of security interest has been regarded as undervalued transaction.

Preferential transactions

- Sec 43- Corporates & Sec 165 – Individuals
- Examples-

- ▶ payment or set-off of debts not yet due;
- ▶ performance of acts - no obligation to perform;
- ▶ granting of a security interest to secure existing unsecured debts;
- ▶ unusual methods of payment;
- ▶ payment of a debt of considerable size in comparison to the assets of the debtor;
- ▶ payment of debts in response to extreme pressure from a creditor

Defences available

- ▶ transaction as consistent with normal commercial practice
- ▶ ordinary course of business
- ▶ “new” credit & “new” value
- ▶ counterparty proves that it was unaware of a preference
- ▶ no knowledge of the debtor's insolvency

Discharge Order

Application by bankruptcy trustee to AA

Earlier of –

- ▶ Expiry of 1 year from the bankruptcy commencement date
- ▶ Within 7 days of the approval of the committee of creditors of the completion of administration of estate of the bankrupt, if the said approval is accorded before the expiry of 1 year from the bankruptcy commencement date

Effects

- ▶ Bankrupt is released from all bankruptcy debts
- ▶ In case the application for discharge is filed within 7 days of the creditors' approval, the discharge does not affect
- ▶ functions of the bankruptcy trustee
- ▶ the operation of the provisions of Chapters IV and V of Part III

These remain unaffected

- ▶ Right of the secured creditor to enforce his security for the payment of a debt from which the bankrupt is discharged
- ▶ Bankrupt is not released in respect of debts incurred by means of fraud or breach of trust to which he was a party
- ▶ Bankrupt is not released from any excluded debt

Proof of Debt Sec 171

Bankruptcy trustee to give notice to every creditor

- ▶ Within 14 days from days of preparing list of creditors

Copy of decree – valid proof

Interest on debt - provable as part of the debt

- ▶ Except in so far as owed in respect of period after bankruptcy commencement date

Proof of debt by secured creditors-

- ▶ Realises his security, produce proof of the balance due to him;
- ▶ Surrenders security to the bankruptcy trustee for the general benefit of the creditors

May produce proof of his whole claim

Water Fall- Priority of Payment Sec 178

The costs and expenses incurred by the **bankruptcy trustee**

Secondly,

- ▶ The **workmen's dues** for the period of **24 months** preceding the bankruptcy commencement date; and
- ▶ Debts owed to **secured creditors**;

Wages and any unpaid dues owed to **employees**, other than workmen, of the bankrupt for the period of **12 months** preceding the bankruptcy commencement date;

Central Government and the State Government dues

- ▶ All other debts and dues owed by the bankrupt including unsecured debts

Adjudicating Authority for Individuals and firm Sec 179-183

The Debt Recovery Tribunal (constituted under the RDDBFI Act)

- ▶ having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain

Appellate authority is the Debt Recovery Appellate Tribunal

- ▶ Appeal to be filed within 30 days
- ▶ Extension of maximum 15 days possible, provided there is “sufficient cause”

Appeal to Supreme Court

- ▶ Against an order of DRAT (on question of law), within 45 days
- ▶ Extension possible for further 15 days, in case there is “sufficient cause”

Jurisdiction of any Civil court or authority barred

Abidance to timelines

- ▶ In case order is not passed by DRT/DRAT within specified timelines, reasons shall be recorded in writing
- ▶ Chairperson of the DRAT may extend the timelines
- ▶ Extension limits not specified, unlike in the case of NCLT/NCLAT

THANK YOU

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