

In-Depth Analysis of **THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

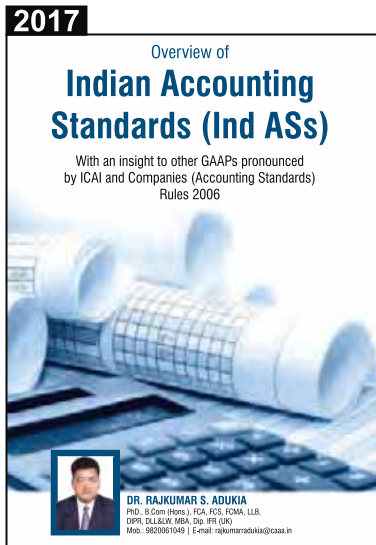
Relevant Rules & Regulations



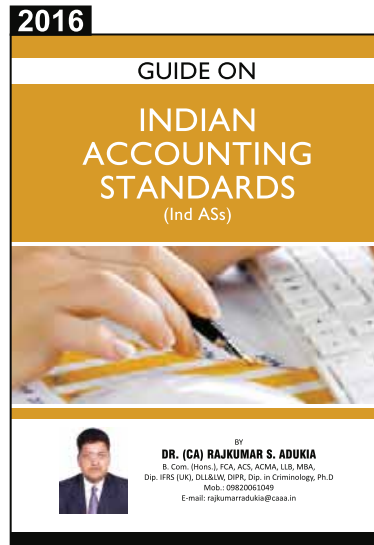
DR. RAJKUMAR S. ADUKIA

B. Com. (Hons.), FCA, FCS, FCMA, LL.B., M.B.A.,
DIPR, Dip. IFRS (UK), Dip. LL&LW, Dip. in Criminology, Ph.D.
Mob.: 9820061049 | E-mail: rajkumarradukia@caaa.in

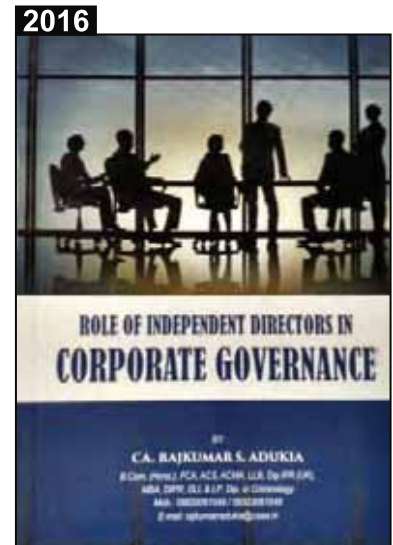
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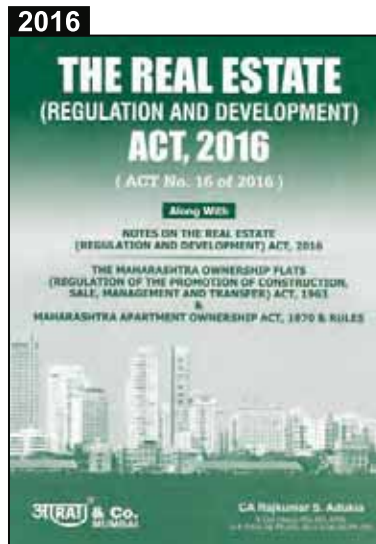
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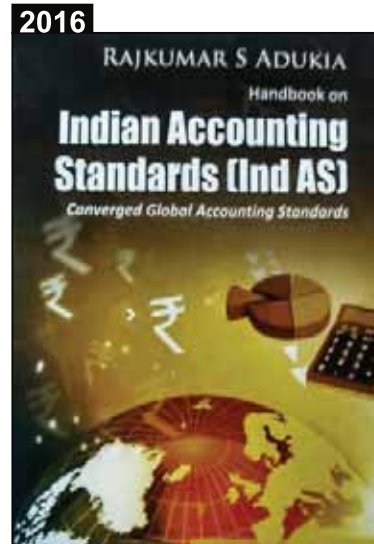
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**IN-DEPTH ANALYSIS OF THE
INSOLVENCY AND BANKRUPTCY
CODE, 2016
Relevant Rules & Regulations**

Dr. Rajkumar S. Adukia

B. Com. (Hons.), FCA, FCS, FCMA, LL.B.,
M.B.A., DIPR, Dip. IFRS (UK), Dip. LL&LW,
Dip. in Criminology, Ph.D.

Mobile: 98200 61049

E-mail ID: rajkumarradukia@caaa.in

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Preface

The road to recovery is now time bound and effectively regulated with a code. With the introduction of The Insolvency and Bankruptcy Code, 2016 the ease of doing business in India has taken a fresh turn. While it would take an average of four years for recovery of dues under previous regulations, The Code, 2016 lays down a remarkable recovery time of three to six months and the recovery rate is expected to be considerably more as compared to twenty per cent in the earlier regime.

The Code as it is rightly called so, manifests as a one stop shop solution for the recovery proceedings of both Corporate persons, Individuals and Partnership firms. Addressing the issue of regulated recovery of debts irrespective of the nature of organisational set-up, the Code is indeed playing a key role in increasing the investor confidence, promoting entrepreneurship, making credit available, balancing the interest of all stakeholders, reducing the resolution time in order to maximise the value of assets.

The Code comprises of 255 sections, supported by Rules and Regulations issued from time-to-time. The process of insolvency and bankruptcy under the code impacts various organizational enactments, when it comes to recovery and liquidation proceedings. Irrespective of the solution resorted to, be it insolvency, bankruptcy, liquidation or voluntary liquidation everything falls under the ambit of the Code. The Code is not applicable to financial service providers as there is a separate legislation in process to address the same.

In my book on The Insolvency and Bankruptcy Code, 2016, I have tried to capture the flow of the Code and appreciate the choice and

the need of some of the regulations in the Code. I would say that it is one of the very well drafted legislations in the recent times. I hope the book helps you appreciate the need, nuances and the necessity of this comprehensive Code.

My insatiable thirst for knowledge has been my driving spirit all through my professional life. I take this opportunity to thank my friends and my wonderful family, my wife Sangeeta, my son CA Rishabh and my daughter-in-law CS Samishka for their unstinted support through all my endeavors.

Thank You,

Dr. Rajkumar S. Adukia
Mumbai

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BACKGROUND OF THE CODE

The Insolvency and Bankruptcy Code, 2016 is based on the report submitted by Bankruptcy Law Reforms Committee chaired by Dr. TK Viswanathan, former Secretary General, Lok Sabha and former Union Law Secretary. It was formed on 22nd August, 2014 to study the corporate bankruptcy legal framework in India and submit a report.

The Union Finance Minister, Shri Arun Jaitley, during his Budget Speech of 2014-15 announced that an entrepreneur friendly legal bankruptcy framework would be developed for SMEs to enable easy exit.

The Committee submitted its interim report on 5th February, 2015 and the Comments were invited till 20th February, 2015. Then the committee submitted its final report on 4th November, 2015. This report was in two parts:

1. Rationale and Design/Recommendations
2. A comprehensive draft Insolvency and Bankruptcy Bill covering all entities

Draft bill titled 'The Insolvency and Bankruptcy Code, 2015' was introduced in Parliament on 21st December, 2015 and referred to a Joint Parliamentary Committee on 23rd December, 2015.

Joint Parliamentary Committee invited comments on the Draft bill (The Insolvency and Bankruptcy Code, 2015) on 22nd January, 2016 and the report of Joint committee on the Insolvency and Bankruptcy Code, 2015 presented to Lok Sabha and laid in Rajya Sabha on 28th April, 2016.

The Bill was passed by Lok Sabha on 5th May, 2016 and was passed by Rajya Sabha on 11th May, 2016. The Bill received the President's assent on 28th May, 2016.

Sections of the IBC were first notified on 5th August, 2016.

CONSTITUTIONALITY OF "THE INSOLVENCY AND BANKRUPTCY CODE, 2016" (THE CODE/IBC)

- Under the Constitution of India, Entry 9 in List III - Concurrent List, (Article 246 – Seventh Schedule to the

Constitution) i.e. both Center and State Governments can make laws relating to 'Bankruptcy & Insolvency'.

- Entry 43 of List I deals with 'incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies' whereas Entry 44 of List I deals with 'incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.'
- Further, Entry 32 of List II deals with 'incorporation, regulation and winding up of corporations, other than those specified in List I...'

SCOPE OF THE CODE

The provisions of this Code shall apply to-

- a) any company incorporated under the Companies Act, 2013 or under any previous company law;
- b) any other company governed by any special act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
- c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;
- d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and
- e) partnership firms and individuals,

in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

This Code is applicable to whole of India except Part III which provides the provisions for Partnership firms and Individual not applicable for the State of Jammu and Kashmir.

THIS CODE IS NOT APPLICABLE TO FINANCIAL SERVICES PROVIDERS.

Financial Resolution and Deposit Insurance Bill, 2016

The Insolvency and Bankruptcy Code, 2016 is not applicable to financial service providers. A separate legislation for financial service providers is in draft stage.

The Legislation is named as the Financial Resolution and Deposit Insurance Bill, 2016.

Origin of this Draft Bill can be found in Para 90 of Budget Speech of 2016-17 by Finance Minister Mr. Arun Jaitley. His words in this regards are:

“A systemic vacuum exists with regard to bankruptcy situations in financial firms. A comprehensive Code on Resolution of Financial Firms will be introduced as a Bill in the Parliament during 2016-17. This Code will provide a specialised resolution mechanism to deal with bankruptcy situations in banks, insurance companies and financial sector entities. This Code, together with the Insolvency and Bankruptcy Code 2015, when enacted, will provide a comprehensive resolution mechanism for our economy”.

To give effect to the words, on 15th March, 2016, the Ministry of Finance issued an Office Order to constitute a committee to draft and submit a Bill on resolution of financial firms.

Composition of the Committee:

- Shri Ajay Tyagi, Additional Secretary (Investment), Department of Economic Affairs – Chairperson
- Representative of
 - Department of Financial Services - Member
 - Reserve Bank of India - Member
 - Deposit Insurance and Credit Guarantee Corporation - Member
 - Securities and Exchange Board of India - Member
 - Insurance Regulatory and Development Authority of India - Member

— Pension Fund Regulatory and Development Authority - Member

- Adviser (FS), DEA - Member
- Adviser (Capital Market), DEA - Member Convener

Committee submitted its report on 21st September, 2016.

Report along with Draft Bill was made public on 28th September, 2016. Suggestion/Comments from the public were invited till 14th October, 2016. This date was extended to 31st October, 2016.

The Committee also considered previous reports Committee of the Financial Sector Legislative Reforms Commission (2013), and the High Level Working Group on Resolution Regime for Financial Institutions (2014).

DRAFT “FINANCIAL RESOLUTION AND DEPOSIT INSURANCE BILL, 2016”

Preamble

An Act to establish a framework to carry out the resolution of certain categories of financial service providers in distress, to provide deposit insurance to consumers of certain categories of financial services and for designation of Systemically Important Financial Institutions by the Central Government for resolution;

And whereas it is necessary to establish a corporation with the objective of protecting consumers of covered service providers and public funds to the extent possible thereby contributing to the stability and resilience of the financial system;

And for matters connected therewith or incidental thereto.

Constitution of Separate Administrative Body

Clause 3 of Draft Bill mandates for establishment of a Corporation by the name of the Resolution Corporation to be headquartered at Mumbai. However, it may establish offices at other places in India.

The Corporation will be a body corporate having, -

- (a) perpetual succession;
- (b) a common seal;

- (c) the power to acquire, hold or dispose of property;
- (d) the power to enter into contracts; and
- (e) the power to sue and be sued by the said name.

Composition, powers and functions shall be in accordance with Draft Bill.

Clause 21 of Draft Bill states the requirement of constitution of funds for the Corporation:

- (a) a fund for Deposit Insurance provided by the Corporation to the insured service providers, called the Corporation Insurance Fund;
- (b) a fund for meeting the expenses of carrying out resolution of insured service providers, called the Corporation Resolution Fund; and
- (c) a fund for all other functions of the Corporation called the Corporation General Fund.

Repeal

The Deposit Insurance and Credit Guarantee Corporation Act, 1961.

Amendments to the Acts

Part VII, covering clause 134 to 146 of the Draft Bill requires amendments to the following Acts

1. The Regional Rural Bank Act, 1976
2. The State Bank of India Act, 1955
3. The Insurance Act, 1938
4. The Banking Regulation Act, 1949
5. The Life Insurance Corporation Act, 1956
6. The General Insurance Business (Nationalisation) India Act, 1972
7. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970

8. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980
9. The State Bank of India (Subsidiary Banks) Act, 1959
10. The Multi-State Cooperative Societies Act, 2002
11. The Reserve Bank of India Act, 1934
12. The Companies Act, 2013
13. The Securities Contracts (Regulation) Act, 1956



Chapter I

Overview of The Insolvency and Bankruptcy Code, 2016

Structure of the Code

This code comprises of 5 Parts, 255 Sections and 11 Schedules.

- Part I–Preliminary- Sections 1 to 3
- Part II- Insolvency Resolution and Liquidation for Corporate Persons
 - Chapter I – Preliminary – Sections 4 & 5
 - Chapter II – Corporate Insolvency Resolution Process – Sections 6 to 32
 - Chapter III – Liquidation Process- Sections 33 to 54
 - Chapter IV – Fast Track Corporate Insolvency Resolution Process- Sections 55 to 58
 - Chapter V – Voluntary Liquidation of Corporate Persons- Section 59
 - Chapter VI – Adjudicating Authority for Corporate Persons- Sections 60 to 67
 - Chapter VII – Offences and Penalties- Sections 68 to 77
- Part III – Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms
 - Chapter I – Preliminary – Sections 78 & 79
 - Chapter II – Fresh Start Process – Sections 80 to 93
 - Chapter III – Insolvency Resolution Process – Sections 94 to 120
 - Chapter IV – Bankruptcy Order for Individuals and Partnership Firms – Sections 121 to 148

- Chapter V – Administration and Distribution of the Estate of the Bankrupt – Sections 149 to 178
- Chapter VI – Adjudicating Authority for Individuals and Partnership Firms – Sections 179 to 183
- Chapter VII – Offences and Penalties – Sections 184 to 187
- Part IV – Regulation of Insolvency Professionals, Agencies and Information Utilities
 - Chapter I – The Insolvency and Bankruptcy Board of India- Sections 188 to 195
 - Chapter II – Powers and Functions of the Board – Sections 196 to 198
 - Chapter III – Insolvency Professional Agencies – Sections 199 to 205
 - Chapter IV – Insolvency Professionals – Sections 206 to 208
 - Chapter V – Information Utilities – Sections 209 to 216
 - Chapter VI – Inspection and Investigation – Sections 217 to 220
 - Chapter VII – Finance, Accounts and Audit – Sections 221 to 223
- Part V – Miscellaneous – Sections 224 to 255

Schedules

- THE FIRST SCHEDULE - Amendment to the Indian Partnership Act, 1932- Section 245
- THE SECOND SCHEDULE - Amendment to the Central Excise Act, 1944- Section 246
- THE THIRD SCHEDULE - Amendment to the Income-Tax Act, 1961- Section 247
- THE FOURTH SCHEDULE - Amendment to the Customs Act, 1962- Section 248

- THE FIFTH SCHEDULE - Amendment to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993- Section 249
- THE SIXTH SCHEDULE - Amendment to the Finance Act, 1994- Section 250
- THE SEVENTH SCHEDULE - Amendment to the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002- Section 251
- THE EIGHTH SCHEDULE - Amendment to the Sick Industrial Companies (Special Provisions) Repeal Act, 2003- Section 252
- THE NINTH SCHEDULE - Amendment to the Payment and Settlement Systems Act, 2007- Section 253
- THE TENTH SCHEDULE - Amendment to the Limited Liability Partnership Act, 2008- Section 254
- THE ELEVENTH SCHEDULE - Amendments to the Companies Act, 2013- Section 255

Rules & Regulations

Rules Notified by Ministry of Corporate Affairs on the matters specified in Section 239 of the Code:

1. The Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016 - notified on 29th August, 2016
2. The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 - notified on 30th November, 2016, w.e.f. 1st December, 2016

Other relevant rules in this regard

1. The National Company Law Tribunal Rules, 2016 - notified on 21st July, 2016
2. The National Company Law Appellate Tribunal Rules, 2016 - notified on 21st July, 2016
3. The Companies (Transfer of Pending Proceedings) Rules, 2016 - notified on 7th December, 2016, w.e.f. 15th December, 2016,

except rule 4 which shall come into effect from 1st April, 2017

Regulations Notified by the Board on matters specified under Section 240 of the Code:

1. The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 - notified on 21st November 2016
2. The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016 - notified on 21st November, 2016
3. The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 - notified on 23rd November 2016, w.e.f. 29th November, 2016
4. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - notified on 30th November 2016, w.e.f. 1st December, 2016
5. The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 - notified on 15th December, 2016
6. The Insolvency and Bankruptcy Board of India (Engagement of Research Associates and Consultants) Regulations, 2017 - notified on 30th January, 2017
7. The Insolvency and Bankruptcy Board of India (Advisory Committee) Regulations, 2017 - notified on 30th January, 2017
8. The Insolvency and Bankruptcy Board of India (Procedure for Governing Board Meetings) Regulations, 2017 - notified on 30th January, 2017
9. The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 - notified on 31st March, 2017, w.e.f. 1st April, 2017
10. Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 - notified on 31st March, 2017, w.e.f. 1st April, 2017

Useful Websites:

<http://www.ibbi.gov.in>- Insolvency and Bankruptcy Board of India

<http://www.mca.gov.in>- Ministry of Corporate Affairs

<http://www.insolindia.com> - INSOL India

<https://www.insol.org> - INSOL International

<http://www.uncitral.org>- United Nations Commission on International Trade Law

<http://finmin.nic.in> – Ministry of Finance, Government of India

<https://www.dicgc.org.in> - Deposit Insurance and Credit Guarantee Corporation

<http://www.cdrindia.org> - Corporate Debt Restructuring Mechanism

<https://www.rbi.org.in> - Reserve Bank of India

Applicability:

This Code is divided into five parts. This Code is applicable to

- Companies and LLPs (termed as Corporate debtor)
- Individuals and Partnership Firms

with such provisions contained in Part II and Part III of the Code respectively.

Must know Terms and their definitions

1. **Section 3(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.
2. **Section 3(7): “corporate person”** means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a

limited liability partnership, as defined in clause (n) of subsection (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

3. **Section 3(8): “corporate debtor”** means a corporate person who owes a debt to any person.
4. **Section 3(10): “creditor”** means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder.
5. **Section 3(11): “debt”** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.
6. **Section 3(12): “default”** means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.
7. **Section 3(13): “financial information”**, in relation to a person, means one or more of the following categories of information, namely: -
 - a) records of the debt of the person;
 - b) records of liabilities when the person is solvent;
 - c) records of assets of person over which security interest has been created;
 - d) records, if any, of instances of default by the person against any debt;
 - e) records of the balance sheet and cash-flow statements of the person; and
 - f) such other information as may be specified.
8. **Section 3(14): “financial institution”** means-
 - a) a scheduled bank;

- b) financial institution as defined in section 45-I of the Reserve Bank of India Act, 1934;
 - c) public financial institution as defined in clause (72) of section 2 of the Companies Act, 2013; and
 - d) such other institution as the Central Government may by notification specify as a financial institution.
9. **Section 3(15): “financial product”** means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed.
10. **Section 3(16): “financial service”** includes any of the following services, namely: -
- a) accepting of deposits;
 - b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
 - c) effecting contracts of insurance;
 - d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
 - e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of-
 - i. buying, selling, or subscribing to, a financial product;
 - ii. availing a financial service; or
 - iii. exercising any right associated with a financial product or financial service;
 - f) establishing or operating an investment scheme;
 - g) maintaining or transferring records of ownership of a financial product;

- h) underwriting the issuance or subscription of a financial product; or
 - i) selling, providing, or issuing stored value or payment instruments or providing payment services.
- 11. **Section 3(17): “financial service provider”** means a person engaged in the business of providing financial services in terms of authorization issued or registration granted by a financial sector regulator.
- 12. **Section 3(18): “financial sector regulator”** means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government.
- 13. **Section 3(23): “person”** includes-
 - a) an individual;
 - b) a Hindu Undivided Family;
 - c) a company;
 - d) a trust;
 - e) a partnership;
 - f) a limited liability partnership; and
 - g) any other entity established under a statute,and includes a person resident outside India.
- 14. **Section 3(24): “person resident in India”** shall have the meaning as assigned to such term in clause (v) of section 2 of the Foreign Exchange Management Act, 1999.
- 15. **Section 3(25): “person resident outside India”** means a person other than a person resident in India.
- 16. **Section 3(27): “property”** includes money, goods, actionable claims, land and every description of property situated

in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property.

17. **Section 3(30): “secured creditor”** means a creditor in favour of whom security interest is created.
18. **Section 3(31): “security interest”** means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee.
19. **Section 3(33): “transaction”** includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor.
20. **Section 3(34): “transfer”** includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.
21. **Section 3(35): “transfer of property”** means transfer of any property and includes a transfer of any interest in the property and creation of any charge upon such property.
22. **Section 3(36): “workman”** shall have the same meaning as assigned to it in clause (s) of section 2 of the Industrial Disputes Act, 1947.
23. **Section 5(4): “constitutional document”**, in relation to a corporate person, includes articles of association, memorandum of association of a company and incorporation document of a Limited Liability Partnership.
24. **Section 5(5): “corporate applicant”** means-
 - a) corporate debtor; or
 - b) a member or partner of the corporate debtor who is authorised to make an application for the corporate

- insolvency resolution process under the constitutional document of the corporate debtor; or
- c) an individual who is in charge of managing the operations and resources of the corporate debtor; or
 - d) a person who has the control and supervision over the financial affairs of the corporate debtor.
25. **Section 5(6): "dispute"** includes a suit or arbitration proceedings relating to-
- a) the existence of the amount of debt;
 - b) the quality of goods or service; or
 - c) the breach of a representation or warranty;
26. **Section 5(7): "financial creditor"** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.
27. **Section 5(8): "financial debt"** means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—
- a) money borrowed against the payment of interest;
 - b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
 - c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
 - d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
 - e) receivables sold or discounted other than any receivables sold on nonrecourse basis;
 - f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

- g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
 - h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
 - i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause 2.
28. **Section 5(11):“initiation date”** means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process.
29. **Section 5(12):“insolvency commencement date”** means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be.
30. **Section 5(13):“insolvency resolution process costs”** means-
- a) the amount of any interim finance and the costs incurred in raising such finance;
 - b) the fees payable to any person acting as a resolution professional;
 - c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
 - d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
 - e) any other costs as may be specified by the Board.
31. **Section 5(14):“insolvency resolution process period”** means the period of one hundred and eighty days beginning from

the insolvency commencement date and ending on one hundred and eightieth day.

32. **Section 5(15):"interim finance"** means any financial debt raised by the resolution professional during the insolvency resolution process period.
33. **Section 5(16):"liquidation cost"** means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board.
34. **Section 5(17):"liquidation commencement date"** means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be.
35. **Section 5(18):"liquidator"** means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be.
36. **Section 5(19):"officer"** for the purposes of Chapter VII of this Part (For Company & LLP), means an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 or a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, as the case may be.
37. **Section 5(20):"operational creditor"** means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.
38. **Section 5(21):"operational debt"** means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.
39. **Section 5(22):"personal guarantor"** means an individual who is the surety in a contract of guarantee to a corporate debtor.
40. **Section 5(23):"personnel"** includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor.

41. Section 5(24):“related party”, in relation to a corporate debtor, means-

- a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;
- b) key managerial personnel of the corporate debtor or a relative of key managerial personnel of the corporate debtor
- c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;
- d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;
- e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
- f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;
- i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;
- j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

- k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;
 - l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;
 - m) any person who is associated with the corporate debtor on account of-
 - i. participation in policy making processes of the corporate debtor; or
 - ii. having more than two directors in common between the corporate debtor and such person; or
 - iii. interchange of managerial personnel between the corporate debtor and such person; or
 - iv. provision of essential technical information to, or from, the corporate debtor;
42. **Section 5(25):"resolution applicant"** means any person who submits a resolution plan to the resolution professional;
43. **Section 5(26):"resolution plan"** means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;
44. **Section 5(27):"resolution professional"**, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional; and
45. **Section 5(28):"voting share"** means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.

- 46. Regulation 2(1) (a) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:** “books of the corporate debtor” means
- a) the books of account and the financial statements as defined in section 2(13) and 2(40) of the Companies Act, 2013,
 - b) the books of account as referred to in section 34 of the Limited Liability Partnership Act, 2008, or
 - c) the books of accounts as specified under the applicable law, as the case may be.
- 47. Regulation 2(1) (c) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:** “contributory” means a member of the company, a partner of the limited liability partnership, and any other person liable to contribute towards the assets of the corporate debtor in the event of its liquidation.
- 48. Regulation 2(1) (d) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:** “electronic means” mean an authorized and secured computer programme which is capable of producing confirmation of sending communication to the participant entitled to receive such communication at the last electronic mail address provided by such participant and keeping record of such communication.
- 49. Regulation 2(1) (e) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:** “identification number” means the Limited Liability Partnership Identification Number or the Corporate Identity Number, as the case may be.
- 50. Regulation 2(1) (f) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:** “Preliminary Report” means the report prepared in accordance with Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 51. Regulation 2(1) (g) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:** “Progress

Report” means the quarterly report prepared in accordance with Regulation 15 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

52. **Regulation 2(1) (h) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:** “**registered valuer**” means a person registered as such in accordance with the Companies Act, 2013 (18 of 2013) and rules made thereunder.
53. **Regulation 2(1) (k) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:** “**stakeholders**” means the stakeholders entitled to distribution of proceeds.



Chapter II

Corporate Insolvency Resolution Process (CIRP)

Part II

(Chapter II – Sections 6-32)

Applicable Framework

- Part II, Chapter II covering Section 6-32 of the Insolvency and Bankruptcy Code, 2016
- Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016
- Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- The Companies (Transfer of Pending Proceedings) Rules, 2016 where such proceedings has been transferred

Initiating Insolvency Resolution Process

Section 4 of the Code: On the event of default (default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor), an application for initiating corporate insolvency resolution process in respect of such corporate debtor may be made by financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor.

Initiation of IRP by Financial creditor: Section 7 of the IBC

Financial Creditor may file the application either by itself or jointly in Form 1 specified in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a fee of Rs. 25000 and the form must contain the name of the Interim Resolution Professional

This application shall be filed along with:

- record of the default recorded with the information utility or such other record or evidence of default as may be specified;
- the name of the resolution professional proposed to act as an interim resolution professional
- Where the applicant is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer.

The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

In case the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf.

Adjudicating Authority on receipt of application by financial creditor

The Adjudicating Authority shall, within fourteen days of the receipt of the application by financial creditor, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor. (Sec 7(4))

Adjudicating Authority may accept the application if a default has occurred and the application is complete, and there is no disciplinary proceedings pending against the proposed resolution professional. (Sec 7(5)(a))

Adjudicating Authority shall, before rejecting the application, give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

The Adjudicating Authority shall communicate within seven days of admission or rejection of such application, as the case may be.

The corporate insolvency resolution process shall commence from the date of admission of the application.

Initiation of Insolvency Resolution and CIRP by Operational creditor: Section 8 and 9 of the Code

Before filing an application for insolvency resolution process, an operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor.

This demand notice shall be in **Form 3** specified in Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Copy of an invoice demanding payment of the amount involved in the default to the corporate debtor shall be in Form 4 specified in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

The demand notice or the copy of the invoice demanding, may be delivered to the corporate debtor,

- a) at the registered office by hand, registered post or speed post with acknowledgement due; or
- b) by electronic mail service to a whole-time director or designated partner or key managerial personnel, if any, of the corporate debtor.

A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any.

The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor-

- a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
- b) the repayment of unpaid operational debt-
 - i. by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
 - ii. by sending an attested copy of record that the operational creditor has encashed a cheques issued by the corporate debtor.

Application form shall be accompanied with:

- a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
- an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
- a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor

The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

An operational creditor initiating a corporate insolvency resolution process, may propose a resolution professional to act as an interim resolution professional.

Adjudicating Authority on receipt of application by operational creditor

The Adjudicating Authority shall, within fourteen days of the receipt of the application, by an order, admit the application and communicate such decision to the operational creditor and the corporate debtor if

- the application made is complete;
- there is no repayment of the unpaid operational debt;
- the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
- no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
- there is no disciplinary proceeding pending against any resolution professional proposed, if any.

The Adjudicating Authority shall, within fourteen days of the receipt of the application, by an order, reject the application and

communicate such decision to the operational creditor and the corporate debtor if

- the application made is incomplete;
- there has been repayment of the unpaid operational debt;
- the creditor has not delivered the invoice or notice for payment to the corporate debtor;
- notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
- any disciplinary proceeding is pending against any proposed resolution professional.

Adjudicating Authority shall, before rejecting the application, give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

The corporate insolvency resolution process shall commence from the date of admission of the application.

Initiation of IRP by the Corporate Applicant: Section 10 of the IBC

Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

Application by Corporate Applicant shall be in Form 6 specified in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a fee of Rs 25,000.

Person not entitled to make application: Section 11 of the IBC

- a) a corporate debtor undergoing a corporate insolvency resolution process; or
- b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or

- d) a corporate debtor in respect of whom a liquidation order has been made.

a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Withdrawal of Application: Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

The Adjudicating Authority may permit withdrawal of the application made by the financial creditor, operational creditor or corporate applicant, as the case may be, on a request made by the applicant before its admission.

Important points for proposal of appointment of interim resolution professional

Eligibility: Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

An insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Explanation– A person shall be considered independent of the corporate debtor, if he:

- a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company;
- b) is not a related party of the corporate debtor; or
- c) is not an employee or proprietor or a partner:
 - i. of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor; or
 - ii. of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm, in the last three financial years.

A resolution professional shall make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.

A resolution professional, who is a director or a partner of an insolvency professional entity, shall not continue as a resolution professional in a corporate insolvency resolution process if the insolvency professional entity or any other partner or director of such insolvency professional entity represents any of the other stakeholders in the same corporate insolvency resolution process.

The applicant, wherever he is required to propose or proposes to appoint an insolvency resolution professional, shall obtain a written communication in Form 2 from the insolvency professional for appointment as an interim resolution professional and enclose it with the application made by financial creditor, operational creditor or corporate applicant, as the case may be.

The application shall be accompanied by a certificate confirming the eligibility of the proposed insolvency professional for appointment as a resolution professional.

Time-limit for completion of Insolvency Resolution Process: Section 12 of the Code

Insolvency resolution process shall be completed within 180 days from the date of admission of application made. Such period can be extended for a further period of maximum 90 days on an application by resolution professional on a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent. of the voting shares.

If the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days. It shall not be granted more than once.

Declaration of Moratorium and Public Announcement on Admission: Section 13 of the IBC

On admission of application, the Adjudicating Authority shall

- declare a moratorium
- cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims
- appoint an interim resolution professional

Moratorium: Section 14 of the IBC

On the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Above provisions shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016: The essential goods and services shall mean-

1. electricity;
2. water;
3. telecommunication services; and
4. information technology services,

to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Illustration- Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity.

The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

Where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan or passes an order for liquidation of corporate debtor, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

Interim Resolution professional

"Resolution professional", for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and **includes an interim resolution professional** (Sec 5(27)). Interim resolution professional is responsible to constitute a committee of creditors and receive and collate all the claims submitted by creditors to him.

Appointment of interim resolution professional: Section 16 of the IBC

The Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date.

Scenario in case the application is made by operational creditor

Where the application for corporate insolvency resolution process is made by an operational creditor and-

- no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional.
- a proposal for an interim resolution professional is made, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority where no resolution professional is proposed in the application, recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

The term of the interim resolution professional shall not exceed thirty days from date of his appointment.

Note: Last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.

Public Announcement of the initiation of corporate insolvency resolution process and call for the submission of claims: Section 15 of the Code

An insolvency professional shall make a public announcement not later than three days from his appointment as an interim resolution professional in Form A of the Schedule of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Public Announcement shall also be published in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operation, along with on the website, if any, of the corporate debtor and on the website, if any, designated by the Board for the purpose.

Management of Affairs of Corporate Debtor by Interim Resolution Professional: Section 17 of the Code

From the date of appointment interim resolution professional-

- a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;
- b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;
- c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;
- d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

Duties of Interim Resolution Professional: Section 18 of the Code

The interim resolution professional shall perform the following duties, namely: -

- a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to-
 - i. business operations for the previous two years;
 - ii. financial and operational payments for the previous two years;
 - iii. list of assets and liabilities as on the initiation date; and
 - iv. such other matters as may be specified;
- b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made;
- c) constitute a committee of creditors;

- d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;
- e) file information collected with the information utility, if necessary; and
- f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including-
 - i. assets over which the corporate debtor has ownership rights which may be located in a foreign country;
 - ii. assets that may or may not be in possession of the corporate debtor;
 - iii. tangible assets, whether movable or immovable;
 - iv. intangible assets including intellectual property;
 - v. securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
 - vi. assets subject to the determination of ownership by a court or authority;
- g) to perform such other duties as may be specified by the Board.

"assets" shall not include the following, namely: -

- a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;
- b) assets of any Indian or foreign subsidiary of the corporate debtor; and
- c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

Management of operations of corporate debtor as going concern: Section 20 of the IBC

The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

The interim resolution professional shall have the authority-

- a) to appoint accountants, legal or other professionals as may be necessary
- b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;
- c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

- d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and
- e) to take all such actions as are necessary to keep the corporate debtor as a going concern.

Co-operation to the Interim Resolution Professional: Section 19 of the IBC

The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the

interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

The Adjudicating Authority, on receiving an application, shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

Costs of the Interim Resolution Professional: Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses by the applicant.

The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

“expenses” mean the fee to be paid to the interim resolution professional and other expenses, including the cost of engaging professional advisors, to be incurred by the interim resolution professional.

Appointment of registered valuers: Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The interim resolution professional shall within seven days of his appointment, appoint two registered valuers to determine the liquidation value of the corporate debtor:

Provided that the following persons shall not be appointed as registered valuers:

- a. a relative of the interim resolution professional;
- b. a related party of the corporate debtor;
- c. an auditor of the corporate debtor in the five years preceding the insolvency commencement date; or

d. a partner or director of the insolvency professional entity.

The interim resolution professional, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in discharging his duties under the Code or these Regulations.

CLAIMS TO THE CORPORATE DEBTOR

Submission of Claims

Claims by operational creditors: Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1. A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit proof of claim to the interim resolution professional in person, by post or by electronic means in Form B of the Schedule Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

2. The existence of debt due to the operational creditor under this Regulation may be proved on the basis of-
- a) the records available with an information utility, if any; or
 - b) other relevant documents, including –
 - i. a contract for the supply of goods and services with corporate debtor;
 - ii. an invoice demanding payment for the goods and services supplied to the corporate debtor;
 - iii. an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or
 - iv. financial accounts.

Claims by **financial creditors**: Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1. A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim 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.

2. The existence of debt due to the financial creditor may be proved on the basis of –
 - a) the records available with an information utility, if any; or
 - b) other relevant documents, including –
 - i. a financial contract supported by financial statements as evidence of the debt;
 - ii. a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;
 - iii. financial statements showing that the debt has not been repaid; or
 - iv. an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

Claims by **workmen and employees**: Regulation 9 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1. A person claiming to be a workman or an employee of the corporate debtor shall submit proof of claim to the interim resolution professional in person, by post or by electronic means in Form D of the Schedule:

Provided that such person may submit supplementary documents or clarifications in support of the claim, on his

- own or if required by the interim resolution professional, before the constitution of the committee.
2. Where there are dues to numerous workmen or employees of the corporate debtor, an authorised representative may submit one proof of claim for all such dues on their behalf in Form E of the Schedule.
 3. The existence of dues to workmen or employees may be proved by them, individually or collectively on the basis of –
 - a) records available with an information utility, if any; or
 - b) other relevant documents, including –
 - i. a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
 - ii. evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made; or
 - iii. an order of a court or tribunal that has adjudicated upon the non-payment of a dues, if any.

Time period for Submission of Claims: Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

A creditor shall submit proof of claim on or before the last date (14 days from the appointment of interim resolution professional) mentioned in the public announcement.

A creditor, who failed to submit proof of claim within the time stipulated in the public announcement, may submit such proof to the interim resolution professional or the resolution professional, as the case may be, till the approval of a resolution plan by the committee.

Where the creditor is a financial creditor, it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

Substantiation of Claims: Regulation 10 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

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.

Verification of Claims: Regulation 13 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

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 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.

Determination of Amount of Claim: Regulation 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

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.

The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims, as soon as may be practicable, when he comes across additional information warranting such revision.

Claims/Debt in foreign currency: Regulation 15 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the insolvency commencement date.

“official exchange rate” is the reference rate published by the Reserve Bank of India or derived from such reference rates.

Cost of Proof: Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

A creditor shall bear the cost of proving the debt due to such creditor.

Committee of Creditors: Section 21 of the Code

Provisions with respect to committee of creditors:

- The interim resolution professional constitutes a committee of creditors after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor.
- The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority on or before the expiry of thirty days from the date of his appointment.
- The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

Composition of Committee

The committee of creditors shall comprise all financial creditors of the corporate debtor.

Where any person is a financial creditor as well as an operational creditor, -

- a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;
- b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

Composition, in case where corporate debtor has no financial creditor: Regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be set up in accordance with this Regulation.

The committee formed under this Regulation shall consist of members as under -

- a) eighteen largest operational creditors by value:
Provided that if the number of operational creditors is less than eighteen, the committee shall include all such operational creditors;
- b) one representative elected by all workmen other than those workmen included in operational creditor; and
- c) one representative elected by all employees other than those employees included in operational creditor.

Notice of the meeting: Regulation 19 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

A meeting of the committee shall be called by giving not less than seven days' notice in writing to every participant, at the address it has provided to the resolution professional and such notice maybe sent by hand delivery, or by post but in any event, be served on every participant by electronic means.

The committee may reduce the notice period from seven days to such other period of not less than twenty-four hours, as it deems fit.

The resolution professional shall give notice of each meeting of the committee of creditors to-

- a. members of Committee of creditors;
- b. members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

- c. operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

Service of notice by electronic means: Regulation 20 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1. A notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.
2. The subject line in e-mail shall state the name of the corporate debtor, the place, if any, the time and the date on which the meeting is scheduled.
3. If notice is sent in the form of a non-editable attachment to an e-mail, such attachment shall be in the Portable Document Format or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.
4. When notice or notifications of availability of notice are sent by an e-mail, the resolution professional shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained as "proof of sending".
5. The obligation of the resolution professional shall be satisfied when he transmits the e-mail and he shall not be held responsible for a failure in transmission beyond its control.
6. The notice made available on the electronic link or Uniform Resource Locator shall be readable, and the recipient should be able to obtain and retain copies and the resolution professional shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.
7. If a participant, other than a member of the committee, fails to provide or update the relevant e-mail address to the resolution professional, the non-receipt of such notice

by such participant of any meeting shall not invalidate the decisions taken at such meeting.

Contents of the notice for meeting: Regulation 21 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1) The notice shall inform the participants of the venue, the time and date of the meeting and of the option available to them to participate through video conferencing or other audio and visual means, and shall also provide all the necessary information to enable participation through video conferencing or other audio and visual means.

2) The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through an authorized representative:

Provided that such participant shall inform the resolution professional, in advance of the meeting, of the identity of the authorized representative who will attend and vote at the meeting on its behalf.

3) The notice of the meeting shall-

- a. contain an agenda of the meeting with the following-
 - i. a list of the matters to be discussed at the meeting;
 - ii. a list of the issues to be voted upon at the meeting; and
 - iii. copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting; and
- b. state that a vote of the members of the committee shall not be taken at the meeting unless all members are present at such meeting.

4) The notice of the meeting shall-

- a. state the process and manner for voting by electronic means and the time schedule, including the time period during which the votes may be cast:

- b. provide the login ID and the details of a facility for generating password and for keeping security and casting of vote in a secure manner; and
- c. provide contact details of the person who will address the queries connected with the electronic voting.

Voting by members of committee of creditors: Regulation 25 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Voting is assigned on the basis of share of debt of financial creditor to the total debt of the corporate debtor.

The Board may specify the manner of determining the voting share where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility or issued as securities provide for a single trustee or agent to act for all financial creditors.

All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five per cent. of voting share of the financial creditors.

A member of the committee with only operational creditors shall have voting rights in proportion of the debt due to such creditor or debt represented by such representative, as the case may be, to the total debt.

Matters requiring approval of committee: Section 28 of the IBC

- a. raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
- b. create any security interest over the assets of the corporate debtor;
- c. change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
- d. record any change in the ownership interest of the corporate debtor;

- e. give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
- f. undertake any related party transaction;
- g. amend any constitutional documents of the corporate debtor;
- h. delegate its authority to any other person;
- i. dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
- j. make any change in the management of the corporate debtor or its subsidiary;
- k. transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
- l. make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
- m. make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

Any action other than those listed above requiring approval of the committee may be considered in meetings of the committee.

Where all members are present in a meeting, the resolution professional shall take a vote of the members of the committee on any item listed for voting after discussion on the same.

At the conclusion of a vote at the meeting, the resolution professional shall announce the decision taken on items along with the names of the members of the committee who voted for or against the decision, or abstained from voting.

Voting through electronic means: Regulation 26 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The resolution professional shall provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system.

“voting by electronic means” or “electronic voting system” means a “secured system” based process of display of electronic ballots, recording of votes of the members of the committee and the number of votes polled in favour or against, such that the voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security;

“secured system” means computer hardware, software, and procedure that -

- i. are reasonably secure from unauthorized access and misuse;
- ii. provide a reasonable level of reliability and correct operation;
- iii. are reasonably suited to perform the intended functions; and
- iv. adhere to generally accepted security procedures.

Once a vote on a resolution is cast by a member of the committee, such member shall not be allowed to change it subsequently.

At the end of the voting period, the voting portal shall forthwith be blocked.

At the conclusion of a vote held, the resolution professional shall announce and make a written record of the summary of the decision taken on a relevant agenda item along with the names of the members of the committee who voted for or against the decision, or abstained from voting.

The resolution professional shall circulate a copy of the record to all participants by electronic means within twenty-four hours of the conclusion of the voting.

Persons who can't vote

A related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

Where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

The directors, partners of corporate debtor and one representative of operational creditors, may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings.

Quorum of Meeting: Regulation 26 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

A meeting of the committee shall be quorate if members of the committee representing at least thirty three percent of the voting rights are present either in person or by video conferencing or other audio and visual means:

Provided that the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee.

Where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.

In the event a meeting of the committee is adjourned; the adjourned meeting shall be quorate with the members of the committee attending the meeting.

Meeting of Committee of Creditors: Regulation 24 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The members of the committee of creditors may meet in person or by electronic means.

All meetings of the committee of creditors shall be conducted by the resolution professional.

The resolution professional shall act as the chairperson of the meeting of the committee.

At the commencement of a meeting, the resolution professional shall take a roll call when every participant attending through video conferencing or other audio and visual means shall state, for the record, the following, -

- a. his name;

- b. whether he is attending in the capacity of a member of the committee or any other participant;
- c. whether he is representing a member or group of members;
- d. the location from where he is participating;
- e. that he has received the agenda and all the relevant material for the meeting; and
- f. that no one other than him is attending or has access to the proceedings of the meeting at the location of that person.

After the roll call, the resolution professional shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete.

The resolution professional shall ensure that the required quorum is present throughout the meeting.

From the commencement of the meeting till its conclusion, no person other than the participants and any other person whose presence is required by the resolution professional shall be allowed access to the place where meeting is held or to the video conferencing or other audio and visual facility, without the permission of the resolution professional.

The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes shall disclose the particulars of the participants who attended the meeting in person, through video conferencing, or other audio and visual means.

The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting.

Participation through video conferencing: Regulation 23 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The notice convening the meetings of the committee shall provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with this Regulation.

The resolution professional shall make necessary arrangements to ensure uninterrupted and clear video or audio and visual connection.

The resolution professional shall take due and reasonable care-

- a. to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
- b. to ensure availability of proper video conferencing or other audio and visual equipment or facilities for providing transmission of the communications for effective participation of the participants at the meeting;
- c. to record proceedings and prepare the minutes of the meeting;
- d. to store for safekeeping and marking the physical recording(s) or other electronic recording mechanism as part of the records of the corporate debtor;
- e. to ensure that no person other than the intended participants attends or has access to the proceedings of the meeting through video conferencing or other audio and visual means; and
- f. to ensure that participants attending the meeting through audio and visual means are able to hear and see, if applicable, the other participants clearly during the course of the meeting:

Provided that the persons, who are differently abled, may make request to the resolution professional to allow a person to accompany him at the meeting.

Where a meeting is conducted through video conferencing or other audio and visual means, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

Resolution Professional

The resolution professional, may make an application to the Adjudicating Authority for an order seeking the assistance of the

local district administration in discharging his duties under the Code or Regulations.

Resolution professional costs: Regulation 23 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

“Expenses” mean the fee to be paid to the resolution professional and other expenses, including the cost of engaging professional advisors, to be incurred by the resolution professional.

“Insolvency resolution process costs” shall mean-

- a) amounts due to suppliers of essential goods and services;
- b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed;
- c) expenses incurred on or by the interim resolution professional to the extent ratified by committee of creditors;
- d) expenses incurred on or by the resolution professional; and
- e) other costs directly relating to the corporate insolvency resolution process and approved by the committee

Appointment of Resolution Professional: Section 22 of the IBC

The committee of creditors, may, in the first meeting, by a majority vote of not less than seventy-five per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

Then the Adjudicating Authority shall forward the name of the resolution professional to replace the name professional to the Board for its confirmation and shall make such appointment after confirmation by the Board.

Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority

shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

Replacement of Resolution Process during insolvency resolution period: Section 27 of the IBC

The committee of creditors may, at a meeting, by a vote of seventy-five per cent. of voting shares, propose to replace the resolution professional appointed with another resolution professional in the same manner as prescribed under section 22.

Duties of Resolution Professional: Section 25 of the IBC

For this purposes, the resolution professional shall undertake the following actions, namely: -

- a. take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
- b. represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;
- c. raise interim finances subject to the approval of the committee of creditors;
- d. appoint accountants, legal or other professionals in the manner as specified by Board;
- e. maintain an updated list of claims;
- f. convene and attend all meetings of the committee of creditors;
- g. prepare the information memorandum;
- h. invite prospective lenders, investors, and any other persons to put forward resolution plans;
- i. present all resolution plans at the meetings of the committee of creditors;
- j. file application for avoidance of transactions, if any; and
- k. such other actions as may be specified by the Board.

The filing of an avoidance application by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.

Transfer of debt due to creditors: Regulation 28 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the identity of the assignee or transferee.

The resolution professional shall notify each participant and the Adjudicating Authority of any resultant change in the committee within two days of such change.

Sale of assets outside the ordinary course of business: Regulation 29 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case:

Provided that the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional.

A sale of assets under this Regulation shall require the approval of the committee.

A bona fide purchaser of assets sold under this Regulation shall have a free and marketable title to such assets notwithstanding the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature.

Liquidation value: Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Liquidation value is the estimated realizable value of the assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date.

Liquidation value shall be determined in the following manner:

- a) the two registered valuers appointed under Regulation 27 shall submit to the interim resolution professional or the resolution professional, as the case may be, an estimate of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;
- b) if in the opinion of the interim resolution professional or the resolution professional, as the case maybe, the two estimates are significantly different, he may appoint another registered valuer who shall submit an estimate computed in the same manner; and
- c) the average of the two closest estimates shall be considered the liquidation value.

The resolution professional shall provide the liquidation value to the committee in electronic form.

Preparation of information memorandum: Section 29 of the IBC

The interim resolution professional or resolution professional shall prepare an information memorandum and submit all contents within 14 days of first meeting.

The information memorandum shall contain the following details of the corporate debtor-

- a) assets and liabilities, as on the insolvency commencement date, classified into appropriate categories for easy identification, with estimated values assigned to each category;
- b) the latest annual financial statements;

- c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;
- d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
- e) particulars of a debt due from or to the corporate debtor with respect to related parties;
- f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
- g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
- h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- i) the number of workers and employees and liabilities of the corporate debtor towards them;
- j) the liquidation value;
- k) the liquidation value due to operational creditors; and
- l) other information, which the resolution professional deems relevant to the committee.

The interim resolution professional or the resolution professional, as the case may be, shall submit an information memorandum in electronic form to each member of the committee and any potential resolution applicant containing-

- at least the matters listed in paragraphs (a) to (i) above, **before its first meeting**; and
- matters listed in paragraphs (j) to (l) above, within **fourteen days** of the first meeting.

The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes-

- a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;
- b) to protect any intellectual property of the corporate debtor it may have access to; and
- c) not to share relevant information with third parties unless point a & b are complied with.

Preparation of Resolution Plan: Regulation 37 and 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1. A resolution plan may provide for the measures required for implementing it, including but not limited to the following-
 - (a) transfer of all or part of the assets of the corporate debtor to one or more persons;
 - (b) sale of all or part of the assets whether subject to any security interest or not;
 - (c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
 - (d) satisfaction or modification of any security interest;
 - (e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;
 - (f) reduction in the amount payable to the creditors;
 - (g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
 - (h) amendment of the constitutional documents of the corporate debtor;
 - (i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; and

- (j) obtaining necessary approvals from the Central and State Governments and other authorities.
2. Mandatory contents of the resolution plan (Regulation 38): A resolution plan shall identify specific sources of funds that will be used to pay the -
- (a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;
 - (b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and
 - (c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.
3. A resolution plan shall provide:
- (a) the term of the plan and its implementation schedule;
 - (b) the management and control of the business of the corporate debtor during its term; and
 - (c) adequate means for supervising its implementation.

Submission of Resolution Plan: Section 30 of the Code

A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

A resolution applicant shall endeavour to submit a resolution plan prepared in accordance with the Code and the Regulations to the resolution professional, thirty days before expiry of the maximum period permitted for the completion of the corporate insolvency resolution process.

The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;
- (b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;
- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- (d) the implementation and supervision of the resolution plan;
- (e) does not contravene any of the provisions of the law for the time being in force;
- (f) conforms to such other requirements as may be specified by the Board.

The resolution professional shall present all resolution plans that meet the requirements of the Code and these Regulations to the committee for its consideration. The committee may approve any resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors with such modifications as it deems fit.

The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

Approval of resolution plan by Adjudicating Authority: Section 31 of the IBC

If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements, it shall by order approve the resolution plan which shall be binding

on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements, it may, by an order, reject the resolution plan.

After the order of approval, -

- a) the moratorium order passed by the Adjudicating Authority shall cease to have effect; and
- b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

Appeal on order of approval of Resolution Plan by Adjudicating Authority: Section 32, 61(3) of the IBC

An appeal against an order approving a resolution plan may be filed on the following grounds, namely: -

- i. the approved resolution plan is in contravention of the provisions of any law for the time being in force;
- ii. there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
- iii. the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
- iv. the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
- v. the resolution plan does not comply with any other criteria specified by the Board.

Appeal shall be filed within thirty days before the National Company Law Appellate Tribunal.

National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.



Chapter III

Liquidation Process of Corporate Person

Part II

(Chapter III – Section 33-54)

Applicable framework

- Part II, Chapter III covering Section 33-54 of the Code
- Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Completion of Liquidation: Regulation 44 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall liquidate the corporate debtor within a period of two years.

If the liquidator fails to liquidate the corporate debtor within two years, he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation.

Circumstance on which Liquidation order can be passed by Adjudicating Authority: Section 33 of the IBC

- before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under or the fast track corporate insolvency resolution process, as the case may be, does not receive a resolution plan.
- rejects the resolution plan for the non-compliance of the requirements specified by the Code.
- Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating

Authority of the decision of the committee of creditors to liquidate the corporate debtor.

- Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order.

On happening of above circumstances, Adjudicating Authority shall:

- i. pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
- ii. issue a public announcement stating that the corporate debtor is in liquidation; and
- iii. require such order to be sent to the authority with which the corporate debtor is registered.

Consequences of passing an order of liquidation by Adjudicating Authority

When a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

However, such provisions shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

Liquidator

Where the Adjudicating Authority passes an order for liquidation of the corporate debtor, the resolution professional appointed for the corporate insolvency resolution process under Chapter II of Part

It shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.

On the appointment of a liquidator, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

Eligibility of Liquidator: Regulation 3 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

A person shall be considered independent of the corporate debtor, if he-

- a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate debtor is a company;
- b) is not a related party of the corporate debtor; or
- c) has not been an employee or proprietor or a partner:
 - i. of a firm of auditors or company secretaries or cost auditors of the corporate debtor; or
 - ii. of a legal or a consulting firm, that has or had any transaction with the corporate debtor contributing ten per cent or more of the gross turnover of such firm, in the last three financial years.

Fee of Liquidator: Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The fee payable to the liquidator shall form part of the liquidation cost.

The liquidator shall be entitled to such fee and in such manner as has been decided by the committee of creditors when a liquidation order is passed on account of:

- before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under or the fast track corporate insolvency resolution process, as the case may be, does not receive a resolution plan.

- Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor.

In all cases, other than those covered, the liquidator shall be entitled to a fee as a percentage of the amount realized net of other liquidation costs, and of the amount distributed, as under:

Amount of Realization / Distribution (In rupees)	Percentage of fee on the amount realized / distributed			
	in the first six months	in the next six months	in the next one year	Thereafter
Amount of Realization (exclusive of liquidation costs)				
On the first 1 crore	5.00	3.75	2.50	1.88
On the next 9 crores	3.75	2.80	1.88	1.41
On the next 40 crores	2.50	1.88	1.25	0.94
On the next 50 crores	1.25	0.94	0.68	0.51
On further sums realized	0.25	0.19	0.13	0.10
Amount Distributed to Stakeholders				
On the first 1 crore	2.50	1.88	1.25	0.94
On the next 9 crores	1.88	1.40	0.94	0.71
On the next 40 crores	1.25	0.94	0.63	0.47
On the next 50 crores	0.63	0.48	0.34	0.25
On further sums distributed	0.13	0.10	0.06	0.05

The liquidator shall be entitled to receive half of the fee payable on realization only after such realized amount is distributed.

Role and Duties of liquidator: Section 35 of the IBC

On the appointment of a liquidator, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor.

The liquidator may make an application to the Adjudicating Authority for a direction that a person who-

- a) is or has been an officer, auditor, employee, promoter or partner of the corporate debtor;
- b) was the interim resolution professional, resolution professional or the previous liquidator of the corporate debtor; or
- c) has possession of any of the properties of the corporate debtor; shall cooperate with him in the collection of information necessary for the conduct of the liquidation.

An application may be made under this Regulation only after the liquidator has made reasonable efforts to obtain the information from such person and failed to obtain it.

Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:

- a) to verify claims of all the creditors;
- b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;
- c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;
- d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary

- e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;
- f) subject to interest of secured creditor as specified, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;
- g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;
- h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;
- i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
- j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
- k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;
- l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;
- m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition,

affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

- n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and
- o) to perform such other functions as may be specified by the Board.

The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds.

The stakeholders consulted shall extend all assistance and cooperation to the liquidator to complete the liquidation of the corporate debtor.

The liquidator shall maintain the particulars of any consultation with the stakeholders made under this Regulation, as specified in Form A of Schedule II of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

Powers of liquidator to access information: Section 37 of the IBC

The liquidator shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely: -

- a) an information utility;
- b) credit information systems regulated under any law for the time being in force;
- c) any agency of the Central, State or Local Government including any registration authorities;

- d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;
- e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;
- f) any database maintained by the Board; and
- g) any other source as may be specified by the Board.

Appointment of professionals: Regulation 7 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

A liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

The liquidator shall not appoint a professional who is his relative, is a related party of the corporate debtor or has served as an auditor to the corporate debtor in the five years preceding the liquidation commencement date.

A professional appointed or proposed to be appointed shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders, or the concerned corporate debtor as soon as he becomes aware of it, to the liquidator.

Reporting: Regulation 5 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall prepare and submit:

- a) a preliminary report;
- b) an asset memorandum;
- c) progress report(s);
- d) sale report(s);
- e) minutes of consultation with stakeholders; and
- f) the final report prior to dissolution

to the Adjudicating Authority in the manner specified under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Registers and books of account: Regulation 6 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall maintain the following registers and books, as may be applicable, in relation to the liquidation of the corporate debtor, and shall preserve them for a period of eight years after the dissolution of the corporate debtor-

- a) Cash Book;
- b) Ledger;
- c) Bank Ledger;
- d) Register of Fixed Assets and Inventories;
- e) Securities and Investment Register;
- f) Register of Book Debts and Outstanding Debts;
- g) Tenants Ledger;
- h) Suits Register;
- i) Decree Register;
- j) Register of Claims and Dividends;
- k) Contributories Ledger;
- l) Distributions Register;
- m) Fee Register;
- n) Suspense Register;
- o) Documents Register;
- p) Books Register;
- q) Register of unclaimed dividends and undistributed properties deposited in accordance with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.; and

- r) such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor.

The liquidator shall keep receipts for all payments made or expenses incurred by him.

Public announcement by liquidator: Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment.

The public announcement shall-

- a) call upon stakeholders to submit their claims as on the liquidation commencement date; and
- b) provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.

The announcement shall be published-

- a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;
- b) on the website, if any, of the corporate debtor; and
- c) on the website, if any, designated by the Board for this purpose.

Liquidation Estate: Section 36 of the IBC

For the purposes of liquidation, the liquidator shall form an estate of the assets which will be called the liquidation estate in relation to the corporate debtor.

The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

The liquidation estate shall comprise all liquidation estate assets which shall include the following: -

- a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
- b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;
- c) tangible assets, whether movable or immovable;
- d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;
- e) assets subject to the determination of ownership by the court or authority;
- f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
- g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;
- h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and
- i) all proceeds of liquidation as and when they are realized.

The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -

- a) assets owned by a third party which are in possession of the corporate debtor, including-
 - i. assets held in trust for any third party;
 - ii. bailment contracts;
 - iii. all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

- iv. other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
- v. such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
- d) assets of any Indian or foreign subsidiary of the corporate debtor; or
- e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

Asset memorandum: Regulation 34 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

On forming the liquidation estate, the liquidator shall prepare an asset memorandum within seventy-five days from the liquidation commencement date.

The asset memorandum shall provide the following details in respect of the assets which are intended to be realized by way of sale-

- a. value of the asset;
- b. value of set of assets or assets in parcels or assets in a slump sale, as the case may be, if intended to be sold;
- c. intended manner of sale, and reasons for the same;
- d. the intended mode of sale and reasons for the same;
- e. expected amount of realization from sale; and
- f. any other information that may be relevant for the sale of the asset.

The asset memorandum shall provide the following details in respect of each of the assets other than those referred above-

- a. value of the asset;
- b. intended manner and mode of realization, and reasons for the same;
- c. expected amount of realization; and
- d. any other information that may be relevant for the realization of the asset.

The liquidator shall file the asset memorandum along with the preliminary report to the Adjudicating Authority.

The asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority.

Preliminary report: Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date, detailing-

- a) the capital structure of the corporate debtor;
- b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate debtor:

Provided that if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate debtor are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;

- c) whether, he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate debtor or the conduct of the business thereof; and
- d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

Disclaimer of onerous property: Regulation 10 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Where any part of the property of a corporate debtor consists of-

- a) land of any tenure, burdened with onerous covenants;
- b) shares or stocks in companies;
- c) any other property which is not saleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or
- d) unprofitable contracts;

the liquidator may, notwithstanding that he has endeavored to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, make an application to the Adjudicating Authority within six months from the liquidation commencement date, or such extended period as may be allowed by the Adjudicating Authority, to disclaim the property or contract.

The liquidator shall not make an application if a person interested in the property or contract inquired in writing whether he will make an application to have such property disclaimed, and he did not communicate his intention to do so within one month from receipt of such inquiry.

The liquidator shall serve a notice to persons interested in the onerous property or contract at least seven days before making an application for disclaimer to the Adjudicating Authority.

A person is interested in the onerous property or contract if he-

- a) is entitled to the benefit or subject to the burden of the contract ; or
- b) claims an interest in a disclaimed property or is under a liability not discharged in respect of a disclaimed property.

Subject to the order of the Adjudicating Authority approving such disclaimer, the disclaimer shall operate to determine, from the date of disclaimer, the rights, interest and liabilities of the corporate

debtor in or in respect of the property or contract disclaimed, but shall not, except so far as is necessary for the purpose of releasing the corporate debtor and the property of the corporate from liability, affect the rights, interest or liabilities of any other person.

A person affected by the disclaimer under this Regulation shall be deemed to be a creditor of the corporate debtor for the amount of the compensation or damages payable in respect of such effect, and may accordingly be payable as a debt in liquidation.

Early dissolution: Regulation 14 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Any time after the preparation of the Preliminary Report, if it appears to the liquidator that-

- a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and
- b) the affairs of the corporate debtor do not require any further investigation;

he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.

Disclaimer of onerous property: Regulation 10 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Where any part of the property of a corporate debtor consists of-

- a) land of any tenure, burdened with onerous covenants;
- b) shares or stocks in companies;
- c) any other property which is not saleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or
- d) unprofitable contracts;

the liquidator may, notwithstanding that he has endeavored to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the

contract, make an application to the Adjudicating Authority within six months from the liquidation commencement date, or such extended period as may be allowed by the Adjudicating Authority, to disclaim the property or contract.

The liquidator shall not make an application if a person interested in the property or contract inquired in writing whether he will make an application to have such property disclaimed, and he did not communicate his intention to do so within one month from receipt of such inquiry.

The liquidator shall serve a notice to persons interested in the onerous property or contract at least seven days before making an application for disclaimer to the Adjudicating Authority.

A person is interested in the onerous property or contract if he-

- a) is entitled to the benefit or subject to the burden of the contract; or
- b) claims an interest in a disclaimed property or is under a liability not discharged in respect of a disclaimed property.

Subject to the order of the Adjudicating Authority approving such disclaimer, the disclaimer shall operate to determine, from the date of disclaimer, the rights, interest and liabilities of the corporate debtor in or in respect of the property or contract disclaimed, but shall not, except so far as is necessary for the purpose of releasing the corporate debtor and the property of the corporate from liability, affect the rights, interest or liabilities of any other person.

A person affected by the disclaimer under this Regulation shall be deemed to be a creditor of the corporate debtor for the amount of the compensation or damages payable in respect of such effect, and may accordingly be payable as a debt in liquidation.

Progress reports: Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall submit Progress Reports to the Adjudicating Authority as under-

- a) the first Progress Report within fifteen days after the end of the quarter in which he is appointed;

- b) subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator; and
- Provided that if an insolvency professional ceases to act as a liquidator during the liquidation process, he shall file a Progress Report for the quarter up to the date of his so ceasing to act, within fifteen days of such cessation.

A Progress Report shall provide all information relevant to liquidation for the quarter, including

- a) appointment, tenure of appointment and cessation of appointment of professionals;
- b) a statement indicating progress in liquidation, including-
- i. settlement of list of stakeholders,
 - ii. details of any property that remain to be sold and realized,
 - iii. distribution made to the stakeholders, and
 - iv. distribution of unsold property made to the stakeholders;
- c) details of fee or remuneration, including-
- i. the fee due to and received by the liquidator together with a description of the activities carried out by him,
 - ii. the remuneration or fee paid to professionals appointed by the liquidator together with a description of activities carried out by them,
 - iii. other expenses incurred by the liquidator, whether paid or not;
- d) developments in any material litigation, by or against the corporate debtor;
- e) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code; and
- f) changes, if any, in estimated liquidation costs.

A Progress Report shall enclose an account maintained by the liquidator showing-

- a) his receipts and payments during the quarter; and
- b) the cumulative amount of his receipts and payments since the liquidation commencement date.

A Progress Report shall enclose a statement indicating any material change in expected realization of any property proposed to be sold, along with the basis for such change:

Provided that this statement shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority.

The Progress Report for the fourth quarter of the financial year shall enclose audited accounts of the liquidator's receipts and payments for the financial year:

Provided that in case an insolvency professional ceases to act as liquidator, the audited accounts of his receipts and payments for that part of the financial year during which he has acted as liquidator, shall be enclosed with the Progress Report to be filed after cessation of his appointment.

Illustration: An insolvency professional becomes a liquidator on 13th February, 2017, and ceases to act as liquidator on 12th February, 2019. He shall submit Progress Reports as under:

Report No.	Period covered in the Quarter	Last date of submission of Report
1	13th February - 31st March, 2017	15th April, 2017
2	April - June, 2017	15th July, 2017
3	July - September, 2017	15th October, 2017
4	October - December, 2017	15th January, 2018
5	January - March, 2018	15th April, 2018
6	April - June, 2018	15th July, 2018
7	July - September, 2018	15th October, 2018
8	October - December, 2018	15th January, 2019
9	January - 12th February, 2019	27th February, 2019

He shall submit the audited accounts of his receipts and payments as under:

Audited Account No.	Period covered in the Year	Last Date of Submission
1	13th February - 31st March, 2017	15th April, 2017
2	April - March, 2018	15th April, 2018
3	April - 12th February, 2019	27th February, 2019

Claims of Creditors: Section 38 of the IBC

The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.

A person, who claims to be a stakeholder, shall prove his claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.

A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility:

Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor.

A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt and to the extent of his operational debt.

The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

Claims by operational creditors: Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

A person claiming to be an operational creditor of the corporate debtor, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form C of Schedule II of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

The existence of debt due to an operational creditor under this Regulation may be proved on the basis of-

- a) the records available with an information utility, if any; or
- b) other relevant documents which adequately establish the debt, including any or all of the following –
 - i. a contract for the supply of goods and services with corporate debtor;
 - ii. an invoice demanding payment for the goods and services supplied to the corporate debtor;
 - iii. an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; and
 - iv. financial accounts.

Claims by financial creditors: Regulation 18 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

The existence of debt due to the financial creditor may be proved on the basis of-

- a) the records available in an information utility, if any; or
- b) other relevant documents which adequately establish the debt, including any or all of the following
 - i. a financial contract supported by financial statements as evidence of the debt;

- ii. a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;
- iii. financial statements showing that the debt has not been repaid; and
- iv. an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

Claims by workmen and employees: Regulation 19 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

A person claiming to be a workman or an employee of the corporate debtor shall submit proof of claim to the liquidator in person, by post or by electronic means in Form E of Schedule II of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Where there are dues to numerous workmen or employees of the corporate debtor, an authorized representative may submit one proof of claim for all such dues on their behalf in Form F of Schedule II of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

The existence of dues to workmen or employees may be proved by them, individually or collectively, on the basis of-

- a) records available in an information utility, if any; or
- b) other relevant documents which adequately establish the dues, including any or all of the following –
 - i. a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
 - ii. evidence of notice demanding payment of unpaid amount and any documentary or other proof that payment has not been made; and
 - iii. an order of a court or tribunal that has adjudicated upon the non-payment of dues, if any.

The liquidator may admit the claims of a workman or an employee on the basis of the books of account of the corporate debtor if such workman or employee has not made a claim.

Claims by other stakeholders: Regulation 20 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

A person, claiming to be a stakeholder other than financial creditor, operational creditor or workmen and employees, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form G of Schedule II of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

The existence of the claim of the stakeholder may be proved on the basis of -

- a) the records available in an information utility, if any, or
- b) other relevant documents which adequately establish the claim, including any or all of the following-
 - i. documentary evidence of notice demanding payment of unpaid amount or bank statements of the claimant showing that the claim has not been paid and an affidavit that the documentary evidence and bank statements are true, valid and genuine;
 - ii. documentary or electronic evidence of his shareholding; and
 - iii. an order of a court, tribunal or other authority that has adjudicated upon the non-payment of a claim, if any.

Proving security interest: Regulation 21 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The existence of a security interest may be proved by a secured creditor on the basis of-

- a) the records available in an information utility, if any;
- b) certificate of registration of charge issued by the Registrar of Companies; or
- c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.

Production of bills of exchange and promissory notes: Regulation 22 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Where a person seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature for which the corporate debtor is liable, such bill of exchange, note, instrument or security, as the case may be, shall be produced before the liquidator before the claim is admitted.

Substantiation of claims: Regulation 23 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator may call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim.

Cost of proof: Regulation 24 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

A claimant shall bear the cost of proving its claim.

Costs incurred by the liquidator for verification and determination of a claim shall form part of liquidation cost:

Provided that if a claim or part of the claim is found to be false, the liquidator shall endeavor to recover the costs incurred for verification and determination of claim from such claimant, and shall provide the details of the claimant to the Board.

Determination of quantum of claim: Regulation 25 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Where the amount claimed by a claimant is not precise due to any contingency or any other reason, the liquidator shall make the best estimate of the amount of the claim based on the information available with him.

Debt in foreign currency: Regulation 26 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the liquidation commencement date.

“The official exchange rate” is the reference rate published by the Reserve Bank of India or derived from such reference rates.

Periodical payments: Regulation 27 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the liquidation commencement date.

Debt payable at future time: Regulation 28 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

A person may prove for a claim whose payment was not yet due on the liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder.

Subject to any contract to the contrary, where a stakeholder has proved for a claim, and the debt has not fallen due before distribution, he is entitled to distribution of the admitted claim reduced as follows-

$$X / (1+r)^n$$

where-

- a) “X” is the value of the admitted claim;
- b) “r” is the closing yield rate (%) of government securities of the maturity of “n” on the date of distribution as published by the Reserve Bank of India; and
- c) “n” is the period beginning with the date of distribution and ending with the date on which the payment of the debt would otherwise be due, expressed in years and months in a decimalized form.

Mutual credits and set-off: Regulation 29 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.

Illustration: X owes Rs. 100 to the corporate debtor. The corporate debtor owes Rs. 70 to X. After set off, Rs. 30 is payable by X to the corporate debtor.

Verification of claims: Regulation 30 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be.

The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

Where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

List of stakeholders: Regulation 31 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted under these Regulations, with-

- a) the amounts of claim admitted, if applicable,
- b) the extent to which the debts or dues are secured or unsecured, if applicable,
- c) the details of the stakeholders, and
- d) the proofs admitted or rejected in part, and the proofs wholly rejected.

The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of claims, and the filing of the list shall be announced to the public.

The liquidator may apply to the Adjudicating Authority to modify an entry in the list of stakeholders filed with the Adjudicating Authority, when he comes across additional information warranting such modification, and shall modify the entry in the manner directed by the Adjudicating Authority.

The liquidator shall modify an entry in the list of stakeholders filed with the Adjudicating Authority, in the manner directed by the Adjudicating Authority while disposing off an appeal against the decision of the liquidator rejecting the claims within fourteen days of the receipt of such decision.

The list of stakeholders, as modified from time to time, shall be-

- a) available for inspection by the persons who submitted proofs of claim;
- b) available for inspection by members, partners, directors and guarantors of the corporate debtor;
- c) displayed on the website, if any, of the corporate debtor.

Appeal against rejection of claim by Liquidator: Section 42 of the IBC

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims within fourteen days of the receipt of such decision.

Preferential Transactions: Section 43 of the IBC

A corporate debtor shall be deemed to have given a preference, if-

- a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and
- b) the transfer mentioned above has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made.

A preference shall not include the following transfers-

- a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
- b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that-
 - i. such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and
 - ii. such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Orders in case of preferential transactions: Section 44 of the IBC

The Adjudicating Authority, may, on an application made by the resolution professional or liquidator for avoidance of preferential transaction, by an order:

- a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
- b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
- c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;
- d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;
- e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under

such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;

- f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and
- g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not-

- a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;
- b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional

Where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference, -

- i. had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;
- ii. is a related party,

it shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown.

A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made.

Avoidance of Undervalued Transactions: Section 45 of the IBC

A transaction shall be considered undervalued where the corporate debtor-

- a) makes a gift to a person; or
- b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,

and such transaction has not taken place in the ordinary course of business of the corporate debtor.

Relevant period for Avoidable Transactions: Section 46 of the IBC

In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that-

- i. such transaction was made with any person within the period of one year preceding the insolvency commencement date; or
- ii. such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions.

Application for Undervalued Transactions: Section 47 of the IBC

Where an undervalued transaction has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter.

Where the Adjudicating Authority, after examination of the application, is satisfied that—

- a) undervalued transactions had occurred; and

- b) liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority,

it shall pass an order-

- a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner of avoiding preferential transaction and undervalued transactions;
- b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

Order in cases of undervalued transactions: Section 48 of the IBC

The order of the Adjudicating Authority may provide for the following: -

- a) require any property transferred as part of the transaction, to be vested in the corporate debtor;
- b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;
- c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or
- d) require the payment of such consideration for the transaction as may be determined by an independent expert.

Transactions Defrauding Creditors: Section 49 of the IBC

Where the corporate debtor has entered into an undervalued transaction and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor-

- a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or

- b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order-
- i. restoring the position as it existed before such transaction as if the transaction had not been entered into; and
 - ii. protecting the interests of persons who are victims of such transactions:

Provided that an order -

- a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and
- b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

Extortionate Credit Transactions: Section 50 of the Code read with Regulation 11 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

A transaction shall be considered an extortionate credit transaction where the terms-

- require the corporate debtor to make exorbitant payments in respect of the credit provided; or
- are unconscionable under the principles of law relating to contracts.

Orders of Adjudicating Authority in respect of extortionate credit transactions: Section 51 of the IBC

Where the Adjudicating Authority after examining the application made is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order-

- a) restore the position as it existed prior to such transaction;
- b) set aside the whole or part of the debt created on account of the extortionate credit transaction;
- c) modify the terms of the transaction;
- d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or
- e) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

Secured creditor in liquidation proceedings: Section 52 of the IBC

Secured creditor in the liquidation proceedings may—

- a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator; or
- b) realise its security interest in the manner specified in this section.

Where the secured creditor realises security interest specified below, he shall inform the liquidator of such security interest and identify the asset and the price at which he proposes to realize its secured asset subject to such security interest to be realised.

The liquidator shall inform the secured creditor within twenty-one days of receipt of the intimation if a person is willing to buy the secured asset before the expiry of thirty days from the date of intimation, at a price higher than the price intimated.

Where the liquidator informs the secured creditor of a person willing to buy the secured asset, the secured creditor shall sell the asset to such person.

If the liquidator does not inform the secured, or the person does not buy the secured asset, the secured creditor may realize the secured asset in the manner it deems fit, but at least at the price intimated.

Where the secured asset is realized, where liquidator informs the secured creditor, the secured creditor shall bear the cost of identification of the buyer.

Where the secured asset is realized, where liquidator does not inform the secured creditor the liquidator shall bear the cost of incurred to identify the buyer.

The amount of insolvency resolution process costs, due from secured creditors who realise their security interests, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

Where the proceeds of the realization of the secured assets are not adequate to repay, debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator.

Realisation of Assets

Manner of sale: Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator may

- a. sell an asset on a standalone basis; or
- b. sell
 - i. the assets in a slump sale,
 - ii. a set of assets collectively, or
 - iii. the assets in parcels.

Mode of sale: Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 when-

- a. the asset is perishable;
- b. the asset is likely to deteriorate in value significantly if not sold immediately;
- c. the asset is sold at a price higher than the reserve price of a failed auction; or
- d. the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

- a. a related party of the corporate debtor;
- b. his related party; or
- c. any professional appointed by him.

The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.

Auction: Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Where an asset is to be sold through auction, a liquidator shall do so in the manner specified herein.

The liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include-

- a. releasing advertisements;
- b. preparing information sheets for the asset;
- c. preparing a notice of sale; and
- d. liaising with agents.

The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.

The reserve price shall be the value of the asset arrived at in accordance with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Such valuation shall not be more than six months old. However, in the event that an auction fails at such price, the liquidator may reduce the reserve price up to seventy-five per cent of such value to conduct subsequent auctions.

The liquidator shall make a public announcement of an auction in the manner specified in Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Provided that the liquidator may apply to Adjudicating Authority to dispense with the requirement of public announcement keeping in view the value of the asset intended to be sold by auction.

The liquidator shall provide all assistance necessary for the conduct of due diligence by interested buyers.

The liquidator shall sell the assets through an electronic auction on an online portal, if any, designated by the Board, where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.

If the liquidator is of the opinion that a physical auction is likely to maximize the realization from the sale of assets and is in the best interests of the creditors, he may sell assets through a physical auction after obtaining the permission of the Adjudicating Authority. The liquidator may engage the services of qualified professional auctioneers specializing in auctioning such assets for this purpose.

An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.

If the liquidator is of the opinion that an auction where bid amounts are not visible is likely to maximize realizations from the sale of assets and is in the best interests of the creditors, he may apply, in writing, to the Adjudicating Authority for its permission to conduct an auction in such manner.

If required, the liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the assets, and to promote the best interests of the creditors.

On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within fifteen days of the date when he is invited to provide the balance sale consideration. On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale.

Private Sale

Where an asset is to be sold through private sale, a liquidator shall conduct the sale in the manner specified herein.

The liquidator shall prepare a strategy to approach interested buyers for assets to be sold by private sale.

Private sale may be conducted through directly liaising with potential buyers or their agents, through retail shops, or through any other means that is likely to maximize the realizations from the sale of assets.

The sale shall stand completed in accordance with the terms of sale.

Thereafter, the assets shall be delivered to the purchaser, on receipt of full consideration for the assets, in the manner specified in the terms of sale.

Valuation of assets intended to be sold: Regulation 35 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall appoint at least two registered valuers to value the assets.

The provisions of appointment of professional in Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 shall apply mutatis mutandis to registered valuers appointed.

The registered valuers appointed shall independently submit to the liquidator the estimates of the realizable value of the asset(s)

computed in accordance with internationally accepted valuation standards, after physical verification of the assets of the corporate debtor.

The average of the estimates received shall be considered the value of the assets.

Asset sale report: Regulation 36 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

On sale of an asset, the liquidator shall prepare an asset sale report in respect of said asset, to be enclosed with the Progress Reports, containing -

- a. the realized value;
- b. cost of realization, if any;
- c. the manner and mode of sale;
- d. if the value realized is less than the value in the asset memorandum, the reasons for the same;
- e. the person to whom the sale is made; and
- f. any other details of the sale.

Distribution of unsold assets: Regulation 38 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator may, with the permission of the Adjudicating Authority, distribute amongst the stakeholders, an asset that cannot be readily or advantageously sold due to its peculiar nature or other special circumstances.

The application seeking permission of the Adjudicating Authority shall-

- a. identify the asset;
- b. provide a value of the asset;
- c. detail the efforts made to sell the asset, if any; and
- d. provide reasons for such distribution.

'assets' include an asset, all assets, a set of assets or parcel of assets, as the case may be, which are being sold.

Recovery of monies due: Regulation 39 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall endeavor to recover and realize all assets of and dues to the corporate debtor in a time-bound manner for maximization of value for the stakeholders.

Liquidator to realize uncalled capital or unpaid capital contribution: Regulation 40 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall realize any amount due from any contributory to the corporate debtor.

Notwithstanding any charge or encumbrance on the uncalled capital of the corporate debtor, the liquidator shall be entitled to call and realize the uncalled capital of the corporate debtor and to collect the arrears, if any, due on calls made prior to the liquidation, by providing a notice to the contributory to make the payments within fifteen days from the receipt of the notice, but shall hold all moneys so realized subject to the rights, if any, of the holder of any such charge or encumbrance.

No distribution shall be made to a contributory, unless he makes his contribution to the uncalled or unpaid capital as required in the constitutional documents of the corporate debtor.

Proceeds of Liquidation and Distribution of Proceeds: Chapter VII Regulations 41 & 42 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The liquidator shall open a bank account in the name of the corporate debtor followed by the words 'in liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate debtor.

The liquidator shall deposit in the bank account all moneys, including cheques and demand drafts received by him as the liquidator of the corporate debtor, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day.

The liquidator may maintain a cash of one lakh rupees or such higher amount as may be permitted by the Adjudicating Authority to meet liquidation costs.

All payments out of the account by the liquidator above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account

The liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority.

The liquidator shall distribute the proceeds from realization within six months from the receipt of the amount to the stakeholders.

The insolvency resolution process costs, if any, and the liquidation costs shall be deducted before such distribution is made.

Return of money: Regulation 43 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

A stakeholder shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.

Final report prior to dissolution: Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor's assets have been liquidated.

If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same.

The final report shall form part of the application for the dissolution of the corporate debtor to the Adjudicating Authority to be made.

Unclaimed proceeds of liquidation or undistributed assets: Regulation 46 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Before the order of dissolution is passed, the liquidator shall apply to the Adjudicating Authority for an order to pay into the Companies Liquidation Account in the Public Account of India any unclaimed proceeds of liquidation or undistributed assets or any other balance payable to the stakeholders in his hands on the date of the order of dissolution.

Any liquidator who retains any money which should have been paid by him into the Companies Liquidation Account under this Regulation shall pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be determined by the Board.

The liquidator shall, when making any payment referred above, furnish to the authority with which the corporate debtor is registered, and the Board, a statement setting forth the nature of the sums included, the names and last known addresses of the stakeholders entitled to participate therein, the amount to which each is entitled to and the nature of their claim.

The liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it and such receipt shall be an effectual discharge of the liquidator in respect thereof.

A person claiming to be entitled to any money paid into the Companies Liquidation Account may apply to the Board for an order for payment of the money claimed; which may, if satisfied that such person is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

Any money paid into the Companies Liquidation Account in pursuance of this Regulation, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government.

Order of priority for Distribution of Assets: Section 53 of the IBC

Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority:

1. the insolvency resolution process costs and the liquidation costs paid in full;
2. the following debts which shall rank equally between and among the following: -
 - i. workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

- ii. debts owed to a secured creditor in the event such secured creditor has relinquished security;
3. wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
4. financial debts owed to unsecured creditors;
5. the following dues shall rank equally between and among the following: -
 - i. any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - ii. debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
6. any remaining debts and dues;
7. preference shareholders, if any; and
8. equity shareholders or partners, as the case may be.

The term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

Dissolution of the Corporate Debtor: Section 54 of the IBC

Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

The Adjudicating Authority shall on application filed by the liquidator order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

A copy of an order for dissolution shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

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Chapter IV

Fast Track Insolvency Process (FTIP) and Voluntary Liquidation Process

Part II

(Chapter II - Sections 55-58)

Applicable framework:

- Section 55-58 and relevant provisions of Chapter II and Chapter VII of Part II of Code.

Eligible corporate debtors: Section 55 of the Code

An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely: -

- a corporate debtor with assets and income below a level as may be notified by the Central Government; or
- a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or
- such other category of corporate persons as may be notified by the Central Government.

Time Limit for completion of FTIP: Section 56 of the Code

This process shall be completed in 90 days from the insolvency commencement date.

Resolution professional may apply to the Adjudicating Authority for extension for a period of maximum 45 days. This application shall be supported by resolution passed by committee of creditor by 75% voting share.

Only one such grant for extension is allowed.

Initiating FTIP: Section 57 of the Code

An application for fast track corporate insolvency resolution process may be filed by a creditor or corporate debtor as the case may be, along with-

- the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and
- such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process.

Applicable provisions of Part II of the Code: Section 58 of the Code

The process for conducting a corporate insolvency resolution process under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require.

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

Applicable framework:

- Chapter V of Part II of the Code covering section 59 of the Code
- The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary
- The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

Application for voluntary Liquidation: Section 59 of the Code

A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings.

Completion of liquidation: Regulation 37 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The liquidator shall endeavor to wind up the affairs of the corporate person within twelve months from the voluntary liquidation commencement date.

In the event of the voluntary liquidation continuing for more than one year, the liquidator shall

- a. call a meeting of the contributories of the corporate person within fifteen days from the end of the year in which he is appointed, and at the end of each succeeding year; and
- b. shall present a Status Report indicating progress in liquidation, including-
 - i. settlement of list of stakeholders,
 - ii. details of any property that remain to be sold and realized,
 - iii. distribution made to the stakeholders, and
 - iv. distribution of unsold property made to the stakeholders;
 - v. developments in any material litigation, by or against the corporate person; and
 - vi. filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.

The Status Report shall enclose an audited account of the voluntary liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.

Application by a Company: Section 59(2) of the IBC

Voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:-

- a declaration from majority of the directors of the company verified by an affidavit stating that-
 - they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay

its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

- the company is not being liquidated to defraud any person.

The declaration shall list each debt of the corporate person as on that date and state that the corporate person will be able to pay all its debts in full from the proceeds of assets to be sold in the liquidation.

- the declaration from the majority of the directors shall be accompanied with the following documents, namely:-
 - audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
 - a report of the valuation of the assets of the company, if any prepared by a registered valuer;
- within four weeks of a declaration by majority of the directors, there shall be-
 - a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or
 - a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

Provided that the company owes any debt to any person, creditors representing two thirds in value of the debt of the company shall approve the resolution passed by members within seven days of such resolution.

Conditions to be met by the corporate person for voluntary liquidation [Regulation 3 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017]

<p>A declaration from majority of</p>	<ul style="list-style-type: none"> • the designated partners, if a corporate person is a LLP, • individuals constituting the governing body in case of other corporate persons, as the case may be, <p>The declaration under shall list each debt of the corporate person as on that date and state that the corporate person will be able to pay all its debts in full from the proceeds of assets to be sold in the liquidation</p>
<p>Affidavit</p>	<ul style="list-style-type: none"> • they have made a full inquiry into the affairs of the corporate person and they have formed an opinion that either the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation; and • the corporate person is not being liquidated to defraud any person
<p>Documents to be accompanied</p>	<ul style="list-style-type: none"> • audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later; • a report of the valuation of the assets of the corporate person, if any prepared by a registered valuer;
<p>Within 4 weeks of declaration</p>	<ul style="list-style-type: none"> • Resolution passed by special majority of partners or contributories, of the corporate person requiring the corporate person to be liquidated and appointing an insolvency professional to act as the liquidator; or

	<ul style="list-style-type: none"> • a resolution of the partners or contributories, as the case may be, requiring the corporate person to be liquidated as a result of expiry of the period of its duration, if any, fixed by its constitutional documents or on the occurrence of any event in respect of which the constitutional documents provide that the corporate person shall be dissolved, as the case may be, and appointing an insolvency professional to act as the liquidator <p>If the corporate person owes any debt to any person, creditors representing two-thirds in value of the debt of the corporate person shall approve the resolution within seven days of such resolution.</p>
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Commencement of Voluntary Liquidation:

Voluntary liquidation of a **company** shall commence from passing of resolution by members. [Section 59(5) of the IBC]

Voluntary liquidation for a **corporate person other than a company** shall be deemed to have commenced from the date of passing of the resolution partners or contributories. [Regulation 3(3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017]

The company shall notify the Registrar of Companies and the Board about the resolution passed by members to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

Effect of Voluntary Liquidation on Status of Corporate Person: Regulation 4 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The corporate person shall from the voluntary liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business:

Provided that the corporate state and corporate powers of the corporate person shall continue until it is dissolved.

Eligibility for appointment as Liquidator: Regulation 6 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

- If he, and every partner or director of the insolvency professional entity of which he is a partner or director is independent of the corporate person.
- He shall not be eligible to be appointed as a liquidator if he, or the insolvency professional entity of which he is a partner or director is under a restraint order of the Board.
- He shall disclose the existence of any pecuniary or personal relationship with the concerned corporate person / its stakeholders, to the Board and the Registrar

He shall not continue as a liquidator if the insolvency professional entity of which he is a director or partner, or any other partner or director of such insolvency professional entity represents any other stakeholder in the same liquidation.

He will be considered independent if he,

1. Is eligible to be appointed as an independent director on the board of the corporate person under section 149 of the Companies Act, 2013, where the corporate person is a company;
2. Is not a related party of the corporate person; or
3. Has not been an employee or proprietor or a partner –
 - of a firm of auditors or company secretaries or cost auditors of the corporate person; or
 - of a legal or a consulting firm, that has or had any transaction with the corporate person contributing ten per cent or more of the gross turnover of such firm.

At any time in the last three years.

The remuneration payable to the liquidator shall form part of the liquidation cost. (Regulation 7 of the IBBI (Voluntary Liquidation Process) Regulations, 2017).

To comply with the provisions of Regulation 14 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations,

2017, Liquidator shall make Public Announcement in Form A within 5 days, which shall be published –

- in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate person and any other location where in the opinion of the liquidator, the corporate person conducts material business operations;
- on the website, if any, of the corporate person; and
- on the website, if any, designated by the Board for this purpose.

The Public Announcement shall –

- call upon stakeholders to submit their claims as on the liquidation commencement date; and

provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.

Reporting: Regulation 8 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The liquidator shall prepare and submit:

- (a) Preliminary Report;
- (b) Annual Status Report;
- (c) Minutes of consultations with stakeholders; and
- (d) Final Report

The liquidator shall make the reports and minutes available to a stakeholder in either electronic or physical form, on receipt of-

- (a) an application in writing;
- (b) cost of making such reports available to it; and
- (c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and shall not use these to cause an undue gain or undue loss to itself or any other person.

The liquidator shall preserve a physical or an electronic copy of the reports for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.

Preliminary Report: Regulation 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2016

The liquidator shall submit a Preliminary Report to the Adjudicating Authority within forty-five days from the liquidation commencement date, detailing-

- a) the capital structure of the corporate debtor;
- b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate debtor:

Provided that if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate debtor are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him

- c) whether, he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate debtor or the conduct of the business thereof; and
- d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

Registers and books of account: Regulation 10 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

Where the books of account of the corporate person are incomplete on the liquidation commencement date, the liquidator shall have them completed and brought up-to date, with all convenient speed.

The liquidator shall maintain the following registers and books, as may be applicable, in relation to the voluntary liquidation of the corporate person, and shall preserve them for a period of eight years after the dissolution of the corporate person-

- (a) Cash Book;

- (b) Ledger;
- (c) Bank Ledger;
- (d) Register of Fixed Assets and Inventories;
- (e) Securities and Investment Register;
- (f) Register of Book Debts and Outstanding Debts;
- (g) Tenants Ledger;
- (h) Suits Register;
- (i) Decree Register;
- (j) Register of Claims and Dividends;
- (k) Contributories Ledger;
- (l) Distributions Register;
- (m) Fee Register;
- (n) Suspense Register;
- (o) Documents Register;
- (p) Books Register;
- (q) Register of unclaimed dividends and undistributed properties deposited; and
- (r) such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate person.

The registers and books may be maintained in the forms indicated in Schedule II, with such modifications as the liquidator may deem fit in the facts and circumstances of the voluntary liquidation.

The liquidator shall keep receipts for all payments made or expenses incurred by him.

The liquidator shall preserve a physical or an electronic copy of registers and books of account for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.

Appointment of professionals: Regulation 11 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

A liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

The liquidator shall not appoint a professional who is his relative, is a related party of the corporate debtor or has served as an auditor to the corporate debtor in the five years preceding the liquidation commencement date.

A professional appointed or proposed to be appointed shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders, or the concerned corporate debtor as soon as he becomes aware of it, to the liquidator.

Consultation with stakeholders: Regulation 12 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The stakeholders of the corporate person shall extend all assistance and cooperation to the liquidator to complete the liquidation of the corporate person.

The liquidator shall make the reports and minutes of consultation with stakeholders available to a stakeholder in either electronic or physical form, on receipt of-

- (a) an application in writing;
- (b) cost of making such reports available to it; and
- (c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and shall not use these to cause an undue gain or undue loss to itself or any other person.

Extortionate credit transactions: Regulation 13 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational

debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

A transaction shall be considered an extortionate credit transaction where the terms-

- require the corporate debtor to make exorbitant payments in respect of the credit provided; or
- are unconscionable under the principles of law relating to contracts.

Any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

Claims by operational creditors: Regulation 16 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

(i) A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit proof of claim to the interim resolution professional in person, by post or by electronic means in Form B.

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

(ii) The existence of debt due to the operational creditor under this Regulation may be proved on the basis of-

- a. the records available with an information utility, if any; or
- b. other relevant documents which adequately establish the debt, including any or all of the following –
 - i. a contract for the supply of goods and services with corporate person supported by an invoice

- demanding payment for the goods and services supplied to the corporate person;
- ii. an order of a court or tribunal that has adjudicated upon the nonpayment of a debt, if any; and
- iii. financial accounts of corporate person.

Claims by financial creditors: Regulation 17 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

A person claiming to be a financial creditor of the corporate person shall submit proof of claim to the liquidator in electronic means in Form C of Schedule I.

The existence of debt due to the financial creditor may be proved on the basis of-

- a. the records available in an information utility, if any; or
- b. other relevant documents which adequately establish the debt, including any or all of the following –
 - i. a financial contract supported by financial statements as evidence of the debt;
 - ii. a record evidencing that the amounts committed by the financial creditor to the corporate person under a facility has been drawn by the corporate person;
 - iii. financial statements showing that the debt has not been repaid; and
 - iv. an order of a court or tribunal that has adjudicated upon the nonpayment of a debt, if any.

Claims by workmen and employees: Regulation 18 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

A person claiming to be a workman or an employee of the corporate person shall submit proof of claim to the interim resolution professional in person, by post or by electronic means in Form D of the Schedule I.

Where there are dues to numerous workmen or employees of the corporate person, an authorized representative may submit one proof of claim for all such dues on their behalf in Form E of Schedule I.

The existence of dues to workmen or employees may be proved by them, individually or collectively on the basis of –

- a) records available with an information utility, if any; or
- b) other relevant documents, including –
 - i. a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
 - ii. evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made; or
 - iii. an order of a court or tribunal that has adjudicated upon the non-payment of a dues, if any.

The liquidator may admit the claims of a workman or an employee on the basis of the books of account of the corporate person if such workman or employee has not made a claim.

Claims by other stakeholders: Regulation 19 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

A person, claiming to be a stakeholder other than those under Regulations 16, 17, 18, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form F of Schedule I.

The existence of the claim of the stakeholder may be proved on the basis of -

- a. the records available in an information utility, if any, or
- b. other relevant documents which adequately establish the claim, including any or all of the following:-
 - i. documentary evidence of notice demanding payment of unpaid amount or bank statements of the claimant showing that the claim has not been paid and an

- affidavit that the documentary evidence and bank statements are true, valid and genuine;
- ii. documentary or electronic evidence of his shareholding; and
 - iii. an order of a court, tribunal or other authority that has adjudicated upon the non-payment of a claim, if any.

Proof of claim: Regulation 15 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

A person, who claims to be a stakeholder, shall prove his claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.

Proving security interest: Regulation 20 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The existence of a security interest may be proved by a secured creditor on the basis of-

- a. the records available in an information utility, if any;
- b. certificate of registration of charge issued by the Registrar of Companies;
- c. proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India; or
- d. other relevant documents which adequately establish the security interest.

Production of bills of exchange and promissory notes: Regulation 21 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

Where a person seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature for which the corporate person is liable, such bill of exchange, note, instrument or security, as the case may be, shall be produced before the liquidator before the claim is admitted.

Substantiation of claims: Regulation 22 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The liquidator may call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim.

Cost of proof: Regulation 23 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

A claimant shall bear the cost of proving its claim.

Costs incurred by the liquidator for verification and determination of a claim shall form part of liquidation cost.

If a claim or part of the claim is found to be false, the liquidator shall endeavor to recover the costs incurred for verification and determination of claim from such claimant, and shall provide the details of the claimant to the Board.

Determination of quantum of claim: Regulation 24 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

Where the amount claimed by a claimant is not precise due to any contingency or any other reason, the liquidator shall make the best estimate of the amount of the claim, based on consultation with the claimant and the corporate person and the information available with him.

Debt in foreign currency: Regulation 25 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the voluntary liquidation commencement date.

“The official exchange rate” is the reference rate published by the Reserve Bank of India or derived from such reference rates.

Periodical payments: Regulation 26 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the voluntary liquidation commencement date.

Debt payable at future time: Regulation 27 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

A person may prove for a claim whose payment was not yet due on the voluntary liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder.

Subject to any contract to the contrary, where a stakeholder has proved for a claim, and the debt has not fallen due before distribution, he is entitled to distribution of the admitted claim reduced as follows-

$$X / (1+r)^n$$

where–

- “X” is the value of the admitted claim;
- “r” is the closing yield rate (%) of government securities of the maturity of “n” on the date of distribution as published by the Reserve Bank of India; and
- “n” is the period beginning with the date of distribution and ending with the date on which the payment of the debt would otherwise be due, expressed in years and months in a decimalized form.

Mutual credits and set-off: Regulation 28 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

Where there are mutual dealings between the corporate person and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate person or to the other party.

Illustration: X owes Rs. 100 to the corporate person. The corporate person owes Rs. 70 to X.

After set off, Rs. 30 is payable by X to the corporate person.

Verification of claims: Regulation 29 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The liquidator shall verify the claims submitted within **thirty days** from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be.

Where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims within **fourteen days** of the receipt of such decision.

List of stakeholders: Regulation 30 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The liquidator shall prepare the list of stakeholders within forty-five days from the last date for receipt of claims.

The liquidator shall prepare a list of stakeholders on the basis of proofs of claims submitted and accepted under these Regulations, with-

- a. the amounts of claim admitted, if applicable,
- b. the extent to which the debts or dues are secured or unsecured, if applicable,
- c. the details of the stakeholders, and
- d. the proofs admitted or rejected in part, and the proofs wholly rejected.

The list of stakeholders, as modified from time to time, shall be-

- a. available for inspection by the persons who submitted proofs of claim;
- b. available for inspection by members, partners, directors and guarantors of the corporate person;

- c. displayed on the website, if any, of the corporate person;
- d. displayed on the website, if any, designated by the Board for this purpose.

Realisation and Distribution

Manner of sale: Regulation 31 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The liquidator may value and sell the property of the corporate person in any manner and through any mode that is approved by the corporate person.

“Assets” include an asset, all assets, a set of assets or parcel of assets, as the case may be, in relation to sale of assets.

Recovery of monies due: Regulation 32 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The liquidator shall endeavor to recover and realize all assets of and dues to the corporate person in a time-bound manner for maximization of value for the stakeholders.

Liquidator to realize uncalled capital or unpaid capital contribution: Regulation 33 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The liquidator shall realize any amount due from any contributory to the corporate person.

Notwithstanding any charge or encumbrance on the uncalled capital of the corporate person, the liquidator shall be entitled to call and realize the uncalled capital of the corporate person and to collect the arrears, if any, due on calls made prior to the liquidation, by providing a notice to the contributory to make the payments within fifteen days from the receipt of the notice, but shall hold all moneys so realized subject to the rights, if any, of the holder of any such charge or encumbrance.

No distribution shall be made to a contributory, unless he makes his contribution to the uncalled or unpaid capital as required in the constitutional documents of the corporate person.

All money to be paid in to bank account: Regulation 34 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The liquidator shall open a bank account in the name of the corporate person followed by the words 'in voluntary liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate person.

The liquidator shall pay to the credit of the bank account all moneys, including cheques and demand drafts received by him as the liquidator of the corporate person, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day.

The money in the credit of the bank account shall not be used except distribution of proceeds of sale of asset to the stakeholders.

All payments out of the account by the liquidator above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

Distribution: Regulation 35 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The liquidator shall distribute the proceeds from realization within six months from the receipt of the amount to the stakeholders.

The liquidation costs shall be deducted before such distribution is made.

The liquidator may, with the approval of the corporate person, distribute amongst the stakeholders, an asset that cannot be readily or advantageously sold due to its peculiar nature or other special circumstances.

Return of money: Regulation 36 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

A stakeholder shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.

Final report prior to dissolution: Regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

When the affairs of the corporate person are fully wound up, the liquidator shall prepare a Final Report consisting of -

- a. an audited account of the voluntary liquidation, showing the receipts and payments pertaining to liquidation since the liquidation commencement date; and
- b. a statement demonstrating that-
 - i. the assets of the corporate person have been disposed of;
 - ii. the debt of the corporate person has been discharged to the satisfaction of the creditors;
 - iii. no litigation is pending against the corporate person.
- c. A sale statement in respect of all assets containing –
 - i. the realized value;
 - ii. cost of realization, if any;
 - iii. the manner and mode of sale;
 - iv. if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets prepared in accordance with section 59(3)(b)(ii) or Regulation 3(2)(b), as the case may be;
 - v. the person to whom the sale is made; and
 - vi. any other details of the sale.

The liquidator shall send the Final Report forthwith, to the Registrar and the Board.

The liquidator shall submit the Final Report to the Adjudicating Authority along with the application for dissolution to the Adjudicating Authority.

Unclaimed proceeds of liquidation or undistributed assets: Regulation 39 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

Before the order of dissolution is passed, the liquidator shall apply to the Adjudicating Authority for an order to pay into the Companies Liquidation Account in the Public Account of India any unclaimed proceeds of liquidation or undistributed assets or any other balance payable to the stakeholders in his hands on the date of the order of dissolution.

Any liquidator who retains any money which should have been paid by him into the Companies Liquidation Account under this Regulation shall pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be determined by the Board.

The liquidator shall, when making any payment referred above, furnish to the authority with which the corporate person is registered and the Board, a statement setting forth the nature of the sums included, the names and last known addresses of the stakeholders entitled to participate therein, the amount to which each is entitled to and the nature of their claim.

The liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it, and such receipt shall be an effectual discharge of the liquidator in respect thereof.

A person claiming to be entitled to any money paid into the Companies Liquidation Account may apply to the Board for an order for payment of the money claimed; which may, if satisfied that such person is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

Any money paid into the Companies Liquidation Account in pursuance of this Regulation, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government.

Detection of Fraud or Insolvency: Regulation 40 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

Where the liquidator is of the opinion that the voluntary liquidation is being done to defraud a person, he shall make an application to the Adjudicatory Authority to suspend the process of voluntary liquidation and pass any such orders as it deems fit.

Where the liquidator is of the opinion that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation, he shall make an application to the Adjudicating Authority to suspend the process of voluntary liquidation and pass any such orders as it deems fit.

Dissolution: Section 59 of the IBC

Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

The Adjudicating Authority shall on an application filed by the liquidator for dissolution, pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

A copy of an order of dissolution shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.



Chapter V

Adjudicating Authority for Corporate Persons

Part II

(Chapter VI – Sections 60-67)

Section 60 of the Code

The National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located, will be the Adjudicating Authority in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof.

Where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal.

An insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose insolvency resolution process or bankruptcy of personal guarantor of such corporate debtor.

Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

- a) any application or proceeding by or against the corporate debtor or corporate person;

- 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
- c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

Appeals and Appellate Authority: Section 61 of the IBC

Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

Every appeal shall be filed within thirty days before the National Company Law Appellate Tribunal.

National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

Appeal to Supreme Court: Section 62 of the IBC

Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.

Civil Courts have no jurisdiction on matters having jurisdiction of NCLT or NCLAT: Section 63 of the IBC

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code.

Expeditious disposal of applications: Section 64 of the IBC

The President of the National Company Law Tribunal or the Chairperson of the National Company Law Appellate Tribunal, as the case may be, may, after taking into account the reasons so recorded, extend the period specified in the Act but not exceeding ten days where an application is not disposed of or an order is not passed within the period specified in this Code, the National Company Law Tribunal or the National Company Law Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified.

No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the National Company Law Tribunal or the National Company Law Appellate Tribunal under this Code.

Fraudulent or Malicious initiation of Proceedings: Section 65 of the IBC

If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

Fraudulent Trading: Section 66 of the IBC

If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the

corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

- a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and
- b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

A director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

Effect of order passed under Section 66: Section 67 of the IBC

Where the Adjudicating Authority has passed an order, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may-

- a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

- b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.

Offence and Penalties

Punishment for concealment of property: Section 68 of the IBC

Officer of corporate debtor or corporate debtor shall be debtor, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both, if within the twelve months immediately preceding the insolvency commencement date officer of the corporate debtor or corporate debtor has: -

- a) wilfully concealed any property or part of such property of the corporate debtor or concealed any debt due to, or from, the corporate debtor, of the value of ten thousand rupees or more; or
- b) fraudulently removed any part of the property of the corporate debtor of the value of ten thousand rupees or more; or
- c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the corporate debtor or its affairs, or
- d) wilfully made any false entry in any book or paper affecting or relating to the property of the corporate debtor or its affairs; or
- e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the corporate debtor or its affairs; or
- f) wilfully created any security interest over, transferred or disposed of any property of the corporate debtor which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the corporate debtor; or

- g) wilfully concealed the knowledge of the doing by others of any of the acts mentioned in clauses (c), (d) or clause (e); or
- h) at any time after the insolvency commencement date, committed any of the acts mentioned in sub-clause (a) to (f) of clause (i) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of clause (i); or
- i) at any time after the insolvency commencement date, taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed.

A person shall not be liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.

Punishment for transactions defrauding creditors: Section 69 of the IBC

On or after the insolvency commencement date, if an officer of the corporate debtor or the corporate debtor-

- a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the corporate debtor;
- b) has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor,

such officer of the corporate debtor or the corporate debtor, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Punishment for misconduct in course of corporate insolvency resolution process: Section 70 of the IBC

An officer of the corporate shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both if, on or after the insolvency commencement date, where debtor

- a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or
- b) does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or
- c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver; or
- d) fails to inform their solution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or
- e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or
- f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date,

Such person shall not be liable to any punishment if he proves that he had no intent to do so in relation to the state of affairs of the corporate debtor.

If an insolvency professional deliberately contravenes the provisions of this Part the shall be punishable with imprisonment for a term which may extend to six months, or with fine which shall not be less than one lakh rupees, but may extend to five lakhs rupees, or with both.

Punishment for falsification of books of corporate debtor: Section 71 of the IBC

Person shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both, if on and after the insolvency commencement date, where such person destroys,

mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the corporate debtor with intent to defraud or deceive any person.

Punishment for willful and material omissions from statements relating to affairs of corporate debtor: Section 72 of the IBC

Officer of the corporate debtor shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both where an officer of the corporate debtor makes any material and willful omission in any statement relating to the affairs of the corporate debtor.

Punishment for false representations to creditors: Section 73 of the IBC

Officer of the corporate debtor shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both where any officer of the corporate debtor-

- a) on or after the insolvency commencement date, makes a false representation or commits any fraud for the purpose of obtaining the consent of the creditors of the corporate debtor or any of them to an agreement with reference to the affairs of the corporate debtor, during the corporate insolvency resolution process, or the liquidation process;
- b) prior to the insolvency commencement date, has made any false representation, or committed any fraud, for that purpose.

Punishment for contravention of moratorium or the resolution plan: Section 74 of the IBC

Where the corporate debtor or any of its officer violates the provisions of orders of the Adjudicating Authority on admission of application for insolvency resolution process, any such officer who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable with imprisonment for a term which shall not be less than three years, but may extend to five

years or with fine which shall not be less than one lakh rupees, but may extend to three lakh rupees, or with both.

Where any creditor violates the provisions of moratorium order, any person who knowingly and willfully authorised or permitted such contravention by a creditor shall be punishable with imprisonment for a term which shall not be less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

Punishment for false information furnished in application by financial creditor: Section 75 of the IBC

Where any person furnishes information in the application made, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material, such person shall be punishable with fine which shall not be less than one lakh rupees, but may extend to one crore rupees.

Punishment for non-disclosure of dispute or repayment of debt by operational creditor: Section 76 of the IBC

Where-

- a) an operational creditor has wilfully or knowingly concealed in an application for insolvency resolution process the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final repayment of the unpaid operational debt; or
- b) any person who knowingly and wilfully authorised or permitted such concealment under clause (a),

such operational creditor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less

than one year but may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees, or with both.

Punishment for providing false information in application made by corporate debtor: Section 77 of the IBC

Such corporate debtor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both where-

- a) a corporate debtor provides information in the application for insolvency resolution process which is false in material particulars, knowing it to be false and omits any material fact, knowing it to be material; or
- b) any person who knowingly and wilfully authorised or permitted the furnishing of such information under sub-clause (a),

For the purposes of this section and sections 75 and 76, an application shall be deemed to be false in material particulars in case the facts mentioned or omitted in the application, if true, or not omitted from the application as the case may be, would have been sufficient to determine the existence of a default under this Code.

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Chapter VI

Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms

Part III

(Chapter I - Sections 78-79)

Applicability of this part: Section 78 of the Code

This Part shall apply to matters relating to fresh start, insolvency and bankruptcy of individuals and partnership firms where the amount of the default is not less than one thousand rupees.

Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one lakh rupees.

Must know Terms and their definitions: Section 79 of the Code

1. **Section 79(1):** "Adjudicating Authority" means the Debt Recovery Tribunal constituted under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.
2. **Section 79 (2):** "associate" of the debtor means-
 - a. a person who belongs to the immediate family of the debtor;
 - b. a person who is a relative of the debtor or a relative of the spouse of the debtor;
 - c. a person who is in partnership with the debtor;
 - d. a person who is a spouse or a relative of any person with whom the debtor is in partnership;
 - e. a person who is employer of the debtor or employee of the debtor;

- f. a person who is a trustee of a trust in which the beneficiaries of the trust include a debtor, or the terms of the trust confer a power on the trustee which may be exercised for the benefit of the debtor; and
- g. a company, where the debtor or the debtor along with his associates, own more than fifty per cent. of the share capital of the company or control the appointment of the board of directors of the company.

Explanation. —For the purposes of this sub-section, “relative”, with reference to any person, means anyone who is related to another, if-

- i. they are members of a Hindu Undivided Family;
- ii. one person is related to the other in such manner as may be prescribed.

3. Section 79(3): “bankrupt” means-

- a. a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126;
- b. each of the partners of a firm, where a bankruptcy order under section 126 has been made against a firm; or
- c. any person adjudged as an undischarged insolvent.

4. Section 79(4): “bankruptcy” means the state of being bankrupt.

5. Section 79(5): “bankruptcy debt”, in relation to a bankrupt, means

- a. any debt owed by him as on the bankruptcy commencement date;
- b. any debt for which he may become liable after bankruptcy commencement date but before his discharge by reason of any transaction entered into before the bankruptcy commencement date; and
- c. any interest which is a part of the debt under section 171.

6. **Section 79(6):** “bankruptcy commencement date” means the date on which a bankruptcy order is passed by the Adjudicating Authority under section 126.
7. **Section 79(7):** “bankruptcy order” means an order passed by an Adjudicating Authority under section 126.
8. **Section 79(8):** “bankruptcy process” means a process against a debtor under Chapters IV and V of this Part.
9. **Section 79(9):** “bankruptcy trustee” means the insolvency professional appointed as a trustee for the estate of the bankrupt under section 125.
10. **Section 79(11):** “committee of creditors” means a committee constituted under section 134.
11. **Section 79(12):** “debtor” includes a judgment-debtor.
12. **Section 79(13):** “discharge order” means an order passed by the Adjudicating Authority discharging the debtor under sections 92, 119 and section 138, as the case may be.
13. **Section 79(14):** (14) “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

- e. an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed.
- 14. Section 79(15):** “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.
- 15. Section 79(16):** “firm” means a body of individuals carrying on business in partnership whether or not registered under section 59 of the Indian Partnership Act, 1932.
- 16. Section 79(17):** “immediate family” of the debtor means his spouse, dependent children and dependent parents.
- 17. Section 79(18):** “partnership debt” means a debt for which all the partners in a firm are jointly liable.
- 18. Section 79(19):** “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.
- 19. Section 79(20):** “repayment plan” means a plan prepared by the debtor in consultation with the resolution professional under section 105 containing a proposal to the committee of creditors for restructuring of his debts or affairs.

20. **Section 79(21):** “resolution professional” means an insolvency professional appointed under this part as a resolution professional for conducting the fresh start process or insolvency resolution process.
21. **Section 79(22):** “undischarged bankrupt” means a bankrupt who has not received a discharge order under section 138.



Chapter VII

Fresh Start Process

Part III

(Chapter III - Sections 80-93)

Applicable framework

- Part III, Chapter II covering Section 80-93 of the Code

Eligibility to make an application for fresh start process: Section 80 of the IBC

A debtor, who is unable to pay his debt, may apply, either personally or through a resolution professional, for a fresh start in respect of his qualifying debts to the Adjudicating Authority if-

- (a) the gross annual income of the debtor does not exceed sixty thousand rupees;
- (b) the aggregate value of the assets of the debtor does not exceed twenty thousand rupees;
- (c) the aggregate value of the qualifying debts does not exceed thirty-five thousand rupees;
- (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.

Effect of filing an application: Section 81 of the IBC

Application shall be in such form and manner and accompanied by such fee, as may be prescribed.

The application shall contain the following information supported by an affidavit, namely: -

- (a) a list of all debts owed by the debtor as on the date of the said application along with details relating to the amount of each debt, interest payable thereon and the names of the creditors to whom each debt is owed;
- (b) the interest payable on the debts and the rate thereof stipulated in the contract;
- (c) a list of security held in respect of any of the debts;
- (d) the financial information of the debtor and his immediate family up to two years prior to the date of the application;
- (e) the particulars of the debtor's personal details, as may be prescribed;
- (f) the reasons for making the application;
- (g) the particulars of any legal proceedings which, to the debtor's knowledge has been commenced against him;
- (h) the confirmation that no previous fresh start order under this Chapter has been made in respect of the qualifying debts of the debtor in the preceding twelve months of the date of the application.

On filing of an application, an interim moratorium shall commence and shall have effect till the admission or rejection of the application.

During the interim-moratorium period, -

- (i) any legal action or legal proceeding pending in respect of any of his debts shall be deemed to have been stayed; and
- (ii) no creditor shall initiate any legal action or proceedings in respect of such debt.

Appointment of Resolution Professional: Section 82 of the IBC

If Application is filed by resolution professional:

The Adjudicating Authority shall direct the Board within seven days of the date of receipt of the application and shall seek confirmation from the Board that there are no disciplinary proceedings against the resolution professional who has submitted such application.

The Board shall communicate to the Adjudicating Authority in writing either-

- (a) confirmation of the appointment of the resolution professional who filed an application; or
- (b) rejection of the appointment of the resolution professional who filed an application and nominate a resolution professional suitable for the fresh start process.

The Adjudicating Authority shall by order appoint the resolution professional recommended or nominated by the Board.

A resolution professional appointed by the Adjudicating Authority shall be provided a copy of the application for fresh start.

If an application for fresh start process is filed by debtor himself:

The Adjudicating Authority shall direct the Board within seven days of the date of the receipt of an application to nominate a resolution professional for the fresh start process.

The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority.

The Adjudicating Authority shall by order appoint the resolution professional recommended or nominated by the Board.

Examination of Application by Resolution Professional: Section 83 of the IBC

The resolution professional shall examine the application within ten days of his appointment, and submit a report to the Adjudicating Authority, either recommending acceptance or rejection of the application.

The report shall contain the details of the amounts mentioned in the application which in the opinion of the resolution professional are-

- (a) qualifying debts; and
- (b) liabilities eligible for discharge under sub-section (3) of section 92.

The resolution professional may call for such further information or explanation in connection with the application as may be required from the debtor or any other person who, in the opinion of the resolution professional, may provide such information and debtor or any other person, as the case may be, shall furnish such information or explanation within seven days of receipt of the request.

Grounds for rejection of application by resolution professional

- (a) the debtor does not satisfy the conditions specified under section 80 for eligibility to file an application for fresh start process; or
- (b) the debts disclosed in the application by the debtor are not qualifying debts; or
- (c) the debtor has deliberately made a false representation or omission in the application or with respect to the documents or information submitted.

Consideration of report on application for fresh start process by resolution process by the Adjudicating Authority: Section 84 of the IBC

The Adjudicating Authority may within fourteen days from the date of submission of the report by the resolution professional, pass an order either admitting or rejecting the application for fresh start process.

After accepting the application

Commencement of moratorium period: Section 85 of the IBC

On the date of admission of the application, the moratorium period shall commence in respect of all the debts.

During the moratorium period-

- (a) any pending legal action or legal proceeding in respect of any debt shall be deemed to have been stayed; and
- (b) subject to the provisions of section 86, the creditors shall not initiate any legal action or proceedings in respect of any debt.

During the moratorium period, the debtor shall-

- (a) not act as a director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company;
- (b) not dispose of or alienate any of his assets;
- (c) inform his business partners that he is undergoing a fresh start process;
- (d) be required to inform prior to entering into any financial or commercial transaction of such value as may be notified by the Central Government, either individually or jointly, that he is undergoing a fresh start process;
- (e) disclose the name under which he enters into business transactions, if it is different from the name in the application admitted under section 84;
- (f) not travel outside India except with the permission of the Adjudicating Authority.

The moratorium ceases to have effect at the end of the period of one hundred and eighty days beginning with the date of admission unless the order admitting the application is revoked under sub-section (2) of section 91.

Objections by creditor and their examination by resolution professional: Section 86 of the IBC

Any creditor mentioned in the order of the Adjudicating Authority of accepting the application for fresh start process to whom a qualifying debt is owed may, within a period of ten days from the date of receipt of the order, object only on the following grounds, namely:

- (a) inclusion of a debt as a qualifying debt; or

- (b) incorrectness of the details of the qualifying debt specified in the order.

A creditor may file an objection by way of an application to the resolution professional which shall be supported by such information and documents as may be prescribed.

The resolution professional shall consider every objection and shall examine the objections and either accept or reject the objections, within ten days of the date of the application.

The resolution professional may examine any matter that appears to him to be relevant to the making of a final list of qualifying debts for the purposes of section 92.

On the basis of the examination, the resolution professional shall-

- (a) prepare an amended list of qualifying debts for the purpose of the discharge order;
- (b) make an application to the Adjudicating Authority for directions under section 90; or
- (c) take such other steps as he considers necessary in relation to the debtor.

Application against decision of resolution professional: Section 87 of the IBC

The debtor or the creditor who is aggrieved by the action taken by the resolution professional on examination of objections raised may, within ten days of such decision, make an application to the Adjudicating Authority challenging such action on any of the following grounds, namely: -

- (a) that the resolution professional has not given an opportunity to the debtor or the creditor to make a representation; or
- (b) that the resolution professional colluded with the other party in arriving at the decision; or
- (c) that the resolution professional has not complied with the requirements of examination of objections prescribed in section 86.

The Adjudicating Authority shall decide the application within fourteen days of such application, and make an order as it deems fit.

Where the application has been allowed by the Adjudicating Authority, it shall forward its order to the Board and the Board may take such action as may be required under Chapter VI of Part IV against the resolution professional.

General duties of debtor: Section 88 of the IBC

The debtor shall-

- (a) make available to the resolution professional all information relating to his affairs, attend meetings and comply with the requests of the resolution professional in relation to the fresh start process.
- (b) inform the resolution professional as soon as reasonably possible of-
 - (i) any material error or omission in relation to the information or document supplied to the resolution professional; or
 - (ii) any change in financial circumstances after the date of application, where such change has an impact on the fresh start process.

Replacement of resolution process during fresh start process: Section 89 of the IBC

Where the debtor or the creditor is of the opinion that the resolution professional is required to be replaced, he may apply to the Adjudicating Authority for the replacement of such resolution professional.

The Adjudicating Authority shall within seven days of the receipt of the application for replacement of resolution professional make a reference to the Board for replacement of the resolution professional.

The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority, recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

The Adjudicating Authority shall appoint another resolution professional for the purposes of the fresh start process on the basis of the recommendation by the Board.

Revocation of order passed by Adjudicating Authority for accepting the application for fresh start process: Section 91 of the IBC

The resolution professional may submit an application to the Adjudicating

Authority seeking revocation of its order on the following grounds, namely:

- (a) if due to any change in the financial circumstances of the debtor, the debtor is ineligible for a fresh start process; or
- (b) non-compliance by the debtor of the restrictions on debtor during moratorium period imposed under sub-section (3) of section 85; or
- (c) if the debtor has acted in a mala fide manner and has willfully failed to comply with the provisions of this Chapter.

The Adjudicating Authority shall, within fourteen days of the receipt of the application, may by order admit or reject the application.

On passing of the order admitting the application, the moratorium and the fresh start process shall cease to have effect.

A copy of the order passed by the Adjudicating Authority under this section shall be provided to the Board for the purpose of recording an entry in the register referred to in section 196.

Discharge order: Section 92 of the IBC

The resolution professional shall prepare a final list of qualifying debts and submit such list to the Adjudicating Authority at least seven days before the moratorium period comes to an end.

The Adjudicating Authority shall pass a discharge order at the end of the moratorium period for discharge of the debtor from the qualifying debts.

The Adjudicating Authority shall discharge the debtor from the following liabilities, namely:

- (a) penalties in respect of the qualifying debts from the date of application till the date of the discharge order;
- (b) interest including penal interest in respect of the qualifying debts from the date of application till the date of the discharge order; and
- (c) any other sums owed under any contract in respect of the qualifying debts from the date of application till the date of the discharge order.

A discharge order shall not discharge any other person from any liability in respect of the qualifying debts.

Standard of conduct: Section 93 of the IBC

The resolution professional shall perform his functions and duties in compliance with the code of conduct provided under section 208.

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Chapter VIII

Insolvency Resolution Process (Non-Corporate Persons)

Part III

(Chapter III – Sections 94-120)

Applicable framework:

- Part III, Chapter III covering Section 94-120.

Unlike, fresh start process, application for insolvency resolution process may be filed by any individual or partnership firm who has committed default.

Application by debtor to initiate insolvency resolution process: Section 94 of the IBC

A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.

Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm unless all or a majority of the partners of the firm file the application jointly.

An application shall be submitted only in respect of debts which are not excluded debts.

Cases under which debtor is not eligible to make an application

- (a) Debtor is an undischarged bankrupt;
- (b) Debtor is undergoing a fresh start process;
- (c) Debtor is undergoing an insolvency resolution process; or
- (d) Debtor is undergoing a bankruptcy process;

- (e) If an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.

The application shall be in such form and manner and accompanied with such fee as may be prescribed.

Application by Creditor to initiate insolvency resolution process : Section 95 of the IBC

A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

A creditor may apply in relation to any partnership debt owed to him for initiating an insolvency resolution process against-

- (a) any one or more partners of the firm; or
(b) the firm.

Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

Interim moratorium: Section 96 of the IBC

When an application is filed by debtor or creditor an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application.

During the interim-moratorium period-

- (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

Appointment of Resolution Professional: Section 97 of the IBC

If Application is filed by resolution professional:

The Adjudicating Authority shall direct the Board within seven days of the date of receipt of the application and shall seek confirmation from the Board that there are no disciplinary proceedings against the resolution professional who has submitted such application.

The Board shall communicate to the Adjudicating Authority in writing either-

- (a) confirmation of the appointment of the resolution professional who filed an application; or
- (b) rejection of the appointment of the resolution professional who filed an application and nominate a resolution professional suitable for the insolvency resolution process.

The Adjudicating Authority shall by order appoint the resolution professional recommended or nominated by the Board.

If an application for fresh start process is filed by debtor himself:

The Adjudicating Authority shall direct the Board within seven days of the date of the receipt of an application to nominate a resolution professional for the insolvency resolution process.

The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority.

The Adjudicating Authority shall by order appoint the resolution professional recommended or nominated by the Board.

A resolution professional appointed by the Adjudicating Authority shall be provided a copy of the application for insolvency resolution process.

Replacement of Resolution Professional: Section 98 of the IBC

Where the debtor or the creditor is of the opinion that the resolution professional is required to be replaced, he may apply to the Adjudicating Authority for the replacement of such resolution professional.

The Adjudicating Authority shall within seven days of the receipt of the application for replacement of resolution professional make a reference to the Board for replacement of the resolution professional.

The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority, recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

Where the Adjudicating Authority admits an application, it shall direct the Board to confirm that there are no disciplinary proceedings pending against the proposed resolution professional.

The Board shall send a communication within ten days of receipt of the direction either-

- (a) confirming appointment of the nominated resolution professional; or
- (b) rejecting appointment of the nominated resolution professional and recommend a new resolution professional.

On the basis of the communication of the Board, the Adjudicating Authority shall pass an order appointing a new resolution professional.

The Adjudicating Authority may give directions to the resolution professional replaced -

- (a) to share all information with the new resolution professional in respect of insolvency resolution process; and
- (b) to co-operate with the new resolution professional as may be required.

Submission of Report by Resolution Professional: Section 99 of the IBC

The resolution professional shall examine the application by debtor or creditor, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.

Where the application has been filed by creditor, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing-

- (a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;
- (b) evidence of encashment of a cheque issued by the debtor; or
- (c) a signed acknowledgment by the creditor accepting receipt of dues.

The resolution professional shall examine the application and ascertain that—

- (a) the application satisfies the requirements set out in section 94 for debtor or 95 for creditor;
- (b) the applicant has provided information and given explanation sought by the resolution professional.

After examination of the application, he may recommend acceptance or rejection of the application in his report.

Consideration of Application by Adjudicating Authority: Section 100 of the IBC

The Adjudicating Authority shall, within fourteen days from the date of submission of the report by resolution professional pass an order either admitting or rejecting the application by debtor or creditor, as the case may be.

Commencement of Moratorium Period: Section 101 of the IBC

When the application is admitted by the Adjudicating Authority, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

Public notice and Claims of Creditors: Section 102 of the IBC

The Adjudicating Authority shall issue a public notice within seven days of passing the order for accepting the application inviting claims from all creditors within twenty-one days of such issue.

The notice shall include-

- (a) details of the order admitting the application;
- (b) particulars of the resolution professional with whom the claims are to be registered; and
- (c) the last date for submission of claims.

The notice shall be-

- (a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;
- (b) affixed in the premises of the Adjudicating Authority; and
- (c) placed on the website of the Adjudicating Authority.

Registering of claims by creditors: Section 103 of the IBC

The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.

In addition to the claims, the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

Preparation of list of creditors: Section 104 of the IBC

The resolution professional shall prepare a list of creditors on the basis of-

- (a) the information disclosed in the application filed by the debtor or creditor, as the case may be;
- (b) claims received by the resolution professional after issuance of public notice.

The resolution professional shall prepare the list within thirty days from the date of the notice.

Preparation of Repayment Plan: Section 105 of the IBC

The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs.

The repayment plan may authorise or require the resolution professional to-

- (a) carry on the debtor's business or trade on his behalf or in his name; or
- (b) realise the assets of the debtor; or
- (c) administer or dispose of any funds of the debtor.

The repayment plan shall include the following, namely:

- (a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
- (b) provision for payment of fee to the resolution professional;
- (c) such other matters as may be specified.

Submission of Repayment Plan along with Report by Resolution Professional to the Adjudicating Authority: Section 106 of the IBC

The resolution professional shall submit the repayment plan along with his report on such plan to the Adjudicating Authority within a period of twenty-one days from the last date of submission of claims.

Report of resolution professional shall include:

- (a) the repayment plan is in compliance with the provisions of any law for the time being in force;
- (b) the repayment plan has a reasonable prospect of being approved and implemented; and
- (c) there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan.

The date on which the meeting is to be held shall be not less than fourteen days and not more than twenty-eight days from the date of submission of report.

Meeting of Committee of Creditors

Notice of the meeting: Section 107 of the IBC

The resolution professional shall issue a notice to the list of creditors calling the meeting of the creditors at least fourteen days before the date fixed for such meeting.

Content of the notice: The notice sent shall state the address of the Adjudicating Authority to which the repayment plan and report of the resolution professional on the repayment plan has been submitted and shall be accompanied by-

- (a) a copy of the repayment plan;
- (b) a copy of the statement of affairs of the debtor;
- (c) a copy of the said report of the resolution professional; and
- (d) forms for proxy voting.

The proxy voting, including electronic proxy voting shall take place in such manner and form as may be specified.

Conduct of Meeting of Creditors: Section 108 of the IBC

In the meeting of the creditors, the creditors may decide to approve, modify or reject the repayment plan and ensure that if modifications are suggested by the creditors, consent of the debtor shall be obtained for each modification.

Rights of Secured Creditors in relation to Repayment Plan: Section 110 of the IBC

Secured creditors shall be entitled to participate and vote in the meetings of the creditors.

A secured creditor participating in the meetings of the creditors and voting in relation to the repayment plan shall forfeit his right to enforce the security during the period of the repayment plan in accordance with the terms of the repayment plan.

Where a secured creditor does not forfeit his right to enforce security, he shall submit an affidavit to the resolution professional at the meeting of the creditors stating-

- (a) that the right to vote exercised by the secured creditor is only in respect of the unsecured part of the debt; and
- (b) the estimated value of the unsecured part of the debt.

In case a secured creditor participates in the voting on the repayment plan by submitting an affidavit, the secured and unsecured parts of the debt shall be treated as separate debts.

The concurrence of the secured creditor shall be obtained if he does not participate in the voting on repayment plan but provision of the repayment plan affects his right to enforce security.

Approval of Repayment Plan by Committee: Section 111 of the IBC

The repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.

Report of meeting of Creditors on Repayment Plan: Section 112 of the IBC

The resolution professional shall prepare a report of the meeting of the creditors on repayment plan containing:

- (a) whether the repayment plan was approved or rejected and if approved, the list the modifications, if any;
- (b) the resolutions which were proposed at the meeting and the decision on such resolutions;
- (c) list of the creditors who were present or represented at the meeting, and the voting records of each creditor for all meetings of the creditors; and
- (d) such other information as the resolution professional thinks appropriate to make known to the Adjudicating Authority.

Notice of decision taken in meeting of Committee: Section 113 of the IBC

The resolution professional shall provide a copy of the report of the meeting to

- (a) the debtor;
- (b) the creditors, including those who were not present at the meeting; and
- (c) the Adjudicating Authority.

Consideration of resolution plan by Adjudicating Authority: Section 114 of the IBC

Adjudicating Authority may, by order approve or reject the resolution plan on the basis of the report of the meeting of the creditors submitted by the resolution professional.

Adjudicating Authority if, is of the opinion that the repayment plan requires modification, it may direct the resolution professional to re-convene a meeting of the creditors for reconsidering the repayment plan.

The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan.

Where a meeting of creditors is not summoned, the Adjudicating Authority shall pass an order on the basis of the report prepared by the resolution professional.

Effect of order of Adjudicating Authority on Repayment Plan: Section 115 of the IBC

If Adjudicating Authority has approved the repayment plan, such repayment plan shall-

- (a) take effect as if proposed by the debtor in the meeting; and
- (b) be binding on creditors mentioned in the repayment plan and the debtor.

Where the Adjudicating Authority rejects the repayment plan, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.

A copy of the order passed by the Adjudicating Authority shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196.

Implementation and Supervision of Repayment Plan: Section 116 of the IBC

The resolution professional shall supervise the implementation of the repayment plan.

The resolution professional may apply to the Adjudicating Authority for directions, if necessary, in relation to any particular matter arising under the repayment plan.

The Adjudicating Authority may issue directions to the resolution professional on the basis of an application by resolution professional.

Completion of Repayment Plan: Section 117 of the IBC

The resolution professional shall within fourteen days of the completion of the repayment plan, forward to the persons who are bound by the repayment plan and the Adjudicating Authority, the following documents, namely: -

- (a) a notice that the repayment plan has been fully implemented; and
- (b) a copy of a report by the resolution professional summarizing all receipts and payments made in pursuance of the repayment plan and extent of the implementation of such plan as compared with the repayment plan approved by the meeting of the creditors.

The resolution professional may apply to the Adjudicating Authority to extend the time for such further period not exceeding seven days.

Repayment Plan coming to end Prematurely: Section 118 of the IBC

A repayment plan shall be deemed to have come to an end prematurely if it has not been fully implemented in respect of all persons bound by it within the period as mentioned in the repayment plan.

Where a repayment plan comes to an end prematurely under this section, the resolution professional shall submit a report to the Adjudicating Authority which shall state-

- (a) the receipts and payments made in pursuance of the repayment plan;
- (b) the reasons for premature end of the repayment plan; and
- (c) the details of the creditors whose claims have not been fully satisfied.

The Adjudicating Authority shall pass an order on the basis of the report submitted by the resolution professional that the repayment plan has not been completely implemented.

The debtor or the creditor, whose claims under repayment plan have not been fully satisfied, shall be entitled to apply for a bankruptcy order under Chapter IV.

The Adjudicating Authority shall forward to the persons bound by the repayment plan, a copy of the-

- (a) report submitted by the resolution professional to the Adjudicating; and
- (b) order passed by the Adjudicating Authority.

The Adjudicating Authority shall forward a copy of the order passed to the Board, for the purpose of recording entries in the register referred to in section 196.

Discharge Order: Section 119 of the IBC

On the basis of the repayment plan, the resolution professional shall apply to the Adjudicating Authority for a discharge order in relation to the debts mentioned in the repayment plan and the Adjudicating Authority may pass such discharge order.

The repayment plan may provide for-

- (a) early discharge; or
- (b) discharge on complete implementation of the repayment plan.

The discharge order shall be forwarded to the Board, for the purpose of recording entries in the register referred to in section 196.

The discharge order shall not discharge any other person from any liability in respect of his debt.

Standard of Conduct: Section 120 of the IBC

The resolution professional shall perform his functions and duties in compliance with the code of conduct provided under section 208.



Chapter IX

Bankruptcy Order for Individuals and Partnership Firms

Part III

(Chapter IV – Sections 121-148)

Applicable framework:

- Part III, Chapter IV covering Section 121-148 of the IBC

Grounds on which application may be filed for bankruptcy: **Section 121 of the IBC**

An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely:

- (a) where an order has been passed for rejection of application for insolvency resolution process on account on the conclusion that the application was made with the intention to defraud his creditors or the resolution professional by an Adjudicating Authority under sub-section 4 of section 100; or
- (b) where an order for rejection of repayment plan has been passed by an Adjudicating Authority under sub-section 2 of section 115; or
- (c) where an order has been passed by an Adjudicating Authority on an application by resolution professional on premature end of repayment plan under sub-section 3 of section 118.

An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority.

Where the debtor is a firm, the application may be filed by any of its partners.

Application for bankruptcy

Application by debtor: Section 122 of the IBC

The application for bankruptcy by the debtor shall be accompanied by-

- (a) the records of insolvency resolution process undertaken under Chapter III of Part III;
- (b) the statement of affairs of the debtor in such form and manner as may be prescribed, on the date of the application for bankruptcy; and

a copy of the order passed by the Adjudicating Authority under Chapter III of Part III permitting the debtor to apply for bankruptcy.

Application by creditor: Section 123 of the IBC

The application for bankruptcy by the creditor shall be accompanied by-

- (a) the records of insolvency resolution process undertaken under Chapter III;
- (b) a copy of the order passed by the Adjudicating Authority under Chapter III permitting the creditor to apply for bankruptcy;
- (c) details of the debts owed by the debtor to the creditor as on the date of the application for bankruptcy; and
- (d) such other information as may be prescribed.

An application made in respect of a debt which is secured, shall be accompanied with-

- (a) a statement by the creditor having the right to enforce the security that he shall, in the event of a bankruptcy order being made, give up his security for the benefit of all the creditors of the bankrupt; or
- (b) a statement by the creditor stating-
 - (i) that the application for bankruptcy is only in respect of the unsecured part of the debt; and
 - (ii) an estimated value of the unsecured part of the debt.

If a secured creditor makes an application for bankruptcy and submits a statement, the secured and unsecured parts of the debt shall be treated as separate debts.

The creditor may propose an insolvency professional as the bankruptcy trustee in the application for bankruptcy.

An application for bankruptcy, in case of a deceased debtor, may be filed against his legal representatives.

Effect of Application: Section 124 of the IBC

When an application for bankruptcy is filed by debtor or creditor, an interim-moratorium shall commence on the date of the making of the application on all actions against the properties of the debtor in respect of his debts and such moratorium shall cease to have effect on the bankruptcy commencement date.

During the interim-moratorium period:

- (i) any pending legal action or legal proceeding against any property of the debtor in respect of any of his debts shall be deemed to have been stayed;
- (ii) the creditors of the debtor shall not be entitled to initiate any legal action or legal proceedings against any property of the debtor in respect of any of his debts.

Appointment of insolvency professional as bankruptcy trustee: Section 125 of the IBC

If insolvency professional is proposed in the application for bankruptcy

The Adjudicating Authority shall direct the Board within seven days of receiving the application for bankruptcy to confirm that there are no disciplinary proceedings pending against such professional.

The Board shall within ten days of the receipt of the direction in writing either-

- (a) confirm the appointment of the proposed insolvency professional as the bankruptcy trustee for the bankruptcy process; or

- (b) reject the appointment of the proposed insolvency professional as the bankruptcy trustee and nominate another bankruptcy trustee for the bankruptcy process.
- (c) The bankruptcy trustee confirmed or nominated under this section shall be appointed as the bankruptcy trustee by the Adjudicating Authority in the bankruptcy order under section 126.

Bankruptcy order

Passing of bankruptcy order: Section 126 of the IBC

The Adjudicating Authority shall pass a bankruptcy order within fourteen days of receiving the confirmation or nomination of the bankruptcy trustee by the Board.

The Adjudicating Authority shall provide the following documents to bankrupt, creditors and the bankruptcy trustee within seven days of the passing of the bankruptcy order, namely: -

- (a) a copy of the application for bankruptcy; and
- (b) a copy of the bankruptcy order.

Validity of bankruptcy order: Section 127 of the IBC

The bankruptcy order passed by the Adjudicating Authority shall continue to have effect till the debtor is discharged under section 138.

Effect of bankruptcy order: Section 128 of the IBC

On the passing of the bankruptcy order-

- (a) the estate of the bankrupt shall vest in the bankruptcy trustee as provided in section 154;
- (b) the estate of the bankrupt shall be divided among his creditors;
- (c) subject to provisions of sub-section (2) for secured creditors, a creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt shall not-
 - (i) initiate any action against the property of the bankrupt in respect of such debt; or

- (ii) commence any suit or other legal proceedings except with the leave of the Adjudicating Authority and on such terms as the Adjudicating Authority may impose.

The bankruptcy order shall not affect the right of any secured creditor to realise or otherwise deal with his security interest in the same manner as he would have been entitled if the bankruptcy order had not been passed.

Statement of Financial Position: Section 129 of the IBC

Where a bankruptcy order is passed on the application for bankruptcy by a creditor, the bankrupt shall submit his statement of financial position to the bankruptcy trustee within seven days from the bankruptcy commencement date.

The statement of financial position shall be submitted in the form and manner as may be prescribed.

Where the bankrupt is a firm, its partners on the date of the order shall submit a joint statement of financial position of the firm, and each partner of the firm shall submit a statement of his financial position.

Public notice inviting Claims of Creditors: Section 130 of the IBC

Public notice inviting claims of creditor shall be-

- (a) published in leading newspapers, one in English and another in vernacular having sufficient circulation where the bankrupt resides;
- (b) affixed on the premises of the Adjudicating Authority; and
- (c) placed on the website of the Adjudicating Authority.

The Adjudicating Authority shall send notices within ten days of the bankruptcy commencement date.

Registration of Claims: Section 131 of the IBC

The creditors shall register claims with the bankruptcy trustee within seven days of the publication of the public notice, by sending details of the claims to the bankruptcy trustee in such manner as may be prescribed.

Preparation of list of creditors: Section 132 of the Code

The bankruptcy trustee shall, within fourteen days from the bankruptcy commencement date, prepare a list of creditors of the bankrupt on the basis of-

- (a) the information disclosed by the bankrupt in the application for bankruptcy filed by the bankrupt under section 118 and the statement of affairs filed under section 125; and
- (b) claims received after issuance of public notice by the bankruptcy trustee under sub-section (2) of section 130.

Meeting of creditors

Summoning of meeting of creditors: Section 133 of the Code

The bankruptcy trustee shall, within twenty-one days from the bankruptcy commencement date, issue a notice for calling a meeting of the creditors, to every creditor of the bankrupt as mentioned in the list prepared under section 132.

The notice shall-

- (a) state the date of the meeting of the creditors, which shall not be later than twenty-one days from the bankruptcy commencement date;
- (b) be accompanied with forms of proxy voting;
- (c) specify the form and manner in which the proxy voting may take place.

The proxy voting, including electronic proxy voting shall take place in such manner and form as may be specified.

Voting rights of creditors: Section 135 of the IBC

The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

Every creditor mentioned in the list under section 132 or his proxy shall be entitled to vote in respect of the resolutions in the meeting of the creditors in accordance with the voting share assigned to him.

A creditor shall not be entitled to vote in respect of a debt for an unliquidated amount.

The following creditors shall not be entitled to vote under this section, namely:

- (a) creditors who are not mentioned in the list of creditors under section 132 and those who have not been given a notice by the bankruptcy trustee;
- (b) creditors who are associates of the bankrupt.

Conducting meeting of creditors: Section 134 of the IBC

The bankruptcy trustee shall be the convener of the meeting of the creditors summoned.

The bankruptcy trustee shall decide the quorum for the meeting of the creditors, and conduct the meeting only if the quorum is present.

The following business shall be conducted in the meeting of the creditors in which regard a resolution may be passed, namely:

- (a) the establishment of a committee of creditors;
- (b) any other business that the bankruptcy trustee thinks fit to be transacted.

Administration and Distribution of Estate of Bankrupt: Section 136 of the IBC

The bankruptcy trustee shall convene a meeting of the committee of creditors on completion of the administration and distribution of the estate of the bankrupt in accordance with the provisions of Chapter V of Part III of the IBC.

The bankruptcy trustee shall provide the committee of creditors with a report of the administration of the estate of the bankrupt in the meeting of the said committee.

The committee of creditors shall approve the report submitted by the bankruptcy trustee within seven days of the receipt of the report and determine whether the bankruptcy trustee should be released under section 148.

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Chapter X
Administration and Distribution of
The Estate of the Bankrupt
PART III
(Chapter V – Sections 149-178)

Applicable framework

- Chapter V of Part III of the IBC covering section 149-178

Function of bankruptcy trustee: Section 149 of the IBC

The bankruptcy trustee shall perform the following functions:

- (a) investigate the affairs of the bankrupt;
- (b) realise the estate of the bankrupt; and
- (c) distribute the estate of the bankrupt.

Rights of bankruptcy trustee: Section 151 of the IBC

The bankruptcy trustee may, by his official name-

- (a) hold property of every description;
- (b) make contracts;
- (c) sue and be sued;
- (d) enter into engagements in respect of the estate of the bankrupt;
- (e) employ persons to assist him;
- (f) execute any power of attorney, deed or another instrument; and
- (g) do any other act which is necessary or expedient for the purposes of or in connection with the exercise of his rights.

General Powers of bankruptcy trustee: Section 152 of the IBC

The bankruptcy trustee may while discharging his functions:

- (a) sell any part of the estate of the bankrupt;
- (b) give receipts for any money received by him;
- (c) prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate;
- (d) where any property comprised in the estate of the bankrupt is held by any person by way of pledge or hypothecation, exercise the right of redemption in respect of any such property subject to the relevant contract by giving notice to the said person;
- (e) where any part of the estate of the bankrupt consists of securities in a company or any other property which is transferable in the books of a person, exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt; and
- (f) deal with any property comprised in the estate of the bankrupt to which the bankrupt is beneficially entitled in the same manner as he might have dealt with it.

Duties of bankrupt towards bankruptcy trustee: Section 150 of the IBC

The bankrupt shall assist the bankruptcy trustee in carrying out his functions-

- (a) giving to the bankruptcy trustee the information of his affairs;
- (b) attending on the bankruptcy trustee at such times as may be required;
- (c) giving notice to the bankruptcy trustee of any of the following events which have occurred after the bankruptcy commencement date, -
 - (i) acquisition of any property by the bankrupt;
 - (ii) devolution of any property upon the bankrupt;
 - (iii) increase in the income of the bankrupt;
 - (iv) doing all other things as may be prescribed.

Estate of Bankrupt: Section 155 of the IBC

The estate of the bankrupt shall include-

- (a) all property belonging to or vested in the bankrupt at the bankruptcy commencement date;
- (b) the capacity to exercise and to initiate proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the bankruptcy commencement date or before the date of the discharge order passed under section 138; and
- (c) all property which by virtue of any of the provisions of this Chapter is comprised in the estate

The estate of the bankrupt shall not include-

- (a) excluded assets;
- (b) property held by the bankrupt on trust for any other person;
- (c) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund; and
- (d) such assets as may be notified by the Central Government in consultation with any financial sector regulator.

Delivery of property and documents to Bankruptcy Trustee: Section 156 of the IBC

The bankrupt, his banker or agent or any other person having possession of any property, books, papers or other records which bankruptcy trustee is required to take possession for the purposes of the bankruptcy process shall deliver the said property and documents to the bankruptcy trustee.

Acquisition of control by bankruptcy trustee: Section 157 of the IBC

The bankruptcy trustee shall take possession and control of all property, books, papers and other records relating to the estate of the bankrupt or affairs of the bankrupt which belong to him or are in his possession or under his control.

Where any part of the estate of the bankrupt consists of things in actionable claims, they shall be deemed to have been assigned to the bankruptcy trustee without any notice of the assignment.

Restrictions on Disposition of Property: Section 158 of the IBC

Any disposition of property made by the debtor, during the period between the date of filing of the application for bankruptcy and the bankruptcy commencement date shall be void.

After-acquired property of Bankrupt: Section 159 of the IBC

“After-acquired property” means any property which has been acquired by or has devolved upon the bankrupt after the bankruptcy commencement date.

The bankruptcy trustee shall be entitled to claim for the estate of the bankrupt, any after-acquired property by giving a notice to the bankrupt.

A notice to the bankrupt shall not be served in respect of-

- (a) excluded assets; or
- (b) any property which is acquired by or devolves upon the bankrupt after a discharge order is passed under section 138.

The notice shall be given within fifteen days from the day on which the acquisition or devolution of the after-acquired property comes to the knowledge of the bankruptcy trustee. In this regard:

- (a) anything which comes to the knowledge of the bankruptcy trustee shall be deemed to have come to the knowledge of the successor of the bankruptcy trustee at the same time; and
- (b) anything which comes to the knowledge of a person before he is appointed as a bankruptcy trustee shall be deemed to have come to his knowledge on the date of his appointment as bankruptcy trustee.

Onerous property of Bankrupt: Section 160 of the IBC

“Onerous property” means-

- (i) any unprofitable contract; and
- (ii) any other property comprised in the estate of the bankrupt which is unsaleable or not readily saleable, or is such that it may give rise to a claim.

The bankruptcy trustee may, by giving notice to the bankrupt or any person interested in the onerous property, disclaim any onerous property which forms a part of the estate of the bankrupt.

The bankruptcy trustee may give the notice notwithstanding that he has taken possession of the onerous property, endeavored to sell it or has exercised rights of ownership in relation to it.

A notice of disclaimer shall-

- (a) determine, as from the date of such notice, the rights, interests and liabilities of the bankrupt in respect of the onerous property disclaimed;
- (b) discharge the bankruptcy trustee from all personal liability in respect of the onerous property as from the date of appointment of the bankruptcy trustee.

A notice of disclaimer shall not be given in respect of the property which has been claimed for the estate of the bankrupt under section 155 without the permission of the committee of creditors.

Notice to disclaim Onerous Property: Section 161 of the IBC

An onerous property is said to be disclaimed where notice in relation to that property has been given by the bankruptcy trustee under section 160.

Disclaimer of Leaseholds: Section 162 of the IBC

The bankruptcy trustee shall not be entitled to disclaim any leasehold interest, unless a notice of disclaimer has been served on every interested person and

- (a) no application objecting to the disclaimer by the interested person, has been filed with respect to the leasehold interest, within fourteen days of the date on which notice was served; and
- (b) where the application objecting to the disclaimer has been filed by the interested person, the Adjudicating Authority has directed under section 163 that the disclaimer shall take effect.

Where the Adjudicating Authority gives a direction, it may also make order with respect to fixtures, improvements by tenant and other matters arising out of the lease as it may think fit.

Challenge against Disclaimed Property: Section 163 of the IBC

An application challenging the disclaimer may be made by the following persons under this section to the Adjudicating Authority-

- (a) any person who claims an interest in the disclaimed property; or
- (b) any person who is under any liability in respect of the disclaimed property; or
- (c) where the disclaimed property is a dwelling house, any person who on the date of application for bankruptcy was in occupation of or entitled to occupy that dwelling house.

The Adjudicating Authority may on an application make an order for the vesting of the disclaimed property in, or for its delivery to any of the persons.

The Adjudicating Authority shall not make an order in favour of a person who has made an application except where it appears to the Adjudicating Authority that it would be just to do so for the purpose of compensating the person.

Undervalued Transaction: Section 164 of the IBC

Bankrupt enters into an undervalued transaction with any person if-

- (a) he makes a gift to that person;
- (b) no consideration has been received by that person from the bankrupt;
- (c) it is in consideration of marriage; or
- (d) it is for a consideration, the value of which in money or money's worth is significantly less than the value in money or money's worth of the consideration provided by the bankrupt.

The undervalued transaction should have—

- (a) been entered into during the period of two years ending on the filing of the application for bankruptcy; and
- (b) caused bankruptcy process to be triggered.

A transaction between a bankrupt and his associate entered into during the period of two years preceding the date of making of the application for bankruptcy shall be deemed to be an undervalued transaction.

Preference Transactions: Section 165 of the IBC

A bankrupt shall be deemed to have entered into a transaction giving preference to any person if-

- (a) the person is the creditor or surety or guarantor for any debt of the bankrupt; and
- (b) the bankrupt does anything or suffers anything to be done which has the effect of putting that person into a position which, in the event of the debtor becoming a bankrupt, will be better than the position he would have been in, if that thing had not been done.

The transaction giving preference to an associate of the bankrupt should have been entered into by the bankrupt with the associate during the period of two years ending on the date of the application for bankruptcy.

On the application of the bankruptcy trustee the Adjudicating Authority may-

- (a) pass an order declaring a transaction giving preference void;
- (b) pass an order requiring any property transferred in respect of a transaction giving preference to be vested with the bankruptcy trustee as a part of the estate of the bankrupt; and
- (c) pass any other order it thinks fit for restoring the position to what it would have been if the bankrupt had not entered into the transaction giving preference.

Effect of order passed on undervalued and preference transactions: Section 166 of the IBC

An order passed by the Adjudicating Authority shall not:

- (a) give rise to a right against a person interested in the property which was acquired in an undervalued transaction or a transaction giving preference, whether or not he is the person with whom the bankrupt entered into such transaction; and

- (b) require any person to pay a sum to the bankruptcy trustee in respect of the benefit received from the undervalued transaction or a transaction giving preference, whether or not he is the person with whom the bankrupt entered into such transaction.

Effect of order shall not be in place if the interest was acquired or the benefit was received-

- (a) in good faith;
- (b) for value;
- (c) without notice that the bankrupt entered into the transaction at an undervalue or for giving preference;
- (d) without notice that the bankrupt has filed an application for bankruptcy or a bankruptcy order has been passed; and
- (e) by any person who at the time of acquiring the interest or receiving the benefit was not an associate of the bankrupt.

Extortionate Credit Transactions: Section 167 of the IBC

An extortionate credit transaction is a transaction for or involving the provision of credit to the bankrupt by any person-

- (a) on terms requiring the bankrupt to make exorbitant payments in respect of the credit provided; or
- (b) which is unconscionable under the principles of law relating to contracts.

Any debt extended by a person regulated for the provision of financial services in compliance with the law in force in relation to such debt, shall not be considered as an extortionate credit transaction.

Obligations under contracts entered into by the bankrupt with a person before the bankruptcy commencement date: Section 168 of the IBC

Any party to a contract entered into by the bankrupt with a person before the bankruptcy commencement date, other than the bankrupt, may apply to the Adjudicating Authority for-

- (a) an order discharging the obligations of the applicant or the bankrupt under the contract; and

- (b) payment of damages by the party or the bankrupt, for non-performance of the contract or otherwise.

Any damages payable by the bankrupt by virtue of an order shall be provable as bankruptcy debt.

Continuance of proceedings on Death of Bankrupt: Section 169 of the IBC

If a bankrupt die, the bankruptcy proceedings shall, continue as if he were alive.

Administration of estate of Deceased Bankrupt: Section 170 of the IBC

All the provisions of Chapter V relating to the administration and distribution of the estate of the bankrupt shall, so far as the same are applicable, apply to the administration of the estate of a deceased bankrupt.

While administering the estate of a deceased bankrupt, the bankruptcy trustee shall have regard to the claims by the legal representatives of the deceased bankrupt to payment of the proper funeral and testamentary expenses incurred by them.

The claims shall rank equally to the secured creditors in the priority provided under section 178.

Proof of debt: Section 171 of the IBC

The bankruptcy trustee shall give notice to each of the creditors to submit proof of debt within fourteen days of preparing the list of creditors.

The proof of debt shall-

- (a) require the creditor to give full particulars of debt, including the date on which the debt was contracted and the value at which that person assesses it;
- (b) require the creditor to give full particulars of the security, including the date on which the security was given and the value at which that person assesses it;
- (c) be in such form and manner as may be prescribed.

Proof of debt by Secured Creditors: Section 172 of the IBC

Where a secured creditor realises his security, he may produce proof of the balance due to him.

Where a secured creditor surrenders his security to the bankruptcy trustee for the general benefit of the creditors, he may produce proof of his whole claim.

Mutual Credit and Set-off: Section 173 of the IBC

Where before the bankruptcy commencement date, there have been mutual dealings between the bankrupt and any creditor, the bankruptcy trustee shall-

- (a) take an account of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set-off against the sums due from the other; and
- (b) only the balance shall be provable as a bankruptcy debt or as the amount payable to the bankruptcy trustee as part of the estate of the bankrupt.

Sums due from the bankrupt to another party shall not be included in the account taken by the bankruptcy trustee, if that other party had notice at the time they became due that an application for bankruptcy relating to the bankrupt was pending.

Distribution of Interim Dividend: Section 174 of the IBC

Bankruptcy trustee may declare and distribute interim dividend among the creditors in respect of the bankruptcy debts which they have respectively proved, whenever he has sufficient funds in his hand.

In the calculation and distribution of the interim dividend, the bankruptcy trustee shall make provision for-

- (a) any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their debts; and
- (b) any bankruptcy debts which are subject of claims which have not yet been determined;

(c) disputed proofs and claims; and

expenses necessary for the administration of the estate of the bankrupt.

Distribution of Property: Section 175 of the IBC

The bankruptcy trustee may, with the approval of the committee of creditors, divide in its existing form amongst the creditors, according to its estimated value, any property in its existing form which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

Final dividend: Section 176 of the IBC

Where the bankruptcy trustee has realised the entire estate of the bankrupt or so much of it as could be realised in the opinion of the bankruptcy trustee, he shall give notice-

- (a) of his intention to declare a final dividend; or
- (b) that no dividend or further dividend shall be declared.

The notice under shall contain such particulars as may be prescribed and shall require all claims against the estate of the bankrupt to be established by a final date specified in the notice.

The Adjudicating Authority may, on the application of any person interested in the administration of the estate of the bankrupt, postpone the final date.

After the final date, the bankruptcy trustee shall-

- (a) defray any outstanding expenses of the bankruptcy out of the estate of the bankrupt; and
- (b) if he intends to declare a final dividend, declare and distribute that dividend among the creditors who have proved their debts, without regard to the claims of any other persons.

If a surplus remains after payment in full with interest to all the creditors of the bankrupt and the payment of the expenses of the bankruptcy, the bankrupt shall be entitled to the surplus.

Claims of creditors: Section 177 of the IBC

A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but-

- (a) when he has proved the debt, he shall be entitled to be paid any dividend or dividends which he has failed to receive, out of any money for the time being available for the payment of any further dividend; and
- (b) any dividend or dividends payable to him shall be paid before that money is applied to the payment of any such further dividend.

No action shall lie against the bankruptcy trustee for a dividend, but if the bankruptcy trustee refuses to pay a dividend payable, the Adjudicating Authority may order him to-

- (a) pay the dividend; and
- (b) pay, out of his own money-
 - (i) interest on the dividend; and
 - (ii) the costs of the proceedings in which the order to pay has been made.

Priority of payment of debts: Section 178 of the Code

- (a) firstly, the costs and expenses incurred by the bankruptcy trustee for the bankruptcy process in full;
- (b) secondly, -
 - (i) the workmen's dues for the period of twenty-four months preceding the bankruptcy commencement date; and
 - (ii) debts owed to secured creditors;
- (c) thirdly, wages and any unpaid dues owed to employees, other than workmen, of the bankrupt for the period of twelve months preceding the bankruptcy commencement date;
- (d) fourthly, any amount due to the Central Government and the State Government including the amount to be received on

account of Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date;

- (e) lastly, all other debts and dues owed by the bankrupt including unsecured debts.

Discharge order: Section 137 of the IBC

The bankruptcy trustee shall apply to the Adjudicating Authority for a discharge order-

- (a) on the expiry of one year from the bankruptcy commencement date; or
- (b) within seven days of the approval of the committee of creditors of the completion of administration of the estates of the bankrupt under section 137, where such approval is obtained prior to the period mentioned in clause (a).

The Adjudicating Authority shall pass a discharge order on an application by the bankruptcy trustee.

A copy of the discharge order shall be provided to the Board for the purpose of recording an entry in the register referred to in section 196.

Discharge order: Section 138 of the IBC

The bankruptcy trustee shall apply to the Adjudicating Authority for a discharge order-

- (a) on the expiry of one year from the bankruptcy commencement date; or
- (b) within seven days of the approval of the committee of creditors of the completion of administration of the estates of the bankrupt under section 137, where such approval is obtained prior to the period mentioned in clause (a).

The Adjudicating Authority shall pass a discharge order on an application by the bankruptcy trustee.

Effect of discharge: Section 139 of the IBC

However, the discharge shall not-

- (a) affect the functions of the bankruptcy trustee; or
- (b) affect the operation of the provisions of Chapters IV and V of Part III; or
- (c) release the bankrupt from any debt incurred by means of fraud or breach of trust to which he was a party; or
- (d) discharge the bankrupt from any excluded debt.

Disqualification of Bankrupt: Section 140 of the IBC

In addition to any disqualification under any other law for the time being in force, a bankrupt shall be disqualified from-

- (a) being appointed or acting as a trustee or representative in respect of any trust, estate or settlement;
- (b) being appointed or acting as a public servant;
- (c) being elected to any public office where the appointment to such office is by election; and
- (d) being elected or sitting or voting as a member of any local authority.

Any disqualification to which a bankrupt may be subject under this section shall cease to have effect, if-

- (a) the bankruptcy order against him is modified or recalled under section 142; or
- (b) he is discharged under section 138.

“public servant” shall have the same meaning as assigned to it in section 21 of the Indian Penal Code.

Restrictions on Bankrupt: Section 141 of the IBC

A bankrupt, from the bankruptcy commencement date, shall-

- (a) not act as a director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company;

- (b) without the previous sanction of the bankruptcy trustee, be prohibited from creating any charge on his estate or taking any further debt;
- (c) be required to inform his business partners that he is undergoing a bankruptcy process;
- (d) prior to entering into any financial or commercial transaction of such value as may be prescribed, either individually or jointly, inform all the parties involved in such transaction that he is undergoing a bankruptcy process;
- (e) without the previous sanction of the Adjudicating Authority, be incompetent to maintain any legal action or proceedings in relation to the bankruptcy debts; and
- (f) not be permitted to travel overseas without the permission of the Adjudicating Authority.

Modification or recall of Bankruptcy order: Section 142 of the IBC

The Adjudicating Authority may, on an application or suo motu, modify or recall a bankruptcy order, whether or not the bankrupt is discharged, if it appears to the Adjudicating Authority that-

- (a) there exists an error apparent on the face of such order; or
- (b) both the bankruptcy debts and the expenses of the bankruptcy have, after the making of the bankruptcy order, either been paid for or secured to the satisfaction of the Adjudicating Authority.

Standard of Conduct: Section 143 of the IBC

The bankruptcy trustee shall perform his functions and duties in compliance with the code of conduct provided under section 208.

Fees of bankruptcy trustee: Section 144 of the IBC

A bankruptcy trustee appointed for conducting the bankruptcy process shall charge such fees as may be specified in proportion to the value of the estate of the bankrupt.

The fees for the conduct of the bankruptcy process shall be paid to the bankruptcy trustee from the distribution of the estate of the bankrupt in the manner provided in section 178.

Replacement of bankruptcy trustee: Section 145 of the IBC

Where Committee of creditors is of the opinion that at any time during the bankruptcy process, a bankruptcy trustee is required to be replaced, it may replace him with another bankruptcy trustee by a vote of seventy-five per cent. Of voting share.

The Committee of creditors may apply to the Adjudicating Authority for the replacement of the bankruptcy trustee.

The Adjudicating Authority shall within seven days of the receipt of the application direct the Board to recommend for replacement of bankruptcy trustee.

The Board shall, within ten days of the direction of the Adjudicating Authority, recommend a bankruptcy trustee for replacement against whom no disciplinary proceedings are pending.

The Adjudicating Authority shall, by an order, appoint the bankruptcy trustee as recommended by the Board within fourteen days of receiving such recommendation.

Resignation by bankruptcy trustee: Section 146 of the IBC

A bankruptcy trustee may resign if-

- (a) he intends to cease practicing as an insolvency professional;
or
- (b) there is conflict of interest or change of personal circumstances which preclude the further discharge of his duties as a bankruptcy trustee.

Filing of vacancy of bankruptcy trustee reasons other than resignation and replacement: Section 147 of the IBC

Where office of bankruptcy trustee, gets vacated due to any other reason than resignation and replacement, the Adjudicating Authority shall direct the Board for replacement of a bankruptcy trustee.

The Board shall, within ten days of the direction of the Adjudicating Authority, recommend bankruptcy trustee as a replacement.

Release of bankruptcy trustee: Section 148 of the IBC

A bankruptcy trustee shall be released from his office with effect from the date on which the Adjudicating Authority passes an order appointing a new bankruptcy trustee in the event of replacement, resignation or occurrence of vacancy, as the case may be.



Chapter XI

Adjudicating Authority for Individuals and Partnership Firms

Part III

(Chapter VI – Section 179-183)

Applicable framework

- Part III, Chapter VI covering Section 179-183

Section 179 of the IBC

Subject to the provisions of section 60 for personal guarantor of corporate debtor, the Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the **Debt Recovery Tribunal (DRT)** having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person.

The Debt Recovery Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of-

- (a) any suit or proceeding by or against the individual debtor;
- (b) any claim made by or against the individual debtor;
- (c) any question of priorities or any other question whether of law or facts, arising out of or in relation to insolvency and bankruptcy of the individual debtor or firm under this Code.

Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

Appeal to Debt Recovery Appellate Tribunal: Section 181 of the IBC

An appeal from an order of the Debt Recovery Tribunal under this Code shall be filed within thirty days before the Debt Recovery Appellate Tribunal.

The Debt Recovery Appellate Tribunal may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within thirty days, allow the appeal to be filed within a further period not exceeding fifteen days.

Appeal to Supreme Court: Section 182 of the IBC

Any person aggrieved by an order of the Debt Recovery Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal has jurisdiction under this Code.

Expeditious disposal of Applications: Section 183 of the IBC

Where an application is not disposed of or order is not passed within the period specified in this Code, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the Chairperson of the Debt Recovery Appellate Tribunal, after taking into account the reasons so recorded, extend the period specified in this Code, but not exceeding ten days.

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Chapter XII

Offences and Penalties (Chapter VII)

Part III

(Chapter VII – Sections 184-187)

Applicable framework

- Part III, Chapter VII covering Section 184-187

Punishment for false information, etc., by creditor in insolvency resolution process: Section 184 of the IBC

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.

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.

Where such amount is not quantifiable, the total amount of fine shall not exceed five lakh rupees.

Punishment for contravention of provisions of Part III by Insolvency Professional: Section 185 of the IBC

If an insolvency professional deliberately contravenes the provisions of this Part, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which shall not be less than one lakh rupees, but may extend to five lakhs rupees, or with both.

Punishment for false information, concealment, etc., by bankrupt:
Section 186 of the IBC

If the bankrupt-

- (a) knowingly makes a false representation or willfully omits or conceals any material information while making an application for bankruptcy under section 122 or while providing any information during the bankruptcy process, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five lakh rupees, or with both;

a false representation or omission includes non-disclosure of the details of disposal of any property, which but for the disposal, would be comprised in the estate of the bankrupt, other than dispositions made in the ordinary course of business carried on by the bankrupt;

- (b) fraudulently has failed to provide or deliberately withheld the production of, destroyed, falsified or altered, his books of account, financial information and other records under his custody or control, he shall be punishable with imprisonment which may extend to one year, or with fine, which may extend to five lakh rupees, or with both;
- (c) has contravened the restrictions under section 140 or the provisions of section 141, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five lakh rupees, or with both;
- (d) has failed to deliver the possession of any property comprised in the estate of the bankrupt under his possession or control, which he is required to deliver under section 156, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five lakh rupees, or with both;
- (e) has failed to account, without any reasonable cause or satisfactory explanation, for any loss incurred of any substantial part of his property comprised in the estate of the bankrupt from the date which is twelve months before the filing of the bankruptcy application, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, which may extend to three times of

the value of the loss, or with both. Where such loss is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees;

- (f) has absconded or attempts to absconds after the bankruptcy commencement date, 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;

A bankrupt shall be deemed to have absconded if he leaves, or attempts to leave the country without delivering the possession of any property which he is required to deliver to the bankruptcy trustee under section 156.

Punishment for certain actions of bankruptcy trustee: Section 187 of the IBC

If a bankruptcy trustee, -

- (a) has fraudulently misapplied, retained or accounted for any money or property comprised in the estate of the bankrupt; or
- (b) has willfully acted in a manner that the estate of the bankrupt has suffered any loss in consequence of breach of any duty of the bankruptcy trustee in carrying out his functions under section 149,

he shall be punishable with imprisonment for a term which may extend to three years, or with fine, which shall not be less than three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention, or with both.

Where such loss or unlawful gain is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees.

Bankruptcy trustee shall not be liable under this section if he seizes or disposes of any property which is not comprised in the estate of the bankrupt and at that time had reasonable grounds to believe that he is entitled to seize or dispose that property.

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Chapter XIII

Regulation of Insolvency Professionals, Agencies and Information Utilities

Part IV

(Chapter I – Section 188-195)

The Insolvency and Bankruptcy Board of India

Applicable framework:

- Part IV, Chapter I covering Section 188-195
- The Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016
- The Insolvency and Bankruptcy Board of India (Engagement Of Research Associates And Consultants) Regulations, 2017
- The Insolvency and Bankruptcy Board of India (Procedure for Governing Board Meetings) Regulations, 2017

Establishment and incorporation of Board: Section 188 of the IBC

The Insolvency and Bankruptcy Board of India, was setup on October 1, 2016 under the Chairmanship of Dr. M. S. Sahoo.

The address of head office is 7th Floor, Mayur Bhawan, Shankar Market, Connaught Circus, New Delhi.

Constitution of Board: Section 189 of the IBC

The Board shall consist of the following members who shall be appointed by the Central Government, namely: -

- (a) a Chairperson (Dr. M. S. Sahoo);
- (b) three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance

(Shri Ajay Tyagi, Additional Secretary, Department of Economic Affairs, Ministry of Finance), the Ministry of Corporate Affairs (Shri Amardeep Singh Bhatia, Joint Secretary, Ministry of Corporate Affairs) and Ministry of Law (Shri G. S. Yadav, Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law), ex officio;

- (c) one member to be nominated by the Reserve Bank of India (Shri A Unnikrishnan, Legal Adviser, RBI), ex officio;
- (d) five other members to be nominated by the Central Government, of whom at least three shall be the whole-time members. Whole time member Ms. Suman Saxena, WTM Research and Regulation Wing and Dr. Navarang Saini, Registration & Monitoring Wing has been nominated.

Terms and conditions of service of Chairperson and members: Rule 3 of the Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016

A person can be appointed as the Chairperson and the whole-time member who is not having any financial or other interests as are likely to affect prejudicially his functions as such Chairperson or member.

In order to fill-up a causal vacancy, the Chairperson and whole-time member appointed is required to hold office for the remainder period of the term of the Chairperson or, as the case may be, whole-time member in whose place he is appointed.

The Chairperson and whole-time member is restricted to not to accept any employment before the expiry of a period of one year from the date of demitting the office in the Board, except with the previous sanction of the Central Government.

The appointment of the Chairperson and the members of the Board other than the appointment of an ex officio member under this section shall be made after obtaining the recommendation of a selection committee consisting of-

- (a) Cabinet Secretary-Chairperson;
- (b) Secretary to the Government of India to be nominated by the Central Government-Member;

- (c) Chairperson of the Insolvency and Bankruptcy Board of India (in case of selection of members of the Board)-Member;
- (d) three experts of repute from the field of finance, law, management, insolvency and related subjects, to be nominated by the Central Government-Members.

The term of office of the Chairperson and members (other than ex officio members) shall be five years or till they attain the age of sixty-five years, whichever is earlier, and they shall be eligible for reappointment.

Remuneration and other receivables to the members/chairperson of the Board [prescribed under Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016]

Pay: Consolidated salary of Chairperson- Rs 4,50,000 per month

Consolidated salary of every whole-time member- Rs 3,75,000 per month

Dearness Allowance: The Chairperson and a whole-time member who has opted pay as admissible to a Secretary or an Additional Secretary to the Government of India respectively shall receive dearness allowance at the rates admissible to a Group 'A' Officer of the Central Government of equivalent rank.

Entertainment Allowance: Rs. 6,000 per annum.

Leave:

The Chairperson and a whole-time member are entitled to a leave subject to the following:

1. Earned Leave at the rate of thirty days for every completed calendar year of service:

Provided that the leave account shall be credited with earned leave in advance in two installments of fifteen days each from the first day of January and first day of July of every calendar year:

Provided further that the earned leave at the credit at the close of previous half year shall be carried forward to the next half year, subject to the condition that the leave so

- carried forward plus credited for half year do not exceed three hundred days.
2. Half Pay Leave on medical certificate or on private affairs at the rate of twenty days in respect of each completed year of service to be credited in advance in two installments of ten days each on first day of January and first day of July of every calendar year and leave salary for half pay leave shall be equivalent to half of the leave salary admissible during he earned leave;
 3. Leave on Half Pay may be commuted to full pay leave at the discretion of the Chairperson or a whole-time member, if it is taken on medical grounds and is supported by a Medical Certificate by a competent medical authority;
 4. Casual Leave at the rate of eight days in a calendar year;
 5. Restricted holidays at the rate of two days in a calendar year availing to their choice;
 6. Extra-ordinary leave without pay and allowances up to a maximum period of one hundred and eighty days in one term of office; and
 7. Extra-ordinary leave without pay and allowances in a calendar year out of the holidays notified by the Central Government.

Leave Sanctioning Authority: The Chairperson is the competent authority to sanction leave to a whole-time member and the President of India is the competent authority to sanction leave to the Chairperson.

Provident Fund: The Chairperson and a whole-time member are entitled to subscribe to the Contributory Pension Fund.

Travelling Allowance: The Chairperson, while on tour or on transfer (including the journey undertaken to join the Board or on the expiry of his term with the Board proceeds to his home town) shall be entitled to the travelling allowances, daily allowances, transportation of personal effects and other similar matters at the same scale and at the same rate as are prescribed for a Secretary to the Government of India.

A whole-time member while on tour or on transfer (including the journey undertaken to join the Board or on the expiry of his term with the Board proceeds to his home town) shall be entitled to the travelling allowances, daily allowances, transportation of personal effects and other similar matters at the same scale and at the same rates as are prescribed for Group 'A' officer of equivalent rank of the Central Government.

Leave Travel Concession: The Chairperson shall be entitled to Leave Travel Concession at the same rates and at the same scales as are applicable to a Secretary to the Government of India.

A whole-time member shall be entitled to Leave Travel Concession at the same rates and at the same scales as are applicable to a Group 'A' officer of the equivalent rank of the Central Government.

Accommodation: The Chairperson and a whole-time member shall be entitled to rent free unfurnished house and the Board shall approve the type of accommodation, purchase price or rent of the house to be used for residence by the Chairperson or a whole-time member.

Charges for water, electricity and fuel consumed in the house shall be borne by the occupant of the house.

In case the Chairperson and a whole-time member has opted a consolidated salary of Rs. 4,50,000/- per month or 3,75,000/- respectively, then they are not entitled to any accommodation.

Conveyance: The Chairperson and a whole-time member shall be entitled to a staff car of the Board for official purpose.

No passenger vehicle shall be purchased by the Board and requirement of vehicles shall be met by hiring.

Bonus: The Chairperson and a whole-time member are not entitled to any bonus.

Sitting Fees and Board's Meetings: The Chairperson and a whole-time member are not entitled to any sitting fees for attending meetings of the Board.

Encashment of Leave: The Chairperson or a whole-time member are entitled to the encashment of leave in accordance with the rules applicable to Group 'A' officers of the Central Government, subject

to a maximum encashment of three hundred days, including the leave encashed before superannuation.

Facilities for medical treatment: The Chairperson and a whole-time member shall be covered under the Health Scheme as may be prescribed by the Central Government.

Residuary Provisions: Matters relating to the conditions of service of the Chairperson and a whole-time member with respect to which no express provision has been made in these rules shall be referred in each case, to the Central Government for its decision and the decision of the Central Government thereon shall be final.

Terms and Conditions of Services of Part-time Members: A part-time member shall be a person who shall not have any such financial or other interest as is likely to affect prejudicially his functions as a part-time member and shall hold office for such period, not exceeding three years, but shall be eligible for reappointment.

Fee and Allowances of Part-time Members: A part-time member is entitled to receive remuneration by way of a fee of rupees one thousand only for each meeting of the Board attended by him. while on tour (including the journey undertaken to attend a meeting of the Board), he is entitled to receive travelling allowance and daily allowances at the same rates and scale as are applicable to an Additional Secretary to the Government of India.

Removal of members from the Board: Section 190 of the IBC

The Central Government may remove a member from office if he-

- (a) is an undischarged bankrupt as defined under Part III;
- (b) has become physically or mentally incapable of acting as a member;
- (c) has been convicted of an offence, which in the opinion of the Central Government involves moral turpitude;
- (d) has, so abused his position as to render his continuation in office detrimental to the public interest:

Powers of Chairperson: Section 191 of the IBC

Save as otherwise determined by regulations, the Chairperson shall have powers of general superintendence and direction of the affairs of the Board and may also exercise such other powers as may be delegated to him by the Board.

Meetings of Board: Section 192 of the IBC

The Chairperson, or if, for any reason, the Chairperson is unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting.

All questions which come up before any meeting of the Board shall be decided by a majority votes of the members present and voting, and, in the event of an equality of votes, the Chairperson, or in his absence, the person presiding, shall have a second or casting vote.

Convening of Meetings: There shall be at least four meetings of the Governing Board in a year and at least one meeting in each quarter.

The Chairperson or in his absence, any other Member nominated by the Chairperson in this behalf, may convene the meetings of the Governing Board.

Any three Members may require the Chairperson to convene a meeting of the Governing Board at any time and the Chairperson shall convene the meeting of the Governing Board accordingly:

Provided that if the Chairperson is not available, any three Members may require the Secretary to convene the meeting of the Governing Board.

The meetings of the Governing Board shall be held at such times and places in India as may be specified in the notice convening the meeting.

Notice of the meeting: Not less than seven days' notice shall ordinarily be given of each meeting of the Governing Board and such notice along with agenda papers shall be sent to every Member ordinarily seven working days in advance at his usual address in India or by e-mail, as furnished by him to the Board:

Provided that if an urgent meeting of the Governing Board is required to be convened, seven days' notice may be dispensed

with by the Chairperson subject to the condition that Members get sufficient notice to enable them to attend the meeting.

Quorum: Five Members, if the Governing Board has eight or more Members, and three Members, if the Governing Board has less than eight Members, shall constitute the quorum for the transaction of business at a meeting of the Governing Board.

Meetings of Committees: Fifty percent of Members of the existing strength of the Committee shall constitute quorum for meetings of the Committee.

Powers of Chairperson: Section 191 of the IBC

Save as otherwise determined by regulations, the Chairperson shall have powers of general superintendence and direction of the affairs of the Board and may also exercise such other powers as may be delegated to him by the Board.

Meetings of Board: Section 192 of the IBC

The Chairperson, or if, for any reason, the Chairperson is unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting.

All questions which come up before any meeting of the Board shall be decided by a majority votes of the members present and voting, and, in the event of an equality of votes, the Chairperson, or in his absence, the person presiding, shall have a second or casting vote.

Member not to participate in meetings in certain cases: Section 193 of the IBC

Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

Vacancies, etc., not to invalidate proceedings of Board, Officers and employees of Board: Section 194 of the IBC

No act or proceeding of the Board shall be invalid merely by reason of-

- (a) any vacancy in, or any defect in the constitution of, the Board; or
- (b) any defect in the appointment of a person acting as a member of the Board; or
- (c) any irregularity in the procedure of the Board not affecting the merits of the case.

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Chapter - XIV

Powers and Functions of The Board

Part IV

(Chapter II – Sections 196-198)

Applicable framework

- Part IV, Chapter II covering Section 196-198
- The Insolvency and Bankruptcy Board of India (Advisory Committee) Regulations, 2017

Section 196 of the IBC

The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely: -

- (a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;
- (b) specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;
- (c) levy fee or other charges for the registration of insolvency professional agencies, insolvency professionals and information utilities;
- (d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;
- (e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

- (f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;
- (g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;
- (h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;
- (i) publish such information, data, research studies and other information as may be specified by regulations;
- (j) specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data;
- (k) collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases;
- (l) constitute such committees as may be required including in particular the committees laid down in section 197;
- (m) promote transparency and best practices in its governance;
- (n) maintain websites and such other universally accessible repositories of electronic information as may be necessary;
- (o) enter into memorandum of understanding with any other statutory authorities;
- (p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;
- (q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;

- (r) conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board;
- (s) specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations;
- (t) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor; and
- (u) perform such other functions as may be prescribed.

The Board may make model bye-laws to be to adopted by insolvency professional agencies which may provide for-

- (a) the minimum standards of professional competence of the members of insolvency professional agencies;
- (b) the standards for professional and ethical conduct of the members of insolvency professional agencies;
- (c) requirements for enrolment of persons as members of insolvency professional agencies which shall be non-discriminatory;

“Non-discriminatory” means lack of discrimination on the grounds of religion, caste, gender or place of birth and such other grounds as may be specified;

- (d) the manner of granting membership;
- (e) setting up of a governing board for internal governance and management of insolvency professional agency in accordance with the regulations specified by the Board;
- (f) the information required to be submitted by members including the form and the time for submitting such information;
- (g) the specific classes of persons to whom services shall be provided at concessional rates or for no remuneration by members;

- (h) the grounds on which penalties may be levied upon the members of insolvency professional agencies and the manner thereof;
- (i) a fair and transparent mechanism for redressal of grievances against the members of insolvency professional agencies;
- (j) the grounds under which the insolvency professionals may be expelled from the membership of insolvency professional agencies;
- (k) the quantum of fee and the manner of collecting fee for inducting persons as its members;
- (l) the procedure for enrolment of persons as members of insolvency professional agency;
- (m) the manner of conducting examination for enrolment of insolvency professionals;
- (n) the manner of monitoring and reviewing the working of insolvency professional who are members;
- (o) the duties and other activities to be performed by members;
- (p) the manner of conducting disciplinary proceedings against its members and imposing penalties;
- (q) the manner of utilising the amount received as penalty imposed against any insolvency professional.

Constitution of Advisory Committee, Executive Committee or Other Committee: Section 197 of the IBC

The Board may, for the efficient discharge of its functions, may constitute advisory and executive committees or such other committees, as it may deem fit, consisting of a Chairperson and such other members as may be specified by regulations.

Condonation of delay: Section 198 of the IBC

Notwithstanding anything contained in this Code, where the Board does not perform any act within the period specified under this Code, the relevant Adjudicating Authority may, for reasons to be recorded in writing, condone the delay.



Chapter - XV

Insolvency Professional Agencies

Part IV

(Chapter III – Sections 199-205)

Applicable framework

- Part IV, Chapter III covering Section 199-205
- The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
- The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016

Section 199 of the IBC

Certificate of registration from Board is mandatory for carrying on business of insolvency professional agency.

Principles governing registration of insolvency professional agency:
Section 200 of the IBC

The Board shall have regard to the following principles while registering the insolvency professional agencies under this Code, namely: -

- (a) to promote the professional development of and regulation of insolvency professionals;
- (b) to promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified;
- (c) to promote good professional and ethical conduct amongst insolvency professionals;
- (d) to protect the interests of debtors, creditors and such other persons as may be specified;

- (e) to promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code.

Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016

Eligibility for registration: No person shall be eligible to be registered as an insolvency professional agency unless it is a company registered under section 8 of the Companies Act, 2013, and -

- (a) its sole object is to carry on the functions of an insolvency professional agency under the Code;
- (b) it has bye-laws and governance structure in accordance with the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies), 2016;
- (c) it has a minimum net worth of ten crore rupees;
- (d) it has a paid-up share capital of five crore rupees,
- (e) it is not under the control of person(s) resident outside India,
- (f) not more than 49% of its share capital is held, directly or indirectly, by person's resident outside India; and
- (g) it is not a subsidiary of a body corporate through more than one layer:
"layer" in relation to a body corporate means its subsidiary;
- (h) itself, its promoters, its directors and persons holding more than 10% of its share capital are fit and proper persons.

Application for Registration: A company eligible for registration as an insolvency professional agency, may make an application to the Board in Form A of the Schedule to these Regulations, along with a non-refundable application fee of ten lakh rupees.

Grant of certificate of registration: The Board may grant or renew a certificate of registration, if it is satisfied that the application is complete in all respects, to the applicant to carry on the activities of an insolvency professional agency in Form B of the

Schedule to these Regulations, within sixty days of receipt of the application, excluding the time given by the Board for removing the deficiencies, or presenting additional documents, information or clarification, or appearing in person, as the case may be.

The certificate of registration shall be valid for a period of five years from the date of issue.

Surrender of registration: An insolvency professional agency may submit an application for surrender of a certificate of registration to the Board, providing -

- (a) the reasons for such surrender;
- (b) the details of all the pending or on-going engagements under the Code of the insolvency professionals enrolled with it;
- (c) details of its pending or on-going activities; and
- (d) the manner in which it seeks to wind-up its affairs as an insolvency professional agency.

Appeal to National Company Law Appellate Tribunal: Section 202 of the IBC

Any insolvency professional agency which is aggrieved by the order of the Board made under section 201 may prefer an appeal to the National Company Law Appellate Tribunal in such form, within such period, and in such manner, as may be specified by regulations.

An appeal may be preferred, within a period of thirty days of receipt the impugned order in the manner prescribed in Part III of the National Company Law Tribunal Rules, 2016. [Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016]

Governing Board of insolvency professional agency: Section 203 of the IBC

The Board may specify provisions for composition of governing board of an insolvency professional agency.

Functions of insolvency professional agencies: Section 204 of the IBC

An insolvency professional agency shall perform the following functions, namely: -

- (a) grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee;
- (b) lay down standards of professional conduct for its members;
- (c) monitor the performance of its members;
- (d) safeguard the rights, privileges and interests of insolvency professionals who are its members;
- (e) suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws;
- (f) redress the grievances of consumers against insolvency professionals who are its members; and
- (g) publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations.

Insolvency professional agencies to make bye-laws: Section 205 in the IBC

Every insolvency professional agency shall make bye-laws consistent with the model bye-laws specified by the Board i.e. The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

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Chapter - XVI
Insolvency Professionals
Part IV
(Chapter IV – Sections 206-208)

Applicable framework

- Part IV, Chapter IV covering Section 206-208
- The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

Prior enrollment with insolvency professional agency and registration with Board: Section 206 of the IBC

No person shall render his services as insolvency professional under this Code without being enrolled as a member of an insolvency professional agency and registered with the Board.

Registration of insolvency professionals: Section 207 of the IBC

Every insolvency professional shall, after obtaining the membership of any insolvency professional agency, register himself with the Board.

The Board may specify the categories of professionals or persons possessing such qualifications and experience in the field of finance, law, management, insolvency or such other field, as it deems fit.

Eligibility for registration as an insolvency professional:
Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

No individual shall be eligible to be registered as an insolvency professional if he-

- (a) is a minor;
- (b) is not a person resident in India;

- (c) does not have the qualification and experience specified in Regulation 5 or Regulation 9, as the case may be;
- (d) has been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

- (e) he is an undischarged insolvent, or has applied to be adjudicated as an insolvent;
- (f) he has been declared to be of unsound mind; or
- (g) he is not a fit and proper person;

Qualifications and experience: Subject to the other provisions of these Regulations, an individual shall be eligible for registration, if he-

- (a) has passed the National Insolvency Examination;
- (b) has passed the Limited Insolvency Examination, and has fifteen years of experience in management, after he received a Bachelor's degree from a university established or recognized by law; or
- (c) has passed the Limited Insolvency Examination and has ten years of experience as –
 - (i) a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
 - (ii) a company secretary enrolled as a member of the Institute of Company Secretaries of India,
 - (iii) a cost accountant enrolled as a member of the Institute of Cost Accountants of India, or
 - (iv) an advocate enrolled with a Bar Council.

Application for certificate of registration: An individual enrolled with an insolvency professional agency as a professional member may make an application to the Board in **Form A** of the Second Schedule to these Regulations, along with a non-refundable application fee of ten thousand rupees to the Board.

Certificate of registration: If the Board is satisfied, after such inspection or inquiry as it deems necessary that the applicant is eligible under these Regulations, it may grant a certificate of registration to the applicant to carry on the activities of an insolvency professional in **Form B** of the Second Schedule to these Regulations, within sixty days of receipt of the application, excluding the time given by the Board for presenting additional documents, information or clarification, or appearing in person, as the case may be.

Registration for a limited period: An individual shall be eligible to be registered for a limited period as an insolvency professional if he-

- (a) has been 'in practice' for fifteen years as-
 - (i) a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
 - (ii) a company secretary enrolled as a member of the Institute of Company Secretaries of India,
 - (iii) a cost accountant enrolled as a member of the Institute of Cost Accountants of India, or
 - (iv) an advocate enrolled with a Bar Council; and
- (b) submits an application for registration in Form A of the Second Schedule to these Regulations to the insolvency professional agency with which he is enrolled on or before 31st December, 2016 along with a non-refundable application fee of five thousand rupees which shall be collected by such insolvency professional agency on behalf of the Board.

Functions and obligations of insolvency professionals: Section 208 of the IBC

Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an

insolvency professional to take such actions as may be necessary, in the following matters, namely: -

- (a) a fresh start order process under Chapter II of Part III;
- (b) individual insolvency resolution process under Chapter III of Part III;
- (c) corporate insolvency resolution process under Chapter II of Part II;
- (d) individual bankruptcy process under Chapter IV of Part III; and
- (e) liquidation of a corporate debtor firm under Chapter III of Part II.

Every insolvency professional shall abide by the following code of conduct: -

- (a) to take reasonable care and diligence while performing his duties;
- (b) to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;
- (c) to allow the insolvency professional agency to inspect his records;
- (d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and
- (e) to perform his functions in such manner and subject to such conditions as may be specified.

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Chapter - XVII

Information Utilities

Part IV

(Chapter V – Sections 209-216)

Applicable framework

- Part IV, Chapter V covering Section 209-216
- The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017

Prior registration for carrying on business: Section 209 of the IBC

Prior registration with Board is mandatory for carrying on business of information utility.

Eligibility for Registration: Section 210 of the IBC read with chapter II of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017

Only Public Company is eligible to be registered as an information utility. Also-

- (a) its sole object is to provide core services and other services under these Regulations, and discharge such functions as may be necessary for providing these services;
- (b) its shareholding and governance is in accordance with Chapter III;
- (c) its bye-laws are in accordance with Chapter IV;
- (d) it has a minimum net worth of fifty crore rupees;
- (e) it is not under the control of person(s) resident outside India;
- (f) not more than 49% of its total voting power or its paid-up equity share capital is held, directly or indirectly, by person's resident outside India;

- (g) the person itself, its promoters, its directors, its key managerial personnel, and persons holding more than 5%, directly or indirectly, of its paid-up equity share capital or its total voting power, are fit and proper persons.

Application for registration/ renewal

Every application for registration / renewal of the registration shall be made to the Board in Form A along with a non-refundable application fee of five lakh rupees.

Board shall acknowledge within seven days of its receipt of application.

On receipt of the application the Board may, on being satisfied that the application conforms to all requirements specified by regulations, grant a certificate of registration to the applicant or else, reject, by order, such application.

The Board may grant or renew a certificate of registration to the applicant in Form B within sixty days of receipt of the application.

The Board may, by order, suspend or cancel the certificate of registration granted to an information utility on any of the following grounds, namely: -

- (a) that it has obtained registration by making a false statement or misrepresentation or any other unlawful means;
- (b) that it has failed to comply with the requirements of the regulations made by the Board;
- (c) that it has contravened any of the provisions of the Act or the rules or the regulations made thereunder;
- (d) on any other ground, as may be specified by regulations:

Provided that no order shall be made unless the information utility concerned has been given a reasonable opportunity of being heard:

No such order shall be passed by any member except whole-time members of the Board.

The certificate of registration shall be valid for a period of five years from the date of issue.

In-principle Approval

Any person who seeks to establish an information utility may make an application for an in-principle approval, along with a non-refundable application fee of five lakh rupees satisfying the following conditions:

- the applicant is a fit and proper person; and
- the proposed or existing company which may receive registration would be able to meet the eligibility criteria under Regulation 3,

In-principle approval shall be valid for a period not exceeding one year and be subject to such conditions as it deems fit. During the validity of in-principle approval, the company referred in second condition may make an application for a certificate of registration as an information utility to the Board in accordance with Regulation 4, but shall not be required to pay the application fee for registration. (Regulation - 4, 5, 6, 7 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

Appeal on order of Board for suspension or cancellation of certificate: Section 211 of the IBC

Any information utility which is aggrieved by the order of the Board made under section 210 may prefer an appeal to the National Company Law Appellate Tribunal in such form, within such period, and in such manner, as may be specified by regulations.

Governing Board of information utility: Section 212 of the IBC

The Board may, for ensuring that an information utility takes into account the objectives sought to be achieved under this Code, require every information utility to set up a governing board, with such number of independent members, as may be specified by regulations.

Regulation 8 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017

No person shall at any time, directly or indirectly, either by itself or together with persons acting in concert, acquire or hold more than ten per cent of the paid-up equity share capital or total voting power of an information utility.

Exceptions:

The following persons may, directly or indirectly, either by themselves or together in concert, acquire or hold up to twenty-five percent of the paid-up equity share capital or total voting power of an information utility: -

- a. government company;
- b. stock exchange;
- c. depository;
- d. bank;
- e. insurance company; and
- f. public financial institution.

Composition of the Governing Board –

More than half of the directors of an information utility shall be independent directors at the time of their appointment and the directors shall elect an independent director as the Chairperson of the Governing Board. (Regulation 9 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

An information utility may constitute a **Regulatory Committee** from amongst the independent directors to oversee the information utility's compliance with the Code. (Regulation 10 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

Grievance Redressal Policy shall also be framed under Regulation 12 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017.

Surrender of registration

An information utility may submit an application for surrender of its certificate of registration to the Board, providing -

- a. the reasons for such surrender;
- b. details of its pending and on-going activities; and
- c. details of how the exit management plan shall be implemented.

The notice shall be published on the website of the Board within seven days of receipt of the application.

After considering the application and the objections received, if any, the Board may, within thirty days from the last date for submission of objections, approve the application for surrender of registration subject to such conditions as it deems fit.

Core services, etc., of information utilities: Section 213 of the IBC read with Chapter V of Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017

An information utility shall provide services such as-

- a. core services;
- b. other services under these Regulations;

in accordance with the Code.

Registration of users

A person shall register itself with an information utility for-

- a. submitting information to; or
- b. accessing information stored with

any of the information utilities.

An information utility shall-

- (a) maintain a list of the
 - (i) registered users;
 - (ii) the unique identifiers of the registered users; and
 - (iii) the unique identifiers assigned to the debts under Regulation 20.

It shall make the list of above mentioned persons available to all information utilities and the Board.

Acceptance and receipt of information

The user shall submit the information in Form C

On receipt of the information, the information utility shall-

- a. assign a unique identifier to the information, including records of debt;
- b. acknowledge its receipt, and notify the user of-
 - (i) the unique identifier of the information;
 - (ii) the terms and conditions of authentication and verification of information; and
 - (iii) the manner in which the information may be accessed by other parties.

Storage of information

An information utility shall store all information in a facility located in India and the facilities to be governed by the laws of India.

Annual statement

1. An information utility shall provide every user an annual statement of all information pertaining to the user, free of charge.
2. An information utility shall provide the user a functionality to mark information as erroneous and correct it.

Obligations of information utility: Section 214 of the IBC

For the purposes of providing core services to any person, every information utility shall-

- (a) create and store financial information in a universally accessible format;
- (b) accept electronic submissions of financial information from persons who are under obligations to submit financial information under sub-section (1) of section 215, in such form and manner as may be specified by regulations;
- (c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;

- (d) meet such minimum service quality standards as may be specified by regulations;
- (e) get the information received from various persons authenticated by all concerned parties before storing such information;
- (f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;
- (g) publish such statistical information as may be specified by regulations;
- (h) have inter-operability with other information utilities.

Procedure for submission, etc., of financial information: Section 215 of the IBC

Any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fee and submit information in such form and manner as may be specified by regulations.

A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations.

An operational creditor may submit financial information to the information utility in such form and manner as may be specified.

Rights and obligations of persons submitting Financial Information: Section 216 of the IBC

A person who intends to update or modify or rectify errors in the financial information submitted under section 215, he may make an application to the information utility for such purpose stating reasons therefor, in such manner and within such time, as may be specified.

A person who submits financial information to an information utility shall not provide such information to any other person, except to such extent, under such circumstances, and in such manner, as may be specified.

Technical Standards and Technical Committee (Regulation 13 & 14 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

The Board may lay down Technical Standards, through guidelines, for the performance of core services and other services under these Regulations on the matters provided under Regulation 13(2) which shall be on recommendations of a Technical Committee consisting of at least 3 years. The Board may invite the Chief Executive Officers or managing directors of information utilities to attend the meetings of the Technical Committee.

Bye-laws of information utilities [prescribed under Regulation 15 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017]

The bye-laws of the information utility must be consistent with the Code and Technical Standards.

The bye-laws shall provide for-

- (a) the manner and process of providing core services and other services under these Regulations;
- (b) risk management;
- (c) rights of users; and
- (d) grievance redressal.

The bye-laws of the information utility, as amended from time to time, shall be published on its website.

Duties of information utility

1. General duties: It shall provide services with due and reasonable care, skill and diligence and shall hold the information as a custodian
2. Non-discrimination: An information utility shall provide services without discrimination in any manner
3. Other duties:
An information utility shall-
 - a. provide services to a user based on its explicit consent;
 - b. guarantee protection of the rights of users;

- c. establish adequate procedures and facilities to ensure that its records are protected against loss or destruction;
- d. adopt secure systems for information flows;
- e. protect its data processing systems against unauthorized access, alteration, destruction, disclosure or dissemination of information; and
- f. transfer all the information submitted by a user, and stored with it to another information utility on the request of the user.

Services to insolvency professionals

It includes-

1. An insolvency professional may submit reports, registers and minutes in respect of any insolvency resolution, liquidation or bankruptcy proceedings to an information utility for storage.
2. The information utility shall not provide access to the reports, registers and minutes submitted to any person other than the concerned insolvency professional, the Board or the Adjudicating Authority.
3. The information utility shall discharge the duties specified in Chapter VI in respect of the reports, registers and minutes submitted.

Insurance - An information utility shall make adequate arrangements, including insurance, for indemnifying the users for losses that may be caused to them by any wrongful act, negligence or default of the information utility, its employees or any other person whose services are used for the provision of services under these Regulations. (Regulation 31 the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

Appeal under Regulation 42 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017

An appeal may be preferred under section 211, within a period of thirty days of receipt of the order, in the manner prescribed in Part III of the National Company Law Tribunal Rules, 2016.

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Chapter - XVIII

Inspection and Investigation

Part IV

(Chapter VI – Sections 217-220)

Applicable framework:

- Part IV, Chapter VI covering section 217-220

Complaints against insolvency professional agency or its member or information utility: Section 217 of the IBC

Any person aggrieved by the functioning of an insolvency professional agency or insolvency professional or an information utility may file a complaint to the Board in such form, within such time and in such manner as may be specified.

Investigation of insolvency professional agency or its member or information utility: Section 218 of the IBC

Where the Board, on receipt of a complaint under or has reasonable grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may

- at any time by an order in writing, direct any person or persons to act as an investigating authority to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility.

The inspection or investigation carried out shall be conducted within such time and in such manner as may be specified by regulations.

The Investigating Authority may, in the course of such inspection or investigation, require any other person who is likely to have any relevant document, record or information to furnish the same, and

such person shall be bound to furnish such document, record or information:

Provided that the Investigating Authority shall provide detailed reasons to such person before requiring him to furnish such document, record or information.

The Investigating Authority may, in the course of its inspection or investigation, enter any building or place where they may have reasons to believe that any such document, record or information relating to the subject-matter of the inquiry may be found and may seize any such document, record or information or take extracts or copies therefrom, subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, insofar as they may be applicable.

The Investigating Authority shall keep in its custody the books, registers, other documents and records seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the concerned person from whose custody or power they were seized:

A detailed report of inspection or investigation shall be submitted to the Board by the Investigating Authority.

Show cause notice to insolvency professional agency or its member or information utility: Section 219 of the IBC

Show cause notice may be issued by the Board, upon completion of an inspection or investigation, to such insolvency professional agency or insolvency professional or information utility, and carry out inspection of such insolvency professional agency or insolvency professional or information utility in such manner, giving such time for giving reply, as may be specified by regulations.

Appointment of disciplinary committee: Section 220 of the IBC

The Board shall constitute a disciplinary committee to consider the reports of the investigating Authority submitted.

Members of the disciplinary committee shall consist of whole-time members of the Board only.

Where any insolvency professional agency or insolvency professional or an information utility has contravened any

provision of this Code or rules or regulations made thereunder, the disciplinary committee may impose penalty which shall be-

- (i) three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention; or
- (ii) three times the amount of the unlawful gain made on account of such contravention,

whichever is higher.

Where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed more than one crore rupees.

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Chapter - XIX

Finance, Accounts and Audit

Part IV

(Chapter VII – 221-223)

Applicable framework

- Part IV, Chapter VII, covering Section 221-223

Grants by Central Government: Section 221 of the IBC

The Central Government may, make to the Board grants of such sums of money as that Government may think fit for being utilised for the purposes of this Code, after due appropriation made by Parliament by law in this behalf.

Board's Fund: Section 222 of the IBC

There shall be constituted a Fund to be called the Fund of the Insolvency and Bankruptcy Board and there shall be credited thereto-

- (a) all grants, fees and charges received by the Board under this Code;
- (b) all sums received by the Board from such other sources as may be decided upon by the Central Government;
- (c) such other funds as may be specified by the Board or prescribed by the Central Government.

The Fund shall be applied for meeting-

- (a) the salaries, allowances and other remuneration of the members, officers and
- (b) other employees of the Board;
- (c) the expenses of the Board in the discharge of its functions under section 196;

- (d) the expenses on objects and for purposes authorised by this Code;
- (e) such other purposes as may be prescribed.

Accounts and audit: Section 223 of the IBC

The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.



Chapter - XX
Miscellaneous
Part V
(Sections 224 – 255)

Insolvency and Bankruptcy Fund: Section 224 of the IBC

There shall be formed a Fund to be called the Insolvency and Bankruptcy Fund (hereafter in this section referred to as the “Fund”) for the purposes of insolvency resolution, liquidation and bankruptcy of persons under the Code.

There shall be credited to the Fund the following amounts, namely-

- (a) the grants made by the Central Government for the purposes of the Fund;
- (b) the amount deposited by persons as contribution to the Fund;
- (c) the amount received in the Fund from any other source; and
- (d) the interest or other income received out of the investment made from the Fund.

Power of Central Government to issue directions: Section 225 of the IBC

Without prejudice to the foregoing provisions of this Code, the Board shall, in exercise of its powers or the performance of its functions under this Code, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

The Board shall, as far as practicable, be given an opportunity to express its views before any direction is given.

The decision of the Central Government as to whether a question is one of policy or not shall be final.

Power of Central Government to supersede Board: Section 226 of the IBC

If at any time the Central Government is of opinion-

- (a) that on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Code; or
- (b) that the Board has persistently not complied with any direction issued by the Central Government under this Code or in the discharge of the functions and duties imposed on it by or under the provisions of this Code and as a result of such noncompliance the financial position of the Board or the administration of the Board has deteriorated; or
- (c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

Power of Central Government to notify financial service providers, etc.: Section 227 of the IBC

Notwithstanding anything to the contrary examined in this Code or any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed.

Budget: Section 228 of the IBC

The Board shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the Central Government.

Annual report: Section 229 of the IBC

The Board shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full

account of its activities during the previous financial year, and submit a copy thereof to the Central Government.

A copy of the report received shall be laid, as soon as may be after it is received, before each House of Parliament.

Delegation of powers and functions of the Board: Section 230 of the IBC

The Board may, by general or special order in writing delegate to any member or officer of the Board subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Code (except the powers to issue regulations under section 240 as it may deem necessary).

Bar of jurisdiction: Section 231 of the IBC

No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority under this Code.

Members, officers and employees of Board to the public servants: Section 232 of the IBC

The Chairperson, Members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Code, to be public servants within the meaning of section 21 of the Indian Penal Code.

Protection of action taken in good faith: Section 233 of the IBC

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government, or the Chairperson, Member, officer or other employee of the Board or an insolvency professional or liquidator for anything which is in done or intended to be done in good faith under this Code or the rules or regulations made thereunder.

Agreements with foreign countries: Section 234 of the IBC

The Central Government may enter into an agreement with the Government of any country outside India for enforcing the provisions of this Code.

The Central Government may, by notification in the Official Gazette, direct that the application of provisions of this Code in relation to assets or property of corporate debtor or debtor, including a personal guarantor of a corporate debtor, as the case may be, situated at any place in a country outside India with which reciprocal arrangements have been made, shall be subject to such conditions as may be specified.

Letter of request to a country outside India in certain cases: Section 235 of the IBC

Notwithstanding anything contained in this Code or any law for the time being in force if, in the course of insolvency resolution process, or liquidation or bankruptcy proceedings, as the case may be, under this Code, the resolution professional, liquidator or bankruptcy trustee, as the case may be, is of the opinion that assets of the corporate debtor or debtor, including a personal guarantor of a corporate debtor, are situated in a country outside India with which reciprocal arrangements have been made, he may make an application to the Adjudicating Authority that evidence or action relating to such assets is required in connection with such process or proceeding.

The Adjudicating Authority on receipt of an application and, on being satisfied that evidence or action relating to assets is required in connection with insolvency resolution process or liquidation or bankruptcy proceeding, may issue a letter of request to a court or an authority of such country competent to deal with such request.

Trial of offences by Special Court: Section 236 of the IBC

Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a

Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint made by the Board or the Central Government or any person authorised by the Central Government, the presence of the person authorised by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial.

Appeal and revision: Section 237 of the IBC

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Provisions of this Code to override other laws: Section 238 of the IBC

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Power to make rules: Section 239 of the IBC

The Central Government may, by notification, make rules for carrying out the provisions of this Code in consistent with this Code.

Power to make regulations: Section 240 of the IBC

The Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code.

Rules and regulations to be laid before Parliament: Section 241 of the IBC

Every rule and every regulation made under this Code shall be laid, as soon as may be after it is made, before each House

of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to remove difficulties: Section 242 of the IBC

If any difficulty arises in giving effect to the provisions of this Code, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code as may appear to be necessary for removing the difficulty.

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Code. Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal of certain enactments and savings: Section 243 of the IBC

The Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 are hereby repealed.

Transitional provisions: Section 244 of the IBC

Until the Board is constituted or a financial sector regulator is designated under section 195, as the case may be, the powers and functions of the Board or such designated financial sector regulator, including its power to make regulations, shall be exercised by the Central Government.

■■■

Chapter - XXI

Schedules to The Insolvency and Bankruptcy Code, 2016

The Code has amended eleven other acts after its enactment. The provisions for the amendments made to other acts are covered under Section 245 to section 255 under Part V of the Code. The manner in which the amendments are to be made are prescribed in the Schedules to the Code (The First Schedule to the Eleventh Schedule).

1. THE INDIAN PARTNERSHIP ACT, 1932 (UNDER SECTION 245, THE FIRST SCHEDULE OF IBC)

Section 41 - Compulsory Dissolution

A firm is dissolved

- (a) by the adjudication of all the partners or of all the partners but one as insolvent, or ----- Omitted by IBC
- (b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership:

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

2. THE CENTRAL EXCISE ACT, 1944 (UNDER SECTION 246, THE SECOND SCHEDULE OF IBC)

Section 11E. Liability under Act to be first charge -

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall, save as otherwise provided in

section 529A of the Companies Act, 1956, (1 of 1956) the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitization and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, (54 of 2002) and the Insolvency and Bankruptcy Code, 2016 be the first charge on the property of the assessee or the person, as the case may be.

* Under the provisions of the section 11E, the Insolvency and Bankruptcy Code, 2016 has been added to the charge holders to have the first charge on the property of the assessee or the person.

3. THE INCOME TAX ACT, 1961 (UNDER SECTION 247, THE THIRD SCHEDULE OF IBC)

Section 178. Company in liquidation

- 1) Every person—
 - a) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or
 - b) who has been appointed the receiver of any assets of a company, (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Assessing Officer who is entitled to assess the income of the company.
- 2) The Assessing Officer shall, after making such inquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Assessing Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.
- 3) The liquidator—
 - a) shall not, without the leave of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, part with any of the assets of the company or the properties in his hands

until he has been notified by the Assessing Officer under sub-section (2); and

- b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands:

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner reasonable.

- 4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

- 5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.
- 6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force except the provisions of the Insolvency and Bankruptcy Code, 2016 (new insertion)

4. CUSTOMS ACT, 1962 (UNDER SECTION 248, THE FOURTH SCHEDULE OF IBC)

SECTION 142A. Liability under Act to be first charge

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2016, be the first charge on the property of the assessee or the person, as the case may be.”.

**The Insolvency and Bankruptcy Code, 2016 has been added to the charge holders to have the first charge on the property of the assessee or the person.*

5. RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 (UNDER SECTION 249, THE FIFTH SCHEDULE OF IBC)

S. No.	Amendments
1.	Change in the long title: <i>An Act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions, insolvency resolution and bankruptcy of individuals and partnership firms and for matters connected therewith or incidental thereto.</i>
2.	<p>Section 1</p> <p>(1) This Act may be called the Recovery of Debts Due to Banks and Financial Institutions and Bankruptcy Act, 1993.</p> <p>(4) The provisions of this Act Save as otherwise provided, the provisions of this Code shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify.</p>

S. No.	Amendments
3.	<p>Insertion of new sub - section (1A) after sub-section (1) in Section 3:</p> <p>(1A) The Central Government shall by notification establish such number of Debts Recovery Tribunals and its benches as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under the Insolvency and Bankruptcy Code, 2016.</p>
4.	<p>Insertion of new sub - section (1A) after sub-section (1) in Section 8:</p> <p>(1A) The Central Government shall, by notification, establish such number of Debt Recovery Appellate Tribunals to exercise jurisdiction, powers and authority to entertain appeal against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016.</p>
5.	<p>Insertion of new sub – sections after sub-sections (1) and (2) respectively in Section 17:</p> <p>(1A) Without prejudice to sub-section (1)—</p> <ol style="list-style-type: none"> <li data-bbox="539 1352 1394 1630">a) the Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain and decide applications under Part III of Insolvency and Bankruptcy Code, 2016. <li data-bbox="539 1657 1394 1747">b) the Tribunal shall have circuit sittings in all district headquarters.

S. No.	Amendments
	(2A) Without prejudice to sub-section (2), the Appellate Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016.
6.	Insertion of new Section 19A:
	19A. The application made to Tribunal for exercising the powers of the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 shall be dealt with in the manner as provided under that Code.
7.	<p>Section 20. Appeal to the Appellate Tribunal—</p> <ol style="list-style-type: none"> <li data-bbox="513 1003 1465 1236">1) Save as provided in subsection (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter. <li data-bbox="513 1263 1465 1406">2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties. <li data-bbox="513 1433 1465 1930">3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

S. No.	Amendments
	<p>4) On receipt of an appeal under sub-section (1) or under sub-section (1) of section 181 of the Insolvency and Bankruptcy Code, 2016, the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.</p> <p>5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.</p> <p>6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.</p>

6. THE FINANCE ACT, 1994 (UNDER SECTION 250, THE SIXTH SCHEDULE OF IBC)

SECTION 88. Liability under Act to be first charge —

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of [tax], penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 (1 of 1956) and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2016, be the first charge on the property of the assessee or the person as the case may be.

7. SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (UNDER SECTION 251, THE SEVENTH SCHEDULE OF IBC)

Section 13. Enforcement of security interest

- (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.
- (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and -his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under subsection (4).
- (3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.
- (3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower: Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A."

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely-

- a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of business of the borrower which is relatable to the security for the debt."

- c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
 - d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.
- (5) Any payment made by any person referred to in clause (d) of subsection (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.
- (6) Any transfer of secured asset after taking possession thereof or takeover of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation

to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

- (7) Where any action has been taken against a borrower under the provisions of subsection (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.
- (8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.
- (9) ~~In the case of~~ Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956:

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his

security instead of relinquishing his security and proving his debt under proviso to subsection (1) of section 529 of the Companies Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act;

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated number of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation-- For the purposes of this sub-section

- a. "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date;
 - b. "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.
- (10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction

or a competent court, as the case may be, for recovery of the balance amount from the borrower.

- (11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of subsection (4) in relation to the secured assets under this Act.
- (12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

8. SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) REPEAL ACT, 2003 (UNDER SECTION 252, THE EIGHTH SCHEDULE OF IBC)

Section 4. Consequential provisions—

On the dissolution of the Appellate Authority and the Board—

- a. (i) the persons appointed as Chairman and Member of the Appellate Authority or the Board; and
- (ii) every other person appointed by the Central Government, Appellate Authority or the Board,

and holding office as such immediately before the commencement of this Act, shall vacate his office and no such Chairman, Member or other person shall be entitled to claim any compensation for premature termination of the term of his office or of any contract of service:

Provided that every officer or employee who has been, immediately before the dissolution of the Appellate Authority or the Board, appointed on deputation basis to the Appellate Authority or the Board, shall stand reverted to his parent cadre, Ministry or Department, as the case may be:

Provided further that every officer or employee who has been, immediately before the dissolution of the Appellate Authority or the Board, employed on regular basis by the Appellate Authority or the Board, shall become, on and from the date of such dissolution, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Appellate Authority or the Board had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other employee, employed in the Appellate Authority or the Board, to the Central Government, shall not entitle such officer or employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Appellate Authority or the Board has established a provident fund, superannuation, welfare or other fund for the benefit of the officers and employees employed in the Appellate Authority or the Board, the monies relatable to the officers and employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Appellate Authority or the Board, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by that Government in such manner as may be prescribed;

- ~~b. any appeal preferred to the Appellate Authority or any reference made to the Board or any inquiry pending before the Board or any other authority or any proceeding of~~

~~whatever nature pending before the Appellate Authority or the Board immediately before the commencement of this Act shall stand abated:~~

~~Provided that a company—~~

- ~~i. in respect of which such appeal or reference or inquiry stand abated under this clause may make a reference under PART VIA of the Companies Act, 1956 (1 of 1956) within one hundred and eighty days from the commencement of this Act in accordance with the provisions of the Companies Act, 1956;~~
- ~~ii. which had become a sick industrial company as defined in clause (46AA) of section 2 of the Companies Act, 1956 (1 of 1956), before the commencement of the Companies (Second Amendment) Act, 2002 (11 of 2003) may make a reference under PART VIA of the Companies Act, 1956 within one hundred and eighty days from the commencement of the Companies (Second Amendment) Act, 2002 or within sixty days of final adoption of accounts after such commencement, whichever is earlier;~~

~~and reference so made shall be dealt with in accordance with the provisions of the Companies Act, 1956 (1 of 1956):~~

~~Provided further that no fee shall be payable for making such reference under PART VIA of the Companies Act, 1956 (1 of 1956) by a company whose appeal or reference or inquiry stand abated under this clause:~~

~~Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the repealed enactment shall be deemed to be a scheme sanctioned or under implementation under section 424D of the Companies Act, 1956 (1 of 1956) and shall be dealt with in accordance with the provisions contained in PART VIA of that Act;~~

~~On such date, as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or~~

any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016:

Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry stands abated under this clause.

- c. the balance of all monies (including any fee) received by, or advanced to the Appellate Authority or the Board, as the case may be, and not spent by it before the commencement of this Act shall, on the commencement of this Act, stand transferred to, and vest in, the Central Government and shall be utilised for the purposes of clauses (e) and (f);
- d. all property of whatever kind owned by, or vested in, the Appellate Authority or the Board, as the case may be, and not spent by it before the commencement of this Act shall, on the commencement of this Act, stand transferred to, and shall vest in the Central Government;
- e. all liabilities and obligations of whatever kind incurred by the Appellate Authority or the Board and subsisting immediately before the commencement of this Act shall, on and from the commencement of this Act, be deemed to be the liabilities or obligations, as the case may be, of the Central Government; and any proceeding or cause of action, pending or existing immediately before the commencement of this Act by or against the Appellate Authority or the Board in relation to such liability or obligation may, as from the commencement of this Act, be continued or enforced by or against the Central Government;
- f. all monies vested in the Central Government under clause (c) shall, after deducting the amount incurred for discharging

the liabilities and obligations referred to in that clause, be refunded by the Central Government to the person to whom such amount is due.

**9. THE PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007
(UNDER SECTION 253, THE NINTH SCHEDULE OF IBC)**

S. No.	Amendments
1.	<p>Section 23: Settlement and netting</p> <ol style="list-style-type: none"> <li data-bbox="454 616 1466 891">1) The payment obligations and settlement instructions among the system participants shall be determined in accordance with the gross or netting procedure, as the case may be, approved by the Reserve Bank while issuing authorisation to a payment system. <li data-bbox="454 907 1466 1227">2) Where the rules providing for the operation of a payment system indicates a procedure for the distribution of losses between the system participants and the payment system, such procedure shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force. <li data-bbox="454 1243 1466 1332">3) A settlement effected under such procedure shall be final and irrevocable. <li data-bbox="454 1348 1466 1995">4) Where a system participant is declared by a court of competent jurisdiction as insolvent or is dissolved or wound up, then notwithstanding anything contained in the Companies Act, 1956 or the Banking Regulation Act, 1949 or the Insolvency and Bankruptcy Code, 2016 or any other law for the time being in force, the order of adjudication or dissolution or winding up, as the case may be, shall not affect any settlement that has become final and irrevocable and the right of the system provider to appropriate any collaterals contributed by the system participant towards its settlement or other obligations in accordance with the rules, regulations or bye-laws of such system provider.

S. No.	Amendments
	<p>Explanation- For the removal of doubts, it is hereby declared that the settlement, whether gross or net, referred to in this section is final and irrevocable as soon as the money, securities, foreign exchange or derivatives or other transactions payable as a result of such settlement is determined, whether or not such money, securities or foreign exchange or derivatives or other transactions is actually paid.</p>
2.	<p>Section 23A Protection of funds collected from customers.</p> <p>1) The Reserve Bank may, in public interest or in the interest of the customers of designated payment systems or to prevent the affairs of such designated payment system from being conducted in a manner prejudicial to the interests of its customers, require system provider of such payment system to--</p> <p>a) deposit and keep deposited in a separate account or accounts held in a scheduled commercial bank; or</p> <p>b) maintain liquid assets in such manner and form as it may specify from time to time, of an amount equal to such percentage of the amounts collected by the system provider of designated payment system from its customers and remaining outstanding, as may be specified by the Reserve Bank from time to time: Provided that the Reserve Bank may specify different percentages and the manner and forms for different categories of designated payment systems.</p>

S. No.	Amendments
	<p data-bbox="451 241 1465 607">2) The balance held in the account or accounts, referred to in sub-section (1), shall not be utilised for any purpose other than for discharging the liabilities arising on account of the usage of the payment service by the customers or for repaying to the customers or for such other purpose as may be specified by the Reserve Bank from time to time.</p> <p data-bbox="451 645 1465 1335">3) Notwithstanding anything contained in the Banking Regulation Act, 1949 or the Companies Act, 1956 or the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 or any other law for the time being in force, the persons entitled to receive payment under sub-section (2) shall have a first and paramount charge on the balance held in that account and the liquidator or receiver or assignee (by whatever name called) of the system provider of the designated payment system or the scheduled commercial bank concerned, whether appointed as provisional or otherwise, shall not utilise the said balances for any other purposes until all such persons are paid in full or adequate provision is made therefor.</p> <p data-bbox="451 1368 1465 1451">Explanation--For the purposes of this section, the expressions--</p> <p data-bbox="451 1487 1465 1715">"designated payment system" shall mean a payment system or a class of payment system, as may be specified by the Reserve Bank from time to time, engaged in collection of funds from their customers for rendering payment service;</p> <p data-bbox="451 1749 1465 1975">"scheduled commercial bank" shall mean a "banking company", "corresponding new bank", "State Bank of India" and "subsidiary bank" as defined in section 5 of the Banking Regulation Act, 1949 and included in the Second Schedule to the Reserve Bank of India Act, 1934.'.</p>

10. THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (UNDER SECTION 254, THE TENTH SCHEDULE OF IBC)

Section 64. Circumstances in which limited liability partnership may be wound up by Tribunal—

A limited liability partnership may be wound up by the Tribunal—

- a) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
- b) if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;
- c) ~~if the limited liability partnership is unable to pay its debts;~~
omitted
- d) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- e) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- f) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

11. COMPANIES ACT, 2013 (UNDER SECTION 255, THE ELEVENTH SCHEDULE OF IBC)

S. No.	Amendments
1)	<p>Section 2:</p> <p>“Company Liquidator”, in so far as it relates to the winding up of a company, means a person appointed by—</p> <p>(a) the Tribunal in case of winding up by the Tribunal; or</p> <p>(b) the company or creditors in case of voluntary winding up;</p> <p>as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;</p>

S. No.	Amendments
	<p><i>(23) "Company Liquidator" means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act;</i></p> <p>Insertion of (94A) after Section 94:</p> <p><i>(94A) "winding up" means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.</i></p>
2)	<p>Section 8: Formation of Companies with Charitable Objects, etc.</p> <p>(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to "Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016"</p>
3)	<p>Section 66: Reduction of Share Capital.</p> <p>(8) Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company "commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim,"</p>

S. No.	Amendments
4)	<p>Section 77: Duty to Register Charges, etc.</p> <p>(3) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator "appointed under this Act or the Insolvency and Bankruptcy Code, 2016, as the case may be," or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).</p>
5)	<p>Section 117. Resolutions and Agreements to be filed</p> <p>1) A copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed within the time specified under section 403:</p> <p>Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.</p> <p>2) If a company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.</p>

S. No.	Amendments
	<p>3) The provisions of this section shall apply to—</p> <ol style="list-style-type: none"> a. special resolutions; b. resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions; c. any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director; d. resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members; e. resolutions passed by a company according consent to the exercise by its Board of directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180; f. resolutions requiring a company to be wound up voluntarily passed in pursuance of “section 59 of the Insolvency and Bankruptcy Code, 2016” g. resolutions passed in pursuance of sub-section (3) of section 179;

S. No.	Amendments
	<p>Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and</p> <p>h. any other resolution or agreement as may be prescribed and placed in the public domain.</p>
6)	<p>Section 224: Actions to be Taken in Pursuance of Inspector's Report</p> <p>1) If, from an inspector's report, made under section 223, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated under this Chapter been guilty of any offence for which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.</p> <p>2) If any company or other body corporate is liable to be wound up under this Act "or under the Insolvency and Bankruptcy Code, 2016" and it appears to the Central Government from any such report made under section 223 that it is expedient so to do by reason of any such circumstances as are referred to in section 213, the Central Government may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf—</p> <p>a. a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up;</p> <p>b. an application under section 241; or</p> <p>c. both.</p>

S. No.	Amendments
	<p data-bbox="453 244 1461 472">3) If from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or anybody corporate whose affairs have been investigated under this Chapter—</p> <p data-bbox="555 506 1461 734">a. for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or</p> <p data-bbox="555 768 1461 898">b. for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained,</p> <p data-bbox="555 931 1461 1061">the Central Government may itself bring proceedings for winding up in the name of such company or body corporate.</p> <p data-bbox="453 1095 1461 1319">4) The Central Government, shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (3).</p> <p data-bbox="453 1352 1461 1955">5) Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.</p>

S. No.	Amendments
7)	<p data-bbox="379 244 1185 331">Section 230: Power to Compromise or Make Arrangements with Creditors and Members.</p> <p data-bbox="379 365 1385 407">1) Where a compromise or arrangement is proposed—</p> <p data-bbox="480 441 1385 521">(a) between a company and its creditors or any class of them; or</p> <p data-bbox="480 555 1385 636">(b) between a company and its members or any class of them,</p> <p data-bbox="480 674 1385 1128">the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, “appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,” order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.</p> <p data-bbox="379 1167 1385 1861">(6) Where, at a meeting held in pursuance of subsection (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator, “appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,” and the contributories of the company.</p>

S. No.	Amendments
8)	<p data-bbox="451 241 1460 331">Section 249: Restrictions on Making Application Under Section 248 in Certain Situations</p> <p data-bbox="451 360 1460 544">(1) An application under sub-section (2) of section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—</p> <ol data-bbox="555 577 1460 1653" style="list-style-type: none"> <li data-bbox="555 577 1460 667">a. has changed its name or shifted its registered office from one State to another; <li data-bbox="555 696 1460 969">b. has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business; <li data-bbox="555 999 1460 1272">c. has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement; <li data-bbox="555 1301 1460 1485">d. has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or <li data-bbox="555 1514 1460 1653">e. is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016. <p data-bbox="451 1682 1460 1865">(2) If a company files an application under sub-section (2) of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees.</p> <p data-bbox="451 1895 1460 2078">(3) An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.</p>

S. No.	Amendments
9)	<p>Chapter XIX Revival and Rehabilitation of Sick Companies</p> <p>Section 253 to 269 shall be omitted</p>
10)	<p>Section 270: Modes of Winding Up</p> <p>1) The winding up of a company may be either—</p> <p style="padding-left: 40px;">a) by the Tribunal; or</p> <p style="padding-left: 40px;">b) voluntary.</p> <p>2) Notwithstanding anything contained in any other Act, the provisions of this Act with respect to winding up shall apply to the winding up of a company in any of the modes specified under sub-section (1).</p> <p>"270. The provisions of Part I shall apply to the winding up of a company by the Tribunal under this Act."</p>
11)	<p>Section 271: Circumstances in Which Company May Be Wound Up by Tribunal</p> <p>(1) A company may, on a petition under section 272, be wound up by the Tribunal, —</p> <p style="padding-left: 40px;">a) if the company is unable to pay its debts;</p> <p style="padding-left: 40px;">b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;</p> <p style="padding-left: 40px;">c) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;</p> <p style="padding-left: 40px;">d) if the Tribunal has ordered the winding up of the company under Chapter XIX;</p>

S. No.	Amendments
	<p>e) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;</p> <p>f) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or</p> <p>g) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.</p>
	<p>(2) A company shall be deemed to be unable to pay its debts,—</p> <p>(a) if a creditor, by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty-one days after the receipt of such demand or to provide adequate security or re-structure or compound the debt to the reasonable satisfaction of the creditor;</p> <p>(b) if any execution or other process issued on a decree or order of any court or tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or</p>

S. No.	Amendments
	<p>(c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company.</p>
	<p>A company may, on a petition under section 272, be wound up by the Tribunal,—</p> <p>(a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;</p> <p>(b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;</p> <p>(c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;</p> <p>(d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or</p> <p>(e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.”.</p>

S. No.	Amendments
12)	<p data-bbox="453 244 1137 286">Section 272: Petition for Winding Up.</p> <p data-bbox="453 315 1461 450">(1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—</p> <ul style="list-style-type: none"> <li data-bbox="555 483 895 526">a) the company; <li data-bbox="555 557 1461 692">b) any creditor or creditors, including any contingent or prospective creditor or creditors; <li data-bbox="555 723 1273 766">c) any contributory or contributories; <li data-bbox="555 797 1461 884">d) all or any of the persons specified in clauses (a), (b) and (c) together; <li data-bbox="555 916 890 958">e) the Registrar; <li data-bbox="555 990 1461 1077">f) any person authorised by the Central Government in that behalf; or <li data-bbox="555 1108 1461 1243">g) in a case falling under clause (c) of sub-section (1) of section 271, by the Central Government or a State Government. <p data-bbox="453 1274 1461 1543">(2) A secured creditor, the holder of any debentures, whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures shall be deemed to be creditors within the meaning of clause (b) of sub-section (1).</p>
	<p data-bbox="453 1568 1461 2024">(3) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six</p>

S. No.	Amendments
	<p>months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.</p> <p>(4) The Registrar shall be entitled to present a petition for winding up under subsection (1) on any of the grounds specified in sub-section (1) of section 271, except on the grounds specified in clause (b), clause (d) or clause (g) of that sub-section:</p> <p>Provided that the Registrar shall not present a petition on the ground that the company is unable to pay its debts unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 210 that the company is unable to pay its debts:</p> <p>Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:</p> <p>Provided also that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.</p> <p>(5) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.</p> <p>(6) Before a petition for winding up of a company presented by a contingent or prospective creditor is admitted, the leave of the Tribunal shall be obtained for the admission of the petition and such leave shall not be granted, unless in the opinion of the Tribunal there is a prima facie case for the winding up of the company and until such security for costs has been given as the Tribunal thinks reasonable.</p>

S. No.	Amendments
	<p>(7) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.</p> <p>(1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—</p> <ol style="list-style-type: none"> a) the company; b) any contributory or contributories; c) all or any of the persons specified in clauses (a) and (b); d) the Registrar; e) any person authorised by the Central Government in that behalf; or f) in a case falling under clause (b) of section 271, by the Central Government or a State Government. <p>(2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.</p>

S. No.	Amendments
	<p>(3) The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section:</p> <p>Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:</p> <p>Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.</p> <p>(4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.</p> <p>(5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.</p>
13)	<p>Section 275: Company Liquidators and Their Appointments</p> <p>(1) For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under sub-section (2) as the Company Liquidator.</p>

S. No.	Amendments
	<p>2) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters.</p> <p>The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016;</p> <p>(3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.</p> <p>(4) The Central Government may remove the name of any person or firm or body corporate from the panel maintained under sub-section (2) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence: Omitted</p> <p>Provided that the Central Government before removing him or it from the panel shall give him or it a reasonable opportunity of being heard.</p> <p>(5) The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.</p>

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	<p>(6) On appointment, as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.</p> <p>(7) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (c) of sub-section (1) of section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.</p>
14)	<p>Section 280: Jurisdiction of Tribunal</p> <p>The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of—</p> <p>(a) any suit or proceeding by or against the company;</p> <p>(b) any claim made by or against the company, including claims by or against any of its branches in India;</p> <p>(c) any application made under section 233;</p> <p>(d) any scheme submitted under section 262;</p> <p>(e) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company,</p>

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	<p>whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.</p> <p>The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of—</p> <ul style="list-style-type: none"> (a) any suit or proceeding by or against the company; (b) any claim made by or against the company, including claims by or against any of its branches in India; (c) any application made under section 233; (d) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company, <p>whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.</p>
15)	<p>Section 289: Power of Tribunal on Application for Stay of Winding Up - Omitted</p> <p>1) The Tribunal may, at any time after making a winding up order, on an application of promoter, shareholders or creditors or any other interested person, if satisfied, make an order that it is</p>

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	<p>just and fair that an opportunity to revive and rehabilitate the company be provided staying the proceedings for such time but not exceeding one hundred and eighty days and on such terms and conditions as it thinks fit:</p> <p>Provided that an order under this sub-section shall be made by the Tribunal only when the application is accompanied with a scheme for rehabilitation.</p> <p>(2) The Tribunal may, while passing the order under sub-section (1), require the applicant to furnish such security as to costs as it considers fit.</p> <p>(3) Where an order under sub-section (1) is passed by the Tribunal, the provisions of Chapter XIX shall be followed in respect of the consideration and sanction of the scheme of revival of the company.</p> <p>(4) Without prejudice to the provisions of sub-section (1), the Tribunal may at any time after making a winding up order, on an application of the Company Liquidator, make an order staying the winding up proceedings or any part thereof, for such time and on such terms and conditions as it thinks fit.</p> <p>(5) The Tribunal may, before making an order, under this section, require the Company Liquidator to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.</p> <p>(6) A copy of every order made under this section shall forthwith be forwarded by the Company Liquidator to the Registrar who shall make an endorsement of the order in his books and records relating to the company.</p>

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16)	<p>The heading “Part II—Voluntary winding up” shall be omitted.</p> <p>In Chapter XX Winding Up After section 303, the heading is omitted.</p>
17)	<p>In Chapter XX Winding Up Part II— Voluntary winding up –</p> <p>From Section 304 to 323 along with heading is omitted.</p>
18)	<p>Section 325: Application of Insolvency Rules in Winding up of Insolvent Companies - Omitted</p>
19)	<p>Section 326: Overriding Preferential Payments</p> <p>Explanation and illustration is the new addition.</p> <p>(1) In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts—</p> <p>(a) workmen’s dues; and</p> <p>(b) where a secured creditor has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen’s portion in his security (if payable under the law), whichever is less, <i>pari passu</i> with the workmen’s dues:</p> <p>Provided that in case of the winding up of a company, the sums referred to in sub-clauses (i) and (ii) of clause (b) of the Explanation, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.</p>

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	<p data-bbox="379 241 1393 566">(2) The debts payable under the proviso to subsection (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that subsection shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.</p> <p data-bbox="379 589 1393 678"><i>Explanation</i>—For the purposes of this section, and section 327—</p> <p data-bbox="379 701 1393 891">(a) “workmen”, in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947);</p> <p data-bbox="379 913 1393 1048">(b) “workmen’s dues”, in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely—</p> <p data-bbox="483 1070 1393 1350">(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any</p> <p data-bbox="579 1373 1393 1462">workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);</p> <p data-bbox="483 1485 1393 1709">(ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;</p> <p data-bbox="483 1731 1393 2011">(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract</p>

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	<p>with insurers, as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (19 of 1923), rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for</p> <p>compensation under the said Act in respect of the death or disablement of any workman of the company;</p> <p>(iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;</p> <p>(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.</p> <p><i>Illustration</i></p> <p>The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs.3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.</p>
20)	<p><i>Insertion of sub-section (7) in Section 327 and addition in the Explanation to the section: Preferential Payments:</i></p> <p>(1) In a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts—</p>

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	<p>(a) all revenues, taxes, cesses and rates due from the company to the Central Government or a State Government or to a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date;</p> <p>(b) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the company and due for a period not exceeding four months within the twelve months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be notified;</p> <p>(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;</p> <p>(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amount due in respect of contributions payable during the period of twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;</p>

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	<p>(e) unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company:</p> <p>Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;</p> <p>(f) all sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and</p> <p>(g) the expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.</p> <p>(2) Where any payment has been made to any employee of a company on account of wages or salary or accrued holiday remuneration, himself or, in the case of his death, to any other person claiming through him, out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid-up to the amount by which the sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been reduced by reason of the payment having been made.</p>

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	<p>(3) The debts enumerated in this section shall—</p> <p>(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and</p> <p>(b) so far as the assets of the company available for payment to general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.</p> <p>(4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given under clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.</p> <p>(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months immediately before the date of a winding up order, the debts to which priority is given under this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:</p> <p>Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.</p>

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	<p>(6) Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.</p> <p>(7) Sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code, 2016.</p> <p><i>Explanation</i>— For the purposes of this section—</p> <p>(a) the expression “accrued holiday remuneration” includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment including any order made or direction given thereunder, are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;</p> <p>(b) the expression “employee” does not include a workman; and</p> <p>(c) the expression “relevant date” means in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date under the Insolvency and Bankruptcy Code, 2016;</p>

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	<p>the expression "relevant date" means—</p> <p>(i) in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date; and</p> <p>(ii) in any other case, the date of the passing of the resolution for the voluntary winding up of the company. As the whole Part 2 of Chapter 20 is omitted</p>
21)	<p>Section 329: Transfers Not in Good Faith to be Void</p> <p>Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal or the passing of a resolution for voluntary winding up of the company, shall be void against the Company Liquidator. As the Part 2 of Chapter 20 is omitted.</p> <p>Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal under this Act shall be void against the Company Liquidator.</p>

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22)	<p data-bbox="453 244 1465 331">Section 334: Transfers, etc., After Commencement of Winding Up to be Void</p> <p data-bbox="453 365 1465 685">(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the Company Liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void. As the Part 2 of Chapter 20 is omitted.</p> <p data-bbox="453 719 1465 1039">(2) In the case of a winding up by the Tribunal, any disposition of the property, including actionable claims, of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Tribunal otherwise orders, be void.</p> <p data-bbox="555 1072 1465 1393">In the case of a winding up by the Tribunal, any disposition of the property including actionable claims, of the company and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up shall, unless the Tribunal otherwise orders, be void.</p>
23)	<p data-bbox="453 1406 1465 1494">Section 336: Offences by Officers of Companies in Liquidation</p> <p data-bbox="453 1527 1465 1930">(1) If any person, who is or has been an officer of a company which, at the time of the commission of the alleged offence, is being wound up whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up by the Tribunal under this Act or which is subsequently ordered to be wound up by the Tribunal under this Act—</p>

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	<p>a. does not, to the best of his knowledge and belief, fully and truly disclose to the Company Liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;</p> <p>b. does not deliver up to the Company Liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control and which he is required by law to deliver up;</p> <p>c. does not deliver up to the Company Liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up;</p> <p>d. within the twelve months immediately before the commencement of the winding up or at any time thereafter—</p> <p>i. conceals any part of the property of the company to the value of one thousand rupees or more, or conceals any debt due to or from the company;</p> <p>ii. fraudulently removes any part of the property of the company to the value of one thousand rupees or more;</p> <p>iii. conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company;</p>

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	<ul style="list-style-type: none"> <li data-bbox="555 241 1466 427">iv. makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company; <li data-bbox="555 456 1466 734">v. fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company; <li data-bbox="555 763 1466 949">vi. by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; <li data-bbox="555 978 1466 1211">vii. under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or <li data-bbox="555 1240 1466 1518">viii. pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing of the property is in the ordinary course of business of the company; <li data-bbox="451 1547 1466 1637">e. makes any material omission in any statement relating to the affairs of the company; <li data-bbox="451 1666 1466 1852">f. knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the Company Liquidator thereof; <li data-bbox="451 1881 1466 2051">g. after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;

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	<p>h. after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses; or</p> <p>i. is guilty of any false representation or fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up,</p> <p>he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees:</p> <p>Provided that it shall be a good defence if the accused proves that he had no intent to defraud or to conceal the true state of affairs of the company or to defeat the law.</p> <p>(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-clause (viii) of clause (d) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees.</p> <p>Explanation—For the purposes of this section, the expression “officer” includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.</p>

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24)	<p data-bbox="454 246 1220 291">Section 337: Penalty for Frauds by Officers</p> <p data-bbox="454 324 1460 548">If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up under this Act, —</p> <ul style="list-style-type: none"> <li data-bbox="454 571 1460 716">a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company; <li data-bbox="454 739 1460 974">b) with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the property of the company; or <li data-bbox="454 996 1460 1500">c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.
25)	<p data-bbox="454 1523 1460 1612">Section 342: Prosecution of Delinquent Officers and Members of Company</p> <p data-bbox="454 1646 1460 2016">(1) If it appears to the Tribunal in the course of a winding up by the Tribunal, that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company, the Tribunal may, either on the application of any person interested in the winding up or suo motu, direct the liquidator to prosecute the offender or to refer the matter to the Registrar.</p>

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	<p>(2) If it appears to the Company Liquidator in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company under this Act, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the Company Liquidator and relating to the matter in question, as the Registrar may require.</p> <p>(3) Where any report is made under sub-section (2) to the Registrar,—</p> <p style="padding-left: 40px;">(a) if he thinks fit, he may apply to the Central Government for an order to make further inquiry into the affairs of the company by any person designated by him and for conferring on such person all the powers of investigation as are provided under this Act;</p> <p style="padding-left: 40px;">(b) if he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government, and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute prosecution:</p> <p>— Provided that no report shall be made by the Registrar under this clause without first giving the accused person a reasonable opportunity of making a statement in writing to the Registrar and of being heard thereon.</p>

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	<p>(4) If it appears to the Tribunal in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the Company Liquidator to the Registrar under sub-section (2), the Tribunal may, on the application of any person interested in the winding up or suo motu, direct the Company Liquidator to make such a report, and on a report being made, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2). OMITTED</p> <p>(5) When any prosecution is instituted under this section, it shall be the duty of the liquidator and of every person, who is or has been an officer and agent of the company to give all assistance in connection with the prosecution which he is reasonably able to give.</p> <p>Explanation—For the purposes of this sub-section, the expression “agent”, in relation to a company, shall include any banker or legal adviser of the company and any person employed by the company as auditor.</p> <p>(6) If a person fails or neglects to give assistance required by sub-section (5), he shall be liable to pay fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.</p>
26)	<p>Section 343: Company Liquidator to Exercise Certain Powers Subject to Sanction</p> <p>(1) The Company Liquidator may—</p> <p>(a) with the sanction of the Tribunal, when the company is being wound up by the Tribunal; and</p>

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	<p data-bbox="480 241 1394 472">(b) with the sanction of a special resolution of the company and prior approval of the Tribunal, in the case of a voluntary winding up, — Provisions of Part 2 Chapter 20 omitted</p> <p data-bbox="379 501 1394 546">i. pay any class of creditors in full;</p> <p data-bbox="379 575 1394 846">ii. make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or</p> <p data-bbox="379 875 1394 1480">iii. compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.</p> <p data-bbox="379 1509 1394 1644">(1) The Company Liquidator may, with the sanction of the Tribunal, when the company is being wound up by the Tribunal—</p> <p data-bbox="379 1673 1394 1718">(i) pay any class of creditors in full;</p> <p data-bbox="379 1747 1394 2018">(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or</p>

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	<p>(iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.</p> <p>(2) Notwithstanding anything contained in sub-section (1), in the case of a winding up by the Tribunal, the Central Government may make rules to provide that the Company Liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be prescribed, exercise any of the powers referred to in sub-clause (ii) or sub-clause (iii) of clause (b) of sub-section (1) without the sanction of the Tribunal.</p> <p>(3) Any creditor or contributory may apply in the manner prescribed to the Tribunal with respect to any exercise or proposed exercise of powers by the Company Liquidator under this section, and the Tribunal shall after giving a reasonable opportunity to such applicant and the Company Liquidator, pass such orders as it may think fit.</p>
27)	<p>Section 347: Disposal of Books and Papers of Company</p> <p>(1) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the Company Liquidator may be disposed of as follows:—</p>

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	<p>(a) in the case of winding up by the Tribunal, in such manner as the Tribunal directs; and</p> <p>(b) in the case of voluntary winding up, in such manner as the company by special resolution with the prior approval of the creditors direct. Part 2 Chapter 20 omission</p> <p>(1) When the affairs of a company have been completely wound up and it is about to be dissolved, the books and papers of such company and those of the Company Liquidator may be disposed of in such manner as the Tribunal directs.</p> <p>(2) After the expiry of five years from the dissolution of the company, no responsibility shall devolve on the company, the Company Liquidator, or any person to whom the custody of the books and papers has been entrusted, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.</p> <p>(3) The Central Government may, by rules, —</p> <p>a) prevent for such period as it thinks proper the destruction of the books and papers of a company which has been wound up and of its Company Liquidator; and</p> <p>b) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to appeal to the Tribunal from any order which may be made by the Central Government in the matter.</p> <p>(4) If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.</p>

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28)	<p data-bbox="453 241 1420 286">Section 348: Information as to Pending Liquidations.</p> <p data-bbox="453 318 1465 918">(1) If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,—</p> <p data-bbox="568 949 1465 1034">(a) in the case of a winding up by the Tribunal, with the Tribunal; and</p> <p data-bbox="552 1066 1465 1151">(b) in the case of a voluntary winding up, with the Registrar: Part 2 of Chapter 20 omitted.</p> <p data-bbox="453 1187 1465 1321">Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply.</p> <p data-bbox="453 1352 1465 1993">(1) If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing, either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, with the Tribunal:</p>

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	<p>Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply.</p> <p>(2) When the statement is filed with the Tribunal under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.</p> <p>(3) Where a statement referred to in sub-section (1) relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof—</p> <p>(a) to the Central Government, if that Government is a member of the Government company;</p> <p>(b) to any State Government, if that Government is a member of the Government company; or</p> <p>(c) to the Central Government and any State Government, if both the Governments are members of the Government company.</p> <p>(4) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement referred to in sub-section (1), and to receive a copy thereof or an extract therefrom.</p> <p>(5) Any person fraudulently stating himself to be a creditor or contributory under subsection (4) shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall, on the application of the Company Liquidator, be punishable accordingly.</p>

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	<p>(6) If a Company Liquidator contravenes the provisions of this section, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.</p> <p>(7) If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (1) audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.</p>
29)	<p>Section 357: Commencement of Winding Up by Tribunal</p> <p>(1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.</p> <p>(2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.</p> <p>The winding up of a company by the Tribunal under this Act shall be deemed to commence at the time of the presentation of the petition for the winding up.</p>

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30)	<p>Section 370: Continuation of Pending Legal Proceedings</p> <p>All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place:</p> <p>*Provided that execution shall not issue against the property or persons of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company in accordance with the provisions of this Act or of the Insolvency and Bankruptcy Code, 2016.</p>
31)	<p>Section 372: Power of Court to Stay or Restrain Proceedings</p> <p>The provisions of this Act "or of the Insolvency and Bankruptcy Code, 2016, as the case may be" with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.</p>
32)	<p>Section 419: Benches of Tribunal</p> <p>(1) There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.</p> <p>(2) The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.</p>

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	<p>(3) The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:</p> <p>Provided that it shall be competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of a single Judicial Member and exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify:</p> <p>Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.</p> <p>(4) The President shall, for the disposal of any case relating to rehabilitation, restructuring, reviving, of companies, constitute one or more Special Benches consisting of three or more Members, majority necessarily being of Judicial Members.</p> <p>(4) The Central Government shall, by notification, establish such number of benches of the Tribunal, as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under Part II of the Insolvency and Bankruptcy Code, 2016.</p>
	<p>(5) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be</p>

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	<p>referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.</p>
33)	<p>Section 424: Procedure Before Tribunal and Appellate Tribunal</p> <p>(1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act 1["or of the Insolvency and Bankruptcy Code, 2016] and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.</p> <p>(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act "or under the Insolvency and Bankruptcy Code, 2016", the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely—</p> <ol style="list-style-type: none"> (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

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	<p>(e) issuing commissions for the examination of witnesses or documents;</p> <p>(f) dismissing a representation for default or deciding it ex parte;</p> <p>(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and</p> <p>(h) any other matter which may be prescribed.</p> <p>(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction, —</p> <p>(a) in the case of an order against a company, the registered office of the company is situated; or</p> <p>(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.</p> <p>(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.</p>

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34)	<p data-bbox="379 241 1382 331">Section 429: Power to Seek Assistance of Chief Metropolitan Magistrate, etc.</p> <p data-bbox="379 362 1382 1012">(1) The Tribunal may, in any proceeding relating to a sick company or winding up of any other company; (Chapter XIX Revival and Rehabilitation of Sick Companies – omitted) in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such sick or other company, are situate or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—</p> <p data-bbox="481 1043 1382 1133">(a) take possession of such property, books of account or other documents; and</p> <p data-bbox="481 1164 1382 1254">(b) cause the same to be entrusted to the Tribunal or other person authorised by it.</p> <p data-bbox="379 1285 1382 1966">(1) The Tribunal may, in any proceedings for winding up of a company under this Act or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—</p>

S. No.	Amendments
	<p>(a) take possession of such property, books of account or other documents; and</p> <p>(b) cause the same to be entrusted to the Tribunal or other persons authorised by it.</p> <p>(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.</p> <p>(3) No act of the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.</p>
35)	<p>Section 434: Transfer of Certain Pending Proceedings</p> <p>(1) On such date as may be notified by the Central Government in this behalf—</p> <p>* (a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;</p> <p>* (b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:</p>

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	<p>Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days;</p> <p>(c) all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.</p> <p>(d) any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated:</p> <p>Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act:</p> <p>Provided further that no fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this clause. Chapter XIX Revival and Rehabilitation of Sick Companies - Section 253 to 269 omitted</p>

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	<p data-bbox="454 241 1460 470">*(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.</p> <p data-bbox="454 504 1460 593">(1) On such date, as may be notified by the Central Government in this behalf, —</p> <p data-bbox="550 616 1460 1131">(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;</p> <p data-bbox="550 1153 1460 1489">(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:</p> <p data-bbox="646 1512 1460 1736">Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and</p>

S. No.	Amendments
	<p data-bbox="480 244 1393 703">*(c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:</p> <p data-bbox="480 734 1393 920">Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.</p> <p data-bbox="480 952 1393 1173">“Provided further that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:</p> <p data-bbox="480 1205 1393 1621">Provided further that – (i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or (ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts; shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959”</p> <p data-bbox="379 1653 1393 1874">(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.”</p>

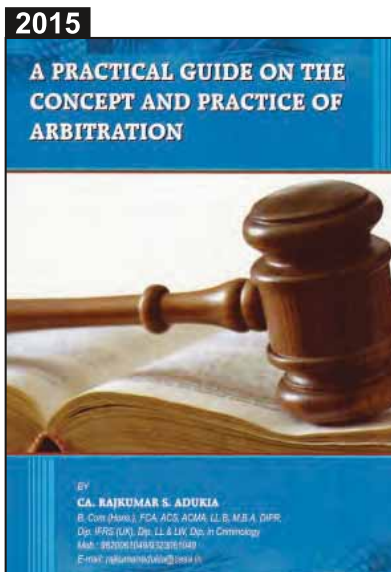
S. No.	Amendments
36)	<p data-bbox="451 241 1460 331">Section 468: Powers of Central Government to Make Rules Relating to Winding Up</p> <p data-bbox="451 360 1460 636">(1) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.</p> <p data-bbox="451 665 1460 846">(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—</p> <ul style="list-style-type: none"> <li data-bbox="555 875 1460 965">(i) as to the mode of proceedings to be held for winding up of a company by the Tribunal; <li data-bbox="555 994 1460 1128">(ii) for the voluntary winding up of companies, whether by members or by creditors; Part 2 of Chapter 20 omitted. <li data-bbox="555 1158 1460 1292">(iii) for the holding of meetings of creditors and members in connection with proceedings under section 230; <li data-bbox="555 1321 1460 1411">(iv) for giving effect to the provisions of this Act as to the reduction of the capital; <li data-bbox="555 1440 1460 1529">(v) generally for all applications to be made to the Tribunal under the provisions of this Act; <li data-bbox="555 1559 1460 1693">(vi) the holding and conducting of meetings to ascertain the wishes of creditors and contributories; <li data-bbox="555 1722 1460 1901">(vii) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;

S. No.	Amendments
	<p>(viii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;</p> <p>(ix) the making of calls; and</p> <p>(x) the fixing of a time within which debts and claims shall be proved.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—</p> <p>(i) as to the mode of proceedings to be held for winding up of a company by the Tribunal under this Act;</p> <p>(ii) for the holding of meetings of creditors and members in connection with proceedings under section 230;</p> <p>(iii) for giving effect to the provisions of this Act as to the reduction of the capital;</p> <p>(iv) generally, for all applications to be made to the Tribunal under the provisions of this Act;</p> <p>(v) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;</p> <p>(vi) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;</p> <p>(vii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;</p> <p>(viii) the making of calls; and</p>

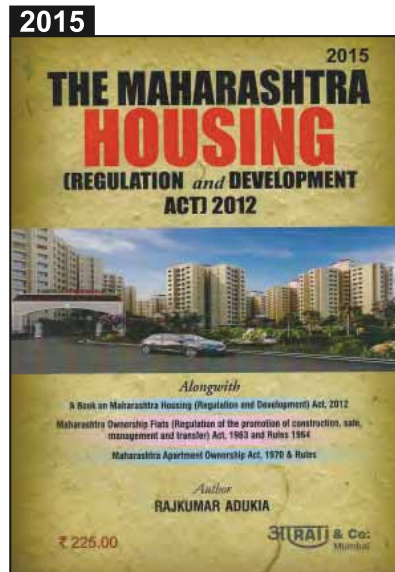
S. No.	Amendments
	<p>(ix) the fixing of a time within which debts and claims shall be proved.</p> <p>(3) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of this Act and in force at such commencement, shall continue to be in force, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.</p>
37)	<p>Schedule V: CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT APPOINTMENTS</p> <p>Part 2 - REMUNERATION</p> <p>Section 3 - Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances:</p> <p>Clause (b)</p> <p>(b) where the company—</p> <p>(i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or</p> <p>(ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival, it may pay remuneration up to two times the amount permissible under Section II.</p>

S. No.	Amendments
	<p data-bbox="379 241 869 286">Addition of new provision.</p> <p data-bbox="379 315 852 360">“(b) where the company—</p> <p data-bbox="379 389 1391 479">(i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or</p> <p data-bbox="379 508 1391 732">(ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction for a period of five years from the date of sanction of scheme of revival, or</p> <p data-bbox="379 761 1391 1037">(iii) is a company in relation to which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval, it may pay remuneration up to two times the amount permissible under section II.”</p>

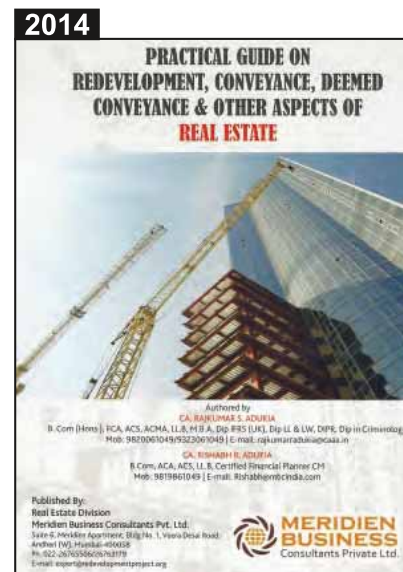
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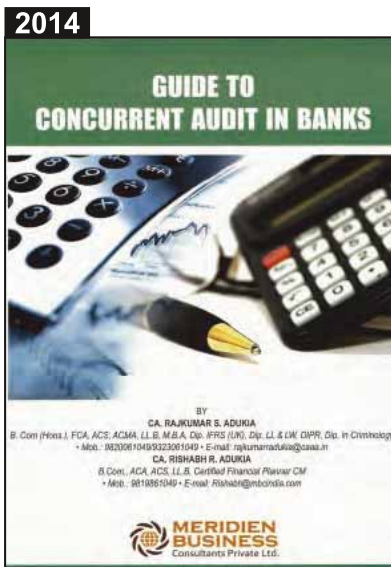
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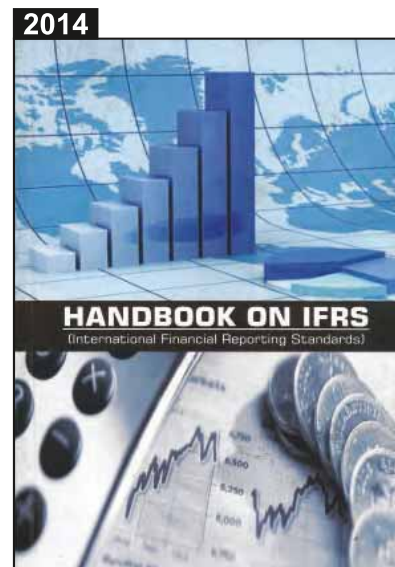
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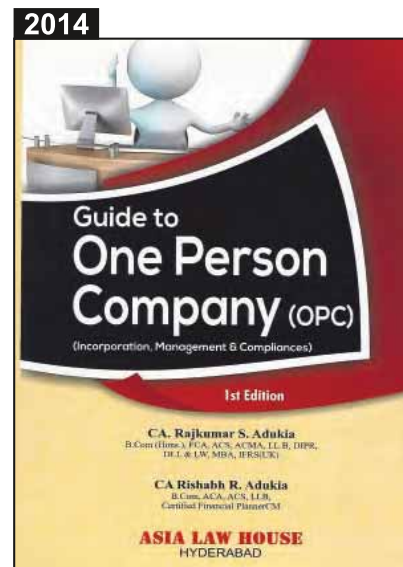
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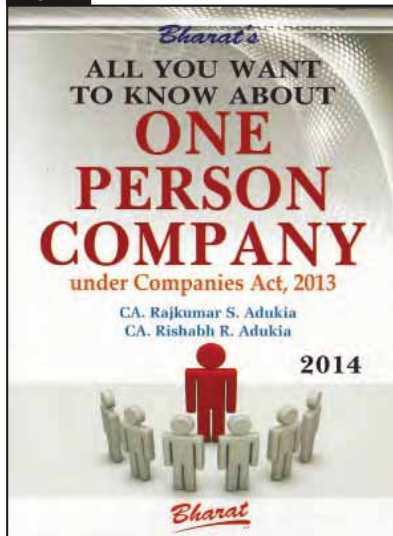
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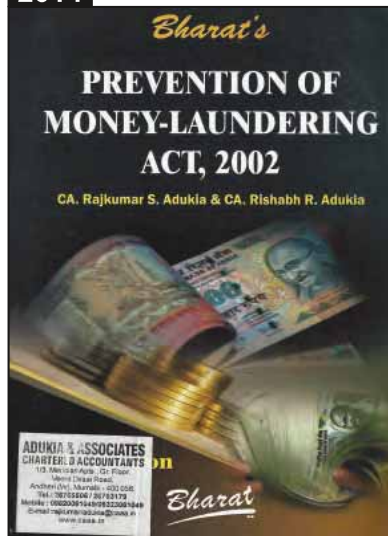
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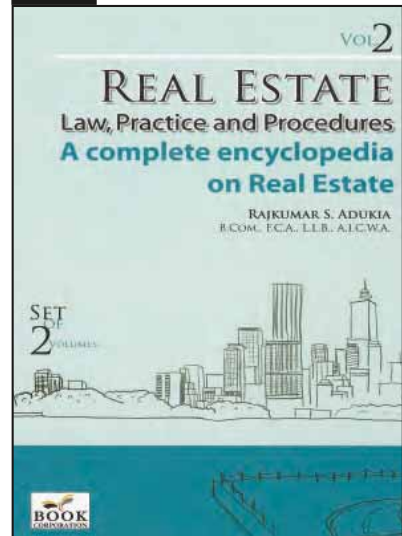
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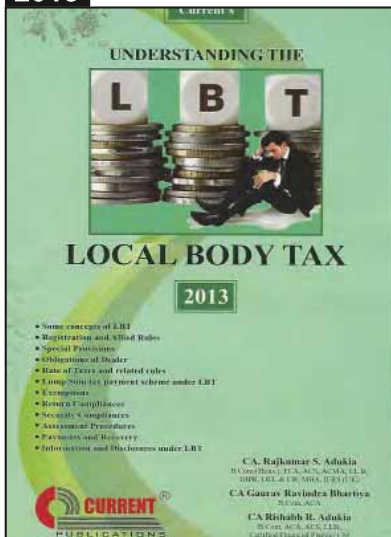
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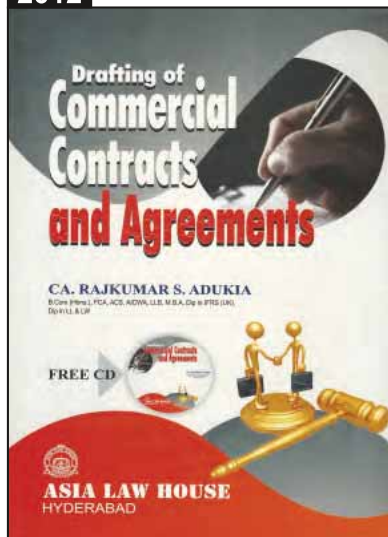
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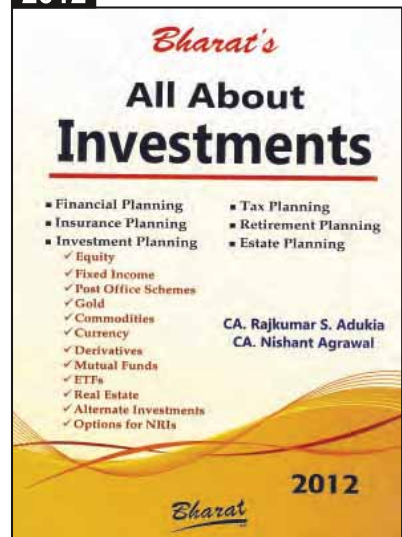
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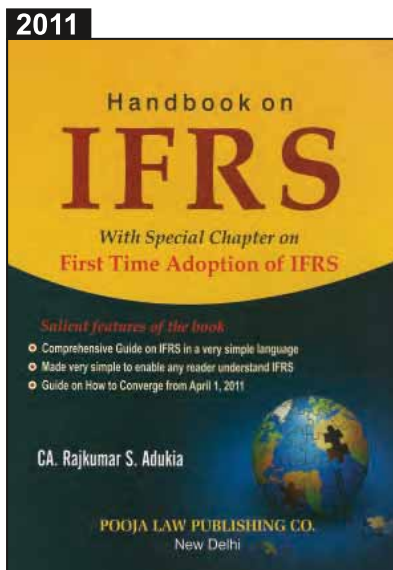
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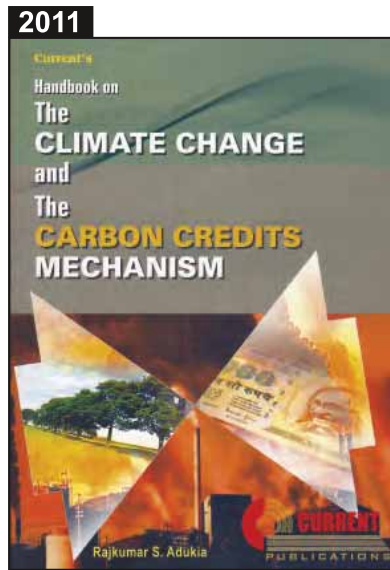


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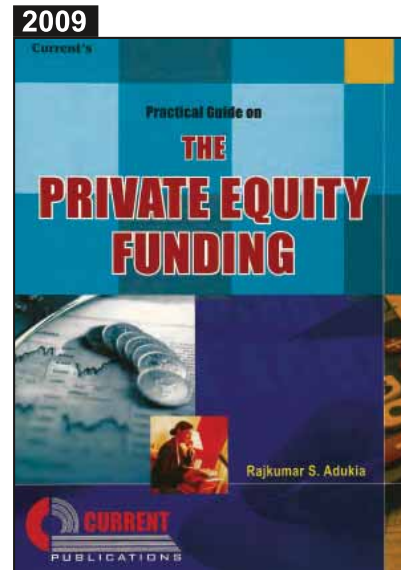
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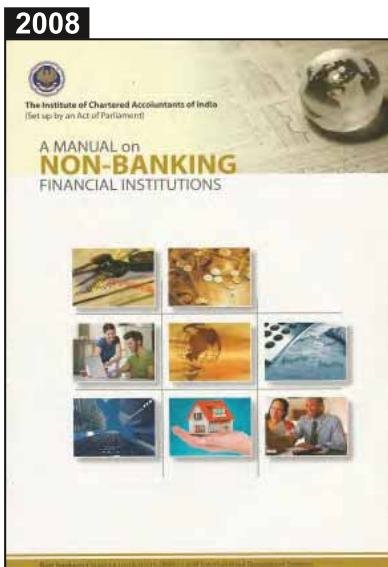
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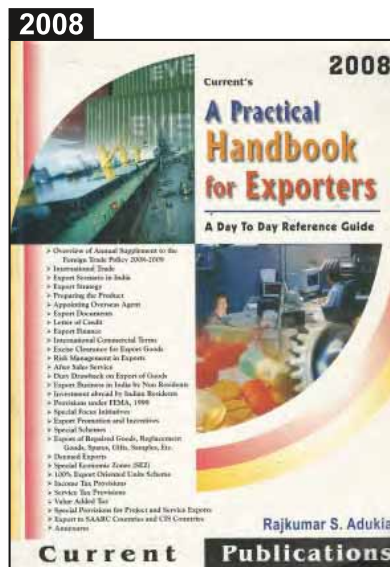
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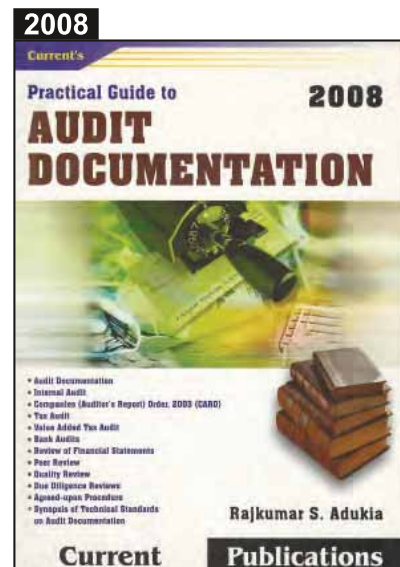
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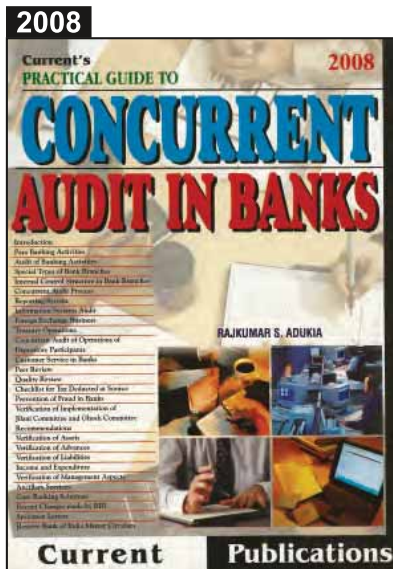


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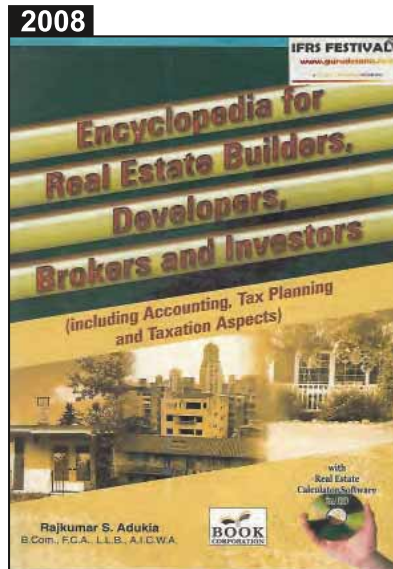


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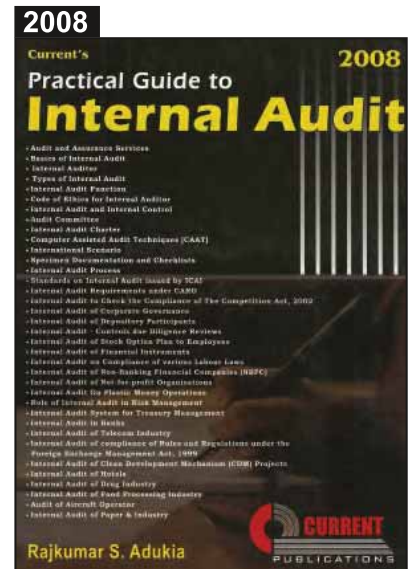
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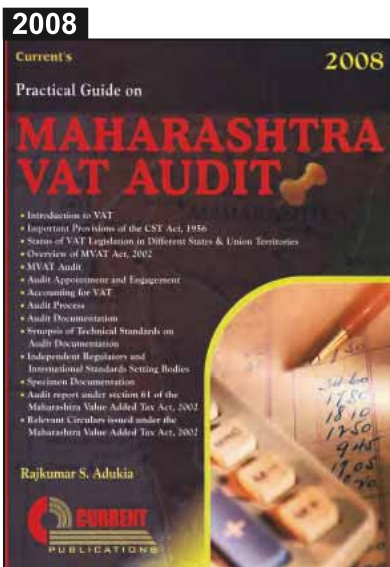
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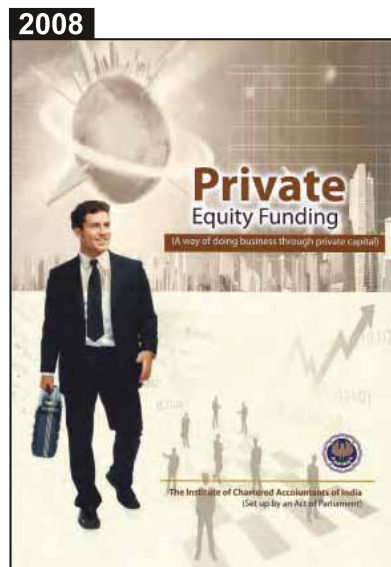
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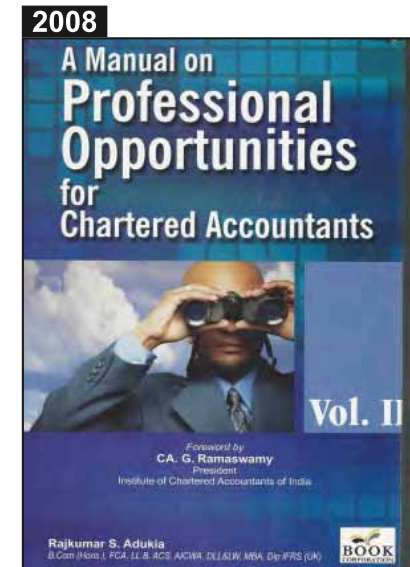
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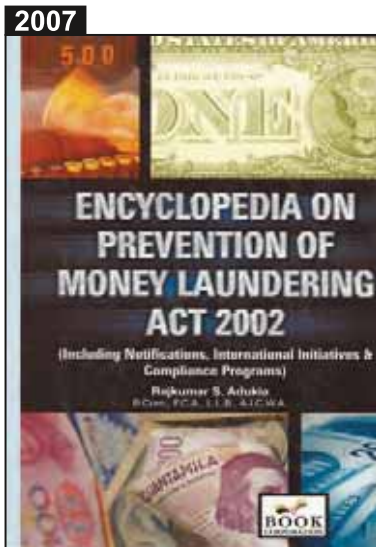


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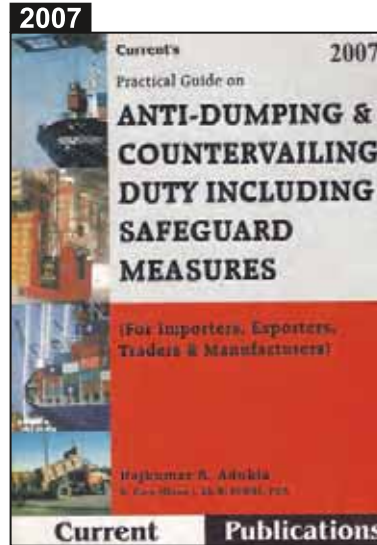


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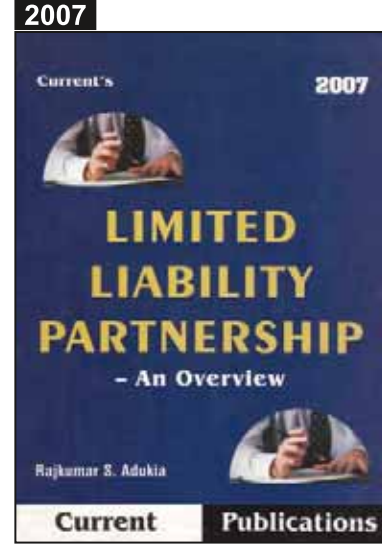
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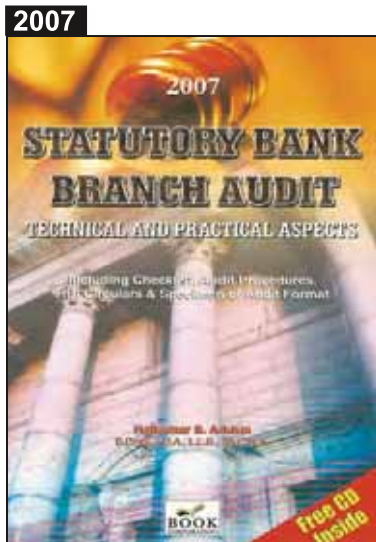
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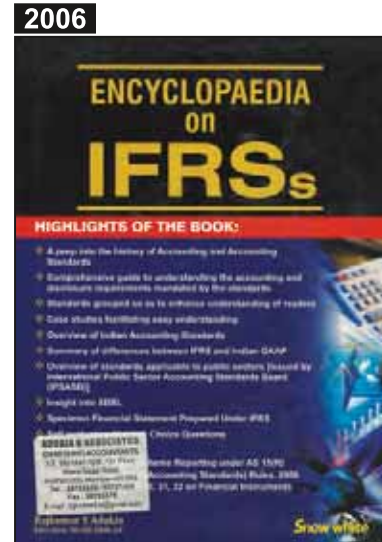
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Dr. Rajkumar S. Adukia is an eminent business advisor, author and speaker. He has been conducting seminars and lectures across various countries. Graduated from Sydenham College of Commerce & Economics in 1980 as 5th Rank holder in Bombay University, he received a Gold Medal for highest marks in Accountancy & Auditing in the Examination. Passed the Chartered Accountancy examination with **1st Rank** in Inter CA and **6th Rank** in Final CA examination. He also secured **3rd Rank** in Final Cost Accountancy Course in 1983. He has been awarded G. P. Kapadia prize for best student of the year 1981. Besides, he holds a degree in Law, PhD in Corporate Governance in Mutual Funds, MBA, Diploma IFRS (UK), Diploma in Labour Law and Labour Welfare, Diploma in IPR, Diploma in Criminology.

He has been Hon. Secretary of Western India Regional Council of Institute of Chartered Accountants of India in 1991-92 and Chairman of WIRC in 1997-98, International Member of Professional Accountants in Business Committee (PAIB) of International Federation of Accountants (IFAC) from 2001 to 2004. He has been Chairman of Research Committee, Board of Studies, Public Relations Committee, Members in Industry, University & Higher Secondary Board Liaison Committee. Peer Review Board & International Trade Law & WTO of ICAI, Member of Inspection Panel of Reserve Bank of India, Member of J. J. Irani Committee which drafted Companies Bill 2008, Member of Secretarial Standards Board of ICSI, Member of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc. He has also been Independent Director of Mutual Fund Company and Asset Management Company.

He has written more than 100 books on a wide variety of topics ranging from those dealing with Trade, Taxation, Finance, Real Estate to topics like Time Management and Professional Opportunities. He is a successful Practising Chartered Accountant since last 30 years in varied fields of Financial Planning, Taxation and Legal Consulting. He has been a business advisor for various companies on varied subjects and has travelled across the globe for his professional work and knowledge sharing. He has widely travelled three-fourths of globe addressing international conferences and seminars on various international issues like Corporate Social Responsibility, Corporate Governance, Business Ethics, etc.

His current positions include Member of Quality Review Board under Chartered Accountants Act, 1949, Member of CAG Advisory Audit Committee, Member of International Financial Reporting Standards Foundation SME group.

He has contributed to Government organisations by giving lectures on International Financial Reporting Standards at National Academy of Audit and Accounts, Training for staff members of Regional Director and Registrar of Companies, Western Region, Ministry of Corporate Affairs, Training for staff members of CBDT and CBEC. He has won numerous awards such as Winner of the College's highest Award – The Jeejeebhoy Cup for Proficiency and Character, STATE TRAINER by the Indian Junior Chamber, "Rajasthan Shree" by Rajasthan Udgosh noted social organisation of Rajasthan and many other awards as a successful leader in various fields.

He promotes education and is always available for students and specially, for the ones who are finding it difficult to succeed in the exams. He is also available for personal counselling of students. He promotes knowledge development and is willing to be co-author with other enthusiastic professionals.



DR. RAJKUMAR S. ADUKIA
Author of more than 100 books &
Renowned Speaker & Author

*B. Com. (Hons.), FCA, FCS, FCMA, LL.B., M.B.A.,
DIPR, Dip. IFRS (UK), Dip. LL&LW, Dip. in Criminology, Ph.D.*
Mob.: 9820061049 | E-mail: rajkumarradukia@caaa.in

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