INSOLVENCY AND BANKRUPTCY CODE, 2016

LEARNING OUTCOMES

At the end of this Chapter, you will be able to:

- Explain the concepts of Insolvency and Bankruptcy
- Explain the Relationship between bankruptcy, insolvency and liquidation
- Explain the important terminologies used in the Code.
- Identify the structure and applicability of the Code.
- Understand the manner and process of Insolvency Resolution Process.
- Understand the manner of Fast track resolution corporate process.
- Know the process of Voluntary liquidation of corporate person.
- Know of the adjudicating Authority and the manner for the disposal of applications
- Know about the various offences and penalties committed and falling within the purview of this Code
- Know the manner of regulation of insolvency professionals, agencies and information utilities
- Identify the constitution of Insolvency and Bankruptcy Board of India and its powers and functions.
- Know of miscellaneous provisions covering management of Insolvency and Bankruptcy Fund, Delegation of powers, Bar of jurisdiction, Enabling provisions under the Code for cross border transactions, Trial of Offences, and the Regulation of Powers to make Rules and Regulations under the Code.
1. **INTRODUCTION**

**Concept of Insolvency and Bankruptcy**

- The term insolvency is used for both individuals and organizations. For individuals, it is known as bankruptcy and for corporate it is called corporate insolvency. Both refer to a situation when an individual or company are not able to pay the debt in present or near future and the value of assets held by them are less than liability.

- Insolvency in this Code is regarded as a “state” where assets are insufficient to meet the liabilities. Untreated insolvency will lead to bankruptcy for non-corporates and liquidation of corporates.

- While insolvency is a situation which arises due to inability to pay off the debts due to insufficient assets, bankruptcy is a situation wherein application is made to an authority...
declaring insolvency and seeking to be declared as bankrupt, which will continue until discharge.

- From the above it is evident that insolvency is a state and bankruptcy is a conclusion. A bankrupt would be a conclusive insolvent whereas all insolvencies will not lead to bankruptcies. Typically insolvency situations have two options – resolution and recovery or liquidation

**Relationship between Bankruptcy, Insolvency & Liquidation**

**Bankruptcy** is a legal proceeding involving a person or business that is unable to repay outstanding debts. The bankruptcy process begins with a petition filed by the debtor, or by the creditors. All of the debtor’s assets are measured and evaluated, and the assets may be used to repay a portion of outstanding debt.

In lucid language, if any person or entity is unable to pay off the debts, it owes, to their creditor, on time or as and when they became due and payable, then such person or entity is regarded as “insolvent”.

**Liquidation** is the winding up of a corporation or incorporated entity. There are many entities that can initiate proceedings to cause the Liquidation, those being:-

- The Regulatory Bodies;
- The Directors of a Company;
- The Shareholders of a Company; and
- An Unpaid Creditor of a Company

In nut shell, **insolvency** is common to both bankruptcy and liquidation. Not being able to pay debts as and when they became due and payable are the leading cause of Liquidations and is the only way that can cause a natural person to become a bankrupt.

**Objectives:** A sound legal framework of bankruptcy law was required for achieving the following objectives:-

- **Improved handling of conflicts between creditors and the debtor:** It can provide procedural certainty about the process of negotiation, in such a way as to reduce problems of common property and reduce information asymmetry for all economic participants.

- **Avoid destruction of value:** It can also provide flexibility for parties to arrive at the most efficient solution to maximise value during negotiations. The bankruptcy law will create a platform for negotiation between creditors and external financiers which can create the possibility of such rearrangements.

- **Drawing the line between malfeasance and business failure:** Under a weak insolvency regime, the stereotype of “rich promoters of defaulting entities” generates two strands of thinking:
4.4 ECONOMIC LAWS

(a) the idea that all default involves malfeasance and
(b) the idea that promoters should be held personally financially responsible for defaults of the firms that they control.

- **Clearly allocate losses in macroeconomic downturns:** With a sound bankruptcy framework, these losses are clearly allocated to some people. Loss allocation could take place through taxes, inflation, currency depreciation, expropriation, or wage or consumption suppression. These could fall upon foreign creditors, small business owners, savers, workers, owners of financial and non-financial assets, importers, exporters.

The Code seeks to provide an effective legal framework for timely resolution of insolvency and bankruptcy which would support development of credit markets and encourage entrepreneurship, and facilitate more investments leading to higher economic growth and development.

**Structure of the Code**

The Code is structured into 5 parts comprising of 255 sections and 11 Schedules. Each part deals with a distinct aspect of the insolvency resolution process.

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An **Insolvency and Bankruptcy Board of India (IBBI)** is established to administer the work of insolvency and bankruptcy of corporate persons, firms and individuals.

**Foundation of Code:**

Decisions are required to be taken in a time bound manner so that there are greater chances that the enterprise is saved as a going concern and productive resources of economy can be put to best use.
Insolvency of corporate persons - Part II of the Code, deals with insolvency resolution and liquidation for corporate persons.

At first instance, corporate insolvency process will be initiated.

Insolvency professional will form a committee of creditors and with their consensus, efforts will be made to develop finalise plan to revive the corporate person.

This process will last for 180 days, extendable by further maximum 90 days.

'Resolution plan' will be drafted to restore the corporate.

A Fast Track Corporate Insolvency Resolution will be available to small corporate persons.

If the efforts fails to rehabilitate the enterprise, the corporate person will be liquidated in time bound manner.

NCLT will be Adjudicating Authority and NCLAT will be appellate authority for corporate persons.

Provisions relating to Corporate Insolvency Resolution Process (section 4 to section 32 of Insolvency Code) will be applicable.

Provisions relating to Liquidation Process of Corporates (section 33 to section 59 of Insolvency Code) will be effective in case where the enterprise is taken for liquidation.

Winding up of companies - In most of the cases, winding up of companies will be through the Insolvency Resolution Process only. Direct winding up process under Companies Act, 2013 will be used very rarely.

Bankruptcy of individuals and firms - Part III of Insolvency Code 2016 deals with insolvency resolution and liquidation for individuals and firms. For individuals and firms, there are two distinct processes - fresh start and insolvency resolution. These are followed by bankruptcy order. Debt Recovery Tribunal (DRT) will be adjudicating authority and DRAT will be appellate authority for individuals and firms. These provisions are not yet effective as not notified [as on 30th April, 2019].

In case of other individuals and firms, the process is similar to that applicable to corporate persons.

Flow of insolvency process-

- The process will be managed by 'resolution professional' under direction of 'Adjudicating Authority'.
- Insolvency Resolution Process will be initiated.
- Finalise 'payment plan' with concurrence of debtor and committee of creditors.
- On consensus on payment plan.
the individual or firm will get a discharge order.

• On failure to finalize the payment plan, the person will be declared 'bankrupt'.

• The resolution professional will take over estate of the bankrupt. He will sell or dispose it off and satisfy payments of creditors to the extent possible.

• After that, the bankrupt will get a 'discharge order'.

• The discharge order will be registered with Board (IBBI) in a register maintained under section 196 of the Insolvency & Bankruptcy Code, 2016.

**Provisions of this Code to override other laws:** Section 238 of the Code, 2016 states that the Code shall have overriding effect over other laws.

**For example,** sections 53 and 178 of Insolvency Code, 2016 provide that distribution from sale of assets will be as specified in that section, notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force.

However, many tax laws (including GST) provide for first charge on assets of the taxable person. This is also an overriding provision.

**Extent and Commencement of the Code:**

As per section 1 of the Insolvency and Bankruptcy Code, it extends to the whole of India except Part III (Insolvency Resolution and Bankruptcy for Individuals and Partnership Firm) which excludes the state of Jammu and Kashmir.

This Code came into an enforcement on 28th May 2016, however, the Central Government appointed different dates for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

**Significant amendments:** The Code has been first amended by the Insolvency and Bankruptcy (Amendment) Ordinance, 2017, passed on November 23, 2017. This Ordinance became an Act on January 18, 2018. It was known as the Insolvency and Bankruptcy Code (Amendment) Act, 2018. It was made applicable from November 23, 2017.

The second amendment was made vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, on June 6, 2018. Further, the said ordinance, in the form of the Insolvency and Bankruptcy (Second Amendment) Bill received the assent of the President on the 17th August, 2018 and thus the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 was promulgated.
1Applicability of the Code [Section 2]

The provisions of the Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:-

(a) Any company incorporated under the Companies Act, 2013 or under any previous law.

(b) Any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such Special Act.

(c) Any Limited Liability Partnership under the LLP Act 2008.

(d) Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf.

(e) 2personal guarantors to corporate debtors (CD);

(f) partnership firms and proprietorship firms; and

(g) individuals, other than persons referred to in clause (e)

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Non-applicability of the Code: The Code is not applicable to corporates in finance sector. Section 3(7) of Insolvency & Bankruptcy Code, 2016 states that "Corporate person" shall not include any financial service provider.

Thus, the Code does not cover Bank, Financial Institutions, Insurance Company, Asset Reconstruction Company, Mutual Funds, Collective Investment Schemes or Pension Funds.

However, NBFC is engaged in various activities and hence NBFC is not ipso facto excluded from definition of ‘corporate person' under section 3(7) of Insolvency Code. NBFC can be a 'corporate debtor' [Jindal Saxena Financial Services v. Mayfair Capital (2018)]

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1 Said section have been amended by Vide Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018. W.e.f 23rd day of November 2017.

2 Personal guarantors of corporate debtors have been treated as a separate class. The application for bankruptcy of individual personal guarantor will have to be filed before NCLT as per section 60(2) of the IBC, 2016. Insolvency Code has been made applicable to personal guarantors of corporates w.e.f. 23-11-2017
“Financial service provider” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator [section 3(17)].

However, section 227 of the Code, which was notified on 1-5-2018 provided that, Central Government can notify financial service providers for purpose of insolvency and liquidation proceedings, which may be conducted under the Insolvency & Bankruptcy Code, in consultation with appropriate financial sector regulator.

2. IMPORTANT DEFINITIONS [SECTIONS 3 AND 5]

(1) Board means the Insolvency and Bankruptcy Board of India (IBBI) established under section 188(1) [Section 3(1)]

The board will have powers of civil court as to the issue of summons, discovery and production of books, inspection of books/registers and issue of commissions for examination of witnesses [Section 196(2) of the Code]

(2) Charge means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;[ Section 3(4)]

(3) 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;[Section 3(6)]

(4) Corporate Person means

(a) a company as defined under section 2(20) of the Companies Act, 2013;

(b) a Limited Liability Partnership as defined in 2(1)(n) of Limited Liability Act, 2008; or,

(c) any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider. [Section 3(7)]

(5) Corporate Debtor means a corporate person who owes a debt to any person. [ Section 3(8)]

(6) Core services means services rendered by an information utility for—

(a) accepting electronic submission of financial information

(b) safe and accurate recording of financial information;

(c) authenticating and verifying the financial information submitted by a person; and

(d) providing access to information stored with the information utility to persons
(7) **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. [Section 3(10)]

(8) **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. [Section 3(11)]

**Financial Debt** - "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 dematerialised 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 non-recourse basis.

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.

3 Explanation.— For the purposes of this sub-clause - (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in section 2(d) and 2(zn) of the Real Estate (Regulation and Development) Act, 2016.

(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.

3 Explanation inserted w.e.f. 6-6-2018
(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 [Section 5(8) of Code, 2016]

**Subscription money for purchase of shares is not financial debt** - Subscription money for purchase of shares is not financial debt - *ACPC Enterprises v. Affinity Beauty Saloon* (2018)

**Operational debt** as per section 5(21) of the Code means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment 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;

**Operational debt** is normally based on agreement to pay to goods or services, it does not mean that interest cannot be claimed in the times to come.

**Difference in financial and operational debt**: Financial debt is given to get interest over money, whereas in the operational debt happens in the business transactions, In both cases money is involved , as days go by after truncation, the time value of money will be there. [Uttam Galva Steel Ltd. DF Deutsche Forfait AG and Misr Bank Europe GmbH]

(9) **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 paid by the debtor or the corporate debtor, as the case may be. [Section 3(12)]

(10) **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. [Section 3(13)]

(11) **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. [Section 3(15)]

(12) **Financial service** includes any of the following services, namely:—

(a) accepting of deposits;

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(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; [Section 3(16)]

(13) **Financial Service Provider** means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator e.g. banks, financial institutions, insurance companies, mutual funds etc. [Section 3(17)]

(14) **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; [Section 3(18)]

(15) **Insolvency professional (IP)** means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207; [Section 3(19)]

Insolvency Professional is required to play a key role in implementation of Insolvency Code. The word 'person', used refers to an individual to be IP. A LLP, partnership firm or a company can only be recognized as 'Insolvency Professional Entity' (IPE).
The Insolvency Professional should follow code of conduct as specified in section 208(2) of Insolvency Code and in First Schedule to Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

(16) "Insolvency professional agency" means any person registered with the Board under section 201 as an insolvency professional agency; [Section 3(20)]

Work relating to insolvency resolution is expected to be handled by 'Insolvency Professionals' (IP). These professionals are required to be registered with 'Insolvency Professional Agency' (IPA).

The Insolvency Professional Agencies (IPA) will develop professional standards, code of ethics and be first level regulator for insolvency professionals members. This will lead to development of a competitive industry for such professionals.

(17) "Information utility" means a person who is registered with the Board as an information utility under section 210; [Section 3(21)]

The Insolvency and Bankruptcy processes are expected to function on basis of financial information available electronically.

Information Utility will collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.

(18) A person includes:-

- an individual
- a Hindu Undivided Family
- a company
- a trust
- a partnership
- A limited liability partnership, and
- any other entity established under a Statute.

And includes a person resident outside India [Section 3(23)]

"Person resident outside India" means a person other than a person resident in India [section 3(25)].

"Person resident in India" shall have the meaning as assigned to such term in section 2(v) of FEMA [ Section 3(24)]

(19) 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; [Section 3(27)]
Secured creditor means a creditor in favour of whom security interest is created; [Section 3(30)]

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. [Section 3(31)]

A transaction includes an agreement or arrangement in writing for transfer of assets, or funds, goods or services, from or to the corporate debtor. [Section 3(33)]

Transfer includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. In case of property, transfer of property means transfer of any property. [Section 3(34)]

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; [Section 3(35)]

Adjudicating Authority - National Company Law Tribunal (NCLT) constituted under section 408 of Companies Act, 2013 is the Adjudicating Authority (AA) for purpose of insolvency resolution and liquidation for corporate persons [section 5(1) read with section 60(1) of Code, 2016]

National Company Law Appellate Tribunal (NCLAT) is the appellate authority over decisions of NCLT [section 61 of the Code, 2016]

Appeal against order of NCLAT can be filed to Supreme Court on question of law arising out of such order, within 45 days [section 62 of the Code, 2016]

Debt Recovery Tribunal (DRT) will be adjudicating authority for individuals and firms – [section 179(1) of the Code, 2016]

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; [Section 5(5)]

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; [Section 5(6)]

29 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; [section 5(7)]

30 Financial position, in relation to any person, means the financial information of a person as on a certain date; [Section 5(9)]

31 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; [Section 5(11)]

32 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; [Section 5(12)]

Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;

33 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; [Section 5(14)]

34 Liquidation commencement date means the date on which proceedings for liquidation commence in accordance with section 33 (Initiation of Liquidation) or section 59 (Voluntary Liquidation of corporate persons), as the case may be; [Section 5(17)]

35 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 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; [Section 5(20)]

37 Related party, in relation to a corporate debtor, means—

(a) a director or partner or a relative of a director or partner of the corporate debtor
(b) a key managerial personnel or a relative of a key managerial personnel of the corporate debtor;

4 Inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018.

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(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) any body 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;

(iv) provision of essential technical information to, or from, the corporate debtor; [Section 5(24)]
5(38) "related party", in relation to an individual, means—

(a) a person who is a relative of the individual or a relative of the spouse of the individual;
(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;
(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent of its share capital;
(e) a public company in which the individual is a director and holds along with relatives, more than two per cent of its paid-up share capital;
(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
(h) a person on whose advice, directions or instructions, the individual is accustomed to act;
(i) a company, where the individual or the individual along with its related party, own more than fifty per cent of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—

(i) members of a Hindu Undivided Family,
(ii) husband,
(iii) wife,
(iv) father,
(v) mother,
(vi) son,
(vii) daughter,
(viii) son’s daughter and son,
(ix) daughter’s daughter and son,
(x) grandson’s daughter and son,
(xi) granddaughter’s daughter and son,
(xii) brother,
(xiii) sister,
(xiv) brother’s son and daughter,
(xv) sister’s son and daughter,
(xvi) father’s father and mother,
(xvii) mother’s father and mother,
(xviii) father’s brother and sister,
(xix) mother’s brother and sister, and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included; [Section 5(24A)]

6 Resolution applicant means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under section 25(2)(h) [Section 5(25)]

38 Resolution plan means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II; [Section 5(26)]

39 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; [Section 5(27)]

40 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. [Section 5(28)]

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6 Substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017.
7 Substituted for "any person" by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017.
3. CORPORATE INSOLVENCY RESOLUTION PROCESS
[SECTIONS 4, 6-32]

Provisions related to Insolvency Resolution and Liquidation process for Corporate Persons are covered in Part II of the Code. This part comprises of seven chapters with section 4 to 77 of the Code. Each chapter deals with different issues relating to Insolvency Resolution and liquidation of corporate persons.

Corporate Insolvency Resolution is a process during which financial creditors assess whether the debtor’s business is viable to continue and the options for its rescue and revival, if any. If the insolvency resolution process fails or financial creditors decide that the business of debtor cannot be carried on in a profitable manner and it should be wound up, the debtor will undergo liquidation process and the assets of the debtor shall be realized and distributed by the liquidator.

The Insolvency Resolution Process provides a collective mechanism to lenders to deal with the overall distressed position of a corporate debtor. This is a significant departure from the existing legal framework under which the primary onus to initiate a re-organization process lies with the debtor, and lenders may pursue distinct actions for recovery, security enforcement and debt restructuring.

The Code creates time-bound processes for insolvency resolution of companies and individuals. These processes will be completed within 180 days, extendable by 90 days. It also provides for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.

Process Flow

A comprehensive process that covers the gamut of insolvency resolution framework for Corporates and includes processes relating to:-

- Filing of application before NCLT
- Adjudication: Admission or Rejection of application
- Moratorium and Public Announcement
- Appointment of Interim Resolution Professional
- Formation of the Committee of Creditors
- Preparation and approval of the Resolution Plan
- Consequences of non-submission of the Resolution Plan
(I) Application to National Company Law Tribunal

The process of insolvency is triggered by occurrence of default. As per Section 3 (12) of the Code, default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor.

The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees. [Section 4]

Filing of application before NCLT

The corporate insolvency process may be initiated against any defaulting corporate debtor by making an application for corporate insolvency resolution before NCLT.

Who can initiate insolvency resolution process?

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter (Chapter II of part II) [Section 6].

Provisions and procedures relating to each initiator are different.
Accordingly, the application may be made by:-

(A) **Initiation of corporate insolvency resolution process by financial creditor**

1. **Filing of application before adjudicating authority:** A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

A 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.

Vide Notification S.O.1091(E) dated 27th February, 2019, the Central government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the Financial Creditor:-

(i) a guardian;
(ii) an executor or administrator of an estate of a financial creditor;
(iii) a trustee (including a debenture trustee); and
(iv) a person duly authorized by the Board of Directors of a Company.

2. **Procedure to be followed by the Financial creditor:** The financial creditor shall file an application by itself / jointly against a corporate debtor before NCLT in accordance with the provisions contained in Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016., Copy of such an application shall be forwarded to registered office of corporate debtor by registered post/speed post.

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8 Substituted for "other financial creditors" by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018.
Financial creditor shall along with the application furnish—

(a) **record of the default** recorded with the information utility or such other record or evidence of default as may be specified;

(b) **the name of the resolution professional** proposed to act as an interim resolution professional; and

(c) **any other information** as may be specified by the Board.

(3) **Time period for determination of default**: The Adjudicating Authority shall, within fourteen days of the receipt of the application, 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.

(iv) **Order**: Where the Adjudicating Authority is satisfied, either—

- **May admit application when** -
  - a default has occurred and,
  - and the application is complete
  - no disciplinary proceedings pending against the proposed resolution professional

- **May reject application when** -
  - default has not occurred or
  - the application is incomplete
  - any disciplinary proceeding is pending against the proposed resolution professional

**Notice to rectify the defect in the application**: Provided that the 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.

(5) **Commencement of corporate insolvency resolution process**: The corporate insolvency resolution process shall commence from the date of admission of the application.

(6) **Communication of Order**: The Adjudicating Authority shall communicate order of admission or rejection of such application within seven days, as the case may be —

1. in case of admission, to the financial creditor and the corporate debtor;
2. In case of rejection, to the financial creditor [Section 7]

(7) **Withdrawal of application**: Any application can be withdrawn before or after admission.

- **Withdrawal before admission of application**
  - any time with permission of Adjudicating Authority

- **Withdrawal after admission of application**
  - on an application made by the applicant with the approval of 90% voting share of the CoC
(B) Insolvency resolution by operational creditor

(1) Serving of demand Notice: On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.

"Demand notice" means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

On receipt of demand notice by corporate debtor: 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 about-

(a) existence of a dispute about debt, if any, 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 payment of unpaid operational debt— It is possible that corporate debtor might have already paid the unpaid operational debt, there in such situation, corporate debtor will inform within 10 days -

(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 cheque issued by the corporate debtor. [Section 8]

(2) Application for initiation of corporate insolvency resolution process by operational creditor after issue of demand notice:

(i) Filing of application by operational creditor: If no reply is received or payment or notice of the dispute under section 8(2) from the corporate debtor within ten days from the date of delivery of the notice or invoice demanding payment, operational creditor can file application before Adjudicating Authority (NCLT) for initiating a corporate insolvency resolution process.

(ii) Providing of documents/ information: The operational creditor shall, along with the application filed in prescribed form, furnish the following documents—

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9 Substituted for "if any, and" by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018
10 This has been amended vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018

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(3) **Appointment of IRP:** An operational creditor initiating a corporate insolvency resolution process, may propose a resolution professional to act as an interim resolution professional.

(4) **Order of an adjudicating authority:** The Adjudicating Authority shall, within fourteen days of the receipt of the application, by an order—

<table>
<thead>
<tr>
<th>admit the application and communicate such decision to the operational creditor and the corporate debtor if,—</th>
<th>reject the application and communicate such decision to the operational creditor and the corporate debtor, if—</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the application made is complete; (b) there is no payment of the unpaid operational debt; (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and (e) there is no</td>
<td>(a) the application made is incomplete; (b) there has been payment of the unpaid operational debt; (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor; (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or (e) any disciplinary</td>
</tr>
</tbody>
</table>
disciplinary proceeding pending against any
resolution professional proposed, if any.

proceeding is pending against any proposed
resolution professional:

Provided that Adjudicating Authority, shall
before rejecting an application which is
incomplete, give a notice to the applicant to
rectify the defect in his application within
seven days of the date of receipt of such
notice from the adjudicating Authority.

(5) Withdrawal of application before or after admission:

withdrawn any time before admission
with permission of Adjudicating Authority

Withdrawn even after admission
on an application made
made by the applicant
with the approval of
90% voting share of the
CoC i.e. as per section
12A

(6) Commencement of insolvency resolution process: The corporate insolvency resolution
process shall commence from the date of admission of the application [Section 9]

(C) Initiation of corporate insolvency resolution process by corporate applicant.

(1) Commission of default: 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.

“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;

"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;

(2) Furnishing of information: The corporate applicant shall, along with the application
furnish the information relating to—
4.26 ECONOMIC LAWS

(a) its **books of account and such other documents** relating to such period as may be specified; and

(b) the **resolution professional** proposed to be appointed as an interim resolution professional.

(c) **special resolution** passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.

(3) ^1^ **Admission/rejection of application:** The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

(a) admit the application, if it is complete; and no disciplinary proceeding is pending against the proposed resolution professional

(b) reject the application, if it is incomplete or any disciplinary proceeding is pending against the proposed resolution professional

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

(4) **Commencement of insolvency resolution process:** The corporate insolvency resolution process shall commence from the date of admission of the application. [Section 10]

**Persons not entitled to initiate insolvency process**

Following persons shall not be entitled to initiate the corporate insolvency process:-

(a) A corporate debtor (which includes a corporate applicant in respect of such corporate debtor) undergoing an insolvency resolution process; or

(b) A corporate debtor (which includes a corporate applicant in respect of such corporate debtor) having completed corporate insolvency resolution process 12 (twelve) months preceding the date of making of the application; or

(c) A corporate debtor (which includes a corporate applicant in respect of such corporate debtor) or a financial creditor who has violated any of the terms of resolution plan which was approved 12 (twelve) months before the date of making of an application;

(d) A corporate debtor (which includes a corporate applicant in respect of such corporate debtor) in respect of whom a liquidation order has been made. [Section 11]

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^1^ This sub-section have been amended vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018

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Example: Suppose a ABC Pvt. Ltd. has committed a default, and is undergoing a corporate insolvency resolution process. Mr. X and Mr. Y, are partners of the ABC Pvt. Ltd. However, Mr. X under the constitutional document of the Company, is being authorized to make an application for the corporate insolvency resolution process. Being a partner of ABC Pvt. Ltd. Mr. Y filed an application on behalf of Mr. X for initiation of corporate insolvency process. State the validity of the act of Mr. Y for initiating corporate insolvency resolution process with the Adjudicating Authority?

Answer: According to section 11, a corporate debtor includes a corporate applicant in respect of such corporate debtor. Whereas as Corporate applicant means as per the definition given in section 5(15) corporate applicant can also be a member or partner of the corporate debtor who is authorized to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor. Since in the given case, Mr. X is the authorized person not Mr. Y, so his act is invalid as to filing of an application to Adjudicating authority to initiate corporate insolvency resolution process.

(II) Adjudication: Admission or Rejection of Application

The Adjudicating Authority may either accept or reject the application within fourteen days of receipt of application. However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

The insolvency resolution process shall commence from the date of admission of application by the Adjudicating Authority. It is referred to as the Corporate Insolvency Resolution Date.

Time-limit for completion of insolvency resolution process

(1) Period for completion of insolvency process: The corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) Filing of application for extension of period: The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution
passed at a meeting of the committee of creditors by a vote of 66 per cent. of the voting shares.

(3) **Period of extension**: On receipt of an application, 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**: Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once. [Section 12]

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**Appointment of Interim Resolution Professional**

"resolution professional", means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional.

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12 Substituted for "seventy-five" by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018

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If applicant proposes for appointment of Insolvency professional

• obtain written communication from insolvency professional
• for appointment as interim resolution professional

Withdrawal of application admitted under section 7, 9 or 10 [Section 12A]

Adjudicating Authority may
withdraw application
admitted under
• section 7 or
• section 9 or
• section 10
on an application made by the applicant
with approval of 90% voting share of the committee of creditors

(III) Declaration of moratorium and public announcement:

After admission of application, the Adjudicating Authority shall pass the following order—

(a) declare a moratorium under section 14;
(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15, and
(c) appoint an interim resolution professional in the manner as laid down in section 16.

The public announcement as referred above, shall be made immediately after the appointment of the interim resolution professional. [Section 13]

Moratorium:

Moratorium is a delay or suspension of an activity. In a legal context, it may refer to the temporary suspension of a law to allow a legal challenge to be carried out.

After the commencement of corporate insolvency resolution a calm period for 180 days is declared, during which all suits and legal proceedings etc. against the Corporate Debtor are held in abeyance to give time to the entity to resolve its status. It is called the Moratorium Period.
(1) **Declaration of moratorium period:** According to the section 14(1) of the Code, on the insolvency commencement date, the Adjudicating Authority shall by order, declare moratorium prohibiting all of the following, acts—

(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.

(2) **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.

(3) **Prohibited Acts:** Acts prohibited during Moratorium period, shall not apply to-

(a) **Such** transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(b) A surety in a contract of guarantee to a corporate debtor.

(4) **Effect of the order of moratorium:** The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

The provision of section 14(1) of the Code is not applicable on a surety in a contract of guarantee to a corporate debtor. Thus, recovery proceedings, insolvency resolution process or bankruptcy proceedings against surety (guarantor) can be initiated even if moratorium is granted to corporate debtor.

**When Moratorium period shall cease to have effect:** Provided that 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 [Section 14]

**Example:** After commencement of Corporate Insolvency Resolution, NCLT declared Moratorium against the corporate debtor. Within a month of declaration, corporate debtor disposed of his property. State validity of the act of corporate debtor.

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13 Amended by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018

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**Answer:** As per section 14 of the Code, any transaction/disposal/ of any assets of Corporate Debtor during the moratorium period which is 180 days from date of commencement of corporate insolvency resolution, is prohibited. So such an act of corporate debtor is not valid.

**Public Announcement**

Interim Resolution Professional shall make the Public Announcement immediately after his appointment. “Immediately” refers to not more than three days from the date of appointment of the Interim Resolution Professional.

**Particulars of the Public announcement:** As per Section 15 of the Code, public announcement shall include the following:-

a) Name & Address of Corporate Debtor under the Corporate Insolvency Resolution Process.

b) Name of the authority with which the corporate debtor is incorporated or registered.

c) Details of interim resolution Professional who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims.

d) Penalties for false or misleading Claims.

e) The last date for the submission of the claims as may be specified.

f) The date on which the Corporate Insolvency Resolution Process ends.

The expenses of public announcement shall be borne by the applicant which may be reimbursed by the Committee of Creditors, to the extent it ratifies them.

**(IV) Appointment, Term and Powers of Interim Resolution Professional (IRP)**

**Appointment of IRP:** Adjudicating authority shall appoint an Interim Resolution Professional within 14 days from the commencement date. Section 16 of the Code lays down the procedure for appointment of an Interim Resolution Professional.

Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, the resolution professional as proposed in the application shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

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

(a) **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.

(b) **A proposal for an interim resolution professional is made** the proposed resolution professional shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.
The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.

14 **Period of appointment of IRP:** The term of Interim Resolution Professional shall continue till the date of appointment of the resolution professional under section 22. [Section 16]

**The key roles** to be performed by the Interim Resolution Professional are:-

(a) Issuance of public notice of the Corporate Insolvency Resolution process

(b) Collation of claims received

(c) Constitution of the Committee of Creditors

(d) Conduct of the first meeting of the Committee of Creditors

(e) File information collected with the information utility

(f) Control on assets over which corporate debtor has ownership rights

(g) Perform other duties as specified by the Board [Section 18]

**Powers of IRP:** As per section 17 of the Code, from the date of appointment of the interim resolution professional, the management of the affairs of the Corporate debtor shall vest in the IRP—

15(a) The management of the affairs of the corporate debtor shall vest in the interim resolution professional. IRP shall be authorized to do the following:

- act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;
- take such actions, in the manner and subject to such restrictions, as may be specified by the Board;
- have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;
- have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and
- be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

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14 Substituted for "shall not exceed thirty days from date of his appointment" by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018.

15 Inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018

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(b) **Exercise of Power of BoD/ partners:** 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) **Reporting of officers/managers:** 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) **Instructions to financial institutions:** 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.

**Management of operations of corporate debtor as going concern:** The IRP shall make every endeavor 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.

**Manner of submission of proof of claims to IRP:** Proofs of claim shall be committed to IRP as follows:
4.34 ECONOMIC LAWS

A creditor shall submit claim with proof on or before the last date mentioned in the public announcement. However, can be submitted later any time before approval of resolution plan by the committee. IRP or the RP, as the case may be, shall verify every claim and thereupon maintain a list of creditors.

(V) Resolution Professional (RP)

Appointment: As per Section 22 of the Code the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

The Committee of Creditors in the first meeting by majority vote of not less than \(^{16}66\%\) 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.

Where the committee of creditors resolves—

(a) to continue the interim resolution professional as resolution professional subject to a written consent from the interim resolution professional in the specified form, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional along with a written consent from the proposed resolution professional in the specified form.

\(^{16}\) Substituted for "seventy-five" by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018
The Adjudicating Authority shall forward the name of the resolution professional proposed 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.

**Role and Duties of RP:** The primary role and duty of RP is to conduct corporate insolvency resolution process and to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

1. RP shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

2. RP shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

3. In case of any appointment of a resolution professional, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional. [Section 23]

**Duties:** The resolution professional shall undertake the following actions to protect the assets of the corporate debtor, 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 resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans;

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17 Substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017
(i) present all resolution plans at the meetings of the committee of creditors;
(j) file application for avoidance of transactions in accordance with Chapter III, if any; and
(k) such other actions as may be specified by the Board. [Section 25]

**Eligibility of an insolvency Professional to be appointed as a Resolution Professional**: As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution process for corporate persons) Regulation, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor:-

(a) He 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) He is not a related party of the corporate debtor.
(c) He is not an employee or proprietor or a partner of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor in the last three financial years.
(d) He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm in the last three financial years.

**Fees of Resolution Professional**: As per Section 5(13) of the Code, the fees payable to any person acting as a resolution professional and any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern shall be included in the insolvency resolution process costs. It shall have priority over other costs in the event of winding up of the corporate debtor.

**Replacement of Resolution Professional**: As per the Section 27 of the Code, RP shall be replaced in the following manner:

- If a debtor or a creditor is of the opinion that the resolution professional appointed is required to be replaced, he may apply to the Adjudicating Authority for replacement of such professional.
- The Adjudicating Authority within seven days of receipt of the application may make reference to the Board for Replacement of Resolution Professional.
- As per Section 27 of the Code, the committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.

18 Substituted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018
The Committee of Creditors shall forward the name of the new proposed Insolvency Professional to the Adjudicating Authority, and Adjudicating Authority shall forward such name to the Board for confirmation.

After the confirmation of the proposed insolvency resolution professional by the Board he shall be appointed in the same manner as laid down in Section 16 which deals with the Appointment of IRP.

Where any disciplinary proceedings are pending against the proposed resolution professional, the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional.

Example: Mr. Z was continuing as Interim resolution professional (IRP) in XY Company. The committee of creditors by majority vote of financial creditors proposed to appoint Mr. Final as Resolution professional (RP) of the XY Company. The said proposal was confirmed by the Board after the 10 days. State whether Mr. Final is appointed as Resolution professional.

Answer: No, as per the Code, if Board does not confirm the proposed name as RP within 10 days of receipt of proposal, the Adjudicating authority shall direct IRP to continue as RP for such time as the Board would have confirmed for the appointment of Proposed RP.

Preparation of information memorandum: (1) The resolution professional shall prepare an information memorandum containing such relevant information as may be specified by the Board for formulating a resolution plan.

(2) 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 clauses (a) and (b) above are complied with.

"Relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified. [Section 29]

(VI) Committee of Creditors

Constitution of CoC: As per section 21, the interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors (CoC).

The committee of creditors shall comprise of all the financial creditors of the corporate debtor.
When FC/authorized representative is not entitled to participate in the CoC: for the
Financial creditor or the authorised representative of the financial creditor referred to in section
24(6), 24(6A), or 24(5), if it is a related party of the corporate debtor, shall not have any right of
representation, participation or voting in a meeting of the committee of creditors:

Provided further that the first proviso shall not apply to a financial creditor, regulated by a
financial sector regulator, if it is a related party of the corporate debtor solely on account of
conversion or substitution of debt into equity shares or instruments convertible into equity shares,
prior to the insolvency commencement date.

In case where debts owed to 2/more FC: 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.

In case, 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.

Where an operational creditor has assigned or legally transferred any operational debt to a
financial creditor, the assignee or transferee shall be considered as an operational creditor to the
extent of such assignment or legal transfer.

In case of consortium arrangement of FC: Where the terms of the financial debt extended as
part of a consortium arrangement or syndicated facility provide for a single trustee or agent to act
for all financial creditors, each financial creditor may—
(a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent
of his voting share;
(b) represent himself in the committee of creditors to the extent of his voting share;
(c) appoint an insolvency professional (other than the resolution professional) at his own cost to
represent himself in the committee of creditors to the extent of his voting share; or
(d) exercise his right to vote to the extent of his voting share with one or more financial creditors
jointly or severally.

19 Substituted for "related party to whom a corporate debtor owes a financial debt" by the Insolvency and
Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018.
20 Inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018.
Voting by authorised representative of class of FC: As per section 21(6A), if a financial debt is owned by a class of creditors, an insolvency professional can be appointed by adjudicating authority on receipt of application from interim Resolution professional.

Who can act as an authorised representative?

Where a financial debt is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors—

- such trustee or agent shall act on behalf of such financial creditors;

Where a financial debt is owed to a class of creditors, the IRP shall make an application to the AA along with the list of all financial creditors, with the name of an insolvency professional

- to act as their authorised representative appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

Where a financial debt is represented by a guardian, executor or administrator,

- such person shall act as authorised representative on behalf of such financial creditors

Rights of Authorised representative: Above Authorised representative shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

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

(VII) Meeting of committee of creditors

The provisions related to the meeting of committee of creditors are being dealt under the section 24 of the Code.
**Composition:** The composition of the committee shall be as follows:

- **Committee of creditors**

  **Where Financial Creditors exist**
  - The CoC shall comprise of all financial creditors of a corporate debtor
  - The resolution professional shall conduct the meetings of the CoC
  - Where all financial creditors are related parties of the corporate debtor,
  - Where the corporate debtor has no financial debt, or

**Where Financial Creditors don’t exist**

- The committee shall be formed comprising of following members
  - 18 largest operational creditors by value.
  - 1 representative elected by all workmen.
  - 1 representative elected by all employees.
  - Where the number of operational creditors is less than 18, the committee shall include all such operational creditors.

**Procedure for conduct of meeting of CoC:** The members of the committee of creditors may meet in person or by such electronic means. All the meeting of CoC shall be conducted by the RP. Notice of meeting shall be served to the following:

(a) members of Committee of creditors, including the authorised representatives;

(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.

The directors, partners and one representative of operational creditors, as referred above, may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings. And there absence, shall not invalidate proceedings of such meeting. Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor. Voting rights of each financial creditor will be in proportion to debt due to each
creditor to “total debt”. Whereas total debt will be equal to debts due to creditors, workmen and employees. [Regulation 16(3) of the IBBI(Insolvency Resolution Process for Corporate Persons)Regulations, 2016].

Approval of committee of creditors: All the decisions of the committee of creditors shall be taken by vote of **minimum sixty six of the voting share of the financial creditors**. The voting share is determined based on the value of the debt of the creditor in proportion to the total debt. Where any action is taken without seeking the approval of the committee of creditors, such action shall be void.

First Meeting of Creditors: The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors. The committee shall be constituted within 30 days from the date of appointment of RP under regulation 17 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Notice for meetings of the committee

(1) A meeting of the committee shall be called by giving not less than five days’ notice in writing to every participant.

(2) The committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit:

Provided that the committee may reduce the period to such other period of not less than forty-eight hours if there is any authorised representative. [Regulation 19 of the of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.]

Quorum for the Meeting

- A meeting of committee of creditors shall quorate if members of the **committee of creditors representing at least thirty three percent of the voting rights are present** either in person or by video/audio means.

- If the requisite quorum for committee of creditors is not fulfilled the meeting cannot be held and the meeting shall automatically stand adjourned at the same time and place on the next day.

- The adjourned meeting shall quorate with the members of the committee attending the meeting.

Approval of committee of creditors for certain actions:

(1) According to section 28 of the Code, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely:—

  (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.

(2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the above actions.

(3) No action shall be approved by the committee of creditors unless approved by a vote of sixty-six per cent of the voting shares.

(4) Where any action is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.

(5) The committee of creditors may report the actions of the resolution professional to the Board for taking necessary actions against him under this Code.

(VIII) Persons not eligible to be resolution applicant

The first and foremost duty of Resolution Professional is to get resolution plan /s by Resolution Applicants.
Grounds of ineligibility to be a resolution applicant: Section 29A states that a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is a/an —

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Exception: Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I.—For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.—For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

(d) has been convicted for any offence punishable with imprisonment—

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

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

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:
Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(e) is **disqualified to act as a director** under the Companies Act, 2013 (18 of 2013):

Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

(h) has **executed a guarantee in favour of a creditor in respect of a corporate debtor** against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) is subject to **any disability**, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a **connected person** not eligible under clauses (a) to (i).

Explanation I—For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:
Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

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

(a) a scheduled bank;

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

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

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

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

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

(IX) Resolution Plan

A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency. Provision given in sections 30 and 31 of the Code deals with resolution plan. A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.
Duty of resolution professional on submission of Resolution plan: The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides the manner for the payment of insolvency resolution process costs in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of the debts of operational creditors 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.

Seeking approval of CoC: The resolution professional shall present such resolution plans to the committee of creditors for its approval by a vote of not less than 66 per cent of voting share of the financial creditors.

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where

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21 Substituted for "seventy-five" by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018.
the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it.

**Provided further** that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A.

**Provided also** that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to section 12(3), and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.

**Attending of meeting by resolution applicant:** 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.

**Submission of the resolution plan:** The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority. [Section 30]

**Approval of resolution plan:** If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements as per section 30(2), it shall by order approve the resolution plan which shall be binding on the following:

- Corporate debtor and its employees,
- Members, creditors, guarantors, and
- Other stakeholders involved in the resolution plan

**Rejection of the resolution plan:** Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the above requirements, it may, by an order, reject the resolution plan.

**Consequences of approval:** After the order of approval,—

- The moratorium order passed shall cease to have effect; and
- The resolution professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.
The resolution applicant shall obtain the necessary approval pursuant to the resolution plan approved, within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority or within such period as provided for in such law, whichever is later.

**Provided** that where the resolution plan contains a provision for combination, as per section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.  

**Appeal against Approval of Resolution Plan:** Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.

As per Section 61(3) of the Code, an appeal against an order of Adjudicating Authority for approving the resolution plan may be filed on the following grounds:

(a) The approved resolution plan is in contravention of the provisions of any law for the time being in force.

(b) There has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period.

(c) 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.

(d) The insolvency resolution process costs have not been provided for repayment in priority to all other debts.

(e) The resolution plan does not comply with any other criteria specified by the Board.

**Consequences of non-submission of a Resolution Plan:** When the Resolution Plan is not filed within 180 days of the Commencement date or such other extended period the Adjudicating Authority may pass orders for the liquidation of the corporate debtor.

**4. LIQUIDATION PROCESS**

The Code concerns itself only with those corporate debtors which have defaulted in payment of debts. The corporate debtor, at the first stage, is put into resolution mode. The process is called

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22 Inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018.
the corporate insolvency resolution process. However, if attempts to resolve the insolvency of the corporate debtor fail, then only the liquidation provisions of the Code are triggered.

Where no plan is presented or where the plan presented is not approved by the Adjudicating Authority it shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Act.

Section 33 to 54 of the Code provides the law related to the liquidation process.

(I) Initiation of liquidation:

Section 33 of the Code provides that where the Adjudicating Authority, —

(a) Not received a Resolution plan: Before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process or the fast track corporate insolvency resolution process, as the case may be, does not receive a resolution plan; or

(b) rejects the resolution plan for the non-compliance of the requirements specified therein, it shall—

Intimation of the decision of the committee of creditors to liquidate to Adjudicating authority: 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 approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order.

Contravention of resolution plan as approved by the Adjudicating Authority: 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.

Determination of contravention of the provisions of the resolution plan: On receipt of an application, if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order.

Bar to filing to suits and legal proceedings: Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate

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23 Inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018.
debtor. 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.

**Exception:** Restrictions on filing of suits and legal proceedings 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.

**Order to be deemed to be notice of discharge:** 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.

So, from above it can be concluded that under the Code, a corporate debtor may be put into liquidation in the following scenarios:

(i) A 66% majority of the creditor’s committee resolves to liquidate the corporate debtor at any time during the insolvency resolution process;

(ii) The creditor’s committee does not approve a resolution plan within 180 days (or within the extended 90 days);

(iii) The NCLT rejects the resolution plan submitted to it on technical grounds; or

(iv) The debtor contravenes the agreed resolution plan and an affected person makes an application to the NCLT to liquidate the corporate debtor.

Once the NCLT passes an order of liquidation, a moratorium is imposed on the pending legal proceedings against the corporate debtor, and the assets of the debtor (including the proceeds of liquidation) vest in the liquidation estate.

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(II) Appointment of liquidator

Section 34 of the Code provides for the appointment of a liquidator.

Resolution professional to act as liquidator: It states that 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, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form, shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.

Powers of BoD/ KMP vested in liquidator: 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.

Personnel to extend cooperation to 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 in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.

Order to replace the resolution professional: The Adjudicating Authority shall by order replace the resolution professional, if—

- the resolution plan submitted by the resolution professional was rejected for failure to meet the requirements; or
- the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing, or
- the resolution professional fails to submit written consent

On rejection of resolution plan due to failure to meet the requirements, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

The Board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specified form within ten days of the direction issued by the Adjudicating Authority.

Adjudicating Authority to appoint insolvency professional as the liquidator: The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

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24 Substituted for "Chapter II shall" by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018
25 along with written consent from the insolvency professional in the specified form
Charge of fees for conduct of liquidation proceedings: An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

Payment of fees: The fees for the conduct of the liquidation proceedings shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

(III) Powers and duties of liquidator

Section 35 of the Code specifies the following power and duties of liquidator-

(a) to verify claims of 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 as may be specified by the Board and prepare a report;
(d) to take measures to protect and preserve the assets and properties of the corporate debtor;
(e) to carry on the business of the corporate debtor for its beneficial liquidation;
(f) 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;

However, the liquidator shall not sell the above said properties of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.

(g) to draw, accept, make and endorse any negotiable instruments 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.

26 Regulations 3, 4 and 12 of the IBBI (Liquidation Process) Regulations, 2016
27 Inserted vide Insolvency and Bankruptcy Code(Amendment)Act, 2018 w.r.e.f. 23.11.17
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. 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:**

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. The creditors may require the liquidator to provide them any financial information relating to the corporate debtor. The liquidator shall provide information to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information [Section 37].

**IV) Liquidation estate:**

According to section 36 of the Code, 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.
Comprising of liquidation estate: 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 realised.

Exceptions to the assets from inclusion in the liquidation estate assets: 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 acquiring 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.

### Inclusions

**[Section 36(3)]**

- any assets over which the corporate debtor has ownership rights;
- encumbered assets;
- tangible and intangible assets;
- ownership of assets determined by the court/authority
- assets or their value recovered through proceedings
- assets issued as collateral over which creditors have relinquished rights;
- property belonging to or vested in the corporate debtor at the insolvency commencement date
- all proceeds of liquidation as and when they are realized

### Exclusions

**[Section 36(4)]**

- assets owned by a third party which are in possession of the corporate debtor;
- assets in security collateral held by financial services providers
- personal assets of any shareholder /partner of a corporate debtor, are not held on account of avoidance transactions;
- assets of any Indian or foreign subsidiary of the corporate debtor
- any other assets as may be specified by the Board

According to section 37 of the Code, 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:
The liquidator shall provide information to creditors (who have requested) of any financial information relating to the corporate debtor, within a period of seven days from the date of such request or provide reasons for not providing such information.

(V) Consolidation of claims:

Section 38 of the Code deals with provisions related to the consolidation of claims. Accordingly-

1. Collection of claims by liquidator: 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.

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

3. Supportive documents: An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.

4. Extent of claims to be submitted: 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.

5. Alteration in claim: A creditor may withdraw or vary his claim under this section within fourteen days of its submission.
**Verification of claims:** The liquidator shall verify the claims submitted within such time as specified by the Board. 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 [Section 39]

**Admission or rejection of claims:** The liquidator may, after verification of claims, either admit or reject the claim, in whole or in part. Provided that 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 [Section 40]

**Determination of valuation of claims:** The liquidator shall determine the value of claims admitted in such manner as may be specified by the Board. [Section 41]

**Appeal against the decision of liquidator:** A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision. [Section 42]

(VI) Preferential transactions & Extortionate Credit Transactions

According to section 43 of the Code, where the liquidator or the resolution professional (RP), is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions to any of the following persons:

(a) A related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date.

(b) A person other than a related party during the period of one year preceding the insolvency commencement date. [Sub-section (4)]

In such case, the liquidator or RP shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

<table>
<thead>
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<th>circumstances under which transactions will be referred to as preferential transactions</th>
<th>circumstances under which transactions will not be referred to as preferential transactions</th>
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| A corporate debtor shall be deemed to have given a preference in the following circumstances:-
  a) If 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 | Following transfers shall not be referred to as a preference transaction:-
  a) The transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee. |

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28 Inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018

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operational debt or other liabilities owed by the corporate debtor.

b) If the transfer 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 in accordance with Section 53 of the Code.

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.

Further, 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.

The term “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

Deemed preferences - A preference shall be deemed to be given at a relevant time, if—

(a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date, or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date [section 43(4) of Insolvency Code, 2016]

If sale deed was executed prior to one year preceding commencement of insolvency proceedings, application under section 43 of Insolvency Code is not maintainable [V Nagarajan (Liquidator) v. Asset Reconstruction Co. (2018)]

Orders in case of preferential transactions

The Adjudicating Authority, may, on an application made by the resolution professional or liquidator, 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. [Section 44]

Explanation I—For the purpose of this section, it is clarified that 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.

Explanation II—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 under section 13.
Avoidance of undervalued transactions: If the liquidator or the RP, on an examination of the transactions of the corporate debtor, determines that certain transactions were made during the relevant period under section 46, were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction.

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. [Section 45]

Relevant period for avoidable transactions: In an application for avoiding a transaction at undervalue, the liquidator or resolution professional shall determine:

a) That the transaction was entered within the period of one year preceding the insolvency commencement date; or

b) That the transaction was made with a related party within a period of two years preceding the insolvency commencement date. [Section 46]

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

In case where liquidator or RP has not reported to the adjudicating authority of the undervalued transaction: Section 47 of the Code states that where an undervalued transaction has taken place and the liquidator or the resolution professional has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect.

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

| undervalued transactions had occurred; and |
| liquidator or the resolution professional, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority, |

shall pass an order-

| restoring the position as it existed before such transactions and reversing the effects thereof |
| requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional |
Order in cases of undervalued transactions: As per Section 48, following order of the adjudicating authority may be passed:

Required any property so transferred as part of the transaction,
• to be vested in the corporate debtor

Any security interest granted by the corporate debtor;
• to be released or discharged

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

 Require the payment of such consideration for the transaction
• as may be determined by an independent expert.

Transactions defrauding creditors: As per section 49 of the Code, where the corporate debtor has entered into an undervalued transaction under section 45 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:

However, an order passed under this section—

(1) 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

(2) 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.
Extortionate credit transactions:

As per the regulation 5 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution process for corporate persons) Regulations, 2017, a transaction shall be considered an extortionate credit transaction under section 50(2) where the terms:

(a) require the corporate debtor to make exorbitant payments in respect of the credit provided; or

(b) are unconscionable under the principles of law relating to contracts.

(1) According to section 50 of the Code, 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.

(2) The Board may specify the circumstances in which the said transactions shall be considered as an extortionate credit transaction as given above.

Exception: Where 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.

Order of Adjudicating authority: As per Section 51 of the Code, if an Adjudicating Authority after examining the application 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 debt created on account of the extortionate credit transaction;

(c) Modify the terms of the transaction;

(d) Require any person who is/ 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.

(VII) Secured creditor in liquidation proceedings

(1) Rights of secured creditor: A 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.
(2) **To inform the liquidator of realise security interest:** Where the secured creditor realises security interest under clause (b) above, he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(3) **Verification by liquidator of security interest:** Before any security interest is realised by the secured creditor, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either—

(a) by the records of such security interest maintained by an information utility; or

(b) by such other means as may be specified by the Board.

(4) **Rights of secured creditor related to secured assets:** A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(5) **Restriction in realising of a secured asset:** If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

(6) **Passing of order by Adjudicating Authority:** The Adjudicating Authority, on the receipt of an application from a secured creditor may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

(7) **Yield of surplus:** Where the enforcement of the security interest yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall—

(a) account to the liquidator for such surplus; and

(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

(8) **Amount of insolvency resolution process to be included in the liquidation estate:** The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, 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.

(9) **Unpaid debts to be paid by liquidator:** Where the proceeds of the realisation 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 [Section 52]
(VIII) Distribution of assets

Section 53 of the Code lays the provisions related to distribution of assets or the proceeds from the sale of the liquidation assets.

(1) **Distribution of proceeds from the sale of the liquidation assets:** The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority —

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) 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 in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) 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;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) **Disregard of order of priority:** Any contractual arrangements between recipients with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator.

(3) **Fees to liquidator:** The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients, and the proceeds to the relevant recipient shall be distributed after such deduction.

At each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and the term “workmen’s
dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 [Section 53]

Requirements for commencement of distribution: (1) Subject to the provisions of section 53, the liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority.

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

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

[Regulation 42 of the Insolvency of Bankruptcy Board of India (Liquidation Process) Regulations, 2016]

(IX) Dissolution of corporate debtor

Application by liquidator dissolution: 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.

Date of dissolution: 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.

Submission of order copy: A copy of an order shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered. [Section 54]

Completion of liquidation: (1) The liquidator shall liquidate the corporate debtor within a period of two years.

(2) 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.

[Regulation 44 of the Insolvency of Bankruptcy Board of India (Liquidation Process) Regulations, 2016]

5. FAST TRACK INSOLVENCY RESOLUTION FOR CORPORATE PERSONS

A fast track insolvency resolution, as the name suggests, is a process wherein the insolvency resolution process shall be completed in an expeditious manner i.e., with 90 (ninety) days from the insolvency commencement date. The provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall, mutatis
mutandis, apply to the conduct of a fast track corporate insolvency resolution process. The provisions related to the fast track insolvency resolution are being covered under sections 55 to 58 of the Code.

Who may apply?

An application under this category can be made by any corporate debtor falling under any of the below mentioned category:-

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

Vide notification no. SO 1911(E) dated 14-6-2017, the Central Government prescribed the following class of corporate debtors on whom the provisions pertaining to the fast track corporate insolvency resolution process are applicable –

(a) small company under section 2(85) of Companies Act
(b) a start-up (other than partnership firm) as defined by Ministry of Commerce and Industry notification No. GSR 501(E) dated 23-5-2017
(c) an unlisted company with total assets not exceeding ₹ one crore as per financial statement immediately preceding the financial year - SO 1911(E) dated 14-6-2017.

Time period for completion of fast track corporate insolvency resolution process

The fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.

"Fast track commencement date" means the date of admission of an application by the Adjudicating Authority for initiating the fast track process under Chapter IV of Part II of the Code;

Extension: The Adjudicating Authority may extend time period for fast track corporate insolvency resolution process.

The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast track corporate insolvency resolution process beyond ninety days if instructed to do so by a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five percent of the voting share.

And if Adjudicating Authority is satisfied that the fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order; extend the duration of such process to a further period which shall not be exceeding forty-five days.
The extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once.

**Manner of initiating fast track corporate insolvency resolution process:** 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—

(a) 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

(b) 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.

**Applicability of Chapter II to this chapter:** 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.

### 6. VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

**[SECTION 59]**

(1) **Person who may initiate voluntary liquidation proceeding:** A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter V of Part II of the Code.

(2) **Requirements for voluntary liquidation to be specified by the Board:** The voluntary liquidation of a corporate person shall meet such conditions and procedural requirements as may be specified by the Board.

(3) **Conditions of initiation of voluntary liquidation proceedings:** Voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:—

(a) a declaration from majority of the directors of the company verified by an affidavit stating that—

   (i) 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

   (ii) the company is not being liquidated to defraud any person;

(b) the declaration given above shall be accompanied with the following documents, namely:—
(i) 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;

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

(c) within four weeks of a declaration, there shall be—

(i) 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

(ii) 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

(iii) 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 under sub-clause (c) within seven days of such resolution.

(4) Notification to Registrar of company and the Board: The Company shall notify the Registrar of Companies and the Board about the resolution to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

(5) Commencement of liquidation proceeding: The voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution.

(6) Application of provisions of this 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.

(7) Application to adjudicating authority on complete wound up of the corporate person: 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.

(8) Passing of an order of dissolution: The Adjudicating Authority shall on an application filed by the liquidator, pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.
(9) **Forward of copy of order**: A copy of an order shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.

7. **ADJUDICATING AUTHORITY FOR CORPORATE PERSONS**

Sections 60 to 77 of the Code deals with the provisions related to the adjudicating authority for corporate persons.

The National Corporate Law Tribunal (‘NCLT’) and Debt Recovery Tribunal (‘DRT’) shall act as Adjudicatory Authority for corporate insolvency and non-corporate insolvency respectively. These bodies shall entertain or dispose any insolvency application, approve or reject resolution plans, decide in respect of claims or matters of law or facts.

Appeals from NCLT orders lie to the National Company Law Appellate Tribunal and thereafter to the Supreme Court of India where as appeals from DRT orders lie to the Debt Recovery Appellate Tribunal and thereafter to the Supreme Court.

(I) **Adjudicating Authority for corporate persons**: As per section 60 of the Code, the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law
Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.

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 liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal.

An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, 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.

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.

**Period of moratorium excluded for purpose of limitation:** 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. [Section 60]. This provision overrides provision of Limitation Act or any other law.

**(II) Appeals and Appellate Authority:** Any person aggrieved by the order of the Adjudicating Authority may prefer an appeal to the National Company Law Appellate Tribunal. It shall be filed within thirty days before the National Company Law Appellate Tribunal.

However, 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. [Section 61]

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29 Substituted for "bankruptcy of a personal guarantor of such corporate debtor" by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018.
30 Substituted for "bankruptcy proceeding of a personal guarantor of the corporate debtor" by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018
An appeal against an order approving a resolution plan under section 31 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.

An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

(III) Appeal to Supreme Court on a question of law: 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 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 [Section 62]

Civil Court is prohibited to entertain any suit or proceedings: 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. Civil court not to have jurisdiction.[Section 63]

(IV) Expeditious disposal of applications: 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; and 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. 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 Tribunal under this Code. [Section 64]

Hence, the Code specify strict time limits for each action. If action is not completed within specified time, the National Company Law Tribunal or the National Company Law Appellate Tribunal can grant extension upto ten days.
(V) **Fraudulent or malicious initiation of proceedings:** 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,

And where if, any person initiates voluntary liquidation proceedings with the intent to defraud any person-

then in such cases, Adjudicating Authority may impose upon such persons a penalty varying from one lakh rupees to one crore rupees.

(VI) **Fraudulent trading or wrongful trading:** 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 shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

**NCLT can order contribution to assets by defrauding director or partner** - The Adjudicating Authority may by an order direct that-

- a director, or
- partner of the corporate debtor

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 the 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.

**Proceedings under section 66:**

If the Adjudicating Authority has passed an order under section 66, it may give such further directions as it may deem appropriate for giving effect to the order.

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 section 67 of the Code.

The term "Assignee" includes a person to whom or in whose favour, by the directions of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the directions have been made.

Even if the Adjudicating Authority has passed an order under section 66, as the case may be, in relation to a person who is a creditor of the corporate debtor, the whole or any part of any debt owed by the corporate debtor to that person and any interest thereon shall rank in the order of priority of payment after all other debts owed by the corporate debtor [Section 67]. Thus, there is no relief to creditor who has been defrauded. Creditor can get only after all other debts are paid off.

## 8. OFFENCES AND PENALTIES

<table>
<thead>
<tr>
<th>Types of offence</th>
<th>Commission of offences</th>
<th>Punishment</th>
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<tbody>
<tr>
<td>Concealment of property [Section 68]</td>
<td>Where any officer of the corporate debtor has,— (i) within the twelve months immediately preceding the insolvency commencement date,— (a) wilfully concealed any 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 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 relating to the property of the corporate debtor or its affairs; or (d) wilfully made any false entry in any book or paper relating to the</td>
<td>Such officer shall be punishable with— ● imprisonment for a term 3 to 5 years, or ● with fine ranging from one lakh rupees to one crore rupees, or ● with both Provided that nothing in this section shall render a person 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.</td>
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### Transactions defrauding creditors [Section 69]

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<tbody>
<tr>
<td>On or after the insolvency commencement date, if an officer of the corporate debtor or the corporate debtor—</td>
<td>Such officer of the corporate debtor or the corporate debtor, as the case may be, shall be punishable with-</td>
<td>Provided that a person shall</td>
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<tr>
<td>(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;</td>
<td>imprisonment for a term of 1 to 5 years, or with fine levying from lakh rupees to one crore rupees, or with both:</td>
<td>not be punishable under this</td>
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<tr>
<td>(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</td>
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</table>

Fraudulently parted with, altered or made any omission in any document relating to the property of the corporate debtor or its affairs; or

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

Wilfully concealed the knowledge of the doing by others of any of the acts mentioned in clauses (c), (d) or clause (e); or

At any time after the insolvency commencement date, committed any of the acts mentioned in sub-clauses (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

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,
### Misconduct in courses of corporate insolvency resolution process [Section 70]

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<table>
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<tbody>
<tr>
<td>(1) On or after the insolvency commencement date, where an officer of the corporate debtor—</td>
<td>Such officer shall be punishable with-</td>
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<tr>
<td>(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</td>
<td>• imprisonment for a term of three to five years, or</td>
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<tr>
<td>(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</td>
<td>• with fine varying from one lakh rupees to one crore rupees, or</td>
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<tr>
<td>(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</td>
<td>• with both</td>
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<tr>
<td>(d) fails to inform the resolution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or</td>
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<tr>
<td>(e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or</td>
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<tr>
<td>(f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if</td>
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</table>

payment of money obtained against the corporate debtor, section if the acts mentioned in clause (a) were committed more than five years before the insolvency commencement date; or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the corporate debtor.

Provided that nothing in this section shall render a person liable to any punishment under this section 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-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.
<table>
<thead>
<tr>
<th>Economic Laws</th>
<th>Description</th>
<th>Punishment</th>
</tr>
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</table>
| **Falsification of books of corporate debtor [Section 71]**                  | On and after the insolvency commencement date, where any 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, book of account or document belonging to the corporate debtor with intent to defraud or deceive any person. | he shall be punishable with-  
  • imprisonment for a term three years to five years, or  
  • with fine from one lakh to one crore rupees, or  
  • with both. |
| **Wilful and material omissions from statements relating to affairs of corporate debtor [Section 72]** | Where an officer of the corporate debtor makes any material and wilful omission in any statement relating to the affairs of the corporate debtor.                                                                 | he shall be punishable with-  
  • imprisonment for a term three years to five years, or  
  • with fine from one lakh rupees to one crore rupees, or  
  • with both. |
| **False representations to creditors [Section 73]**                         | 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, | he shall be punishable with-  
  • imprisonment for a term three years to five years, or  
  • with fine of one lakh rupees to one crore rupees, or  
  • with both. |
| **Contravention of moratorium or the resolution plan [Section 74]**         | Where the corporate debtor or any of its officer violates the provisions of section 14,                                                                                                                         | (1) any such officer who knowingly or wilfully committed or authorised or permitted |
Where any creditor violates the provisions of section 14

(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention,

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.

(2) any person who knowingly and wilfully 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.

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.

False information furnished in application [Section 75]

Where any person furnishes information in the application made under section 7, 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.
Non-disclosure of dispute or repayment of debt by operational creditor [Section 76]

Where—
(a) an operational creditor has wilfully or knowingly concealed in an application under section 9 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.

Providing false information in application made by corporate debtor [Section 77]

Where—
(a) a corporate debtor provides information in the application under section 10 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),

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.

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.

9. INNOLVENTY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AND PARTNERSHIP FIRMS

Part III of Insolvency and Bankruptcy Code, 2016 deals with provisions relating to Bankruptcy for Individuals and partnership firms. It comprises of sections 78 to 187. These provisions will replace Present Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920. These provisions are not yet notified and not in force [as on 30th of April, 2019]

Application of the provisions of the Bankruptcy to personal guarantors of Corporate Debtors and for others in phases w.e.f. 23.11.2017

Though provisions relating to bankruptcy of individuals have not been notified, Insolvency Code has been made applicable to personal guarantors of corporate debtors. Here the matters will go before NCLT and not before DRT.
As per section 2 of the Code it has been provided that the Code will apply to personal guarantors of corporate debtors as a category different from individuals.

10. REGULATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES

(I) The Insolvency and Bankruptcy Board of India

Establishment and incorporation of Board

The Central Government hereby appoints 01st October, 2016 as the date of establishment of Insolvency and Bankruptcy Board of India. The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Code, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued. The head office of the Insolvency and Bankruptcy Board of India shall be at New Delhi. The Board may establish offices at other places in India. [Section 188]

Constitution of Board

(1) Appointment of Members: The Board shall consist of the following members who shall be appointed by the Central Government, namely:

- Chairperson
- three members from the Central Government not below the rank of Joint Secretary or equivalent
- one member to be nominated by the Reserve Bank of India
- five other members to be nominated by the Central Government

(2) Eligibility: The Chairperson and the other members shall be persons of ability, integrity and standing, who have shown capacity in dealing with problems relating to insolvency or bankruptcy and have special knowledge and experience in the field of law, finance, economics, accountancy or administration.
(3) **Appointment on recommendation of a selection committee:** 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—

- Cabinet Secretary
- Secretary to the GOI nominated by the Central Government
- Chairperson of the Insolvency and Bankruptcy Board of India
- three experts from the field of finance, law, management, insolvency etc., nominated by the Government

(4) **Term of offices:** 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 re-appointment.

(5) **Payment of salaries:** The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and members (other than the ex officio members) shall be such as may be prescribed. [Section 189]

**Removal of member from office**

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 Central Government involves moral turpitude;

(d) has, so abused his position as to render his continuation in office detrimental to the public interest.

Provided that no member shall be removed under clause (d) unless he has been given a reasonable opportunity of being heard in the matter. [Section 190]

**Meetings of Board**

(1) The Board shall meet at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be determined by regulations.
(2) 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.

(3) 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.[Section 192]

**Member not to participate in meetings in certain cases**

Any member, who is a director of a company and who as such director has any pecuniary interest
in any matter coming up for consideration at a meeting of the Board, shall –

- 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.[Section 193]

**Vacancies, etc., not to invalidate proceedings of Board, Officers and employees of
Board**

(1) 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.

(2) The Board may appoint such other officers and employees as it considers necessary for the
efficient discharge of its functions in such manner as may be specified.

(3) The salaries and allowances payable to, and other terms and conditions of service of, officers
and employees of the Board appointed under sub-section (2) shall be such as may be
specified by regulations.[Section 194]

**Powers and Functions of the Board**

(1) The Board shall, on the basis 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.

(2) The Board may make model bye-laws to be 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.

Explanation.— For the purposes of this clause, the term "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.

(3)  Board shall have the same powers as are vested in a civil court while trying a suit, in respect of the following matters, namely:—
(i)   the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;
(ii)  summoning and enforcing the attendance of persons and examining them on oath;
(iii) inspection of any books, registers and other documents of any person at any place;
(iv)  issuing of commissions for the examination of witnesses or documents. [Section 196]

Constitution of advisory committee, executive committee or other committee.

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. [Section 197]

Condonation of delay

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. [Section 198]

[II]  Insolvency Professional Agencies

Provisions related to insolvency professional agencies (IPA) are covered under sections 199 to 205 of the Code. Relevant provisions related to IPA are as follows:

No person to function as insolvency professional agency without valid certificate of registration.

No person shall carry on its business as insolvency professional agencies under this Code and enrol insolvency professionals as its members except under and in accordance with a certificate of registration issued in this behalf by the Board. [Section 199]
Principles governing registration of insolvency professional agency

The Board shall have regard to the following principles while registering the insolvency professional agencies under this Code, namely:—

- to promote the professional development
  - of and regulation of insolvency professionals
- to promote the services of competent insolvency professionals
  - to cater to the needs of debtors, creditors and such other persons as may be specified
- to promote good professional and ethical conduct
  - amongst insolvency professionals
- to protect the interests
  - of debtors, creditors and such other persons as may be specified
- to promote the growth of insolvency professional agencies
  - for the effective resolution of insolvency and bankruptcy processes under this Code

Manner of registration of insolvency professional agency

Filing of application to the Board

Grant of certificate of registration to the applicant

Board may renew the certificate of registration from time to time

Board may, by order, suspend or cancel the certificate of registration granted to an insolvency professional agency—

- obtained registration by making a false statement / misrepresentation / by any other unlawful means;
- failed to comply with the requirements made by the Board / bye-laws of the insolvency professional agency;
- contravened any of the provisions of the Act or the rules or the regulations made thereunder;
- on any other ground as may be specified by regulations.
(1) **Application to be made to the Board:** Every application for registration shall be made to the Board containing such particulars, and accompanied by such fee, as may be specified by regulations.

Every application received by the Board shall be acknowledged within seven days of its receipt.

(2) **Grant of certificate of registration:** On receipt of the application, the Board may, on being satisfied that the application conforms with all requirements, grant a certificate of registration to the applicant or else, reject, by order, such application:

However an order rejecting the application shall be made by giving an opportunity of being heard to the applicant:

Every such order so made shall be communicated to the applicant within a period of fifteen days.

(3) **Board may specify the terms and conditions:** The Board may issue a certificate of registration to the applicant in such form and manner and subject to such terms and conditions as may be specified.

(4) **Renewal of certificate:** The Board may renew the certificate of registration from time to time in such manner and on payment of such fee as may be specified.

(5) **Suspension or cancellation of certificate:** The Board may, by order, suspend or cancel the certificate of registration granted to an insolvency professional agency on any of the following grounds, namely:—

(a) that it has obtained registration by making a **false statement or misrepresentation** or by any **other unlawful means**;

(b) that it has **failed to comply with the requirements of the regulations** made by the Board or bye-laws made by the insolvency professional agency;

(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.

No order shall be made under this sub-section unless the insolvency professional agency concerned has been given a reasonable opportunity of being heard. Further that such order shall not be passed by any member except whole-time members of the Board. [Section 201]

**Appeal to National Company Law Appellate Tribunal**

As per section 202 of the Code, 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.

**Governing Board of insolvency professional agency**

The Board may make regulations, for the purposes of ensuring that every insolvency professional agency takes into account the objectives sought to be achieved under this Code, to specify—

(a) the setting up of a governing board of an insolvency professional agency;
(b) the minimum number of independent members to be on the governing board of the insolvency professional agency; and

(c) the number of the insolvency professionals being its members who shall be on the governing board of the insolvency professional agency. [Section 203]

**Functions of insolvency professional agencies.**

As per the section 204, an insolvency professional agency shall perform the following functions, namely:—

<table>
<thead>
<tr>
<th>Function</th>
</tr>
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<tbody>
<tr>
<td>grant membership to persons who fulfil all requirements on payment of fee</td>
</tr>
<tr>
<td>lay down standards of professional conduct</td>
</tr>
<tr>
<td>suspend or cancel the membership of insolvency professionals</td>
</tr>
<tr>
<td>monitor the performance of its member</td>
</tr>
<tr>
<td>safeguard the rights, privileges and interests of insolvency professionals who are its members</td>
</tr>
<tr>
<td>redress the grievances of consumers against insolvency professionals</td>
</tr>
<tr>
<td>publish information about its functions, list of its members, performance of its members and such other informations</td>
</tr>
<tr>
<td>every insolvency professional agency shall make bye-laws consistent with the model bye-laws specified by the Board as per section 205.</td>
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</tbody>
</table>
[III] Insolvency Professionals

Sections 206 to 208 of the Code specify the relevant sections related to the Insolvency professionals.

Who may act as insolvency professionals?

As per section 206, person shall render his services as insolvency professional under this Code only when he is enrolled as a member of an insolvency professional agency and registered with the Board.

Registration of insolvency professionals

According to section 207, every insolvency professional shall, after obtaining the membership of any insolvency professional agency, register himself with the Board within such time, in such manner and on payment of such fee, as may be specified by the IBBI (Insolvency Professional) Regulations, 2016.

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: 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;

Explanation: For determining whether an individual is fit and proper under these Regulations, the Board may take account of any consideration as it deems fit, including but not limited to the following criteria—

(i) integrity, reputation and character,
(ii) absence of convictions and restraint orders, and
competence, including financial solvency and net worth.

[Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016]

**Functions and obligations of insolvency professionals (IP)**

Section 208 specifies the following functions and obligations of the IP:

1. 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 fresh start order process under Chapter II of Part III;
   - individual insolvency resolution process under Chapter III of Part III;
   - corporate insolvency resolution process under Chapter II of Part II;
   - individual bankruptcy process under Chapter IV of Part III; and
   - liquidation of a corporate debtor firm under Chapter III of Part II.

*Note:* Matters given in point no. (a), (b) & (d) are not yet notified as on 30th April, 2019.

2. Every insolvency professional shall abide by the following code of conduct:
   - to take reasonable care and diligence while performing his duties;
   - 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;
   - to allow the insolvency professional agency to inspect his records;
   - 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
   - to perform his functions in such manner and subject to such conditions as may be specified.

**[IV] Information Utilities**

Provisions related to information utilities are covered under sections 209 to 216 of the Code.

Who shall carry on the business as information utility?

Person with a certificate of registration issued in that behalf by the Board shall carry on its business as information utility under this Code.[Section 209]

Manner of registration of information utility

Section 210 lays the procedure for the registration of the information utility. It states that every application for registration shall be made to the Board containing such particulars, and accompanied by such fee, as may be specified by regulations.
Every application received by the Board shall be acknowledged within seven days of its receipt. On receipt of the application, the Board may, on being satisfied that the application conforms to all requirements, grant a certificate of registration to the applicant or else, reject, by order, such application.

The Board may issue a certificate of registration to the applicant.

The Board may renew the certificate of registration on payment of such fee as may be specified by regulations.

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:

However, no order shall be made unless the information utility concerned has been given a reasonable opportunity of being heard. Further that no such order shall be passed by any member except whole-time members of the Board.

Eligibility for registration: No person shall be eligible to be registered as an information utility unless it is a public company and—

(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) Omitted
(f) Omitted
(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:

Explanation: For determining whether a person is fit and proper under these Regulations, the Board may take account of relevant considerations, including—

(i) integrity, reputation and character,
(ii) absence of conviction by a court for an offence:

Provided that a person may be considered ‘fit and proper’ if he has been sentenced to imprisonment for a period of less than six months;

Provided that a person shall not be considered ‘fit and proper’ if he has been sentenced to imprisonment for a period (a) of not less than six months, but less than seven years and a period of five years has not elapsed from the date of expiry of the sentence, or (b) of seven years or more.

(iii) absence of restraint order, in force, issued by a financial sector regulator or the Adjudicating Authority, and

(iv) financial solvency.

[Regulation 3 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017]

Appeal to National Company Law Appellate Tribunal

Any information utility which is aggrieved by the order of the Board may prefer an appeal to the National Company Law Appellate Tribunal as may be specified by regulations.[Section 211]

Governing Board of information utility

The Board may require every information utility to set up a governing board. It may contain such number of independent members, as may be specified by regulations, for ensuring that an information utility takes into account the objectives sought to be achieved under this Code. [Section 212]

31Composition of the Governing Board.

(1) The Governing Board shall consist of —

(a) managing director;

(b) independent directors; and

(c) shareholder directors:

Provided that more than half of the directors shall be citizens of India and shall be residents in India.

(2) The managing director shall not be considered either an independent director or a shareholder director.

31 Regulation 9 substituted by the IBBI (Information Utilities) (Second Amendment) Regulations, 2018, w.e.f. 11-10-2018.
(3) Any employee of an information utility may be appointed as a director on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

(4) The number of independent directors shall not be less than the number of shareholder directors:

Provided that no meeting of the Governing Board shall be held without the presence of at least one independent director.

(5) An independent director shall be an individual—

(a) who is a person of ability and integrity;

(b) who has expertise in the field of finance, law, management or insolvency;

(c) who is not a relative of the directors of the Governing Board;

(d) who has or had no pecuniary relationship with the information utility, or any of its directors, or any of its shareholders holding more than ten per cent of its share capital, during the immediately preceding two financial years or during the current financial year;

(e) who is not a shareholder of the information utility; and

(f) who is not a member of the Board of Directors of any of the shareholders holding more than ten per cent of the share capital of the information utility.

(6) An independent director shall be nominated by the Board from amongst the list of names proposed by the information utility.

(7) An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.

(8) The second term referred to in sub-regulation (7) may be subject to a satisfactory performance review of the first term by the Governing Board.

(9) A cooling off period of three years shall be applicable for an independent director to become a shareholder director in the same or another information utility.

(10) The directors shall elect an independent director as the Chairperson of the Governing Board.

(11) A director, who has any interest, direct or indirect, pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Governing Board or any of its Committees, 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 Governing Board or the Committee, as the case may be, and the director shall not take part in any deliberation or decision of the Governing Board or the Committee with respect to that matter.

[Regulation 9 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017]
Obligations of information utility

For the purposes of providing core services to any person, every information utility shall have following obligations as per the section 214 of the Code—

(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-operatability with other information utilities.

Procedure for submission, etc., of financial information.

(1) 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 as may be specified by regulations.

(2) 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.

(3) An operational creditor may submit financial information to the information utility in such form and manner as may be specified.[Section 215]

Rights and obligations of persons submitting financial information

(1) A person who intends to update or modify or rectify errors in the financial information, he may make an application to the information utility with the reasons therefor, in such manner and within such time, as may be specified.

(2) 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 [Section 216]
(V) Inspection and Investigation

Provisions given under sections 217 to 220 of the Code deals with the manner of inspection and investigation against insolvency professional agency, its members, information utility. It also provides of appointment of disciplinary committee.

"Investigating Authority" means an officer or a team of officers of the Board, which has been directed by the Board, to conduct the investigation of a service provider;

"Inspecting Authority" means an officer or a team of officers of the Board, which has been directed by the Board, to conduct the inspection of a service provider;

Relevant provisions are as follows:

**Complaints against insolvency professional agency or its member or information utility.**

According to section 217, any person aggrieved by the functioning of an-
(2) The inspection or investigation carried out, shall be conducted by regulations.

(3) **Investigating Authority may bound to furnish the relevant documents:** The Investigating Authority may require any 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.

(4) **Seizure of relevant documentations:** During the course of its inspection or investigation, the Investigating Authority may 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, in so far as they may be applicable.

(5) **To take custody of the documents:** The Investigating Authority shall keep in its custody the books, registers, other documents and records seized for such period not later than the conclusion of the investigation and thereafter shall return the same to the concerned person from whose custody or power they were seized with an identification marks on them or any part thereof.

(6) **Submission of detailed reports:** A detailed report of inspection or investigation shall be submitted to the Board by the Investigating Authority. [Section 218]

**Show cause notice to insolvency professional agency or its member or information utility**

The Board may, upon completion of an inspection or investigation, issue a show cause notice 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. [Section 219]

**Disposal of Show-cause notice:** (1) The Disciplinary Committee, after providing an opportunity of being heard to the notice, shall dispose of the show-cause notice by a reasoned order.

(2) The Disciplinary Committee shall dispose of the show-cause notice within a period of 180 days of the issue of the show-cause notice.

(3) The order under sub-regulation (1) may provide for—

(a) closure of show-cause notice without any direction;
(b) warning;
(c) any of the actions under sub-sections (2), (3) and (4) of section 220;
(d) a reference to the Board to take any action under sub-section (5) of section 220 or sub-section (2) of section 236; or
any other action or direction as may be considered appropriate.

(4) The order under sub-regulation (1) shall not become effective until thirty days have elapsed from the date of issue of the order, unless the Disciplinary Committee states otherwise in the order along with the reasons for the same.

(5) The order under sub-regulation (1) shall be issued to the noticee immediately, and be published on the website of the Board.

(6) If the order under sub-regulation (1) suspends or cancels the registration of a service provider, the Disciplinary Committee may, if it considers fit, require the service provider to—

(a) discharge pending obligations, if any;
(b) continue its functions till such time as may be directed, only to enable clients to shift to another service provider; and
(c) comply with any other directions.

[Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017]

Appointment of disciplinary committee

To consider the submitted reports of the investigating Authority, the Board shall constitute a disciplinary committee consisting of whole-time members of the Board only.

On the examination of the report, if the disciplinary committee is satisfied that sufficient cause exists, it may—

♦ impose penalty, or
♦ suspend or cancel the registration of the insolvency professional or, suspend or cancel the registration of insolvency professional agency or information utility as the case may be.

In case of contravention of 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.

In case, where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed more than one crore rupees.
the Board may direct any person who has made unlawful gain or averted loss by indulging in any activity in contravention of this Code, or the rules or regulations made thereunder, to disgorge an amount equivalent to such unlawful gain or averting of loss.

The Board may take such action as may be required to provide restitution to the person who suffered loss on account of any contravention from the amount so disgorged, if the person who suffered such loss is identifiable and the loss so suffered is directly attributable to such person.

The Board may make regulations to specify—

(a) the procedure for claiming restitution under sub-section (5);
(b) the period within which such restitution may be claimed; and
(c) the manner in which restitution of amount may be made.

(VI) Finance, Accounts and Audit

Following are the relevant provisions of the Code that deals with the matter related to the management of finance, accounts and audit by the Board under the Code:

Grants by Central Government: The Central Government may, after due appropriation made by Parliament by law, 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. [Section 221]

Board's Fund: Section 222 of the Code, shall be constitutes 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 other employees of the Board;
(b) the expenses of the Board in the discharge of its functions under section 196;
(c) the expenses on objects and for purposes authorised by this Code.
(d) such other purposes as may be prescribed.

Accounts and audit: According to section 223 of the Code, 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.
Audit of Accounts by the CAG: 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.

Right and privileges: 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.

Presentation of certified copy of the accounts and audit report to CG: 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.

11. MISCELLANEOUS

(I) Power of Central Government to issue directions: Section 225 of the Code states that the Board shall, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time. However, the Board shall 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.

(II) Power of Central Government to supersede Board: If at any time the Central Government is of opinion that—

(a) 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) 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 non-compliance the financial position of the Board or the administration of the Board has deteriorated; or

(c) 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.

Upon the publication of a notification - (a) all the members shall, as from the date of supersession, vacate their offices as such; (b) all the powers, functions and duties which may, by

32 Section 224, 239 (partially), 240(2) (partially), 243, 245 & 249 are yet to be notified.
or under the provisions of this Code, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted be exercised and discharged by such person or persons as the Central Government may direct; and (c) all property owned or controlled by the Board shall, until the Board is reconstituted, vest in the Central Government.

**On the expiration of the period of supersession:** The Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices, shall not be deemed disqualified for appointment.

**Provided** that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

The Central Government shall cause a notification issued and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest. [Section 226]

**(III) Power of Central Government to notify financial service providers, etc.**

33Notwithstanding 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. [Section 227]

**(IV) Delegation:** 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 under section 240 as it may deem necessary). [Section 230]

**(V) Bar of jurisdiction:** No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or Board 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 or the Board under this Code. [Section 231]

**(VI) Members, officers and employees of Board to the public servants:** 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. [Section 232]

**(VII) Protection of action taken in good faith:** No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government, or the Chairperson, Member,

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33 Notification NO. SO. 1817(E) [F.N.30/23/2018-Insolvency Section], New Delhi, the 1st May, 2018.—In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 1st day of May, 2018 as the date on which the provisions of section 227 to section 229 (both inclusive) of the said Code shall come into force.

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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. [Section 233]

(VIII) **Enabling provisions for cross border transactions:** India is no more an isolated business place. India is now part of global business hub. Indian businesses have investments outside India while many businesses outside India have presence in India. India is now a global village. Enabling provisions in the Code are sections 234 and 235 for this purpose.

**Agreements with Foreign Countries:** 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. [Section 234]

**Letter of request to a country outside India in respect of assets:** 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, 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 under section 234 of Insolvency Code, 2016, 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. [Section 235]

**34 Punishment where no specific penalty or punishment is provided:**

If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees. [Section 235A]

(IX) **Trial of offences by Special Court:** Offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

**Cognizance of an offence committed under this code:** 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.

34 Section 235A inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017.
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.

In case of a complaint, 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. [Section 236].

(X) Appeal and revision: The High Court may exercise, all the powers conferred by Chapters XXIX (Appeals) and XXX (Reference and Revision) 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. [Section 237].

(XI) Provisions of this Code to override other laws: 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 [Section 238].

(XII) Limitation: The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be [Section 238A]

(XIII) Power to make rules: The Central Government may, by notification, make rules for carrying out the provisions of this Code. The Central Government may make rules for any of the matters given under section 239 of the Code. [Section 239].

(XIV) Power to make regulations: The Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code. In particular, such regulations may provide for all or any of the matters given in section 240 of the Code. [Section 240]

(XV) Application of this Code to micro, small and medium enterprises

(1) The provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises.

(2) The Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—

(a) not apply to micro, small and medium enterprises; or

(b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.
(3) A draft of every notification proposed to be issued, shall be laid 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.

(4) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.

(5) The period of thirty days shall not include any period during which the House is prorogued or adjourned for more than four consecutive days.

(6) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.

The expression here "micro, small and medium enterprises" means any class or classes of enterprises classified as such under section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006. [Section 240 A]