

Laws and Compliance in Business Valuation

~~IBC | Cos. Act | Co. Regd Valuer & Val' Ruler | SARFAESI Act~~
~~Val' Stds | Val' as per IT Act~~

1. SALIENT FEATURES OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

1.1 Objective of the Code

The Insolvency and Bankruptcy Code (IBC) 2016 aims to consolidate the laws relating to insolvency of companies and limited liability entities (including limited liability partnerships and other entities with limited liability), unlimited liability partnerships and individuals, contained in several legislations, into a single legislation and provide for their reorganization and resolution in a time bound manner for maximization of value of their assets. Such consolidation provides for a greater clarity in law and facilitates the application of consistent and coherent provisions to different stakeholders affected by business failure or inability to pay debt.

The Code separates commercial aspects of the insolvency proceedings from judicial aspects. The Code also provides a fast-track insolvency resolution process for corporates and LLPs. This is an enabler for start-ups and small and medium enterprises (SMEs) to complete the resolution process in 90 days (extendable to 45 days in deserving cases).

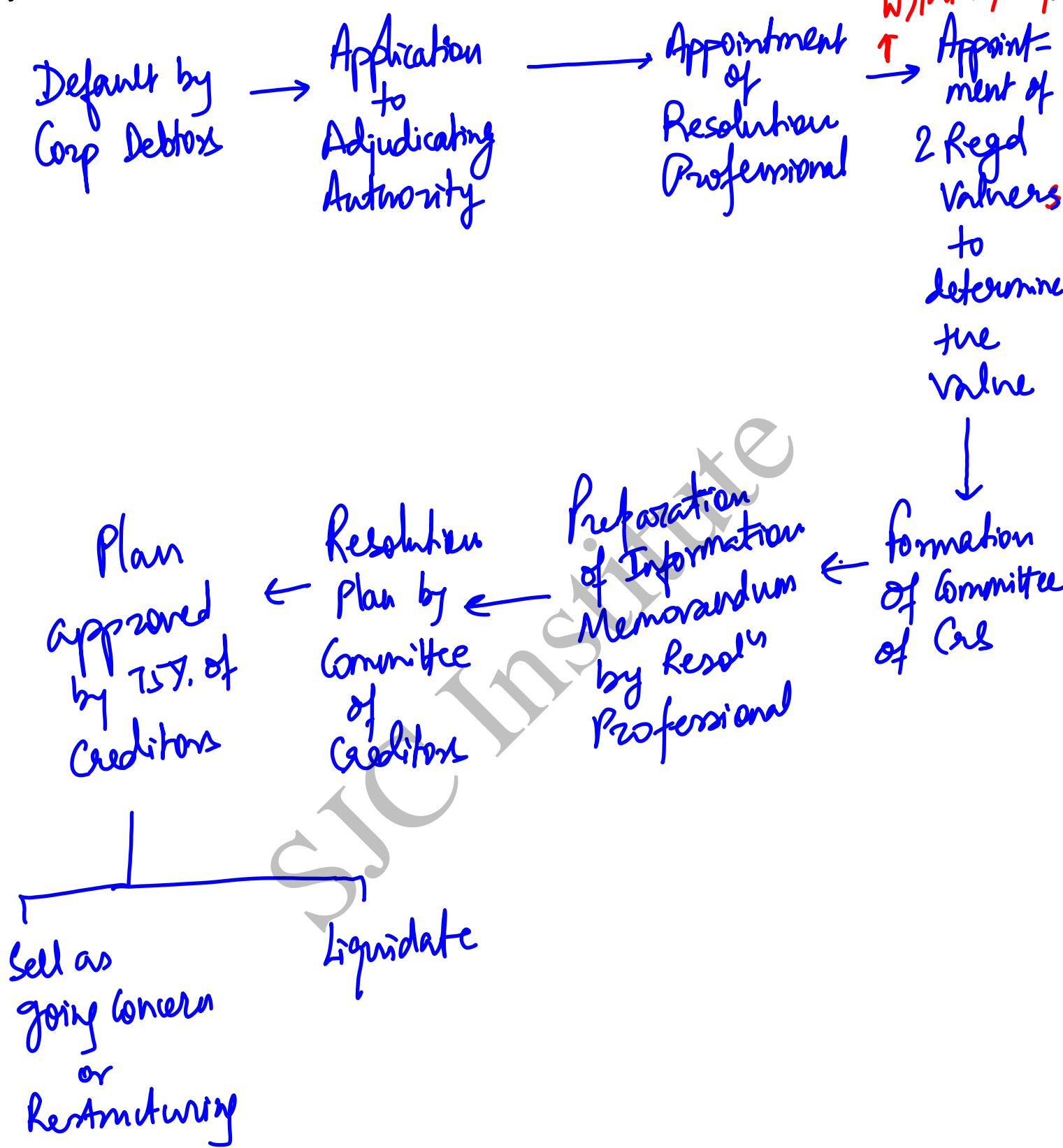
1.2 Insolvency Resolution Process

An application to initiate an **Insolvency Resolution Process** under the Code can be either made by the **debtor** (personally or through an insolvency resolution professional) or by a **creditor** (either personally or jointly with other creditors through an insolvency resolution professional). However, a **partner of a partnership firm is not eligible** to apply for an IRP unless a joint application is filed by **majority of the partners** of the partnership firm.

Insolvency & Bankruptcy Code 2016

1. Date of becoming Effective:- 28th May 2016
2. Insolvent vs Bankrupt :-
 Insolvent - Procedural
 ↓
 filed by CAs
 Bankrupt - self declared
3. Applicability :- If default is ₹ 1 Cr or more
4. Sec 5(24) - Defn of Related Party
[Sec. 5 - All definitions]
5. who can apply for Insolvency Resolution?
 - Corporate Debtor (defaulter)
 - Creditors
 - Jointly all CAs (through Insolvency Resolution Professional)
6. Resolution time period —
 Normal Course \Rightarrow 180 days (+ 90 days extension)
 fast track resolution \Rightarrow 90 days (+ 45 days extension)
 ↳ For startups / SMEs

7. Resolution Process :-



8. Liquidation - NCLT Order - Sec.53 - Distⁿ of Assets
k
Dissolution

- voluntary liquidation - applied by directors (majority)
- approved when no dues / no fraud
- Report of valⁿ regd

9. Regulation Pertaining to Valⁿ

- Liquidation Value \Rightarrow Est NRV (by 2 regd valuers)
- IBC Lig Process regulation:-
 - Valⁿ of assets to be sold (Regn 35)
 - Voluntary liquidation of corporate person
 - final report - (Regn 38(1)(c)) - By liquidator

Companies Act '2013 (Extract)

Sec 192 - Non Cash transactions involving Directors!:-

Arises when!:- director acquires any asset from the Co.
or

Co. acquires any asset from the
directors

Prior approval of members in General Meeting is
required.

Contravention!:- trans shall be voidable by the
Co.

Sec. 23D :- (Extracts) - Compromise & Arrangements-

- Reduction of Share Capital, Buyback, Takeovers,
Corporate Debt Restructuring

- Objection may be raised by!:-

Member with 10% of share holding or Creditor with 5%
of outstanding debt

- Auditor's Certificate held by the Co. undergoing
Compromise & Arrangement

Sec. 230 (1) :- Tribunal to order meeting of members
Creditors

(i) Gov & Gov
(ii) Co. & shareholders] → Proposers of rearrangement

Appn by [Gov / Members / liquidator (IBC 2016)

Purpose :- Rearrangement → Share Split

— Consolidation of shares

Sec 230(2) :- Affidavit by the applicant to disclose certain material facts

Disclosure : - latest financial position / Auditors report /
Pendingy of investigation / Proceedings

- Redn of share capital included in
compromise / rearrangement

- Corporate debt restructuring

- Consent given by 75% of Sec Creditors

- Valn report by a regd valuer

- Creditors Responsibility Statement
- Safeguard other unsecured creditors
- Auditor Report — for all requirements to be met
- Statement that RBI Guidelines, if being followed, have been complied

Sec. 230(3) :- Notice of Meeting to CAS, members & debenture holders

individually | website | SEBI | Stock Exchange/
Newspaper | Regd office (free of charge)

Sec 231 :- Power of tribunal to enforce Compromise
or Arrangement

231(1) - To Supervise] For Tribunal
231(2) - Order for winding up]

Sec. 232 :- Mergers & Amalgamation

232(1) :- Notice to call meeting by Tribunal

232(2) :- Circulation of Documents for the meeting

- Draft terms, effect of merger on shareholders, KMP, etc., Valn Report, Accounts

232(3) - Sanction by Tribunal

232(4) - Property transfer

232(5) - Order filed with Registrar

232(6) - Effective date.

232(7) - Certified by CA/CS / Cost Accountant

232(8) - Punishment - Transferor / Transferee Co.
fine = ₹1L to ₹25L

Officer \Rightarrow fine 1L to 3L
or

Imprisonment - 1yr

or
both

Sec. 247:- Valuation by Registered Valuers

- Impartial - true & fair
- Due diligence
- No direct/indirect interest in the Co.
in last 3 yrs
- Punishment to Valuer! - ₹ 50,000
 - Intentional defraud \Rightarrow Fine 1L to 5L
or
1yr
or
both

Sec 281 Submission of report by Company liquidator

Within 60 days, liquidator shall submit its report to the Tribunal:-

- | | |
|---------------------|--------------------------------|
| (a) Valn report | (f) Intellectual Property |
| (b) Capital | (g) Jt. Venture/ Collaboration |
| (c) Liabilities | (h) Holding / Subsidiary |
| (d) Debts list | (i) Legal Cases |
| (e) Guarantees list | (j) Any other info. |

Rule 2 - Definitions

Rule 3 - Eligibility for Regd Valuers

- (i) Member of Registered Valuer Orgn (RVO)
- (ii) Is recommended by RVO
- (iii) Passed Valn examination within 3 yrs (Rule 5)
- (iv) Possess Qualifn & Experience (Rule 4)
- (v) Not a minor
- (vi) Not of unsound mind
- (vii) Not bankrupt
- (viii) Resident of India
- (ix) Not Convicted (for > 6M) in last 5 yrs
Convicted for ≥ 7 yrs - not eligible
- (x) Not paid penalty u/s 271J of IT Act in last 5 yrs
- (xi) Partnership firm eligible provided all partners or directors are eligible

Rule 4 : Qualification & Experience

<u>Asstn</u>	<u>Qualif</u>	<u>Experience</u>
P/M	Gradn. in machine related fields PG	5 yrs
L/B	Gradn in Civil fields Ph	3 yrs
Sec & fin ans	Member of ICAI / ICSI / ICMAI or PG Diploma in Business Mgmt (finance)	5 yrs
	or Post Graduate in finance	3 yrs

Rule 5 :- Valu' Exams

- As per asset class
- Any no. of attempts
- 50 hrs of training with RVO

Rule 6 : Certificate of Registration

Individual / Partnership firm

Rule 7 : - Conditions for Registration

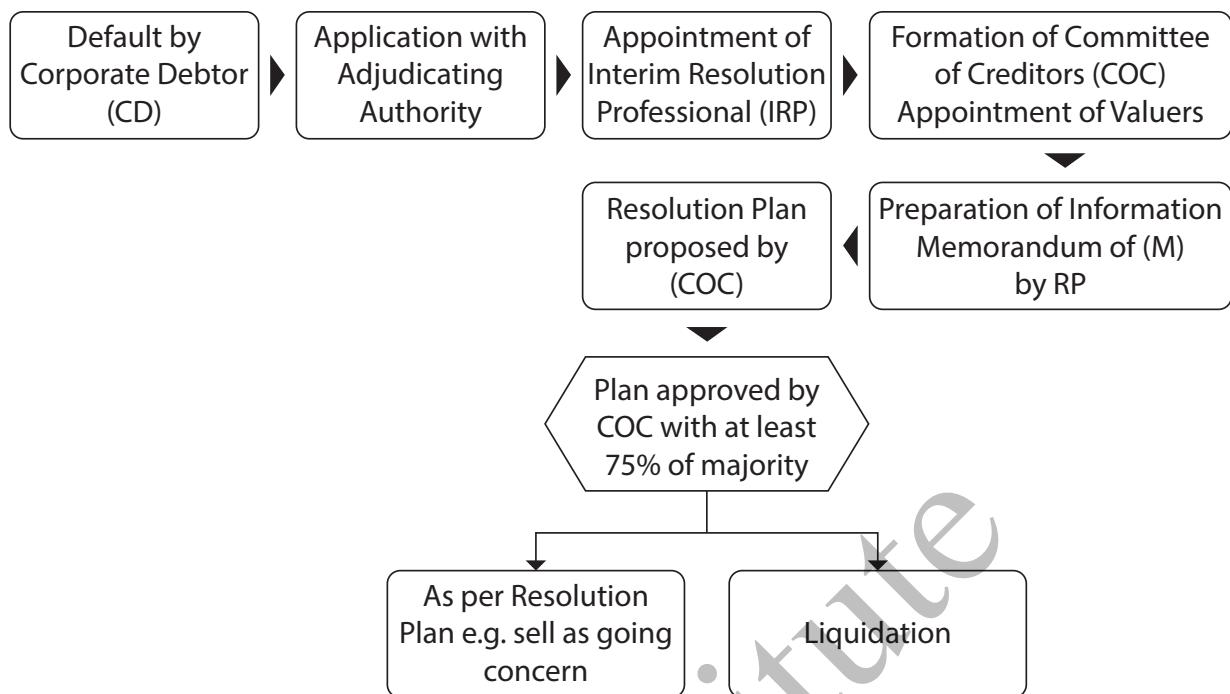
- Must remain eligible as per Rule 3 & 4
- Conduct Valn for the respective asset class only
- Only Partner / Director of firm to sign
- Take prior permission to port to another RvO.
- Maintain record for 3 yrs

Rule 8 : - Conduct of Valn

- Use internationally accepted valuation standards / standards adopted by RVO

Rule 9 : - Content of Valn Report

- Background info of asset being valued
- Purpose of valn & appointing authority
- Identity of valuer
- Disclosure of valuer interest
- Date of appointment / valn date/date of report
- Inspns / Inverigtn undertaken
- Source of Info
- Procedure adopted
- Restriction of use of report
- major factors considered
- Conclusion
- Caveats, limitation & disclaimers



Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate CIRP in respect of such corporate debtor in the manner as provided under this Chapter.

The minimum amount of default for being admitted into Corporate Insolvency Resolution Process (CIRP) is ₹1 crore.

The CIRP shall be completed within a period of 180 days from the date of admission of the application to initiate such process. This can be extended if at least 66 percent voting of Committee of Creditors (COC).

“Resolution plan” means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern. A resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

From the date of appointment of the interim resolution professional, the management of the affairs of the corporate debtor shall vest in the interim resolution professional. The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

1.3 Liquidation

If the COC cannot agree on a workable resolution plan within the IRP Period (i.e. 180 days extendable once by another 90 days), the COC decides to liquidate the company, NCLT rejects the resolution plan; or the corporate debtor contravenes provisions of the resolution plan, the

NCLT shall:

- (i) pass an order requiring liquidation of corporate debtor;
- (ii) make a public announcement of corporate debtor entering liquidation; and
- (iii) require a liquidation order to be sent to the registering authority of the corporate debtor (for example Registrar of Companies in case of companies incorporated under Companies Act).

The IP acting as the resolution professional shall, upon commencement of liquidation shall be appointed as the liquidator for the process, unless replaced by NCLT.

LIQUIDATION PROCESS

The liquidation process starts with the winding up order and ends with the order of dissolution of the corporate debtor. It involves realization of the assets of the entity in liquidation and distribution of the realization proceeds among the creditors and other stakeholders who have claim to share the proceeds and other incidental activities by virtue of the liquidator being the trustee for the stakeholders as discussed hereunder:

Distribution of assets and other aspects

Section 53 of the Code stipulates in case of liquidation, the assets of the corporate debtor will be sold and the proceeds will be distributed amongst the creditors in the following order of priority:

- (a) cost of the insolvency resolution process and liquidation;
- (b) secured creditors (who choose to relinquish their security enforcement rights and workmen's dues relating to a period of 24 months preceding the liquidation commencement date);
- (c) wages and unpaid dues of employees (other than workmen) for a period of 12 months preceding the liquidation commencement date;
- (d) financial debts owed to unsecured creditors;
- (e) statutory dues to be received on account of Consolidated Fund of India or Consolidated Fund of a State (relating to a period of whole or part of 2 years preceding the liquidation commencement date) and debts of secured creditors (remaining unpaid after enforcement of security);
- (f) remaining debts and dues;
- (g) dues of preference shareholders; and
- (h) dues of equity shareholders or partners (as may be applicable)

Dissolution of corporate debtor

Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to NCLT for the dissolution of such corporate debtor and NCLT shall order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

A corporate person (which includes companies as well as LLPs) may put the entity into voluntary winding up. The conditions and procedural requirements that may be specified by the Board.

Procedure for voluntary liquidation:

Declaration of Solvency to be made by the majority of Directors

Majority of directors of the company/entity must make a declaration verified by an affidavit stating that)

- (a) 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 sold/ to be sold in the voluntary winding up; and
- (b) the company is not being liquidated to defraud any person

1.4 Regulations pertaining to Valuer

"registered valuer" means a person registered as such in accordance with the Companies Act 2013 (18 of 2013) and rules made thereunder – Reg. 2(1)(m);

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

LIQUIDATION VALUE- REG. 35:

- (a) Liquidation value is the estimated realizable value of the assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date.
- (b) Liquidation value shall be determined in the following manner:
 - (i) the two registered valuers appointed under Regulation 27 shall submit an estimate of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;
 - (ii) if in the opinion of resolution professional (RP), as the case may be, the two estimates are significantly different, he may appoint another registered valuer who shall submit an estimate computed in the same manner; and
 - (iii) the average of the two closest estimates shall be considered the liquidation value.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS) REGULATION, 2016

VALUATION OF ASSETS INTENDED TO BE SOLD - REG.35:

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

The registered valuers shall independently submit to the liquidator the estimates of the realizable value of the asset(s) computed in accordance with internationally accepted valuation standards, after physical verification of the assets of the corporate debtor.

VOLUNTARY LIQUIDATION OF CORPORATE PERSON - SECTION 59(3)

Voluntary liquidation proceedings of a corporate person registered as a company shall be accompanied with:

- a declaration from majority of the directors of the company verified by an affidavit stating that they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation;
- a report of the valuation of the assets of the company, if any prepared by a registered valuer.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (VOLUNTARY LIQUIDATION PROCESS) REGULATION, 2017, FINAL REPORT - REG. 38(1)(C):

On completion of the liquidation process, the liquidator shall prepare the Final Report consisting of a sale statement in respect of all assets containing

- (i) the realized value;
- (ii) cost of realization, if any;
- (iii) the manner and mode of Sale;
- (iv) an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets;
- (v) the person to whom the sale is made; and
- (vi) any other relevant details of the sale.

2. THE COMPANIES ACT, 2013: SECTION 192(2), 230(1), (2), (3), 231, 247, 281(1)

SECTION 192: RESTRICTION ON NON- CASH TRANSACTIONS INVOLVING DIRECTORS

Where a Company enters into an agreement by which-

- (i) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
- (ii) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected.

The company needs prior approval for such arrangement accorded by a resolution of the company in general meeting. In case the director or connected person is a director of its holding company, approval shall also be required to be obtained by passing a resolution in general meeting of the holding company. The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company.

The arrangement will be valid if the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

SECTION 230 – 232 SELECT EXTRACTS

Section 230 to 240 of the Companies Act, 2013 cover the statutory provisions governing M&As including arrangements involving companies, their members and creditors. These sections deal comprehensively with all forms of compromises as well as arrangements, and extends to the reduction of share capital, buy-back, takeovers and corporate debt restructuring as well. Objection to any compromise or arrangement can be made only by persons holding not less than 10% of share holding or having an outstanding debt amounting to not less than 5% of the total outstanding debt as per the latest audited financial statements. The 2013 Act requires all companies undertaking any compromise or arrangement to obtain an auditor's certificate. This requirement helps in streamlining the varied practices as well as ensuring appropriate accounting treatment.

The Act simplified the procedures in two areas, firstly, for holding wholly owned subsidiaries and secondly, for arrangements between small companies (section 233). Small companies have defined capital and turnover thresholds, and have been given certain benefits, including simplified procedures.

SEC 230(1) TRIBUNAL TO ORDER MEETING OF MEMBERS/CREDITORS, ETC.

When a compromise or arrangement is proposed—

- (i) between a company and its creditors or any class of them; or
- (ii) between a company and its members or any class of them,

the Tribunal may, on the application of the company, or any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under Insolvency and Bankruptcy Code, 2016 order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both these methods.

SEC 230(2) AFFIDAVIT BY THE APPLICANT TO DISCLOSE CERTAIN MATERIAL FACTS

The company or any other person, by whom an application is made under 230(1), shall disclose to the Tribunal by affidavit –

- (a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;
- (b) reduction of share capital of the company, if any, included in the compromise or arrangement;
- (c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including—
 - (i) a creditors' responsibility statement in the prescribed form;
 - (ii) safeguards for the protection of other secured and unsecured creditors;
 - (iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;
 - (iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and
 - (v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

SEC 230(3) NOTICE OF THE MEETING

When a meeting is proposed to be called in pursuance of an order of the Tribunal under 230(1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by

- a statement disclosing the details of the compromise or arrangement,
- a copy of the valuation report, if any, and
- explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders, and
- the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and
- such other matters as may be prescribed:

Such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

When the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

SEC 231 POWER OF THE TRIBUNAL TO ENFORCE COMPROMISE OR ARRANGEMENT

231(1): When the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it –

shall have power to supervise the implementation of the compromise or arrangement; and may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

231(2): If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding-up the company and such an order shall be deemed to be an order made under section 273

SEC 232 MERGER AND AMALGAMATION OF COMPANIES.

232(1) TRIBUNAL'S POWER TO CALL MEETING OF CREDITORS OR MEMBERS, WITH RESPECT TO MERGER OR AMALGAMATION OF COMPANIES

When an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

- (i) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and
- (ii) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.

232(2) CIRCULATION OF DOCUMENTS FOR MEMBERS'/CREDITORS' MEETING

when an order has been made by the Tribunal under 232(1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—

- (i) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;
- (ii) confirmation that a copy of the draft scheme has been filed with the Registrar;
- (iii) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

- (iv) the report of the expert with regard to valuation, if any;
- (v) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

232(3) SANCTIONING OF SCHEME BY TRIBUNAL

The Tribunal, after satisfying itself that the procedure specified in 232(1) and 232(2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

- (i) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;
- (ii) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

A transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

- (iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer
- (iv) dissolution, without winding-up, of any transferor company;
- (v) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;
- (vi) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;
- (vii) the transfer of the employees of the transferor company to the transferee company;
- (viii) when the transferor company is a listed company and the transferee company is an unlisted company,
 - (a) the transferee company shall remain an unlisted company until it becomes a listed company;
 - (b) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

The amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

- (ix) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and
- (x) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out.

No compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

232(4) TRANSFER OF PROPERTY OR LIABILITIES

An order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

232(5) CERTIFIED COPY OF THE ORDER TO BE FILED WITH THE REGISTRAR

Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.

232(6) EFFECTIVE DATE OF THE SCHEME

The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

232(7) ANNUAL STATEMENT CERTIFIED BY CA/CS/COST ACCOUNTANT TO BE FILED WITH REGISTRAR EVERY YEAR UNTIL THE COMPLETION OF THE SCHEME

Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

232(8) PUNISHMENT

If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation under Section 232

For the purpose of the Section, –

- (i) in a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;
- (ii) references to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;
- (iii) a scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and
- (iv) property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

SEC 247 VALUATION BY REGISTERED VALUERS

Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets ("assets") or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

- (a) The valuer appointed under sub-section (1) shall, –
 - (i) make an impartial, true and fair valuation of any assets which may be required to be valued;
 - (ii) exercise due diligence while performing the functions as valuer;
 - (iii) make the valuation in accordance with such rules as may be prescribed; and
 - (iv) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.
- (b) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be liable to a penalty of fifty thousand rupees. Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

- (c) Where a valuer has been convicted under 247(3), he shall be liable to –
- (i) refund the remuneration received by him to the company; and
 - (ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

SEC 281. SUBMISSION OF REPORT BY COMPANY LIQUIDATOR (EXTRACT)

Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely: —

- (a) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company:
Provided that the valuation of the assets shall be obtained from registered valuers for this purpose;
- (b) amount of capital issued, subscribed and paid-up;
- (c) the existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;
- (d) the debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;
- (e) guarantees, if any, extended by the company;
- (f) list of contributors and dues, if any, payable by them and details of any unpaid call;
- (g) details of trademarks and intellectual properties, if any, owned by the company;
- (h) details of subsisting contracts, joint ventures and collaborations, if any;
- (i) details of holding and subsidiary companies, if any;
- (j) details of legal cases filed by or against the company; and
- (k) any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.



SALIENT FEATURES OF THE COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2020

The students are encouraged to go through the entire Rules from mca.gov.in or a credible source. An extract of the rules is summarised below.

RULE 2- IMPORTANT DEFINITIONS

- (a) **2(c) Asset Class** – means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation

- (b) **2(e) Certificate of Registration** - means the certificate of recognition granted to a registered valuers organisation under sub-rule (5) of rule 13 and the term "recognition" shall be construed accordingly;
- (c) **2(f) Partnership Entity** - means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009)
- (d) **2(j) Valuer** - means a person registered with the authority in accordance with these rules and the term "registered valuer" shall be construed accordingly.

RULE 3- ELIGIBILITY FOR REGISTERED VALUERS

- (a) A person shall be eligible to be a registered valuer if he
 - (i) is a valuer member of a RVO
 - (ii) is recommended by RVO
 - (iii) has passed the valuation examination under rule 5 within three years
 - (iv) possesses the qualifications and experience as specified in rule 4
 - (v) is not a minor
 - (vi) is not of unsound mind
 - (vii) is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt
 - (viii) is a person resident in India (as per FEMA regulations)
 - (ix) has not 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;
 - (x) has not been levied a penalty under section 271J of Income-tax Act, 1961 and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and
 - (xi) is a fit and proper person
- (b) No partnership entity or company shall be eligible to be a registered valuer if-
 - (i) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate;
 - (ii) it is undergoing an insolvency resolution or is an undischarged bankrupt;
 - (iii) all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (f), (g), (h), (i), (j) and (k) of sub-rule (1);

- (iv) three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or
- (v) none of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

RULE 4 – QUALIFICATION AND EXPERIENCE

Asset Class	Eligibility - Qualifications	Experience in specified discipline
Plant & machinery	(i) Graduate in Mechanical, Electrical, Electronic and Communication, Electronic and Instrumentation, Production, Chemical, Textiles, Leather, Metallurgy, or Aeronautical Engineering, or Graduate in Valuation of Plant and Machinery or equivalent;	5 Years
	(ii) Post-Graduate on above courses	3 Years
Land & Building	(i) Graduate in Civil Engineering, Architecture, Town Planning or equivalent;	5 Years
	(ii) Post-Graduate on above courses and also in valuation of land and building or Real Estate Valuation (a two-year full time post-graduation course).	3 Years
Securities & Financial Assets	(i) Member of Institute of Chartered Accountants of India, Member of Institute of Company Secretaries of India, Member of the Institute of Cost Accountants of India, Master of Business Administration or Post Graduate Diploma in Business Management (specialisation in finance) or	
	(ii) Post-Graduate in Finance	3 Years

- Post-Graduate degree / diploma in the specified discipline with minimum 3 years of post-qualification experience
- Bachelors degree or equivalent in the specified discipline with minimum 5 years of post-qualification experience
- Member of a professional institute established by an act of parliament (i.e., CS, CMA, CA) with minimum 3 years of post-qualification experience

Specified discipline - shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Qualifying education and experience and examination or training for various asset classes, is given in an indicative manner in Annexure—IV of these rules.

RULE 5 – VALUATION EXAMINATION

- (a) The authority shall, either on its own or through a designated agency, conduct valuation examination for one or more asset classes, for individuals, qualifications and experience

as specified in rule 4, and have completed their educational courses as member of a registered valuers organisation, to knowledge, skills, values and ethics in respect of valuation:

- (b) The authority shall determine the syllabus for various valuation specific subjects or assets classes for the valuation examination on the recommendation Committee of experts constituted by the authority in this regard.
- (c) The syllabus, format and frequency of the valuation examination, including qualifying marks, shall be published on the website of the authority.
- (d) An individual who passes the valuation examination, shall receive acknowledgement of passing the examination.
- (e) An individual may appear for the valuation examination any number of times.

[Currently, aspiring Registered Valuers must undergo 50 hours of educational course from their respective RVO].

RULE 6. APPLICATION FOR CERTIFICATE OF REGISTRATION

- (a) Eligible Individual: Application in Form A along with application fee of INR 5000
- (b) Eligible Partnership Firm or Company: Application in Form-B with application fee of INR 10,000.
- (c) 21 days to remove the deficiencies in application; additional documents or clarification within 21 days; 21 days to appear (in person or through representatives) for clarifications required for processing the application
- (d) Authority to grant certificate in Form C of the Annexure II within 60 days, if satisfied
- (e) Reasons for not granting to be communicated within 45 days from receipt of application (excluding the time given for clarifications)
- (f) Applicant to reply within 15 days
- (g) Accept or reject within 30 days

RULE 7 – CONDITIONS FOR REGISTRATION

- (a) Valuer shall,
- (b) be always eligible as per rule 3 and 4
- (c) must comply with the bye laws
- (d) Not to conduct valuation of other classes other than for which he/it has been registered
- (e) Take prior permission to port to another RVO
- (f) Maintain records for 3 years
- (g) Comply with code of conduct of each RVO
- (h) Only partner or director to sign the documents
- (i) Company/Partnership firm is jointly and severally liable along with Partner/Director who signs

- (j) Company and director who signs are liable jointly and severally
- (k) Inform the authority for any removal of Partners or Director immediately

RULE 8 – CONDUCT OF VALUATION

The registered valuer shall conduct a valuation as per valuation standards as notified or modified under rule 18. Till notified, a valuer shall make valuations as per-

- (i) internationally accepted valuation standards;
- (ii) valuation standards adopted by any registered valuers organisation (RVO)

The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.

Contents of Valuation Report:

- (i) background information of the asset being valued
- (ii) purpose of valuation and appointing authority
- (iii) identity of the valuer and any other experts involved in the valuation
- (iv) disclosure of valuer interest or conflict, if any
- (v) date of appointment, valuation date and date of report
- (vi) inspections and/or investigations undertaken
- (vii) nature and sources of the information used or relied upon
- (viii) procedures adopted in carrying out the valuation and valuation standards followed
- (ix) restrictions on use of the report, if any
- (x) major factors that were taken into account during the valuation
- (xi) conclusion
- (xii) caveats, limitations and disclaimers

OTHER RULES

- (a) Temporary surrender
- (b) Functions of a Valuer
- (c) Transitional Arrangement
- (d) Eligibility for registered valuers organisations
- (e) Application for recognition
- (f) Conditions of Recognition
- (g) Cancellation or suspension of certificate of registration or recognition

SARASI Act

↓
Securitisation & Reconstruction of financial Assets &
Enforcement of Security Interest Act 2002

↓
To address the problem of Non Performing Assets
↓
This Act enables banks & financial institutions to
sell off their NPAs to asset reconstruction Cos regd
with SEBI

↓
3 methods of Recovery of NPA :-

- (1) Securitisation
- (2) Asset Reconstruction
- (3) Enforcement of Security Interest

Act:
1. Introduction
2. Objectives
3. Key Terms - "Asset Reconstruction Co."

- 4 Non Perf Assets - Banking Regulations
- 5. Enforcement of Sec Interest → Notice → Take Possession
 - ↓
Sale
 - ↓
Appoint mgr &
ask to pay
- 6. Right of borrower
 - ↳ objection raised with
Debt Recovery Tribunal
- 7. Central Registry - Administration
- 8. Need for Central Registry
Updated SARFAESI Act

Sec. 2 - Definitions / key Terms

Sec 3 - Registration of Asset Recovery Co.

Sec. 5 - Acquisition of fin assets by bank

Sec. 6! - Notice to Obligor & Discharge of obligation

Sec 7 - Issue of Security by raising of Receipt

Sec. 9! - Measures for Asset Reconstruction

Sec 13:- Enforcement of Security Interest

Sec. 14:- Chief Metropolitan Magistrate to answer

Sec. 15 - Takeover of Mgmt

Director / Mgr - No compensation be given

Sec. 16 - Aggrieved person - to DRT

Sec. 18 - Appeal to DR Appellate Tribunal

Sec. 20 - Central Registry

Sec. 21 - Central Registrar (person)

Sec. 22 - Central Register (maintained by Registrar)

Sec. 23 - Transl. detail - filed with Registrar

Sec. 26E - IBC will supersede

Sec. 33 - Offences by Companies

Valuation Standards

(By International Valuation Standard Council)

IVS 101 - Scope

102 - Inversion & Compliance

103 - Reporting

104 - Bases of value [Mr, Market, Rent, Fair, Inventoried, Value, Value]

105 - Value approaches & Method

200 - Business & Business Interests

210 - Intangible Assets

220 - Non financial Liabilities

230 - Inventory

300 - P/M

400 - Real property interests

410 - Development Property

500 - Financial Instruments

Ind AS 113 - Fair Value Measurement

Applies to - Ind AS where fair value measurement

are help

- Eg Ind AS 105 (Discontinued Operations)
- 109 (Financial Instruments)
- 107 (Financial Instrument - Disclosures)

does not apply to! - where prescribed valuation methodology are given -

- Eg - Ind AS 17 (Leasing)
- 2 (Inventories)
- 36 (Impairment)
- 19 (Employee Benefits)

fair value: the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

- Market Participants:
- 1. knowledgeable of asset & market conditions
 - 2. Able / Not restricted
 - 3. willing
 - 4. Independent

Principal Market / Most Advantageous market

↓
maximum volume

Highest Price

↓
in absence of principal market

Three types of Inputs-

Level 1

↓
Listed Price
of Shares
(observable input)

Level 2

↓
Quoted Price of
Similar assets

↓
Other observable
inputs from mkt

Level 3

↓
Forecasts /
Models

↓
Unobservable
inputs.

Use the techniques that minimises unobservable inputs & maximises observable inputs.

Valuation as per IT Act

Rule 11 UAT (1) (c) \Rightarrow Shares & Securities

Rule 11 UATB \Rightarrow Inventories of

Immovables



Stamp
Duty

Jewellery



Valu Report

Others
 \downarrow
Open
Mkt
Rate

- (h) Complaint against a registered valuer or registered valuers organisation
- (i) Procedure to be followed for cancellation or suspension of registration or recognition certificate
- (j) Valuation Standards
- (k) Committee to advise on valuation matters
- (l) Punishment for contravention
- (m) Punishment for false statement

4. SAILENT FEATURE OF THE [SARFAESI] ACT, 2002 ON VALUATION

4.1 Introduction

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 is a legislation that helps financial institutions to ensure asset quality in multiple ways. The Act was framed to address the problem of Non-Performing Assets (NPAs) or bad assets through different processes and mechanisms. The enactment of the SARFAESI Act, 2002 enabled banks and financial institutions to sell off their NPAs to asset reconstruction companies registered with RBI.

The SARFAESI Act gives detailed provisions for the formation and activities of Asset Securitization Companies (ASCs) and Asset Reconstruction Companies (ARCs). RBI is the regulator for these institutions. As a legal mechanism to insulate assets, the Act addresses the interests of secured creditors (like banks). Several provisions of the Act give directives and powers to various institutions to manage the bad asset problem. The Act permits banks and other financial institutions to recover loans by auctioning off the defaulter's residential or commercial assets. Under this Act, India's first Asset Reconstruction Corporation (ARC), ARCL, was established.

4.2 Objectives:

The main purpose of the SARFAESI Act is to enable and empower the secured creditors to take possession of their securities and to deal with them without the intervention of the court and also alternatively to authorise any securitisation or reconstruction company to acquire financial assets of any bank or financial institution.

Following are the main objectives of the SARFAESI Act.

The Act provides the legal framework for securitization activities in India

It gives the procedures for the transfer of NPAs to asset reconstruction companies for the reconstruction of the assets.

The Act enforces the security interest without Court's intervention

The Act gives powers to banks and financial institutions to take over the immovable property that is hypothecated or charged to enforce the recovery of debt.

The Act provides three methods for recovery of NPAs, viz:

- (a) Securitization;
- (b) Asset Reconstruction; and
- (c) Enforcement of Security without the intervention of the Court.

4.3 Key Terms

"borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a asset reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance or who has raised funds through issue of debt securities.

"debt" shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and includes –

- (i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;
- (ii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset;

"Debts Recovery Tribunal" means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; name changed Recovery of Debts and Bankruptcy Act, 1993

"default" means –

non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor; or

non-payment of any debt or any other amount payable by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of such debt securities;

"financial asset" means debt or receivables and includes –

- (i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or
- (ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

- (iii) a mortgage, charge, hypothecation or pledge of movable property; or
- (iv) any right or interest in the security, whether full or part underlying such debt or receivables; or
- (v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
- (vi) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or
- (vii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or
- (viii) any financial assistance;

"financial lease" means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be;

"securitisation" means acquisition of financial assets by any asset reconstruction company from any originator, whether by raising of funds by such asset reconstruction company from qualified buyers by issue of security receipts representing undivided interest in such financial assets or otherwise;

Securitization is the process of pooling and repackaging of financial assets (like loans given) into marketable securities that can be sold to investors. In the context of bad asset management, securitization is the process of conversion of existing less liquid assets (loans) into marketable securities. The securitization company takes custody of the underlying mortgaged assets of the loan taker. It can initiate the following steps:

- (i) Acquisition of financial assets from any originator (bank), and
- (ii) Raising of funds from qualified institutional buyers by issue of security receipts (for raising money) for acquiring the financial assets or
- (iii) Raising of funds in any prescribed manner, and
- (iv) Acquisition of financial asset may be coupled with taking custody of the mortgaged land, building etc.

"asset reconstruction" means acquisition by any [asset reconstruction company] of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance.

Asset reconstruction is the activity of converting a bad or non-performing asset into performing asset. The process of asset reconstruction involves several steps including

purchasing of bad asset by a dedicated asset reconstruction company (ARC) including the underlying hypothecated asset, financing of the bad asset conversion into good asset using bonds, debentures, securities and cash, realization of returns from the hypothecated assets etc. The Act also laid the framework to the constitution of Asset Reconstruction Companies (ARCs) specializing in securitizing distressed assets purchased from banks.

"asset reconstruction company" means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both;

Asset Reconstruction Companies take over non-performing assets of banks at discounted rate and manage and dispose of such assets. Reconstruction, is to be done with the RBI regulations and the SARFAESI Act gives the following components for reconstruction of assets –

- (i) taking over or changing the management of the business of the borrower,
- (ii) the sale or lease of a part or whole of the business of the borrower;
- (iii) rescheduling of payment of debts payable by the borrower;
- (iv) enforcement of security interest in accordance with the provisions of this Act;
- (v) settlement of dues payable by the borrower;
- (vi) taking possession of secured assets in accordance with the provisions of this Act.

It empowers the Reserve Bank of India to regulate asset reconstruction companies in a changing business environment. It empowers the RBI to carry out Audit and conduct inspections of an ARC from time to time. The RBI may impose a penalty where an ARC fails to comply with any direction issued by RBI.

4.4 Non-Performing Asset

'Non Performing Asset' means an asset or account of a borrower, which has been classified by a bank or financial institution and sub-standard, doubtful or loss asset, in accordance with the directions or guidelines relating to asset classification issued by RBI .

Other functions of securitisation company or reconstruction company

Any Securitisation company or reconstruction company registered may –

- (i) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties;
- (ii) act as a manager on such fee as may be mutually agreed upon between the parties;
- (iii) act as receiver if appointed by any court or tribunal.

Provided that no securitisation company or Reconstruction Company shall act as manager if acting as such gives rise to any pecuniary liability.

No securitisation company or reconstruction company which has been granted a certificate of registration, shall carry on, any business other than that of securitisation or asset reconstruction without prior approval of the Reserve Bank. If in case a securitisation company or reconstruction company is carrying any business other than the business of securitisation or asset reconstruction on or before the commencement of this Act, it will cease to carry on any such business within one year from the date of commencement of this Act.

4.5 What is meant by 'enforcement of security interests'?

The Act empowers the lender (banker), when the borrower defaults, to issue notice to the defaulting borrower and guarantor, calling to repay the debt within 60 days from the date of the notice. If the borrower fails to comply with the notice, the bank or the financial institution may enforce security interests (means interest of the bank/creditor) by following the provisions of the Act:

- (i) Take possession of the security;
- (ii) Sale or lease or assign the right over the security;
- (iii) Appoint Manager to manage the security;
- (iv) Ask any debtors of the borrower to pay any sum due to the borrower.

If there are more than one secured creditors, the decision about the enforcement of SARFEASI provisions will be applicable only if 75% of them are agreeing. The SARFAESI Act allows secured creditors to take steps to enforce their security interests in respect of any debt of a borrower that is classified as a non-performing asset without the intervention of a court or tribunal if certain conditions specified in the Act are met.

4.6 Rights of borrower

A borrower can object to the measures taken under this Act within 45 days without depositing any amount with DRT. However for making application at the second appeal stage Debt Recovery Appellate Tribunal 50% of the amount outstanding has to be deposited which can also be reduced to 25% at the discretion of the Appellate Tribunal.

4.7 Establishment of a Central Registry

The functions relating to securitisation, asset reconstruction and creation of security interest is sought to be administered and regulated by a Central Registry. A Central Registrar shall head the Registry. The functions of the Central Registry are as under:

- Particulars relating to securitisation of assets, reconstruction of financial assets and creation of security interest are entered in a record called Central Register.
- The records can be kept in electronic form also .
- The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed within 30 days of the transaction by SCO, RCO or the lender as the case may be.

- Modifications made in the security interest registered with the Registry are to be filed within 30 days of such modification.
- Satisfaction of security interest is required to be filed with the Registry within 30 days of satisfaction.
- Records maintained at the Central Registry are open to inspection for any person on payment of the prescribed fee.

4.8 Need for Central Registry

The RBI is the regulator of the major player in the Indian Financial System and has to ensure financial intermediaries engage in Securitisation prudently. To prevent fraud in loan cases involving, multiple lending from different banks on the same immovable property, the Central Electronic Registry under SARFAESI Act, 2002 has become operational since 31 March, 2011. The records maintained by the Central Electronic Registry will be available for search by any lender or any other person desirous of dealing with the property.

When the borrower is a company, there is a strong mechanism to verify the charges created by the company on its assets by searching its records maintained with the concerned Registrar of Companies. Therefore, the establishment of a Central Registry was a welcome idea under the Act and is a necessary step to maintain data relating to the charges created on any asset by any person.

Besides being beneficial to the lenders and innocent third parties, the establishment and notification of the Central Registry would result in advantages given below:

- a single source to verify charges, if any, on any asset created by any entity,
- charges/encumbrances created on the asset of an unregistered entity including individuals, HUF, Association of Persons can be easily traced and the information be readily available,
- chances of use of false title deeds or false representations on the title of the assets can be eliminated. Accordingly, fraud on title of properties can be controlled, minimised and eliminated,
- due diligence on portfolio securitisation can be eased out,
- due diligence on sale and purchase of assets/properties would become easy and transparent,
- gullible public and innocent buyers who are generally left in the hands of unscrupulous real estate brokers and builders can be saved and their interests protected,
- data on charged and encumbered properties can be made available in a transparent manner giving the industry reflection and exposure of the lenders on such assets, and

Since the land records are not computerized in all the states and tracing the title of properties is still a complex problem, the Central Registry would better equip the lender to make a fair assessment of risk undertaken while providing finance against the property, thus making lending more easy and safe.

Bureaucratic delays and fleecing which happens on account of lack of transparency and procedure to determine the (ICSI) encumbrances would be reduced or eliminated, restoring faith in the land record system as well in respect of assets other than real estate.

(UPDATED) SARFAESI ACT

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 is a legislation that was framed to address the problem of Non-Performing Assets (NPAs) or bad assets through different processes and mechanisms. The enactment of the SARFAESI Act, 2002 enabled banks and financial institutions to sell off their NPAs to asset reconstruction companies registered with RBI.

Objectives of the Act

- To regulate securitisation and reconstruction of financial assets and
- Enforcement of security interest and to provide for a central database of security interests created on property rights

SECTION 31 : Provisions of this Act not to apply in certain cases

The provisions of this act shall not apply to--

- A lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force;
- A pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872;
- Creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934;
- Creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;
- Any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930;
- Any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this act)] or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908;
- Any security interest for securing repayment of any financial asset not exceeding one lakh rupees;
- Any security interest created in agricultural land;
- Any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon.

Key terms

Asset Reconstruction [2(b)]: acquisition by any securitisation company (SC) or reconstruction company (RC) of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance.

Financial Assistance [2(k)]: any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution.

Asset Reconstruction Company (ARC) [2(ba)]: a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both. An ARC is not a banking company although it is regulated by RBI. Such company cannot carry out any other business other than securitisation or reconstruction.

Borrower [2(f)]: any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance or who has raised funds through issue of debt securities.

Default [2(j)]:

- (a) non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as nonperforming asset in the books of account of the secured creditor or
- (b) non-payment of any debt or any other amount payable by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of such debt securities.

Debt [2(ha)]: meaning assigned to in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and includes—

- (a) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract
- (b) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset

Financial Asset [2(l)]: debt or receivables and includes

- (a) a claim to any debt or receivables or part thereof, whether secured or unsecured or
- (b) any debt or receivables secured by, mortgage of, or charge on, immovable property or
- (c) a mortgage, charge, hypothecation or pledge of movable property or
- (d) any right or interest in the security, whether full or part underlying such debt or receivables or
- (e) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent or
 - (i) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to

pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset or

- (ii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset

- (f) any financial assistance

An asset which is not a financial asset cannot be securitised, acquired or transferred under this Act.

Non-Performing Asset [2(o)]: an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset,

- (a) in case such bank or financial institution is administered or regulated by an authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body
- (b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank.

Securitisation [2(z)]: acquisition of financial assets by any asset reconstruction company from any originator, whether by raising of funds by such asset reconstruction company from qualified buyers by issue of security receipts representing undivided interest in such financial assets or otherwise. The process of securitisation helps the ARC to acquire financial assets like Loans from banks due to which the ARC shall be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

SEC 3: REGISTRATION OF ASSET RECONSTRUCTION COMPANY

A company can commence or carry on the business of securitisation or asset reconstruction only after-

- obtaining a certificate of registration granted under this section and
- having the net owned fund of not less than ₹100 Crore or such other higher amount as the Reserve Bank of India (RBI), may, by notification, specify.

RBI may inspect the records or books of such ARC, ensure that the following conditions are fulfilled, namely:-

- that the ARC has not incurred losses in any of the three preceding financial years;
- that such ARC has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified buyers or other persons

- that the directors of ARC have adequate professional experience in matters related to finance, securitisation and reconstruction
- that any of its directors has not been convicted of any offence involving moral turpitude
- that a sponsor (any person holding not less than 10% of the paid-up equity capital) of an ARC is a fit and proper person in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such persons
- that ARC has complied with or is in a position to comply with prudential norms specified by RBI.
- that ARC has complied with one or more conditions specified in the guidelines issued by RBI for the said purpose.

SEC 5: ACQUIRING OF FINANCIAL ASSETS OF ANY BANK OR FINANCIAL INSTITUTION

An ARC may acquire financial assets of any bank or financial institution:

- by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them or
- by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

Exemption from Stamp Duty: Any document executed by any bank or financial institution as mentioned above, in favour of the ARC acquiring financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty. The provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.

ARC Deemed to be the Lender: In case where bank or financial institution is a lender in relation to any financial assets acquired by the ARC, then such ARC shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to the subject financial assets. If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets.

Enforcement by Asset Reconstruction Company: All contracts, deeds, bonds, agreements, powers-of-attorney, permissions, approvals, consents or no-objections and other instruments of whatever nature which relate to the said financial asset shall have same effect against or in favour of such Company.

Continuation of Proceedings: If, on the date of acquisition of financial asset, any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or

against the bank or financial institution, the same shall not abate, or be discontinued but may be continued, prosecuted and enforced by or against the ARC.

Substitution of ARC in Legal Proceedings: On acquisition of financial assets, the ARC, may with the consent of the originator, file an application before the Debts Recovery Tribunal (DRT) or the Appellate Tribunal (AT) or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other Proceedings. On receipt of such application, such DRT or AT or court or Authority shall pass orders for the substitution of the ARC in such pending suit, appeal or other proceedings.

SEC 6: NOTICE TO OBLIGOR AND DISCHARGE OF OBLIGATION OF SUCH OBLIGOR

The bank or financial institution may give a notice of acquisition of financial assets by any ARC to the concerned obligor and any other concerned person and to the concerned registering authority.

On receipt of notice, the obligor shall make payment to the concerned ARC in discharge of any of the obligations in relation to the financial asset specified in the notice which will mean full discharge to borrower.

SEC 7: ISSUE OF SECURITY BY RAISING OF RECEIPTS OR FUNDS BY ARC

Any ARC, may, after acquisition of any financial asset under section 5(1), offer security receipts to qualified buyers (or such other category of investors including non-institutional investors) for subscription in accordance with the provisions of those Acts.

An ARC may raise funds from the qualified buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

In the event of non-realisation of financial assets, qualified buyers (holding minimum 75% of total value of security receipts) issued under a scheme, shall be entitled to call a meeting of all qualified buyers. Resolution passed in such meeting shall be binding.

SEC 9: MEASURES FOR ASSET RECONSTRUCTION

ARC may provide for any of the following measures:

- Proper management of business of borrower
- Sale or lease of part of whole of business of borrower
- Rescheduling of payment of debts
- Enforcement of security interest
- Settlement of dues payable by borrower
- Taking possession of secured assets
- Conversion of portion of debt into shares of borrower

SEC 13: ENFORCEMENT OF SECURITY INTEREST

Any security interest created in favour of any secured creditor may be enforced without intervention of any court or tribunal by such creditor.

Where any borrower makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset (NPA), then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within 60 days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under 13(4).

This notice shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower that payment be made within 60 days failing which secured creditor shall be entitled to exercise all or any of the rights under Section 13(4).

If the borrower fails to discharge his liability in full within the above specified period, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:-

- (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset
- (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset
- (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor
- (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

If the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets.-

- (a) the secured assets shall not be transferred by way of lease, assignment or sale of the secured creditor; and
- (b) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

SEC 14 CHIEF METROPOLITAN MAGISTRATE OR DISTRICT MAGISTRATE TO ASSIST SECURED CREDITOR IN TAKING POSSESSION OF SECURED ASSET

The secured creditor may, for the purpose of taking possession or control of secured asset, request, in writing, the Chief Metropolitan Magistrate (CMM) or the District Magistrate (DM) within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the CMM or DM shall, on such request being made to him—

- take possession of such asset and documents relating thereto; and
- forward such asset and documents to the secured creditor within a period of thirty days from the date of application.

Provided further that if no order is passed by the CMM or DM within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

SEC 15: MANNER AND EFFECT OF TAKEOVER OF MANAGEMENT

- When the management of business of a borrower is taken over by a ARC or ASC, the secured creditor may, by publishing a notice in an English and Indian language newspaper appoint as many persons as it thinks fit--
- In case of company: directors of the borrower company and office of all existing directors of the company shall vacate
- In other case: administrator of the business of borrower and office of all persons holding any power of superintendence, direction and control of the business shall vacate.
- Every contract between borrower and director/manager shall terminate.
- The director or administrator appointed by creditor shall take necessary steps to take custody and control of property and business of the borrower and the business of the borrower shall be deemed to be in the custody of the directors or administrators from the date of the publication of the notice.
- The director/administrator appointed by secured creditor shall alone be entitled to exercise all the powers of the directors or administrator of the business of the borrower whether such powers are derived from any source.

15(3): EFFECT OF TAKEOVER THE BUSINESS OF BORROWER BEING A COMPANY

- The shareholders of the company cannot appoint or nominate any person as director
- The resolution passed by shareholders of the company shall not have any effect unless approved by the secure creditor
- No proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor

15(4): OBLIGATIONS OF SECURED CREDITOR

- After realization of their debt, the ASC shall restore the management of business to borrowers.

- If any secured creditor jointly with other secured creditors or any ARC or Financial Institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower

OTHER MISCELLANEOUS PROVISIONS

- Where any borrower who is under a liability to secured creditor and makes default in repayment of secured debt and if such debt is classified as NPA, then secured creditor should send a notice in writing to discharge his liabilities in less than 60 days feeling which secured creditor is entitled to hold or any of his rights
- Notice should contain details of the amount payable secured asset, should be enforced in case of non payment.
- **Sec 16:** No director, manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office.
- **Sec 17:** Any person aggrieved by any of the measures taken by the secured creditor under section 13(4), may make an application with such fee to the DRT within 45 days from the date on which such measure had been taken. The DRT shall try to complete the proceeding within 60 days which may extend for maximum 4 months.
- **Sec 18:** Any person aggrieved, by any order made by the DRT under section 17, may prefer an appeal with fee to the appellate tribunal (DRAT) within 30 days from the date of receipt of the order of debts recovery tribunal. No appeal shall be entertained unless the borrower has deposited with the appellate tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the DRT, whichever is less. The DRAT may reduce the amount to not less than 25% of debt referred.

CENTRAL REGISTRY AND REGISTRAR:

- **Sec 20:** The Central Government to set up a central registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this act.
- As per directives issued by the government, all lenders (banks, financial institutions etc) are required to register any and all information with CERSAI with regards to security interests that they have been created. Registration must be completed within a period of 30 days of the creation of security interests.
- **Sec 21:** Central registrar: The central government may appoint a person for the purpose of registration of transactions under this act to be known as the central registrar.
- **Sec 22:** Central Register shall be kept at head office and entered the transactions such as securitisation of financial assets, reconstruction of financial assets, creation of security interest. The records shall be maintained in control and safeguard of central registrar.
- **Sec 23:** The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the central registrar in the manner and on payment of such fee as may be prescribed.

- **Sec 26E:** Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the central government or state government or local authority. On or after the commencement of the insolvency and bankruptcy code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions under IBC.
- **Sec 33:** Offences by Companies: Where an offence under this act has been committed by a company, every person who at the time the offence was committed was incharge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Where an offence under this act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

5. VALUATION STANDARDS [IVSC]

INTERNATIONAL VALUATION STANDARDS

The International Valuation Standards (IVS) are standards for undertaking valuation assignments using generally recognised concepts and principles that promote transparency and consistency in valuation practice. The International Valuation Standards Council (IVSC) is an independent, not-for-profit organisation committed to advancing quality in the valuation profession and develops IVS.

The IVS consist of mandatory requirements that must be followed in order to state that a valuation was performed in compliance with the IVS. Certain aspects of the standards do not direct or mandate any particular course of action but provide fundamental principles and concepts that must be considered in undertaking a valuation.

When a statement is made that a valuation will be, or has been, undertaken in accordance with the IVS, it is implicit that the valuation has been prepared in compliance with all relevant standards issued by the IVSC. For a valuation to be compliant with IVS the valuer must comply with all the requirements contained within IVS. A "departure" is a circumstance where specific legislative, regulatory or other authoritative requirements must be followed that differ from some of the requirements within IVS.

5.1 Core Principles of Valuation

- (a) **Ethics:** Valuers must follow the ethical principles of integrity, objectivity, impartiality, confidentiality, competence and professionalism to promote and preserve the public trust.
- (b) **Competency:** At the time the valuation is submitted, valuers must have the technical skills and knowledge required to appropriately complete the valuation assignment.
- (c) **Compliance:** Valuers must disclose or report the published valuation standards used for the assignment and comply with those standards.
- (d) **Basis (ie, Type or Standard) of Value:** Valuers must select the basis (or bases) of value appropriate for the assignment and follow all applicable requirements. The basis of value (or bases) must be either defined or cited.
- (e) **Date of Value (ie, Effective Date/Date of Valuation):** Valuers must disclose or report the date of value that is the basis of their analyses, opinions or conclusions. Valuers must also state the date they disclose or report their valuation.
- (f) **Assumptions and Conditions:** Valuers must disclose significant assumptions and conditions specific to the assignment that may affect the assignment result.
- (g) **Intended Use:** Valuers must disclose or report a clear and accurate description of the intended use of the valuation.
- (h) **Intended User(s):** Valuers must disclose or report a clear and accurate description of the intended user(s) of the valuation.
- (i) **Scope of Work:** Valuers must determine, perform, and disclose or report a scope of work that is appropriate for the assignment that will result in a credible valuation.
- (j) **Identification of Subject of Valuation:** Valuers must clearly identify what is being valued.
- (k) **Data:** Valuers must use appropriate information and data inputs in a clear and transparent manner so as to provide a credible valuation.
- (l) **Valuation Methodology:** Valuers must properly use the appropriate valuation methodology(ies) to develop a credible valuation.
- (m) **Communication of Valuation:** Valuers must clearly communicate the analyses, opinions and conclusions of the valuation to the intended user(s).
- (n) **Record Keeping:** Valuers must keep a copy of the valuation and a record of the valuation work performed for an appropriate period after completion of the assignment.

IVS 101 SCOPE OF WORK

A scope of work (sometimes referred to as terms of engagement) describes the fundamental terms of a valuation, such as the asset(s) being valued, the purpose of the valuation and the responsibilities of parties involved in the valuation.

All valuation advice and the work undertaken in its preparation must be appropriate for the intended purpose.

A valuer must ensure that the intended recipient(s) of the valuation advice understand(s) what is to be provided and any limitations on its use before it is finalised and reported.

A valuer must communicate the scope of work to its client prior to completion of the assignment including:

- Identity of the valuer
- Identity of the client
- Identity of other intended users (if any)
- Assets being valued
- Valuation currency
- Purpose of valuation
- Bases of value used
- Valuation date
- The nature and extent of the valuer's work and any limitations thereon
- The nature and sources of information upon which the valuer relies
- Significant assumptions and/or special assumptions
- The type of report being prepared
- Restrictions on use, distribution and publication of the report
- That the valuation will be prepared in compliance with IVS and that the valuer will assess the appropriateness of all significant inputs

IVS 102 INVESTIGATIONS AND COMPLIANCE

To be compliant with IVS, valuation assignments, including valuation reviews, must be conducted in accordance with all of the principles set out in IVS that are appropriate for the purpose and the terms and conditions set out in the scope of work.

Investigation made during the assignment must be appropriate for the purpose of the valuation assignment and the basis of value.

Sufficient evidence must be assembled by means such as inspection, inquiry, computation and analysis to ensure that the valuation is properly supported.

Limits may be agreed on the extent of the valuer's investigation.

Information received by the valuer from other sources (third parties, management, owner), such inputs should be considered, investigated and/or corroborated. In cases where credibility or reliability of information supplied cannot be supported, consideration should be given as to whether or how such information is used.

A record must be kept of the work performed on which the conclusion were reached for a reasonable period after completion of the assignment, having regard to any statutory or legal requirement.

IVS 103 REPORTING

It is essential that the valuation report communicates the information necessary for proper understanding of the valuation or valuation review. A report must provide the intended users with a clear understanding of the valuation.

Where the report is the result of an assignment involving the valuation of an asset or assets, the report must convey the following, at a minimum:

- (i) the scope of the work performed,
- (ii) intended use,
- (iii) intended users,
- (iv) the purpose,
- (v) the approach or approaches adopted,
- (vi) the method or methods applied,
- (vii) the key inputs used,
- (viii) the assumptions made,
- (ix) the conclusion(s) of value and principal reasons for any conclusions reached, and
- (x) the date of the report (which may differ from the valuation date).

IVS 104 BASES OF VALUE

Bases of value (sometimes called standards of value) describe the fundamental premises on which the reported values will be based. It is critical that the basis (or bases) of value be appropriate to the terms and purpose of the valuation assignment, as a basis of value may influence or dictate a valuer's selection of methods, inputs and assumptions, and the ultimate opinion of value.

In addition to the IVS-defined bases of value listed below, the IVS have also provided a non-exhaustive list of other non-IVS-defined bases of value prescribed by individual jurisdictional law or those recognised and adopted by international agreement:

(a) IVS-defined bases of value:

- Market value (section 30),
- Market rent (section 40),
- Equitable value (section 50),
- Investment value/worth (section 60),
- Synergistic value (section 70), and
- Liquidation value (section 80).

(b) Other bases of value (non-exhaustive list):

- Fair value (International Financial Reporting Standards) (section 90),

- Fair market value (Organisation for Economic Co-operation and Development) (section 100),
- Fair market value (United States Internal Revenue Service) (section 110), and
- Fair value (Legal/Statutory) (section 120):

Market Value

Market value is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

IVS provides a conceptual framework for applying Market Value as a base that must be applied.

Market Rent

Market rent is the estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion. Market rent may be used as a basis of value when valuing a lease or an interest created by a lease. In such cases, it is necessary to consider the contract rent and, where it is different, the market rent.

Equitable value

Equitable value is the estimated price for the transfer of an asset or liability between identified knowledgeable and willing parties that reflects the respective interests of those parties. It requires the assessment of the price that is fair between two specific, identified parties considering the respective advantages or disadvantages that each will gain from the transaction. In contrast, market value requires any advantages or disadvantages that would not be available to, or incurred by, market participants generally to be disregarded. Equitable value is a broader concept than market value.

Examples:

- (a) determination of a price that is equitable for a shareholding in a non-quoted business, where the holdings of two specific parties may mean that the price that is equitable between them is different from the price that might be obtainable in the market, and
- (b) determination of a price that would be equitable between a lessor and a lessee for either the permanent transfer of the leased asset or the cancellation of the lease liability.

Investment Value

Investment value is the value of an asset to a particular owner or prospective owner for individual investment or operational objectives. Investment value is an entity-specific basis of value. This basis of value reflects the benefits received by an entity from holding the asset and, therefore, does not involve a presumed exchange. It is often used for measuring investment performance.

Synergistic Value

Synergistic value is the result of a combination of two or more assets or interests where the combined value is more than the sum of the separate values. If the synergies are only available to one specific buyer then synergistic value will differ from market value, as the synergistic value will reflect particular attributes of an asset that are only of value to a specific purchaser.

Liquidation Value

Liquidation value is the amount that would be realised when an asset or group of assets are sold on a piecemeal basis. Liquidation value should consider the costs of getting the assets into saleable condition as well as those of the disposal activity. Liquidation value can be determined under two different premises of value:

- (a) an orderly transaction with a typical marketing period
- (b) a forced transaction with a shortened marketing period

Premise of Value/Assumed Use

A premise of value or assumed use describes the circumstances of how an asset or liability is used. Different bases of value may require a particular premise of value or allow the consideration of multiple premises of value.

Some common premises of value are:

- (a) highest and best use,
- (b) current use/existing use,
- (c) orderly liquidation, and
- (d) forced sale.

Highest and Best Use

Highest and best use is the use, from a participant perspective, that would produce the highest value for an asset. Although the concept is most frequently **applied to non-financial assets** as many financial assets do not have alternative uses, there may be circumstances where the highest and best use of financial assets needs to be considered. The highest and best use must be physically possible (where applicable), financially feasible, legally allowed and result in the highest value. If different from the current use, the costs to convert an asset to its highest and best use would impact the value. The highest and best use for an asset may be its current or existing use when it is being used optimally. However, highest and best use may differ from current use or even be an orderly liquidation.

The determination of the highest and best use involves **consideration of the following**:

- (a) To establish whether a use is **physically possible**, regard will be had to what would be considered reasonable by participants.
- (b) To reflect the requirement to be **legally permissible**, any legal restrictions on the use of the asset, e.g., town planning/zoning designations, need to be considered as well as the likelihood that these restrictions will change.

- (c) The requirement that the use be **financially feasible** considers whether an alternative use that is physically possible and legally permissible will generate sufficient return to a typical participant, after taking into account the costs of conversion to that use, over and above the return on the existing use.

Current use/existing use

Current use/existing use is the current way an asset, liability, or group of assets and/or liabilities is used. The current use may be, but is not necessarily, also the highest and best use.

Orderly Liquidation

160.1. An orderly liquidation describes the value of a group of assets that could be realised in a liquidation sale, given a reasonable period of time to find a purchaser (or purchasers), with the seller being compelled to sell on an as-is, where-is basis.

Forced Sale

This premise is often used in circumstances where a seller is under compulsion to sell and proper marketing period is not possible and buyers may not be able to undertake adequate due diligence. Unless the nature of, and the reason for, the constraints on the seller are known, the price obtainable in a forced sale cannot be realistically estimated. The price that a seller will accept in a forced sale will reflect its circumstances, rather than those of the hypothetical willing seller in the market value definition.

Entity Specific Factors and Synergies

For most bases of value, entity specific factors are not included in assessment of valuation. Examples of entity specific factors that may not be available to participants include:

- additional value or reduction in value derived from the creation of similar assets,
- unique synergies between the asset and other assets owned by the entity,
- legal rights or restrictions applicable only to the entity,
- tax benefits or tax burdens unique to the entity, and
- an ability to exploit an asset that is unique to that entity.

Synergies

“Synergies” refer to the benefits associated with combining assets. When synergies are present, the value of a group of assets and liabilities is greater than the sum of the values of the individual assets and liabilities on a stand-alone basis. Synergies typically relate to a reduction in costs, and/or an increase in revenue, and/or a reduction in risk.

Whether synergies should be considered in a valuation depends on the basis of value. An assessment of whether synergies are available to other participants may be based on the amount of the synergies rather than a specific way to achieve that synergy.

Assumptions: Valuer must state the assumptions used during valuation. All assumptions and special assumptions must be reasonable under the circumstances, be supported by evidence, and be relevant having regard to the purpose for which the valuation is required.

Transaction Costs and Taxes: Most bases of value represent value without considering the transaction cost to buyer or seller and without considering taxes payable by either party as a direct result of the transaction.

IVS 105 VALUATION APPROACHES AND METHODS

[Here is an extract of IVS 105. Module 7 provides more detailed information about approaches and methods of valuation.]

Consideration must be given to the relevant and appropriate valuation approaches. One or more valuation approaches may be used in order to arrive at the value in accordance with the basis of value. The three approaches described and defined below are the main approaches used in valuation. They are all based on the economic principles of price equilibrium, anticipation of benefits or substitution.

The **principal valuation approaches** are:

- (a) market approach,
- (b) income approach, and
- (c) cost approach
 - If high degree of confidence in accuracy and reliability of a single method is available, no need to apply multiple methods / approaches.
 - Should consider the use of multiple approaches/methods to arrive at an indication of value, particularly when there are insufficient factual or observable inputs for a single method to produce a reliable conclusion.
 - If more than one approach is used, the conclusion of value based on those multiple approaches and/or methods should be reasonable and the process of analysing and reconciling the differing values into a single conclusion, without averaging, should be described by the valuer in the report.
 - It is the valuer's responsibility to choose the appropriate method(s) for each valuation engagement.
 - It is generally not appropriate to simply weight two or more divergent indications of value. Valuer should re-assess the methods or inputs that provide a better indication of value.
 - Valuers should maximise the use of relevant observable market information in all three approaches.
 - price information from an active market is generally considered to be the strongest evidence of value.
 - In certain circumstances, the valuer and the client may agree on the valuation approaches, methods and procedures the valuer will use or the extent of procedures

the valuer will perform. Depending on the limitations placed on the valuer and procedures performed, such circumstances may result in a valuation that is not IVS compliant

Market Approach

The market approach provides an indication of value by comparing the asset with identical or comparable (that is similar) assets for which price information is available

Applicability (high weight):

- (a) the subject asset has recently been sold in a transaction appropriate for consideration under the basis of value,
- (b) the subject asset or substantially similar assets are actively publicly traded, and/or
- (c) there are frequent and/or recent observable transactions in substantially similar assets.

Consider Market Approach along with other approaches in following circumstances:

- (a) Transactions involving the subject asset or substantially similar assets are not recent enough considering the levels of volatility and activity in the market.
- (b) The asset or substantially similar assets are publicly traded, but not actively.
- (c) Information on market transactions is available, but the comparable assets have significant differences to the subject asset, potentially requiring subjective adjustments.
- (d) Information on recent transactions is not reliable (ie, missing information, synergistic purchaser, not arm's length, distressed sale, etc).
- (e) The critical element affecting the value of the asset is the price it would achieve in the market rather than the cost of reproduction or its income-producing ability

Comparable Transactions Method

The comparable transactions method, also known as the guideline transactions method, utilises information on transactions involving assets that are the same or similar to the subject asset to arrive at an indication of value

Guideline publicly-traded comparable method

The guideline publicly-traded method utilises information on publicly-traded comparables that are the same or similar to the subject asset to arrive at an indication of value.

Income Approach

The income approach provides an indication of value by converting future cash flow to a single current value. Under the income approach, the value of an asset is determined by reference to the value of income, cash flow or cost savings generated by the asset.

Applicability

- (i) the income-producing ability of the asset is the critical element affecting value from a participant perspective, and/or

- (ii) reasonable projections of the amount and timing of future income are available for the subject asset, but there are few, if any, relevant market comparables.

Consider along with other approaches in following circumstances:

- (i) the income-producing ability of the subject asset is only one of several factors affecting value from a participant perspective,
- (ii) there is significant uncertainty regarding the amount and timing of future income-related to the subject asset,
- (iii) there is a lack of access to information related to the subject asset (for example, a minority owner may have access to historical financial statements but not forecasts/budgets), and/or
- (iv) the subject asset has not yet begun generating income, but is projected to do so.

Discounted Cash Flow (DCF) Method

Under the DCF method the forecasted cash flow is discounted back to the valuation date, resulting in a present value of the asset.

Cost Approach

The cost approach provides an indication of value using the economic principle that a buyer will pay no more for an asset than the cost to obtain an asset of equal utility, whether by purchase or by construction, unless undue time, inconvenience, risk or other factors are involved. The approach provides an indication of value by calculating the current replacement or reproduction cost of an asset and making deductions for physical deterioration and all other relevant forms of obsolescence.

Applicability

- (i) participants would be able to recreate an asset with substantially the same utility as the subject asset, without regulatory or legal restrictions, and the asset could be recreated quickly enough that a participant would not be willing to pay a significant premium for the ability to use the subject asset immediately,
- (ii) the asset is not directly income-generating and the unique nature of the asset makes using an income approach or market approach unfeasible, and/or
- (iii) the basis of value being used is fundamentally based on replacement cost, such as replacement value.

Consider along with other approaches:

- (i) participants might consider recreating an asset of similar utility, but there are potential legal or regulatory hurdles or significant time involved in recreating the asset,
- (ii) when the cost approach is being used as a reasonableness check to other approaches (for example, using the cost approach to confirm whether a business valued as a going-concern might be more valuable on a liquidation basis), and/or

- (iii) the asset was recently created, such that there is a high degree of reliability in the assumptions used in the cost approach.

Broadly, there are three cost approach methods:

- (i) replacement cost method: a method that indicates value by calculating the cost of a similar asset offering equivalent utility,
- (ii) reproduction cost method: a method under the cost that indicates value by calculating the cost to recreating a replica of an asset, and
- (iii) summation method: a method that calculates the value of an asset by the addition of the separate values of its component parts.

6. ASSET STANDARDS

- IVS 200 Businesses and Business Interests
- IVS 210 Intangible Assets
- IVS 220 Non Financial Liabilities
- IVS 230 Inventory
- IVS 300 Plant & Machinery
- IVS 400 Real property Interests
- IVS 410 Development Property
- IVS 500 Financial Instruments

7. VALUATION AS PER IT ACT

7.1 Rule 11UA (1)(c): Fair Market Value of Shares and Securities

- (a) **the fair market value of quoted shares and securities** shall be determined in the following manner, namely,—
- (i) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange:
 - (ii) if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,—
 - (A) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and
 - (B) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation

lowest price on Rec'd. St. Exch. on Valn date / preceding the valn date

date there is no trading in such shares and securities on any recognized stock exchange;

→ Net assets

~~ESc + RIS + Refund~~

- (b) **the fair market value of unquoted equity shares** shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:

the fair market value of unquoted equity shares = $(A + B + C + D - L) \times (PV) / (PE)$, where,

A = book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,

- any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and
- any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

Jewellery **B** = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

Sec & Sec **C** = fair market value of shares and securities as determined in the manner provided in this rule;

Immovable **D** = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely:

- the paid-up capital in respect of equity shares; **ESc**
- the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company; **Prop Div**
- reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation; **RIS**
- any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto; **PFT - IT Refund**
- any amount representing provisions made for meeting liabilities, other than ascertained liabilities; **Other prov.**
- any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares; **Contingent liab.**

PV = the paid up value of such equity shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;]

[For the purposes of Sec 56(2)(viib) Explanation (a)(i), the FMV of unquoted equity shares will be calculated as $(A - L) \times PV / PE$ or it should be calculated by a Merchant Banker using DCF Method]

- (c) the **fair market value of unquoted shares and securities other than equity shares** in a company which are not listed in any recognized stock exchange shall be estimated to be **price it would fetch if sold in the open market** on the valuation date and the assessee may obtain a **report from a merchant banker or an accountant** in respect of which such valuation.

7.2 Rule 11UAB of IT Act: Determination of fair market value for inventory.

11UAB. (1) For the purposes of clause (via) of section 28 of the Act, the fair market value of the inventory,—

- (a) being an immovable property, being land or building or both, shall be the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of stamp duty in respect of such immovable property on the date on which the inventory is converted into, or treated, as a capital asset;
- (b) being jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities referred to in rule 11UA, shall be the value determined in the manner provided in sub-rule (1) of rule 11UA and for this purpose the reference to the valuation date in the rule 11U and rule 11UA shall be the date on which the inventory is converted into, or treated, as a capital asset;
- (c) being the property, other than those specified in clause (i) and clause (ii), the price that such property would ordinarily fetch on sale in the open market on the date on which the inventory is converted into, or treated, as a capital asset.

8. IND AS 113 – FAIR VALUE MEASUREMENT

Ind AS 113 – Fair Value Measurement is an important standard around valuation. It applies to other IND AS's that require or permit fair value measurements. E.g., Ind AS 105 (Discontinued Operations), 109 (Financial instruments), 107 (Financial instruments – Disclosures). It does not apply to Ind AS that themselves prescribe a valuation methodology E.g., Ind AS 102 (Share-based payment transactions), Ind AS 17 (Leasing transactions), Ind AS 2 (Inventories), Ind AS 36 (Impairment of Assets), Ind AS 19 (Employee Benefits). It also applies to measurements such as fair value less costs to sell, based on fair value or disclosures about those measurements.

This Ind AS defines fair value as “**the price that would be received to sell an asset or paid to transfer a liability, in an orderly transaction between market participants at the measurement date.**”

The standard assumes that Market price factors in many aspects such as known restrictions on use of assets, and ignores Transaction costs and entity specific synergies.

An Orderly transaction is a transaction that assumes that the seller has exposure to the market for a period before the measurement date to allow for marketing activities; that are usual and customary for transactions involving such assets or liabilities; it is not a forced transaction (eg a forced liquidation or distress sale).

Market Participants are those that are:

- Knowledgeable of the asset in question and of market conditions
- Able i.e., not restricted in any way
- Willing i.e., have desire to maximise their economic benefits
- Independent i.e., there is no cartel or collusion amongst the participants

The standard states the concept of **Principal Market** or the **Most Advantageous Market**. Transaction takes place either in the principal market for the asset or liability; i.e. the market wherein the maximum volume of trade occurs shall be the Principal market or, in the absence of a principal market, in the most advantageous market (MAM) for the asset or liability. The market wherein the highest price is obtained but not the highest volume, shall be the MAM.

If there is a principal market, the fair value measurement shall be the **price in that market, even if the price in a different market is potentially more advantageous at the measurement date**. But it needs to be ensured that the entity must have access (but not necessarily to actually buy or sell) to the principal (or most advantageous) market at the measurement date.

The standard prescribes use of valuation techniques that maximise the use of **observable inputs (level 1 inputs)** and **minimise the use of unobservable inputs (level 3 inputs)**. Observable inputs are publicly available information about actual events or transactions. Such inputs include those developed using market data. Unobservable inputs are inputs for which there is no market data available. They are developed using the best information available about the assumptions that market participants would use when pricing the asset or liability. They reflect the entity's own view on the assumptions that market participants would use.

Level 1 Inputs	Level 2 Inputs	Level 3 Inputs
Quoted price of shares traded on Stock exchanges	Quoted price of similar assets in active markets	Financial forecasts
	Quoted price of similar/identical assets in inactive markets	Historical viability
	Other observable inputs	Adjustment to mis-market consensus
	Market corroborated inputs	

Factors that need to be considered while selecting a valuation technique to measure fair value are:

- Appropriateness in the given facts and circumstances
- Availability of sufficient data
- Maximising the use of relevant observable inputs and minimising the use of unobservable inputs and as a result, multiple-valuation techniques can be applied.

Three widely used valuation techniques are:

- Market approach
- Cost approach

- Income approach

If multiple valuation techniques are used to measure fair value, the results should be evaluated considering the reasonableness of the range of values. Fair value is the point within the range that is most representative of the fair value in the given scenario.

Change in valuation techniques

Valuation techniques used to measure fair value shall be applied consistently. However, a change in the valuation technique or application of multiple valuation techniques is appropriate if the change results in a measurement that is equally or more representative of fair value in the circumstances.

Examples:

- New markets develop or market conditions change
- New information is available
- Information previously used is no longer available
- Valuation techniques improve

Disclosures

Ind AS 113 aims to equip the users of financial statements with additional transparency with respect to the following:

- The extent of usage of fair value in valuation of assets and liabilities
- Valuation techniques, inputs and assumptions used in measuring fair value
- The impact of level 3 fair value measurements on profit and loss account or Other Comprehensive Income (OCI).

The standard has set broad disclosure objectives and has also stipulated the minimum disclosures an entity must make.

Illustration 1

Pankaj is an investor who invested ₹10,000 @ ₹5 per share and consequently bought 2,000 shares of Peehoo, a private limited company, on 1st June 2021. Since he does not hold a controlling stake, he does not have access to the forecasts or budgets of the company. He wants to assess the fair value of the investment as on 31st March 2022.

Solution

Since Pankaj does not have access to the details of forecasts, the amount paid (transaction price) for the unquoted equity shares in June 2021 may be a reasonable starting point to assess the fair value of the investment at measurement date (31st March 2022). However, Pankaj should assess if there are any factors that indicate that the transaction price may not be representative of the fair value of the investment. For example, if the market forces have changed significantly that it could affect Peehoo's growth prospects or if the company may have shown significant changes in its financial results, these may affect the fair value of the investment.

Chapter - 6

#) Rule 11UA of Income Tax Act

Quoted / Listed

RSE
↓
Fairer Value

Unrecog. at Epoch

Lower price in RSE
on valn date / immediately
preceding date

Unquoted

Net Assets App

$$= \frac{[A + B + C + D - L]}{\text{No. of Eq Sh}}$$

Or

$$\frac{E_{SC} + R_{LS} \pm \text{Reval}^n}{\text{PfH}} \\ \text{No of Eq Sh}$$

where : $A = BV$ of Assets ✓
 $\rightarrow BV$ of Jewellery,
 Immovable Prop. ✓
in in Shares / Sec

E) Net IT Paid (✓)
 (IT Paid - Refund) ✓

B = Value of Jewellery as per regd Valuer ✓

C = Value of shares & Sec as per Recog St Exch ✓

D = Value of Immovable Property as per Stamp Duty ✓

L = Total BV of Liabilities ✓

↳ Eq Sh Cap (✓)

↳ Prop Div (✓)

↳ RIS (✓)

↳ PFT net of IT refund (✓) ✓

$[A + B + C + D - L]$

No. of Eq Shares ✓

Value / Eq Sh ✓

#2 Further Issue of Shares - Sec. 62 of Cos. Act

1. Approved by a Special Resolution
2. Valued by a Regd Valuer

#2 Prohibition of Shares issued at disc - Sec. 53 of Cos. Act

- Shares issued at discount is void

Q1

Human Resources Management is a mid-sized company is considering expansion into related field, for which it requires to raise fund. Board of director of company decides to raise fund through further issue of shares. For further issue of share, company needs to assess the fair value of its share.

Balance Sheet of the company as on 31.1.22

Equity & Liabilities	
Equity Share Capital (1,10,000 equity share of INR 10 each)	11,00,000
Other Equity	(68,81,956)
Total Equity	(57,81,956)
Liabilities	
Non-Current Liabilities	
Borrowings	3,96,94,670
Total Non-Current Liabilities	3,96,94,670
Current Liabilities	
Trade Payables	87,903
Other Current Liabilities	1,31,320
Duties & Taxes	(68,21,862)
Total Current Liabilities	(66,02,630)
Total Equity & Liabilities	2,73,10,075
Assets	
Non-Current Assets	
Property, Plant & Equipment	80,676
Total Non-Current Assets	80,676
Current Assets	
Inventories	1,93,38,292
Trade Receivables	5,02,370
Cash & Cash Equivalents	35,99,873
Deferred Tax Assets (Net)	15,44,953
Other Current Assets	22,43,911
Total Current Assets	2,72,29,399
Total Assets	2,73,10,075

- Q1*
- (a) As a Valuer assess the value of per share for further issue of share by the company
- (b) Different approaches to value the share, method used to value present scenario and provide the rationale for the same.
- (c) Briefly discuss the relevant section in relation to the issue of share.

Soln to Q1 Pg No -

Soln to part (a)

Value/share

ESC
(+) R/S

No. of shares
Value / share

$$\begin{array}{r}
 11,00,000 \\
 (68,81,956) \\
 \hline
 (57,81,956) \\
 \hline
 1,10,000 \\
 (52.56)
 \end{array}$$

As valuation is being done for further issue of shares,
& further issue cannot be at discount, the
value / share should be undertaken as ₹10 /share
(par value)

Soln to part (b) APProaches

Income APP

Mkt APP

Cost APP
↓

future potential
are knowns

Comparable
listed cos. are
knowns

when no
ex of
income/
mkt
approach
↓

Cos. Act
Sec. 62

Sec. 53

Soln to part (c)

Used this
approach here

Reference

Book Value of Shares, Different Approaches & Rationale, Relevant section of Companies Act.

What's New**Answer**

Net Asset Value of per share = (Book Value of Assets – Book Value of Liabilities) / No. of shares

- (A) **Calculation of Net Asset Value of Human Resources Management is tabulated as follows:**

Particulars	Amount (INR)
Total Assets	2,73,10,075
Less: Total Outside liabilities	3,30,92,031
Value of Equity	(57,81,956)
Number of shares	1,11,000
Value per share	(52.09)
Value per share (Considering Sec 53 of Companies Act, 2013)	10.00

Although arrived value per share is INR (52.09), since Sec 53 of the Companies Act, 2013 prohibits issue of shares at a discount to par value, the value per share for the purpose of issue of shares may be considered at par value. i.e., INR 10.00 per share.

- (B) **Different Valuation approaches are as follows**

- **Market Approach**

Market approach is a valuation approach that uses prices and other relevant information generated by market transactions involving identical or comparable (i.e., similar) assets, liabilities or a group of assets and liabilities, such as a business. Market approach can be applied where the asset to be valued or a comparable or identical asset is traded in the active market; there is a recent, orderly transaction in the asset to be valued; or there are recent comparable orderly transactions in identical or comparable asset and information for the same is available and reliable.

- **Income Approach**

Income Approach provides an indication of value by converting future cash flow to a single current value. Under this approach, the value of an asset is determined by reference to the value of income, cash flow or cost savings generated by the asset.

- **Cost Approach**

Cost approach is a valuation approach that reflects the amount that would be required currently to replace the service capacity of an asset (often referred to as current replacement cost). This approach provides an indication of value using the economic principle that a buyer will pay no more for an asset than the cost to obtain an asset

of equal utility. The Cost Approach can be used when Market Approach and Income Approach are not appropriate to value the assets or companies.

Under the Net Asset Value approach, total value is based on the sum of book values as recorded on the consolidated balance sheet of the respective companies. We have used Net Asset Value method for the company

(C) **Valuation Rationale are as follows:**

Income Approach: The Valuer have not relied on the Income Approach to value the company because past working results do not indicate true potential of the company, and financial forecasts cannot be reliably drawn at this stage of business restructuring. Therefore, not used the Income approach for valuation of shares.

Market Approach: There are no comparable listed companies that could be identified that would consistently value the company using the market approach, therefore valuer have not considered market approach as valuation method.

Cost Approach: Under the Cost Approach, Valuer have considered Adjusted Net Asset Value (ANAV) Method of Valuation. Arrived at the Net Asset Value by deducting all book value of liabilities from book value of assets.

(C) **The relevant extracts of the Companies Act, 2013 is as under:**

Section 62. Further issue of share capital —

Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered —

to any persons, if it is authorized by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

Section 53. Prohibition on Issue of Shares at Discount.

- (1) Except as provided in section 54, a company shall not issue shares at a discount.
- (2) Any share issued by a company at a [discount] price shall be void.

Q2

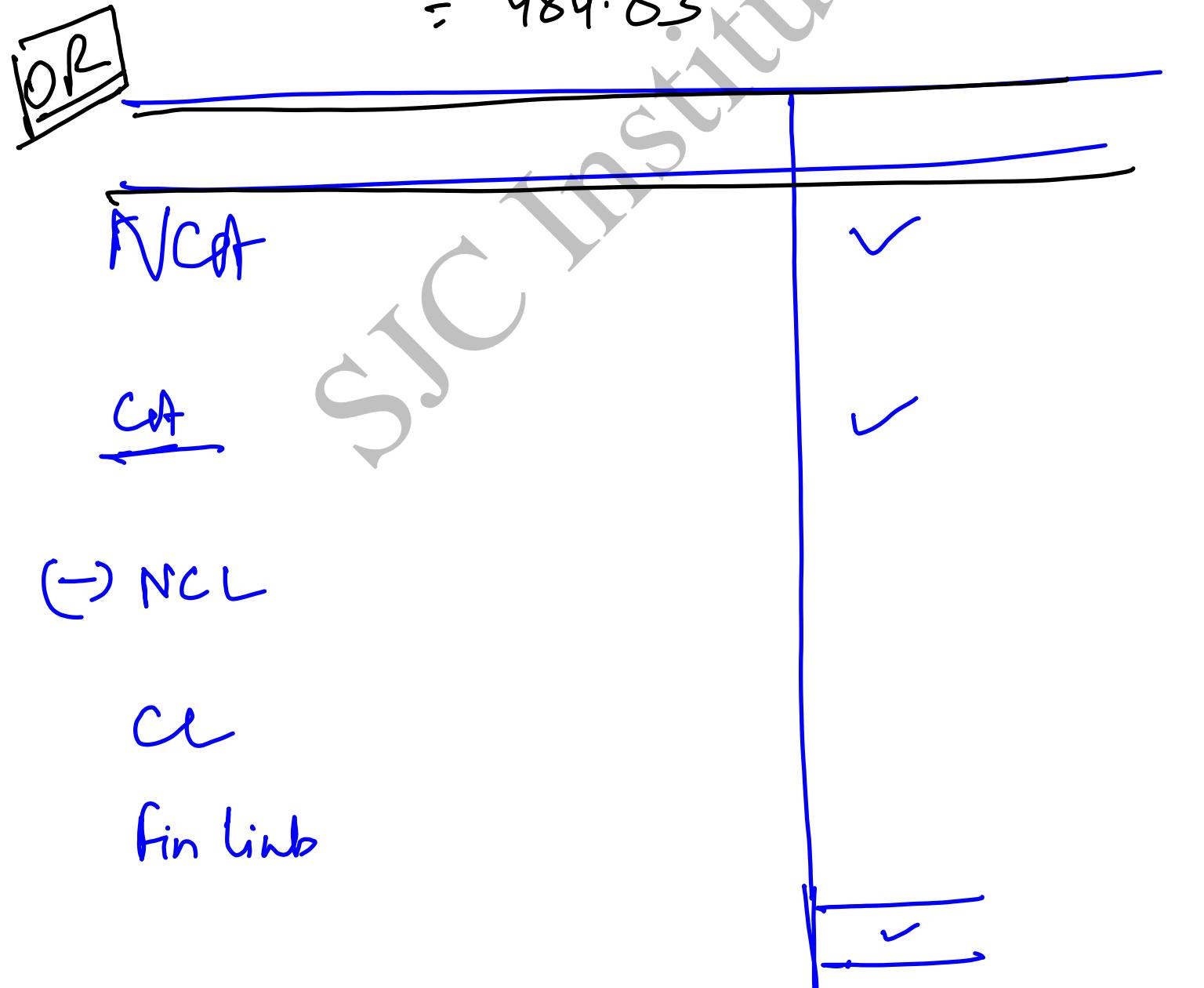
Smartpoint Limited is a trading company incorporated under Company's Act. Board of director of the company plans to issue further share for which they need to assess the value of its share as on valuation date.

Balance sheet as on 31.3.2020

Particulars	In INR
Equity & Liabilities	
Equity	
Equity Share Capital (1,00,000 share of 100 each)	1,00,00,000
Other Equity = R14	3,84,83,632
Total Equity	<u>4,84,83,632</u>
Liabilities	
Financial Liabilities (Preference Shares)	12,50,000
Non-Current Liabilities	
Deferred Tax Liabilities (Net)	9,80,898
Total Non-Current Liabilities	9,80,898
Current Liabilities	
Total Other Liabilities	3,33,20,849
Total Current Liabilities	3,33,20,849
Total Equity & Liabilities	8,40,35,380
Assets	
Non-Current Assets	
Property, Plant & Equipment	2,59,06,316
Total Non-Current Assets	<u>2,59,06,316</u>
Current Assets	
Inventory	3,39,199
MAT Credit Entitlement	21,32,496
Trade Receivables	92,38,936
Cash & Cash Equivalents	2,035
Prepaid Expense	98,02,214
TCS Paid	48,357
TDS Receivables	1,65,480
Bank Balances other than above	68,10,544
Total For Input Tax Credits	42,60,827

Soln to Q2 Q No

$$\text{Value / share} = \frac{\text{ECL} + \text{RCL}}{\text{No of Eq Sh}}$$
$$= \frac{4,84,83,632}{1,00,000}$$
$$= 484.83$$



(\rightarrow) NCL

or

fin limb

Other Current Assets	2,53,28,977
Total Current Assets	5,81,29,064
Total Assets	8,40,35,380

You are appointed as a Valuer to **assess** the value of per share for further issue of share by the company.

Reference

Book Value per share

What's New

Q3

Balance Sheet of Exim Limited for the year ended 31.3.22 and 31.3.21 are as follows:

Liabilities	31.3.22	Assets	31.3.22
Equity Share Capital (no. of share 60,000)	60,00,000	Property, Plant & Equipment	1,49,56,685
Other Equity	39,06,110	Capital Work in progress	21,27,835
Non-Current Liabilities	4,58,71,674	Loans and Advances	9,45,611
Current Liabilities	11,70,75,605	Current Assets	15,48,23,258
Total	17,28,53,389	Total	17,28,53,389

Calculate the Fair Market value of Equity per share for the purpose of "Issue of share" as per Rule 11UA of Income Tax Act.

Reference

FMV as per IT Act.

What's New

Answer

Fair market value can be calculated as =

There;

A= Assets; L= Liabilities

PE = Amount of Paid-up Equity Share; PV = Paid up value of equity share

Soln to Q3 Pg No -

Value as per Rule 11VA of I.T Act

<u>Particulars</u>	<u>Amt</u>
(A) Total assets	17,28,53,289
(B)	-
(C)	-
(D)	-
(L) <u>Total Liab</u> (\rightarrow ESC (\rightarrow RIC	17,28,53,289 <u>(60,00,000)</u> <u>(39,06,110)</u> <hr/> 1629,47,179
Net Assets Value	99,06,110
No. of Eq shares	60,000
Value / Eq share	165.10

Statement of computation of FMV of Unquoted Equity Shares as on 31.03.2021

Particulars	Amount (₹)
Book Value of Assets (A)	17,28,53,389
Book Value of Liabilities (L) (Refer to Note No.1)	16,29,47,279
Amount of paid-up equity shares (PE) (Refer to Note No.2)	50,00,000
Paid up value of equity share (PV)	100
(A-L)	99,06,110
Fair market value of unquoted equity share ((A-L)/PE*PV)	165.10

Note No. 1- Calculation of Book value of Liabilities

Particulars	Amount (₹)
Total Value of Liabilities	17,28,53,389
Less:	
Paid up share capital	60,00,000
Reserves & Surplus (except Depreciation)	39,06,110
Book value of Liabilities	16,29,47,279

Note No. 2- Calculation of Amount of Paid up of Equity Shares

Particulars	Amount (₹)
Paid up share capital	60,00,000
Amount of Paid-up share capital	60,00,000

Fair Market Value as per 11UA of Income Tax Act is 165.10.

Q4

Balance sheet of ABC Limited as on 31.8.2021 are as follows:

Liabilities	31.8.2021	Assets	31.8.2021
Share Capital (Equity Shares of ₹ 10/- Each)	<u>10,00,93,000</u>	Fixed Assets	<u>18,98,69,000</u>
Reserve & Surplus	44,39,11,000	Long Term Loans and Advances	2,25,85,700
Deferred tax Liability	3,21,76,000	Inventories	48,33,08,500
Long-Term Borrowings	45,15,000	Trade Receivables	2,02,60,200
Short Term Borrowings	20,79,04,000	Cash & Bank Balances	2,87,98,300
Trade Payable	82,19,000	Short-Term Loans and Advances	13,15,08,200

Other Current Liabilities	8,00,31,359	Other Current Assets	45,66,500
Short-Term Provisions	40,47,041		
Total	88,08,96,400		88,08,96,400

Note:

- (i) Book Value of Immovable Property is ₹1,56,56,644; Market value of Immovable Property is ₹7,21,51,000.
- (ii) Income Tax Paid is ₹49,17,802; Income tax refund Claimed is ₹8,70,614. **[Net = ₹40,47,188]**
- (iii) Short-term Provisions includes Provision for Tax of ₹40,47,188.

Calculate Fair Market Value of share for the purpose of "Transfer of Share" as per 11UA of Income Tax Act.

Reference

FMV as per IT Act.

What's New

Immovable Property, Income Tax

Answer

Calculation of Fair Market Value of Unquoted Equity Shares as per Rule 11UA

The fair market value of unquoted equity shares = $(A+B+C+D - L) \times (PV) / (PE)$ where,

	₹
A: Book value of all the assets	88,08,96,400
Less: Book value of Immovable property	1,56,56,644
Income Tax Paid	49,17,802
Less: Income tax refund claimed	(8,70,614)
Any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any	40,47,188
Total of A	85,54,04,152
B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;	86,11,92,568
C = fair market value of shares and securities as determined in the manner provided in this rule;	-
D = the value adopted or assessed or assessable by any authority of the government for the purpose of payment of stamp duty in respect of the immovable property.	7,21,51,000
L: Book value of liabilities, but not including the following amounts, namely:	88,08,96,400

Ans to Q4 Pg No. —

Valuation of Shares as per Rule 11 U.A of IT Act

Particulars	Amt
(A) Total BV of Assets	88,08,96,400
(-) BV of Immovable Prop	(1,56,56,644)
IT Paid	49,17,802
(→ Refund of IT)	<u>(8,70,614)</u>
	(40,47,188)
	<u>86,11,92,568</u>
(B) Jewellery	-
(C) Shares & Sec	-
(D) MV of Immovable Prop	7,21,51,000
(L) <u>Total Liabilities</u>	88,08,96,400
(→ Eq Sh Cap	(10,00,93,000)
(→ R/S	(44,39,11,000)
(→ Prop Div	-
(→ PFT (net)	(40,47,188)
	<u>33,28,45,212</u>
Net Asset Value (A+B+C+D-L)	60,04,98,356

No. of Eq shares ($\frac{10,00,93,000}{10}$) 1,00,09,300
∴ Value / Eq Share ₹ 60

SJC Institute

(i) the paid-up capital in respect of equity shares;	10,00,93,000
(ii) the amount set apart for payment of dividends on preference shares and equity shares;	
(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;	44,39,11,000
(iv) any amount representing provision for taxation, other than amount of income tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;	40,47,188
Total of L	33,28,45,212
Value as per (A+B+C+D - L)	50,47,05,940 Mistake
PE = total amount of paid-up equity share capital as shown in the balance-sheet;	10,00,93,000
PV= the paid-up value of such equity shares	10
Fair Market Value per Share (A+B+C+D - L) × (PV) / (PE)	59.41 60

Q5

Balance sheet of Laxman Limited as on 31.03.2022 are as follows:

Liabilities	31.03.2022	Assets	31.03.2022
Equity Share capital C210	3,86,20,500	Property, Plant & Equipment	3,01,54,668
Preference Share capital	2,50,00,000	Capital WIP	3,52,73,410
Reserve & Surplus / Other Equity	3,41,06,547	Loans and advances	27,87,063
Long term Borrowings	6,29,58,275	Inventories	3,40,94,597
Deferred Tax Liabilities	22,46,476	Trade Receivables	7,17,79,692
Short Term Borrowings	1,04,75,317	Cash & Cash Equivalents	61,05,558
Trade Payables	3,47,15,994	Loans and Advances	3,35,88,618
Other Current Liabilities	57,19,945	Other Current Assets	74,447
Short Term Provision	15,000		
Total	21,38,58,053	Total	21,38,58,053

Note: Book value of Immovable property is ~~₹1,05,65,481~~ Market Value of Immovable property is ₹9,64,86,760.

You are required to calculate Fair Market Value of share for the purpose of "Transfer of Share" as per 11UA of Income Tax Act.

$$\begin{aligned}
 \text{NAV} &= [38620500 + 34106547 - 10565481 + 96486760] \\
 &= 158648326
 \end{aligned}$$

Soln to Q5 Pg -

Valuation of Eq Sh as per Rule 11 VA of ITA

Perticulars

Amt

(A) BV of Assets

21,38,58,053

\hookrightarrow BV of Immovable property

(1,05,65,481)

20,32,92,572

(B) Jewellery

-
-

(C) Shares

9,64,86,760

(D) MV of Immovable property

(L) BV of Liabilities

21,38,58,053

\hookrightarrow ESC (Par value ₹ 210)

(3,86,20,500)

\hookrightarrow RLS

(3,41,06,547)

14,11,31,006

Net assets $(A + B + C + D - L)$
No. of Eq Sh (₹ 10 - let)

15,86,48,326
3,86,20,500

Value / Eq share = $\frac{15,86,48,326}{3862050}$

41.08

Reference
FMV as per IT Act.
What's New
Answer
Calculation of Valuation per share as per Section 56 (vii) read with Rule 11UA of Income Tax Rules

The fair market value of unquoted equity shares = $(A+B+C+D - L) \times (PV) / (PE)$ where,

	₹
A = Book value of all the assets	21,38,58,053
Less: Book value of Immovable property	1,05,65,481
Total of A	20,32,92,572
B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;	-
C = fair market value of shares and securities as determined in the manner provided in this rule;	-
D = the value adopted or assessed or assessable by any authority of the government for the purpose of payment of stamp duty in respect of the immovable property.	9,64,86,760
L: Book value of liabilities, but not including the following amounts, namely:	21,38,58,053
(i) the paid-up capital in respect of equity shares;	(3,86,20,500)
(ii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;	(3,41,06,547)
Total of L	14,11,31,006
Value as per $(A+B+C+D - L)$	15,86,48,326
PE = total amount of paid-up equity share capital as shown in the balance-sheet;	3,86,20,500
PV= the paid-up value of such equity shares	10
Fair Market Value per Share $(A+B+C+D - L) \times (PV) / (PE)$	41.08

Q6

As a Registered Valuer you are asked to **calculate** the fair market value as on 31.05.2022 of R Limited for the purpose of issue of share as per 11 UA of Income Tax Act.

Balance of the company are as follows:

Liabilities	31.05.2022(₹)	Assets	31.05.2022 (₹)
Equity Share Capital C710	45,01,12,400	Tangible Assets	92,80,88,839
Reserve & Surplus	12,26,03,279	Non-Current Investments	25,00,000
Long-term Borrowings	86,18,20,170	Capital Work-in-progress	9,79,46,867
Deferred Tax Assets	3,30,53,680	Long term Loans & Advances	2,08,32,646
Short Term Borrowings	27,41,38,266	Inventories	76,55,82,793
Trade Payables	26,38,76,597	Trade Receivables	17,11,31,446
Other Current Liabilities	20,87,20,117	Cash & Cash Equivalents	15,45,04,345
Short Term Provision	92,72,645	Other Current Assets	13,30,10,218
TOTAL	2,27,35,97,154	TOTAL	1,27,35,97,154

Reference

FMV as per IT Act.

What's New

A = 2273597154

B - Nil

C - Nil

D - Nil

L - ✓

NAV ✓

Look to Q6 Pg -

Answer

Fair market value can be calculated as $= ((A-L)) / (PE \times PV)$

There;

A = Assets; L = Liabilities

PE = Amount of Paid-up Equity Share;

PV = Paid up value of equity share

$$\text{Value share} = \frac{450112400 + 122603279}{450112400} = 12.72$$

Statement of computation of FMV of Unquoted Equity Shares as on 31.05.2022

Particulars	Amount (₹)
Book Value of Assets (A)	2,27,35,97,154
Book Value of Liabilities (L) (Refer to Note No.1)	1,70,08,81,475
Amount of paid-up equity shares (PE) (Refer to Note No.2)	45,01,12,400

Paid up value of equity share (PV)	10
(A-L)	57,27,15,679
Fair market value of unquoted equity share ((A-L)/PE*PV)	12.72

Note No. 1- Calculation of Book value of Liabilities

Particulars	Amount (₹)
Total Value of Liabilities	2,27,35,97,154
Less:	
Paid up share capital	45,01,12,400
Reserves & Surplus (except Depreciation)	12,26,03,279
Book value of Liabilities	1,70,08,81,475

Note No. 2 - Calculation of Amount of Paid up Equity Shares

Particulars	Amount (₹)
Paid up share capital	45,01,12,400
Amount of Paid-up share capital	45,01,12,400

Fair Market Value as per 11UA of Income Tax Act is 12.72.

Q7

Mr A is a shareholder of S Pvt Ltd. He is planning to sell his shares. He has engaged you to assess the Fair Market Value of S Pvt Ltd as on 31.3.2023 under Rule 11UA of Income Tax Rules.

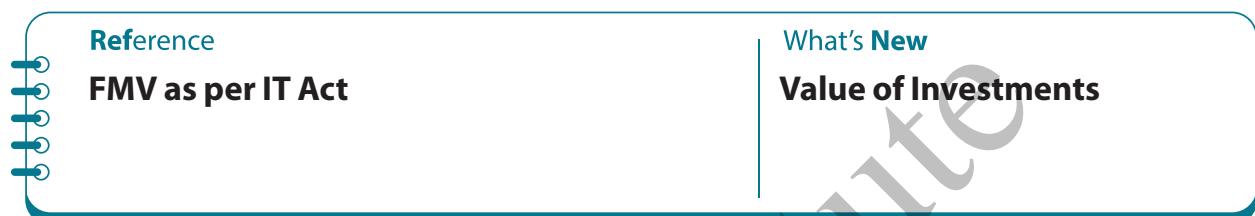
The Balance sheet of the company as on the 31st March 2023 is as follows-

Liabilities	INR	Assets	INR
Equity Share Capital	50,01,12,400	Tangible Assets	92,80,88,839
Reserve & Surplus	12,26,03,279	Non-Current Investment	25,00,000
Long- term Borrowings	86,18,20,170	Capital Work-in- progress	9,79,46,867
Deferred Tax Assets	3,30,53,680	Long term Loans & Advances	2,08,32,646
Short Term Borrowings	27,41,38,266	Inventories	76,55,82,793
Trade Payables	26,38,76,597	Trade Receivables	17,11,31,446
Other Current Liabilities	20,87,20,117	Cash & Cash Equivalents	15,45,04,345
Short Term Provisions	92,72,645	Other Current Assets	13,30,10,218
TOTAL	2,27,35,97,154	TOTAL	2,27,35,97,154

Additional information:

1. Tangible Assets includes Land which is recorded in the books at its book value of INR 10 Crore. As per the Government records, its Stamp Duty value is estimated to be INR 12.5 Crore.
2. Non-Current Investments represents investment in 25000 shares of Z Pvt Ltd. Mr A has provided a valuation report from a Chartered Accountant that shows that the value of Z Pvt Ltd under Rule 11UA was INR 79 per share.
3. The Paid-up value of Equity Share is INR 10/-

Suggest with supporting calculations, the Fair Market Value of S Pvt. Ltd.

**Answer**

Fair Market Value is calculated as = $(A+B+C+D-L)/(PE \times PV)$

Where, A= Assets, L= Liabilities, PE=Amount of Paid-up Equity Share,

PV=Paid up value of Equity Share

Statement of computation of FMV of Unquoted Shares as on 31.3.2023

Particulars	Amount	
Book Value of Assets (A)	2,27,35,97,154	
Less: Book value of Immovable Property	(10,00,00,000)	
Less: Book Value of Shares and Securities	(25.00.000)	
Add: Fair Value of Immovable Property	<i>Mistake</i> 12,00,00,000	12,00,00,000
Add: Fair Value of Shares and Securities	25000x79	19,75,000
Value of A		2,29,072,154
Book Value of Liabilities (L) (Note No. 1)		1,65,08,81,475
A + B + C + D - L		64,71,90,679
Amount of Paid-up Equity Shares (PE)		50,01,12,400
Paid up Value of Equity Share (PV)		10
Fair market value of Equity Shares		12.84 12.94

Note No. 1

Particulars	Amount
Total value of liabilities	2,27,35,97,154
Less: Paid Up Share Capital	50,01,12,400
Reserves and surplus (except depreciation)	12,26,03,279
Book Value of Liabilities(L)	1,65,08,81,475

Solu to Q7 Pg No. —

Value of Eq sh as per Rule 11 VAT of IT Act

Particulars Amt

(A) Total Brv of Assets	2,27,35,97,154
(-) Brv of immovable property	(10,00,00,000)
(-) Brv of shares	(25,00,000)
	<u>2,17,10,97,154</u>

(B) FV of Jewellery	
(C) FV of shares (2500×79)	19,75,000
(D) FV of immovable property	13,50,00,000
(E) Total Brv of liabilities	2,27,35,97,154
(-) ESC	(50,01,12,400)
	<u>(12,26,03,279)</u>

1,65,08,81,478

Net assets Value = (A+B+C+D-L) 64,71,90,679

No. of Eq sh C210/sh 5,00,11,240

Value /Eq sh 12.94

Theory Questions

Q1

✓ What do you mean by Asset reconstruction? What is the role of Asset reconstruction companies?

Reference	What's New
 Asset Reconstruction	

Answer

"Asset reconstruction" means acquisition (by any asset reconstruction company) of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance.

(1) Asset reconstruction is the activity of converting a bad or non-performing asset into performing asset. The process of asset reconstruction involves several steps including purchasing of bad asset by a dedicated asset reconstruction company (ARC) including the underlying hypothecated asset, financing of the bad asset conversion into good asset using bonds, debentures, securities and cash, realization of returns from the hypothecated assets etc.

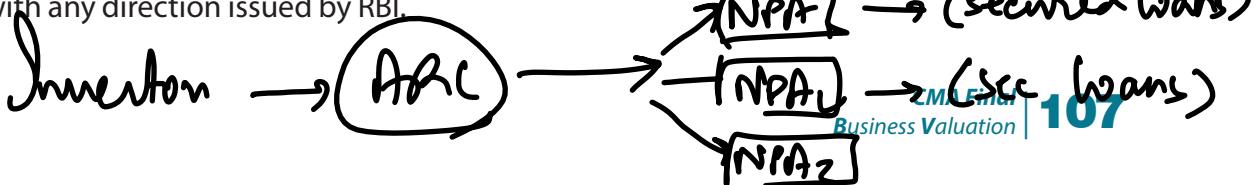
"Asset reconstruction company" means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of asset reconstruction or securitization, or both;

Asset Reconstruction Companies take over non-performing assets of banks at discounted rate and manage and dispose of such assets, Reconstruction, is to be done with the RBI regulations and the SARFAESI Act gives the following components for reconstruction of assets -

Notes

- (i) taking over or changing the management of the business of the borrower
- (ii) the sale or lease of a part or whole of the business of the borrower.
- (iii) rescheduling of payment of debts payable by the borrower
- (iv) enforcement of security interest in accordance with the provisions of this Act;
- (v) settlement of dues payable by the borrower
- (vi) taking possession of secured assets in accordance with the provisions of this Act

It empowers the Reserve Bank of India to regulate asset reconstruction companies in a changing business environment. It empowers the RBI to carry out Audit and conduct inspections of an ARC from time to time. The RBI may impose a penalty where an ARC fails to comply with any direction issued by RBI.

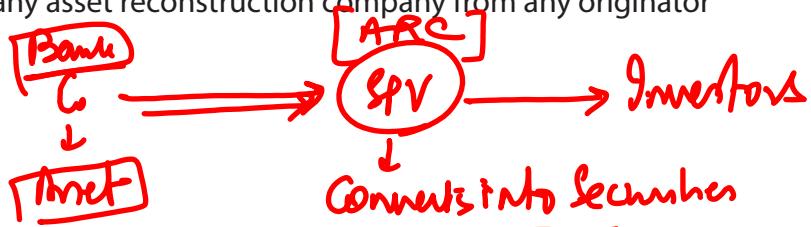


Multiple Choice Questions

1. When did the Insolvency and Bankruptcy Code 2016 receive the President's assent?
 - (a) 5th August 2016
 - (b) 28th May 2016
 - (c) 5th May 2016
 - (d) 15th June 2016
2. The Insolvency and Bankruptcy Code, 2016 is applicable to corporates if the default is?
 - (a) ₹1 lakh or more *(CMAI - wrong)*
 - (b) Above ₹1 lakh
 - (c) ₹5 lakh or more
 - (d) ₹1 Crore or more
3. The term related party is defined in of the Insolvency and Bankruptcy Code, 2016:
 - (a) Section 5 (22)
 - (b) Section 5 (23)
 - (c) Section 5 (24)
 - (d) Section 5 (25)
4. How much time is given to start-ups and small and medium enterprises (SMEs) to complete the resolution process in Fast-track insolvency process?
 - (a) 30 days
 - (b) 60 days
 - (c) 90 days
 - (d) 45 days
5. Who can initiate an Insolvency Resolution Process under the Code ?
 - (a) Debtor
 - (b) Creditor
 - (c) Insolvency resolution Professional
 - (d) all of the above
6. What is the minimum amount of default for being admitted into Corporate Insolvency Resolution Process (CIRP)
 - (a) ₹50 lakhs
 - (b) ₹75 Lakhs

- (c) ₹90 Lakhs
- (d) ₹1 Crore
7. During voluntary liquidation, who is required to make declaration of solvency ?
- (a) Partners
- (b) Directors
- (c) Debtor
- (d) Creditor
8. Whom does the IRP appoint to determine the liquidation value of the corporate debtor?
- (a) Liquidator
- (b) CA
- (c) Director
- (d) Registered valuers
9. Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be - *Sec 192*
- (a) Voidable
- (b) Void
- (c) Voidable at the option of others
- (d) Valid
10. Under sec 230(3), In case of a listed company, the documents related to notice of meeting under should be sent to -
- (a) SEBI
- (b) NSE
- (c) BSE
- (d) all of the above
11. What is the punishment for a valuer for contravening the provisions of this section 247 with the intention to defraud the company or its members?
- (a) Fine of ₹1 lacs - ₹5 lacs
- (b) Imprisonment may extend to one year
- (c) both
- (d) None
12. A person shall be eligible to be a registered valuer if he
- (a) is a valuer member of a RVO
- (b) is recommended by RVO

- (c) has passed the valuation examination under rule 5 within three years
 (d) all of the above
13. If you have Graduated in Valuation of Plant and Machinery or equivalent, What is the minimum experience required to become eligible to do Plant & machinery valuation ?
(a) 1 year
(b) 2 years
(c) 3 years
 (d) 5 years
14. non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor is known as
(a) Debt
 (b) Default
(c) Securisation
(d) Debtor
15. Central Registry of Securitization Asset Reconstruction and security Interest (CERSAI) is under which provision?
(a) SEBI Act,1992
 (b) SARFAESI Act,2002
(c) RBI Act,1934
(d) Banking Regulation,1949
16. The Insolvency and bankruptcy code was passed in _____
(a) 2013
(b) 2014
(c) 2015
 (d) 2016
17. Acquisition of financial assets by any asset reconstruction company from any originator
(a) Reconstruction
(b) Default
 (c) Securitisation
(d) Amalgamation
18. Which of the following assets is an asset or account of a borrower, which has been classified by a bank or financial institution and sub-standard, doubtful or loss asset, in accordance with the directions or guidelines relating to asset classification issued by RBI .



- (a) Underlying Assets
(b) Operating Assets
(c) Performing Assets
 (d) Non Performing Assets
19. Which Company can act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties
(a) securitisation company
(b) reconstruction company
 (c) Both
(d) None
20. As per the provision of the SARFAESI Act, if the borrower fails to comply with the notice, the bank may:
(a) Take possession of the security;
(b) Sale or lease or assign the right over the security;
(c) Appoint Manager to manage the security
 (d) all of the above
21. Which of the following acts gave birth to the Asset Reconstruction Company ?
(a) Banking regulation act 1949
(b) SEBI Act 1992
(c) Companies Act 2013
 (d) SARFAESI Act 2002
22. Which of the following defines the term 'fair value'?
(a) The price at which an orderly transaction to sell an asset or to transfer a liability would take place between market participants at the reporting date under current market conditions
 (b) The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date
(c) The weighted average price at which orderly transactions to sell assets or to transfer liabilities are taking place between market participants at the reporting date in the relevant market
(d) The entry price at the measurement date from the perspective of a market participant that holds the asset or owes the liability

→ will apply

23. Which of the following are not the exceptions for application of IND AS 113?

- (a) Share-based payment transactions within the scope of IND AS 102 Share-based Payments
- (b) Hedge instruments within the scope of IND AS 109 Financial Instruments
- (c) Leasing transactions within the scope of IND AS 106 Leases
- (d) Net realisable value of inventories within the scope of IND AS 2 Inventories

24. Which of the followings is not the core principle of valuation :

- (a) Ethics
- (b) Perception
- (c) Compliance
- (d) Data

25. What is the IVS for Scope of Work?

- (a) IVS 100
- (b) IVS 101
- (c) IVS 200
- (d) IVS 400

26. What is the IVS for Investigation and compliance?

- (a) IVS 100
- (b) IVS 101
- (c) IVS 200
- (d) IVS 102

27. What is the IVS for Reporting?

- (a) IVS 100
- (b) IVS 101
- (c) IVS 103
- (d) IVS 102

28. What is the IVS for Bases of Value

- (a) IVS 100
- (b) IVS 104
- (c) IVS 103
- (d) IVS 102

29. What is the IVS for Valuation Approaches and Methods?

- (a) IVS 100

- (b) IVS 101
 (c) IVS 105
(d) IVS 102
30. What is the IVS for Businesses and Business Interests
 (a) IVS 200
(b) IVS 210
(c) IVS 220
(d) IVS 230
31. What is the IVS for Intangible Assets
(a) IVS 200
 (b) IVS 210
(c) IVS 220
(d) IVS 230
32. What is the IVS for Non-Financial Liabilities
(a) IVS 200
(b) IVS 210
 (c) IVS 220
(d) IVS 230
33. What is the IVS for Inventory
(a) IVS 200
(b) IVS 210
(c) IVS 220
 (d) IVS 230
34. What is the IVS for Plant & Machinery
(a) IVS 200
(b) IVS 210
 (c) IVS 300
(d) IVS 230
35. What is the IVS for Real property Interests
(a) IVS 210
 (b) IVS 400
(c) IVS 410
(d) IVS 500

36. What is the IVS for Development Property

- (a) IVS 210
- (b) IVS 400
- (c) IVS 410
- (d) IVS 500

37. What is the IVS for Financial Instruments

- (a) IVS 210
- (b) IVS 400
- (c) IVS 410
- (d) IVS 500

38. Which rule determines Fair Value of Shares and Securities ?

- (a) Rule 11UB
- (b) Rule 11UAA
- (c) Rule 13BB
- (d) Rule 11UA (1)(c)

39. Which Act is responsible for entrusting the Asset reconstruction Companies (ARCs) for raising funds by issuing security receipts to the set of qualified buyers.

- (a) SARFAESI Act
- (b) Banking regulation act 1949
- (c) SEBI Act 1992
- (d) Companies Act 2013

40. Reports need not contain one of the following:

- (a) Scope of work
- (b) site notes
- (c) Assumptions
- (d) key inputs used

41. Which of the following types of items are least likely included in other comprehensive income and why?

- (a) Loss under the revaluation.
- (b) Unrealized gains on equity shares.
- (c) Realized gains on securities classified as available for sale.
- (d) All the above

42. Which Act is responsible for entrusting the Asset Reconstruction Companies (ARCs) for raising funds by issuing security receipts to the set of qualified buyers?

- Reprint*
- (a) SARFAESI Act
(b) Banking regulation act 1949
(c) SEBI Act 1992
(d) Companies Act 2013

Answer key :

1	b	2	a	3	c	4	c	5	d	6	d
7	b	8	d	9	a	10	d	11	c	12	d
13	d	14	b	15	b	16	d	17	c	18	d
19	c	20	d	21	d	22	b	23	b	24	b
25	b	26	d	27	c	28	b	29	c	30	a
31	b	32	c	33	d	34	c	35	b	36	c
37	d	38	d	39	a	40	c				

Sl. No.	Ans.	Justification
41	(c)	Explanation: Realized gains on investment securities are reported on the income statement. The other two types of incomes may be reported as other comprehensive income under certain circumstances.
42	(a)	

Fill in the Blanks:

- (1) When an entity (individual or an organisation) is unable to meet its outstanding financial debt towards its lender as it becomes due for a prolonged period with no foresight of being able to repay the debt, it is considered as insolvent
- (2) When an entity voluntary declares itself as an insolvent and goes to the court, it is considered as Bankrupt
- (3) A partner of a partnership firm is not eligible to apply for an IRP unless a joint application is filed by majority of the partnership firm.
- (4) The CIRP shall be completed within a period of 180 days from the date of admission of the application to initiate such process
- (5) Resolution Plan means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern.
- (6) The interim resolution professional shall within 7 of his appointment, appoint 2 registered valuers to determine the liquidation value of the corporate debtor.
- (7) Objection to any compromise or arrangement can be made only by persons holding 10%

of shareholding or having an outstanding debt amounting to 5% of the total outstanding debt as per the latest audited financial statements

- (8) DRT means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- (9) No securitisation company or reconstruction company which has been granted a certificate of registration, shall carry on, any business other than that of securitisation or asset reconstruction without prior approval of the RBI.

Answer :

1	insolvent	6	seven days, two
2	Bankrupt	7	not less than 10%, not less than 5%
3	Majority of the partners	8	Debts Recovery Tribunal
4	180 days	9	Reserve Bank
5	Resolution Plan		