

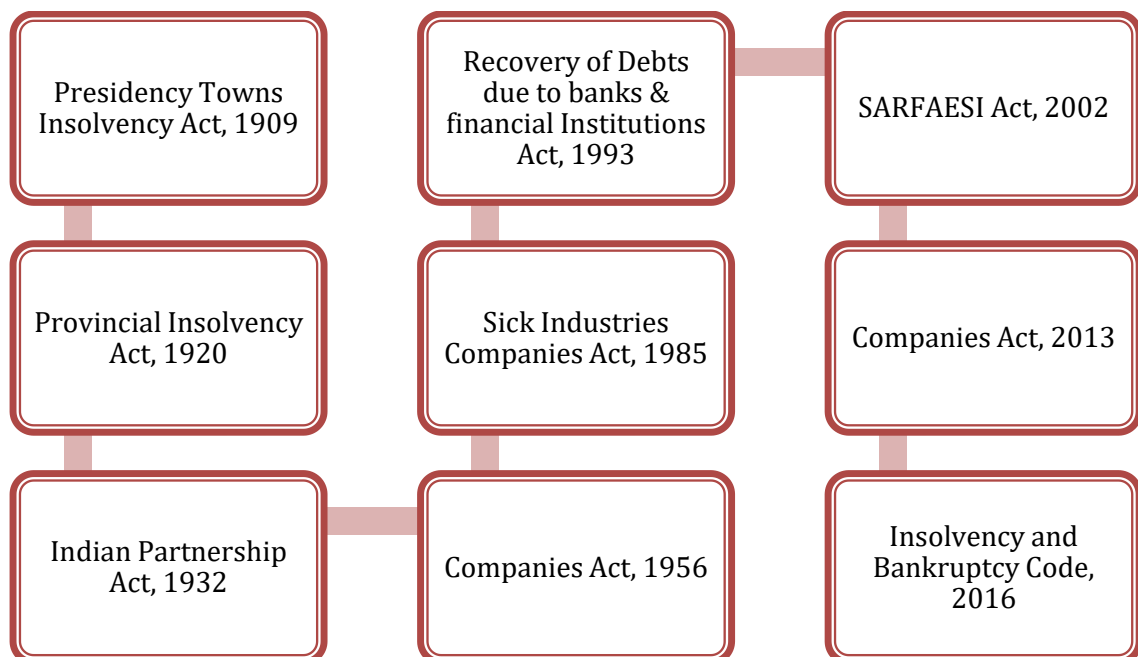
Insolvency & Bankruptcy Code, 2016

Concept of Insolvency and Bankruptcy



- ✓ **Insolvency** in this Code is regarded as a “state” where assets are insufficient to meet the liabilities.
- ✓ If untreated insolvency will lead to **bankruptcy for non-corporates** and **liquidation of corporate**.
- ✓ **insolvency** is a **state** and **bankruptcy** is a **conclusion**
- ✓ insolvency is a situation which arises due to inability to pay off the debts due to insufficient assets, bankruptcy is a situation wherein application is made to an authority declaring insolvency and seeking to be declared as bankrupt
- ✓ Liquidation is the winding up of a corporation or incorporated entity.

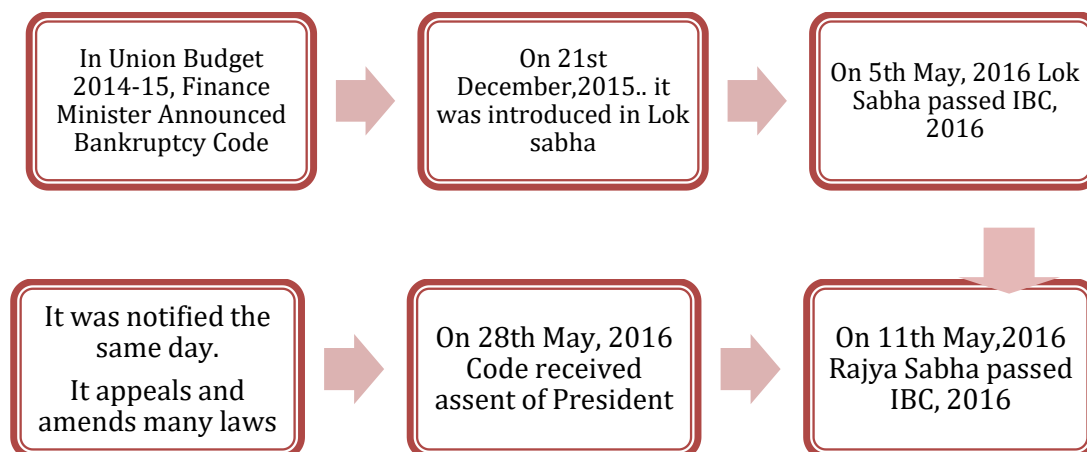
Earlier Laws



Need of New Law

- ✓ In past Bankruptcy regime of India as mentioned in chart above, company's revival has been sluggish and cumbersome which often leads to productive assets lying dormant and getting wasted.
- ✓ It takes an average of four to five years in insolvency resolution in India. The main reason behind such delay in the legal process is the existence of overlapping legislations and adjudicating authorities dealing with insolvency of companies and individuals in India.
- ✓ The Government of India then formulated a plan to refurbish the prevailing bankruptcy laws and replace them with one that will facilitate hassle-free and time-bound for revival and closure of businesses.
- ✓ For this, Insolvency and Bankruptcy Code, 2016 has come up with the expeditious insolvency resolution/revival process for corporate persons, firms and Individuals

Evolution of the Code



Objective of Insolvency & Bankruptcy Code, 2016

- a) **Comprehensive Law:** Insolvency Code is a comprehensive law which envisages and regulates the process of insolvency and bankruptcy of all persons including corporates, partnerships, LLP's and individuals.
- b) **No Multiplicity of Laws:** The Code has withered away the multiple laws covering the recovery of debts and insolvency and liquidation process and presents singular platform for all the reliefs relating to recovery of debts and insolvency.
- c) **Low Time Resolution:** The Code provides a low time resolution and defines fixed time frames for insolvency resolution of companies and individuals. The process is mandated to be completed within 180 days, extendable to maximum of 90 days. Further, for a speedier process there is provision for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.
- d) **One Window Clearance:** It has been drafted to provide one window clearance to the applicant whereby he gets the appropriate relief at the same authority unlike the earlier position of law where in case the company is not able to revive the procedure for

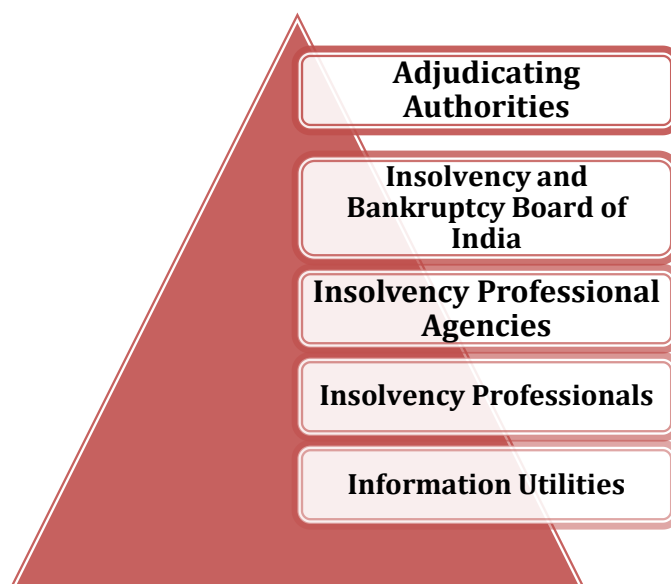
winding up and liquidation has to be initiated under separate laws governed by separate authorities.

- e) **One Chain of Authority:** There is one chain of authority under the Code. It does not even allow the civil courts to interfere with the application pending before the adjudicating authority, thereby reducing the multiplicity of litigations. The National Company Law Tribunal (NCLT) will adjudicate insolvency resolution for companies. The Debt Recovery Tribunal (DRT) will adjudicate insolvency resolution for individuals.
- f) **Priority to the interests of workman and employees:** The Code also protects the interests of workman and employees. It excludes dues payable to workmen under provident fund, pension fund and gratuity fund from the debtor's assets during liquidation.
- g) **New Regulatory Authority:** It provides for constitution of a new regulatory authority 'Insolvency and Bankruptcy Board of India' to regulate professionals, agencies and information utilities engaged in resolution of insolvencies of companies, partnership firms and individuals. The Board has already been established and started functioning.

Objective of IBC, 2016

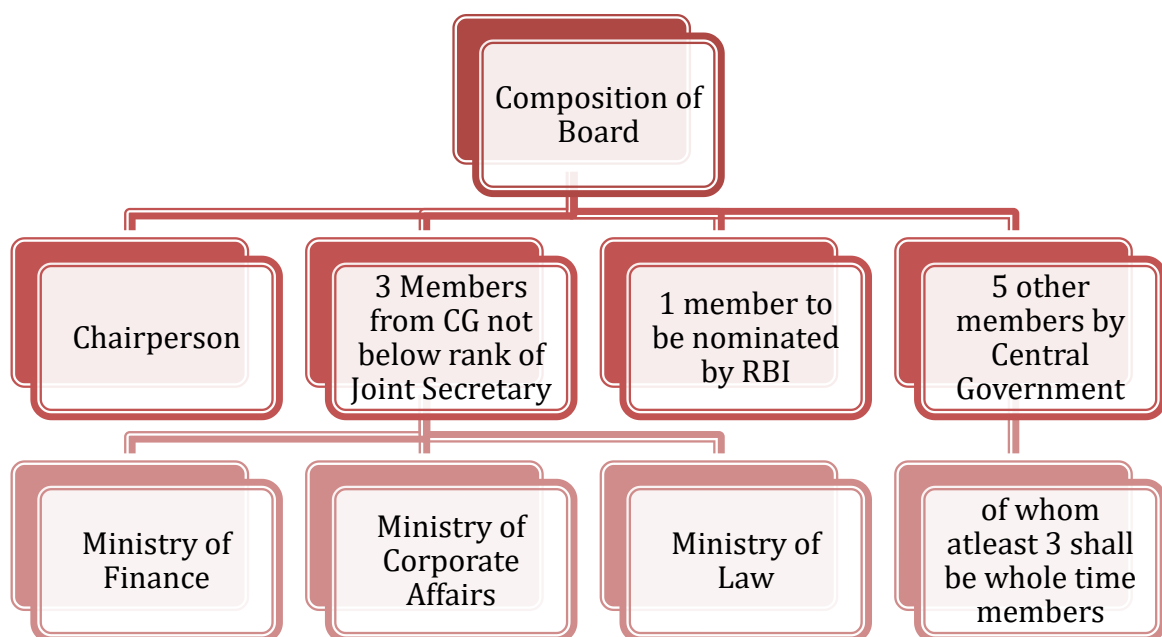
- a) To consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals.
- b) To fix time periods for execution of the law in a time bound manner.
- c) To maximize the value of assets of interested persons.
- d) To promote entrepreneurship
- e) To increase availability of credit.
- f) To balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues.
- g) To establish an Insolvency and Bankruptcy Board of India as a regulatory body for insolvency and bankruptcy law.

Pillars of the Code



Insolvency and Bankruptcy Board of India

Establishment	Features	Functions
<ul style="list-style-type: none"> • On 1st October, 2016 • Head Office- New Delhi 	<ul style="list-style-type: none"> • Body Corporate • perpetual Succession • Common seal • Capacity to sue and be sued • Hold & dispose property 	<ul style="list-style-type: none"> • Legislative • Executive • Quasi Judicial with respect to Insolvency Professionals, their agencies & information Utilities



Insolvency Professional Agencies

The Code provides for establishment of insolvency professionals agencies to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code 2016 and read with regulations.

Functions of IPA

- ✓ **Regulatory Functions-** Drafting detailed standards and codes of conduct through bye-laws, that are made public and are binding on all members
- ✓ **Executive Functions-** Gathering information for preventing frivolous behaviour, and malfeasance in the conduct of IP duties
- ✓ **Quasi-Judicial Functions-** Addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions

Insolvency Professionals

The Code provides for **insolvency professionals** as **intermediaries** who would **play** a key **role** in the **efficient working of** the **bankruptcy process**.

Every insolvency professional shall abide by the following code of conduct-

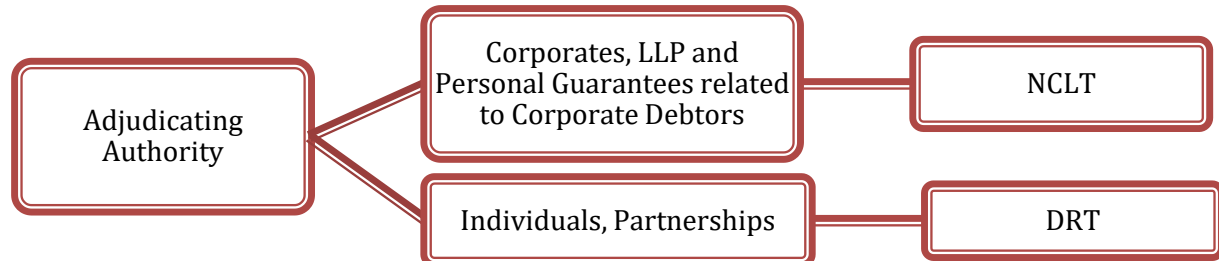
- ✓ to take reasonable care and diligence
- ✓ to allow the insolvency professional agency to inspect his records
- ✓ to submit a copy of the records

Information Utilities

- ✓ The **Code envisages creation of information utility to collect, collate, authenticate and disseminate financial information of debtors** in centralized electronic databases, at all time.
- ✓ The **Code requires creditors to provide financial information** of debtors to multiple utilities on an ongoing basis. Such information would be available to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings.

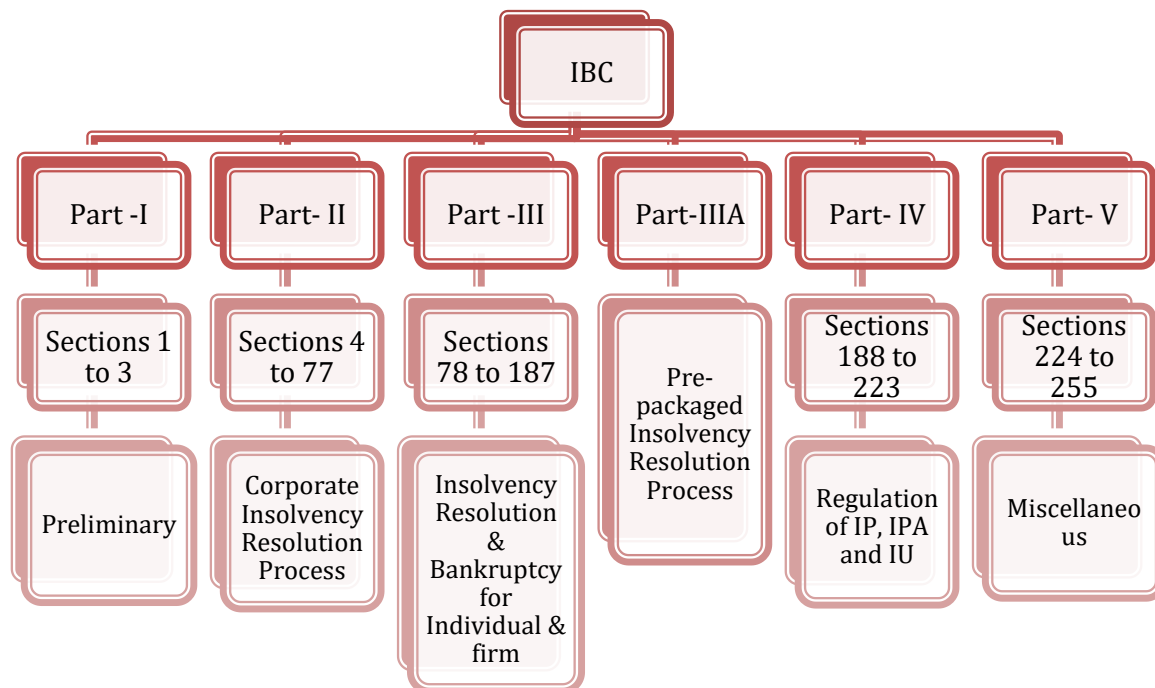
Adjudicating Authorities

The Code has created one chain of authority for adjudication under the Code. Civil Courts have been prohibited to interfere in the matters related with application pending before the Adjudicating Authority.



XY & Co., a firm applied to NCLT to be declared insolvent as the firm is not able to pay off debts to his creditors in present and in coming future. State whether the act of the firm is valid as to the filing of application in terms of jurisdiction.

Structure of the Code



Important Definitions

Claim [Section 3(6)]

Claim means a right to payment or right to remedy for breach of contract if such breach gives rise to a right to payment whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

Corporate Person [Section 3(7)]

Corporate Person means

- (a) a **company** as defined under section 2(20) of the **Companies Act, 2013**
- (b) a **Limited Liability Partnership** as defined in 2(1)(n) of Limited Liability Act, 2008 or,
- (c) any other **person incorporated with limited liability under any law** for the time being in force but shall not include any financial service provider.

Exception: NBFC and HFC with asset size ≥ 500 crore are covered in above definition despite being financial service provider.

Corporate Debtor [Section 3(8)]

Corporate Debtor means a **corporate person who owes a debt** to any person.

Creditor [Section 3(10)]

Creditor means any person to whom a debt is owed and includes a financial creditor, an

operational creditor, a secured creditor, an unsecured creditor and a decree holder.

Debt [Section 3(11)]

Debt means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

Default [Section 3(12)]

Default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

Financial Information [Section 3(13)]

Financial information, in relation to a person, means one or more of the following categories of information, namely:—

- (a) records of the debt of the person
- (b) records of liabilities when the person is solvent
- (c) records of assets of person over which security interest has been created
- (d) records, if any, of instances of default by the person against any debt
- (e) records of the balance sheet and cash-flow statements of the person; and
- (f) such other information as may be specified.

Person [Section 3(23)]

A person includes:-

- ✓ an individual
- ✓ a Hindu Undivided Family
- ✓ a company
- ✓ a trust
- ✓ a partnership
- ✓ A limited liability partnership, and
- ✓ any other entity established under a Statute.
- ✓ And includes a person resident outside India

Secured Creditor [Section 3(30)]

Secured creditor means a creditor in favour of whom security interest is created

Adjudicating Authority [Section 5(1)]

Adjudicating Authority, for the purposes of this Part II (Insolvency Resolution and Liquidation for corporate persons), means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013. [Section 5(1)]

Corporate Applicant [Section 5(5)]

Corporate applicant means—

- a) **corporate debtor**; or
- b) a **member** or **partner** of the **corporate debtor** who is **authorised to make an application for the corporate insolvency resolution process** or the pre-packaged

insolvency resolution process as the case may be under the constitutional document of the corporate debtor; or

- c) an **individual** who is **in charge of managing the operations and resources** of the **corporate debtor**; or
- d) a **person** who **has the control** and supervision **over the financial affairs** of the **corporate debtor**

Dispute [Section 5(6)]

Dispute includes a suit or arbitration proceedings relating to—

- (a) the existence of the amount of debt
- (b) the quality of goods or service; or
- (c) the breach of a representation or warranty

Financial Creditor [Section 5(7)]

Financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Insolvency Commencement Date [Section 5(12)]

Insolvency commencement date means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be

Operational Creditor [Section 5(20)]

Operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred; [Section 5(20)]

Related Party [Section 5(24)]

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

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

- (j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;
- (k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;
- (l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;
- (m) any person who is associated with the corporate debtor on account of—
- participation in policy making processes of the corporate debtor; or
 - having more than two directors in common between the corporate debtor and such person; or
 - interchange of managerial personnel between the corporate debtor and such person

Resolution Plan [Section 5(26)]

Resolution plan means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II

Resolution Professional [Section 5(27)]

Resolution professional, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional

Voting Share [Section 5(28)]

Voting share means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.

Financial Debt [Sec 5(8)]

"Financial debt" means a debt along with interest and includes—

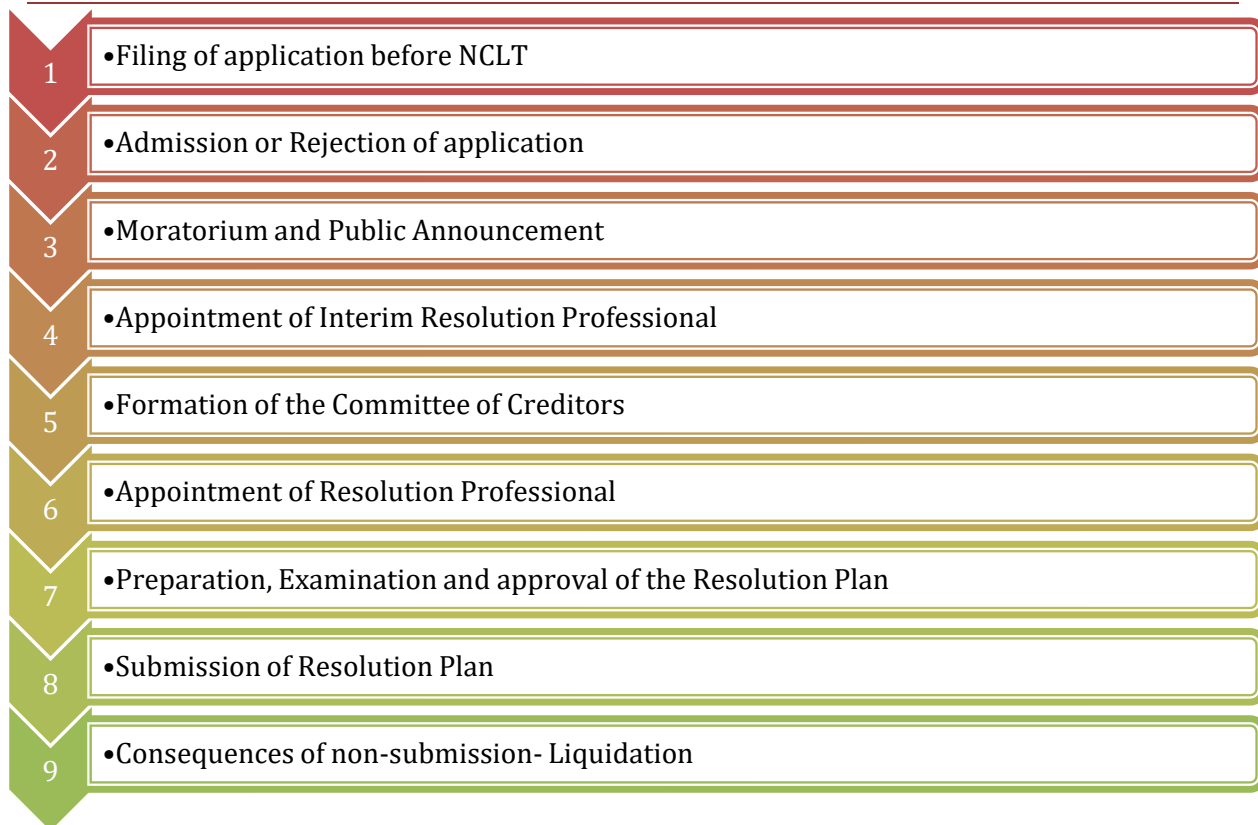
- ✓ money borrowed against the payment of interest,
- ✓ accepted against any credit facility
- ✓ Raised by issue of bonds, notes, debentures, loan stock or any similar instrument.
- ✓ any liability in respect of any lease
- ✓ receivables sold or discounted
- ✓ Other like forward sale or purchase agreement, having the commercial effect of a borrowing.

any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing

Operational Debt [Section 5(21)]

Claim in respect of Provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority

Process of Corporate Insolvency Resolution Process



Part II of Code

Section 4

- ✓ Part II of Code contains the provisions with respect to Insolvency Resolution and liquidation of Corporate Persons. It consists of sections 4 to 77.
- ✓ **Part II shall apply to matters of insolvency and liquidation only when minimum amount of default is 1 crore.**
- ✓ Central Government may by notification specify minimum amount of default of higher value which shall not be more than 1 crore.

Part II-Chapter II- Corporate Insolvency Resolution Process (CIRP)

Application to National Company Law Tribunal

Section 6

The process of insolvency is triggered by occurrence of default.

The corporate insolvency process may be initiated against any defaulting corporate debtor by making an application for corporate insolvency resolution. The **application may be made by:-**

- a) **Financial creditor**
- b) **Operational creditor**
- c) **Corporate debtor**

Filing Of Application by Financial Creditor

Section 7

A **financial creditor** either itself or along with other financial creditors **may lodge** an **application** before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process **against** a **corporate debtor who commits** a **default in payment** of its dues in specified form and manner.

Enclosure to Application

The Financial Creditor shall **along with** the **application give-**

- ✓ **Record of default** with Information Utility or other evidence in support of the default committed by the corporate debtor.
- ✓ **Name of the Interim Resolution Professional.**
- ✓ Any **other information** as may be **prescribed**.

Admission/Rejection

The **Adjudicating Authority may** either **accept or reject** the application **within fourteen days of receipt** of application.

Grounds of Acceptance	Grounds of Rejection
If satisfied that- <ul style="list-style-type: none"> ✓ Default has occurred ✓ Application for Corporate Insolvency resolution process is complete ✓ No disciplinary proceedings are against proposed Resolution professional 	If satisfied that- <ul style="list-style-type: none"> ✓ Default has not occurred ✓ Application for Corporate Insolvency resolution process is not complete ✓ disciplinary proceedings are against proposed Resolution professional

However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

Illustration:

Mr. SP booked office space with Elegant Construction Limited. At the time of booking Rs. 36 lakhs was paid. Remaining amount of Rs. 10 lakhs was paid at the time of taking delivery. He entered into a Memorandum of Understanding (MoU) with the company having various terms and conditions of the sale/ allotment. According to the MoU, Elegant Construction Limited was required to build and deliver the possession of the unit within 2 years from the date of execution of the MoU. It also stipulated payment of an assured return of Rs. 82,000 per month (subject to TDS u/s 194A of IT Act, 1961) till possession of the unit was delivered to Mr. SP. Elegant construction Limited failed to pay the assured return. Thereafter Mr. SP filed an application for initiating insolvency resolution process. Decide about the validity of the said application in view of the provisions of Insolvency and Bankruptcy Code, 2016 as regards the definition of a 'financial creditor' under section 5(7) read with section 5(8) of the Code.

Answer:

Real Estate Allottees are Financial creditors and thus make an application under this section in case of default.

Application may be made by atleast 100 such allottees or not less than 10% of such allottees.

Pre-Condition for Filing by Operational Creditor

Section 8

Sending Of Demand Notice

- ✓ An **operational creditor** shall **on** the occurrence of **default**, shall **first send** a **demand notice** in such form and manner as may be prescribed **and** a **copy of invoice** to the **corporate debtor**.
- ✓ Demand Notice shall contain demand requiring payment of amount involved in default.

Response to Notice

The corporate **debtor shall-**

- ✓ **within** a period of **ten days of receipt** of demand notice
- ✓ **notify** the **operational creditor about** the existence of a **dispute**, any or record of pendency of any suit or arbitration proceedings.
- ✓ **Bring to notice of operational creditor about payment** of unpaid operational debt by sending attested copy of record of payment

Dispute [Section 5(6)]

It includes suit or arbitration proceedings relating to-

- a) Existence of amount of debt
- b) Quality of goods or service
- c) Breach of representation or warranty

Filing Of Application by Operational Creditor

Section 9

After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, **he may file an application before the Adjudicating Authority** for initiating a corporate insolvency resolution process.

Enclosure to Application

The Operational Creditor shall **along with** the **application give-**

- ✓ **Copy of Invoice or demand notice** delivered by operational creditor to debtor.
- ✓ An **affidavit** to effect **that no notice** given by corporate debtor **relating to dispute**
- ✓ Copy of **certificate from Financial Institutions** maintaining accounts **confirming** that **no payment** of unpaid operational debt is available.
- ✓ Any **other proof** confirming non-payment.
- ✓ An **operational creditor may propose** Name of **Resolution professional**

Admission/Rejection

The **Adjudicating Authority may** either **accept or reject** the **application within fourteen days of receipt** of application.

Grounds of Acceptance	Grounds of Rejection
If satisfied that- <ul style="list-style-type: none"> ✓ Default has occurred ✓ Application for Corporate Insolvency resolution process is complete ✓ No disciplinary proceedings are against proposed Resolution professional ✓ Invoice and demand notice is delivered to Corporate Debtor ✓ No notice of dispute received. 	If satisfied that- <ul style="list-style-type: none"> ✓ Default has not occurred ✓ Application for Corporate Insolvency resolution process is not complete ✓ disciplinary proceedings are against proposed Resolution professional ✓ Invoice and demand notice is not delivered to Corporate Debtor ✓ Notice of dispute has been received.

However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

Filing Of Application by Corporate Applicant

Section 10

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

Enclosure to Application

The Corporate Applicant shall **along with the application give-**

- ✓ **Information relating to books of account** and other documents
- ✓ **Name of Resolution professional**
- ✓ **Special Resolution** passed by shareholders of Corporate Debtor or the resolution passed by atleast 3/4th of total number of partners of corporate debtor approving filing of application.

Admission/Rejection

The **Adjudicating Authority may either accept or reject the application within fourteen days of receipt** of application.

Grounds of Acceptance	Grounds of Rejection
If satisfied that- <ul style="list-style-type: none"> ✓ Application for Corporate Insolvency resolution process is complete ✓ No disciplinary proceedings are against proposed Resolution professional 	If satisfied that- <ul style="list-style-type: none"> ✓ Application for Corporate Insolvency resolution process is not complete ✓ disciplinary proceedings are against proposed Resolution professional

Commencement of Insolvency Resolution Proceedings

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

Persons not entitled to Initiate Insolvency Process

Section 11

- (a) A **corporate debtor already undergoing an insolvency resolution process/ PPIRP** or
- (b) A corporate **debtor having completed** corporate insolvency resolution **process 12 months preceding** the **date** of making of the **application** or
- (c) A corporate debtor or a financial creditor **who has violated any of the terms of resolution plan** which was **approved 12 months before the date** of making of an application
- (d) A corporate **debtor** in respect of **whom** a **liquidation order** has been **made**

Other grounds added:

- ✓ **A financial creditor / operational creditor undergoing a PPIRP**
- ✓ **a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, 12 months preceding the date of making of the application**

In this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor

Disposal of Applications

Section 11A

- ✓ Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7 or section 9 or section 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.
- ✓ Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.
- ✓ Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under sections 7, 9 or 10.
- ✓ The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.

Time Limit for Completion of Insolvency Resolution Process

Section 12

Corporate Insolvency **Resolution process shall be completed within a period of 180 days from the date of admission of application** to initiate such process.

Extension

- ✓ **Resolution professional shall file an application to Adjudicating Authority to extend the period beyond 180 days, if a resolution in this regard is passed at a meeting of the committee of creditors by a vote of 66% of the voting shares.**
- ✓ **On receipt of application, if Authority is satisfied that subject matter of case is such that Corporate Insolvency resolution process can't be completed within 180 days, it may by order extend duration beyond 180 days by such further period as it thinks fit but not exceeding 90 days**
- ✓ Extension shall not be granted more than once

Withdrawal of Application

Section 12A

Adjudicating Authority may allow withdrawal of application on application made with approval of 90% voting share of committee of creditors.

Order of Adjudicating Authority

Section 13

The **Adjudicating Authority, after admission of the application** under section 7 or section 9 or section 10, shall, **by an order—**

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

Appointment of IRP

Section 16

Adjudicating authority shall appoint an Interim Resolution Professional within 14 days from the commencement date.

In Case of Application by Financial Creditor

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

In Case of Application by Operational Creditor

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

Case I: No proposal for an interim resolution professional is made.

- ✓ The **Adjudicating Authority** shall **make a reference to** the **Board** for the recommendation of an insolvency professional who may act as an interim resolution professional.
- ✓ The **Board** shall **recommend** the **name** of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, **within ten days of the receipt of a reference from the Adjudicating Authority.**
- ✓ Name proposed by Board shall be appointed.

Case II: A proposal for an interim resolution professional is made.

The **proposed** resolution professional shall be **appointed as** the **interim resolution professional**, if no disciplinary proceedings are pending against him.

Period of Appointment of IRP

The term of Interim Resolution Professional shall not exceed 30 days from the date of appointment.

Public Announcement

Section 15

Interim Resolution Professional shall make the Public Announcement immediately after his appointment.

“Immediately” here means not more than three days from the date of appointment of the Interim Resolution Professional.

Public announcement shall include the following:-

- (a) **Name & Address of Corporate Debtor** under the Corporate Insolvency Resolution Process.
- (b) **Name of the authority with which** the corporate **debtor** is incorporated or **registered**.
- (c) **Details of interim resolution Professional** who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims.
- (d) **Penalties** for false or misleading Claims.
- (e) The **last date for the submission of the claims.**
- (f) The **date on which** the Corporate Insolvency Resolution **Process ends.**

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

Moratorium

Section 14

Following **acts** shall be **prohibited during** the **moratorium period**-

- (a) The **institution of suits or continuation of** any **pending suits** or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority

(b) **Transferring, encumbering, alienating or disposing of** by the corporate **debtor** any of its **assets** or any legal right or beneficial interest therein

(c) Any **action to** foreclose, recover or **enforce** any **security interest** created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002

(d) The **recovery of** any **property** by an **owner or lessor** where such property is occupied by or in the possession of the corporate debtor.

Schweitzer Systemtek India (P) Ltd v Phoenix ARC(P) Ltd
Alpha & Omega Diagnostics (India) Ltd vs Asset Reconstruction Co. of India Ltd
When moratorium is declared, it results in prohibition on any action to recover or enforce any security interest created by debtor in respect of its property. Property not owned by Corporate debtor is outside the ambit of this section

The order of Moratorium shall have effect from the date of such order till earliest of following:

- ✓ Approval of Resolution Plan by NCLT
- ✓ Liquidation order
- ✓ End of CIRP period

Powers of IRP

Section 17

a) **Management of Affairs:** The management of the affairs of the corporate debtor shall vest in the interim resolution professional from the date of his appointment.

(b) **Exercise of Power of BoD/ partners:** The powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional.

(c) **Reporting of officers/managers:** The officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required.

(d) **Instructions to financial institutions:** The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them.

IRP also has other duties u/s 18 like collecting information, collating it. Monitoring assets, filing information with Information Utility, taking custody of asset and others as specified by board.

Committee of Creditors

Section 21

The **interim resolution professional shall after collation of all claims** received against the corporate debtor **and determination of the financial position** of the corporate debtor, **constitute a committee of creditors.**

Composition of Committee

Where Financial Creditors exist:

The **Committee of creditors shall comprise of all financial creditors of a corporate debtor**. The Resolution Professional shall identify the financial creditors and constitutes a creditors committee.

Where No Financial Creditors exist:

where a corporate debtor does not have any financial creditors, **the committee of creditors shall be constituted and comprise of such persons** to exercise such functions in such manner **as may be specified by the Board**.

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

Meetings and Report

- ✓ The **resolution professional shall conduct all the meetings** of the Committee of Creditors.
- ✓ After the constitution of committee of creditors, the **interim resolution professional is required to file a report certifying the constitution** of the committee to the Adjudicating Authority.
- ✓ The report shall be filed **on or before the expiry of thirty days from the date of appointment** of the interim resolution professional.

Consortium Finance

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

Where Any Person is a Financial Creditor as well as an Operational Creditor

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

In Case of Legal Transfer

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

One Trustee for More Than 1 Financial Creditor

Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility or issued as securities provide for a single trustee or agent to act for all financial creditors,

each financial creditor may—

- (a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;
- (b) represent himself in the committee of creditors to the extent of his voting share;
- (c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or
- (d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

Voting Share

- ✓ The Board may specify the manner of determining the voting share in respect of financial debts issued as securities
- ✓ All **decisions of the committee** of creditors except otherwise stated shall **be taken by a vote of not less than 51% of voting share of the financial creditors**

Right to Demand Information

- ✓ The **committee of creditors** shall **have the right to require the resolution professional to furnish** any **financial information** in relation to the corporate debtor at any time during the corporate insolvency resolution process.
- ✓ The **resolution professional shall make available** any **financial information** so **required** by the committee of creditors **within a period of seven days of such requisition.**

Appointment of Resolution Professional

Section 22

First Meeting of Committee

The **first meeting** of the committee of creditors shall **be held within seven days of the constitution of the committee** of creditors.

Resolution for Appointment or Replacement

The **committee of creditors**, may, in the first meeting, **by a majority vote of not less than 66% of the voting share** of the financial creditors, **either resolve to appoint** the interim resolution professional as a resolution professional **or to replace the interim resolution professional** by another resolution professional.

Appointment

Where the committee of creditors **resolves Appointment** of resolution professional to continue the interim resolution professional as resolution professional, **it shall communicate**

its **decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority**

Replacement

- ✓ **To replace** the interim resolution professional, **it shall file an application before the Adjudicating Authority** for the appointment of the proposed resolution professional.
- ✓ The Adjudicating **Authority shall forward** the name of the resolution professional proposed **to the Board for its confirmation** and shall make such appointment after confirmation by the Board.
- ✓ **Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function** as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

Resolution Professional to Conduct Corporate Insolvency Resolution Process

Section 23

- ✓ resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.
- ✓ The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.
- ✓ In case of any appointment of a resolution professional other than Interim RP, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

Meeting of Committee of Creditors

Section 24

- ✓ The **members** of the committee of creditors **may meet in person or by such electronic means** as may be specified.
- ✓ All **meetings** of the committee of creditors shall be **conducted by the resolution professional**.
- ✓ The **resolution professional shall give notice** of each meeting of the committee of creditors **to—**
 - **members** of Committee of creditors
 - **members of the suspended Board** of Directors or the **partners** of the corporate persons, as the case may be
 - **operational creditors** or their representatives **if the amount of their aggregate dues is not less than 10% of the debt**.
- ✓ The **directors, partners and one representative of operational creditors**, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall **not have any right to vote** in such meetings
- ✓ Any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors

- ✓ Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.
- ✓ Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.
- ✓ The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.
- ✓ The meetings of the committee of creditors shall be conducted in such manner as may be specified

Duties of Resolution Professional

Section 25

It shall be the **duty of the resolution professional to preserve and protect the assets of the corporate debtor**, including the continued business operations of the corporate debtor.

For above, the **resolution professional shall undertake the following actions**, namely:—

- a. **take immediate custody and control of** all the **assets** of the corporate debtor, including the business records of the corporate debtor
- b. **represent and act on behalf of** the corporate **debtor with third parties**, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings
- c. **raise interim finances** subject to the approval of the committee of creditors under section 28
- d. **appoint accountants**, legal or other **professionals** in the manner as specified by Board
- e. **maintain** an updated **list of claims**
- f. **convene** and **attend** all **meetings of the committee** of creditors
- g. **prepare the information memorandum** in accordance with section 29
- h. **invite prospective resolution applicants**, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans
- i. **present** all **resolution plans at the meetings** of the committee of creditors
- j. **file application for avoidance of transactions** in accordance with Chapter III, if any; and
- k. such **other actions** as may be **specified** by the Board.

Rights and Duties of Authorised Representative

Section 25A

- ✓ The **Authorised representative** shall **have the right to participate** and vote in meetings of committee of creditors **on behalf of financial creditor** he represents with prior voting instructions obtained through physical or electronic means.
- ✓ Authorised representative shall **not act against the interest of financial creditor** and always acts in accordance with prior instructions.
- ✓ **In case no prior instructions**, he shall **abstain from voting** on behalf of such creditor.
- ✓ Authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means from the financial creditor he represents for voting in accordance therewith to ensure that appropriate voting instructions of the financial creditors is correctly recorded.

Replacement of Resolution Professional to Committee of Creditors

Section 27

- ✓ Where, at **any time during** the corporate insolvency resolution **process**, the **committee** of creditors is **of the opinion that** a resolution **professional** appointed under section 22 is required to **be replaced**, it may replace him with another resolution professional in the manner provided under this section.
- ✓ The **committee** of creditors may, at a meeting, **by a vote of seventy five per cent. of voting shares, propose to replace** the resolution **professional** appointed under section 22 with another resolution professional.
- ✓ The **committee** of creditors **shall forward** the **name** of the insolvency professional proposed by them **to the Adjudicating Authority**.
- ✓ The Adjudicating **Authority shall forward** the **name** of the proposed resolution professional **to the Board** for its **confirmation** and a resolution professional shall be appointed **in the same manner** as laid down **in section 16**.
- ✓ Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

Approval of Committee of Creditors for Certain Actions

Section 28

Resolution professional, during the corporate insolvency resolution process, **shall not take** any of the following **actions without** the **prior approval** of the committee of creditors namely:—

- (a) **raise** any **interim finance in excess of** the **amount** as may be **decided** by the committee of creditors in their meeting;
- (b) **create** any **security interest** over the assets of the corporate debtor;
- (c) **change** the **capital structure** of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
- (d) **record** any **change in** the **ownership** interest of the corporate debtor;
- (e) **give instructions to financial institutions** maintaining accounts of the corporate debtor for a debit transaction from any such accounts **in excess of** the **amount** as may be **decided** by the committee of creditors in their meeting;
- (f) **undertake** any **related party transaction**;
- (g) **amend** any **constitutional documents** of the corporate debtor;
- (h) **delegate** its **authority** to any other person;
- (i) **dispose** of or permit the disposal of **shares** of any shareholder of the corporate debtor or their nominees to third parties;
- (j) **make** any **change in** the **management** of the corporate debtor or its subsidiary;
- (k) **transfer rights** or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
- (l) **make changes in** the **appointment** or terms of contract **of** such **personnel** as **specified** by the committee of creditors; or
- (m) **make changes in** the **appointment** or terms of contract **of statutory auditors or internal auditors** of the corporate debtor.

Methods of Approval

- ✓ The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the above actions
- ✓ **No action stated above shall be approved by the committee of creditors unless approved by a vote of 66% of the voting shares.**

Consequences of Non-Approval

- ✓ **Where any action is taken** by the resolution professional **without** seeking the **approval** of the committee of creditors in the manner as required in this section, such **action shall be void.**
- ✓ The committee of creditors may report the actions of the resolution professional to the Board for taking necessary actions against him under this Code.

Information Memorandum

Section 29

A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency.

The **Resolution Professional shall prepare an Information Memorandum** which shall contain information for preparing resolution plan.

Resolution Professional shall provide access of the following to a Resolution applicant in order to prepare the Resolution Plan:

- ✓ **Financial position** of corporate debtor
- ✓ **Information required by applicant for resolution plan**
- ✓ **Other matters** pertaining to corporate debtor

Resolution Professional shall examine the Resolution Plan and submit the same to Committee of Creditors for its approval.

Persons Not Eligible To Be Resolution Applicant

Section 29A

A **person shall not be eligible to submit a resolution plan**, if such person, or any other person acting jointly or in concert with such person—

- ✓ is an **undischarged insolvent**
 - ✓ is a **wilful defaulter** in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949
 - ✓ **has an account**, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, **classified as non-performing asset** in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor
- Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan

- ✓ has been **convicted for any offence punishable with imprisonment for two years or more under Act specified in Twelfth Schedule.**
- ✓ has been **convicted for any offence punishable with imprisonment for seven years or more under any other law for the time being in force**
- ✓ is **disqualified to act as a director** under the Companies Act, 2013
- ✓ is **prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets**
- ✓ **has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place** and in respect of which an order has been made by the Adjudicating Authority under this Code

Submission of Resolution Plan

Section 30

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

Requirements to be examined by Resolution Professional [Section 30(2)]

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

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

Approval by Creditors and Submission of Plan

- ✓ The **resolution professional shall present to the committee** of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).
- ✓ The **committee of creditors may approve a resolution plan by a vote of not less than 66% of voting share** of the financial creditors, after considering its feasibility and viability
- ✓ The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered
- ✓ Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.
- ✓ The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

Approval of Resolution Plan

Section 31

If the **Adjudicating Authority** is **satisfied** that the **resolution plan** as **approved** by the committee of creditors **meets** the **requirements** as referred to in sub-section (2) of section 30, it shall **by order approve** the **resolution plan** which shall be **binding on** the **corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority** to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the **Adjudicating Authority** shall, **before passing an order** for approval of resolution plan under this sub-section, **satisfy** that the **resolution plan has provisions** for its **effective implementation**.

Rejection of Resolution Plan

Where the **Adjudicating Authority** is **satisfied** that the resolution plan does **not confirm** to the **requirements** referred to in sub-section (1), it **may, by an order, reject** the **resolution plan**.

Consequences of Approval

After the order of **approval** under sub-section (1), -

- (a) the **moratorium order** passed by the Adjudicating Authority under section 14 shall **cease to have effect**; and
- (b) the **resolution professional shall forward all records relating to** the **conduct** of the corporate insolvency resolution process and the resolution plan **to the Board** to be recorded on its database.

The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority

Part II- Chapter III- Liquidation Process

Order of Liquidation

Section 33

Adjudicating Authority may order for liquidation of the Corporate Debtor in the following cases:-

- a) Where **before** the **expiry of the Insolvency Resolution Process or within 180 days** of the initiation of Insolvency Resolution, the **Adjudicating Authority** does **not receive** the **Resolution Plan**.
- b) If the **Committee** of Creditors before the expiry of the resolution process **intimate** the Adjudicating Authority of their **decision that they have passed an order for liquidation** of the Corporate Debtor.
- c) **Where** the **resolution plan** approved by the Adjudicating Authority is **contravened by** the **concerned corporate debtor**, any person other than the corporate debtor, whose interests are

prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order. Once the Adjudicating Authority passes an order of liquidation, a moratorium is imposed on the pending legal proceedings against the corporate debtor, and the assets of the debtor (including the proceeds of liquidation) vest in the liquidation estate.

Appointment of Liquidator

Section 34

- ✓ **Where the Adjudicating Authority passes an order for liquidation** of the corporate debtor under section 33, the **resolution professional** appointed for the corporate insolvency resolution process under Chapter II or for the pre-packaged insolvency resolution process under Chapter IIIA shall, **subject to submission of a written consent** by the resolution professional to the Adjudicating Authority in specified form, shall **act as the liquidator** for the purposes of liquidation unless replaced by the Adjudicating Authority.
- ✓ **All powers of the board of directors, key managerial personnel and the partners** of the corporate debtor, as the case may be, shall cease to have effect and shall be **vested in the liquidator**.
- ✓ The **personnel** of the corporate debtor shall **extend all assistance** and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor.

Replacement of Resolution Professional

The **Adjudicating Authority** shall **by order replace** the **resolution professional**, if–

- (a) the resolution **plan submitted** by the resolution professional under section 30 **was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30**; or
- (b) the **Board recommends the replacement of a resolution professional** to the Adjudicating Authority for reasons to be recorded in writing; or
- (c) the **resolution professional fails to submit written consent** under sub-section (1).

- ✓ The **Adjudicating Authority may direct the Board to propose name of another insolvency professional** to be appointed as a liquidator.
- ✓ The **Board shall propose the name** of another insolvency professional along with written consent from the insolvency professional in the specified form **within ten days of the direction issued by the Adjudicating Authority**.
- ✓ The Adjudicating Authority shall, **on receipt of the proposal** of the Board for the appointment of an insolvency professional as liquidator, **by an order appoint such insolvency professional** as the liquidator.

Fees of Liquidator

- ✓ An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.
- ✓ The fees for the conduct of the liquidation proceedings shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

Powers and Duties of Liquidator

Section 35

- ✓ to **verify claims** of all the creditors;
- ✓ to **take into** his **custody** or control **all** the **assets, property**, effects and actionable claims of the corporate debtor;
- ✓ to **evaluate** the **assets** and **property** of the corporate debtor in the manner as may be specified by the Board and prepare a report;
- ✓ to **take** such **measures to protect and preserve** the **assets** and properties of the corporate debtor as he considers necessary;
- ✓ to **carry on** the **business** of the corporate debtor for its beneficial liquidation as he considers **necessary**;
- ✓ subject to section 52, to **sell** the **immovable and movable property and** actionable **claims** of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified
- ✓ to **draw, accept, make** and **endorse** any **negotiable instruments** including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;
- ✓ to **take out**, in his official name, **letter of administration** to any **deceased contributory** and to **do** in his official name any **other act necessary** for obtaining **payment** of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;
- ✓ to **obtain** any **professional assistance** from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
- ✓ to **invite and settle claims** of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
- ✓ to **institute or defend** any **suit**, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor; 43
- ✓ to **investigate** the **financial affairs** of the corporate debtor to determine undervalued or preferential transactions;
- ✓ to **take** all such **actions**, steps, or to sign, **execute** and **verify** any **paper, deed, receipt document**, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;
- ✓ to **apply to** the **Adjudicating Authority** for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and
- ✓ to **perform** such **other functions** as may be specified by the Board.

- ✓ The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53. Provided that any such consultation shall not be binding on the liquidator

Liquidation Estate

Section 36

Inclusions

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

- (a) **any assets over which the corporate debtor has ownership rights**, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
- (b) **assets that may or may not be in possession of the corporate debtor including** but not limited to **encumbered assets**;
- (c) **tangible** assets, whether movable or immovable;
- (d) **intangible** assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;
- (e) assets **subject to the determination of ownership** by the court or authority; 44
- (f) any **assets** or their value **recovered through proceedings for avoidance of transactions** in accordance with this Chapter;
- (g) any **asset** of the corporate debtor **in respect of which a secured creditor has relinquished security interest**;
- (h) any **other property** belonging to or **vested in the corporate debtor** at the insolvency commencement date; and
- (i) all **proceeds of liquidation** as and when they are realised.

Exclusions

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

- (a) **assets owned by a third party** which are in possession of the corporate debtor, including - assets held in trust for any third party;
 - **bailment contracts**;
 - all **sums due to** any **workmen** or employee from the provident fund, the pension fund and the gratuity fund
 - **other contractual arrangements** which do not stipulate transfer of title but only use of the assets; and
 - such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) **assets in security collateral held by financial services providers** and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (c) **personal assets of any shareholder** or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
- (d) **assets of any Indian or foreign subsidiary** of the corporate debtor; or
- (e) any **other assets** as may be **specified** by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

Powers of Liquidator to Access Information

Section 37

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

- (a) an information utility
- (b) credit information systems regulated under any law for the time being in force;
- (c) any agency of the Central, State or Local Government including any registration authorities;
- (d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;
- (e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;
- (f) any database maintained by the Board; and
- (g) any other source as may be specified by the Board.

Power of Creditors to Call for Information

- ✓ The creditors may require the liquidator to provide them any financial information relating to the corporate debtor in such manner as may be specified.
- ✓ The liquidator shall provide information referred to in sub-section (2) to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.

Consolidation of Claims

Section 38

- ✓ The **liquidator shall receive or collect the claims** of creditors **within a period of thirty days from the date of the commencement of the liquidation process.**
- ✓ A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility
Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner provided for the submission of claims for the operational creditor
- ✓ An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.
- ✓ A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt and to the extent of his operational debt in specified manner.
- ✓ **A creditor may withdraw or vary his claim under this section within fourteen days of its submission.**

Verification of Claims

Section 39

- ✓ The **liquidator shall verify the claims** submitted under section 38 within such time as specified by the Board.
- ✓ The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

Admission or Rejection of Claims

Section 40

- ✓ The **liquidator** may, **after verification** of claims under section 39, **either admit or reject the claim**, in whole or in part, as the case may be.
- ✓ Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.
- ✓ The liquidator shall **communicate** his **decision** of admission or rejection of claims **to the creditor and corporate debtor within seven days of such admission or rejection of claims**.

Determination of Valuation of Claims

Section 41

The liquidator shall determine the value of claims admitted under section 40 in such manner as may be specified by the Board.

Appeal against the Decision of Liquidator

Section 42

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

Preferential Transactions & Extortionate Credit Transactions

Section 43

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

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

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

What is regarded as Preference?

A corporate debtor shall be deemed to have given a preference in the following circumstances:-

- ✓ If there is a **transfer of property or an interest thereof** of the corporate debtor **for the benefit of a creditor or a surety or a guarantor** for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor.
- ✓ If the **transfer has the effect of putting such creditor or a surety or a guarantor in a beneficial position** than it would have been in the event of a distribution of assets being made in accordance with Section 53 of the Code.

What is not regarded as Preference?

Following transfers shall not be referred to as a preference transaction:-

- ✓ The transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee.

- ✓ Any transfer creating a security interest in property acquired by the corporate debtor to the extent that-
 - (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and
 - (ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property.
- ✓ Further, any transfer made in pursuance of the order of a Court shall not preclude such transfer to be deemed as giving of preference by the corporate debtor.

Order in case of Preferential Transaction

Section 44

The Adjudicating Authority, may, on an application made by the resolution professional or liquidator, by an order :

- a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
- b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
- c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;
- d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;
- e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;
- f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and
- g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not—

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

It is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference, —

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

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

A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13.

Avoidance of Undervalued Transactions

Section 45

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

A transaction shall be considered undervalued where the corporate debtor —

- (a) makes a gift to a person; or
- (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor.

Relevant Period for Avoidable Transactions

Section 46

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

- a) That the **transaction was entered within the period of one year** preceding the insolvency commencement date; or
- b) That the **transaction was made with a related party within a period of two years** preceding the insolvency commencement date.

Application by Creditor In Case Of Undervalued Transactions

Section 47

where an undervalued transaction has taken place and the liquidator or the resolution professional has not reported it to the Adjudicating Authority after having sufficient information or opportunity to avail information, a creditor, member or a partner of a corporate debtor may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect.

Adjudicating Authority shall pass an order-

- ✓ restoring the position as it existed before such transactions and reversing the effects thereof and
- ✓ requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional

Order in cases of Undervalued Transactions

Section 48

NCLT may provide for following:

- ✓ Require any property transferred as a part of transaction to be vested in Corporate Debtor
- ✓ Release or discharge security interest

- ✓ Require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be
- ✓ Require the payment of such consideration for the transaction as may be determined by an independent expert.

Transactions Defrauding Creditors

Section 49

where the corporate debtor has entered into an undervalued transaction under section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—

- (a) for **keeping assets of the corporate debtor beyond the reach of any person** who is entitled to make a claim against the corporate debtor; or
- (b) in order to **adversely affect the interests of such a person in relation to the claim**, the Adjudicating Authority shall make an order—
 - (i) **restoring the position** as it existed before such transaction as if the transaction had not been entered into; and
 - (ii) **protecting the interests** of persons who are victims of such transactions:

However, an order passed under this section—

(1) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(2) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

Extortionate Credit Transactions

Section 50

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

A transaction shall be considered an extortionate credit transaction under section 50(2) where the terms:

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

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

Order of Adjudicating Authority

Section 51

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

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

Secured Creditor in liquidation proceedings

Section 52

- ✓ A **secured creditor** in the liquidation proceedings **may**-
 - **relinquish** its **security interest** to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or
 - **realise** its **security interest** in the manner specified in this section.
- ✓ **Where** the **secured creditor realises security interest** under clause (b) of sub-section (1), **he shall inform the liquidator** of such security interest and identify the asset subject to such security interest to be realised.
- ✓ **Before** any security **interest is realised** by the secured creditor under this section, 52
- ✓ the **liquidator shall verify** such security interest **and permit** the secured **creditor to realise** only such security interest, the existence of which may be proved either –
 - by the records of such security interest maintained by an information utility; or
 - by such other means as may be specified by the Board.
- ✓ A secured **creditor may enforce, realise, settle, compromise or deal with** the **secured assets** in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.
- ✓ **If** in the course of realising a secured asset, any **secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security**, the secured **creditor may make an application to** the Adjudicating **Authority to facilitate** the secured creditor **to realise** such security interest in accordance with law for the time being in force.
- ✓ The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.
- ✓ **Where** the **enforcement** of the security interest under sub-section (4) **yields** an **amount** by way of proceeds which is **in excess** of the debts due to the secured creditor, the secured **creditor shall**-
 - **account to the liquidator for such surplus**; and
 - tender to the liquidator any surplus funds received from the enforcement of such secured assets.

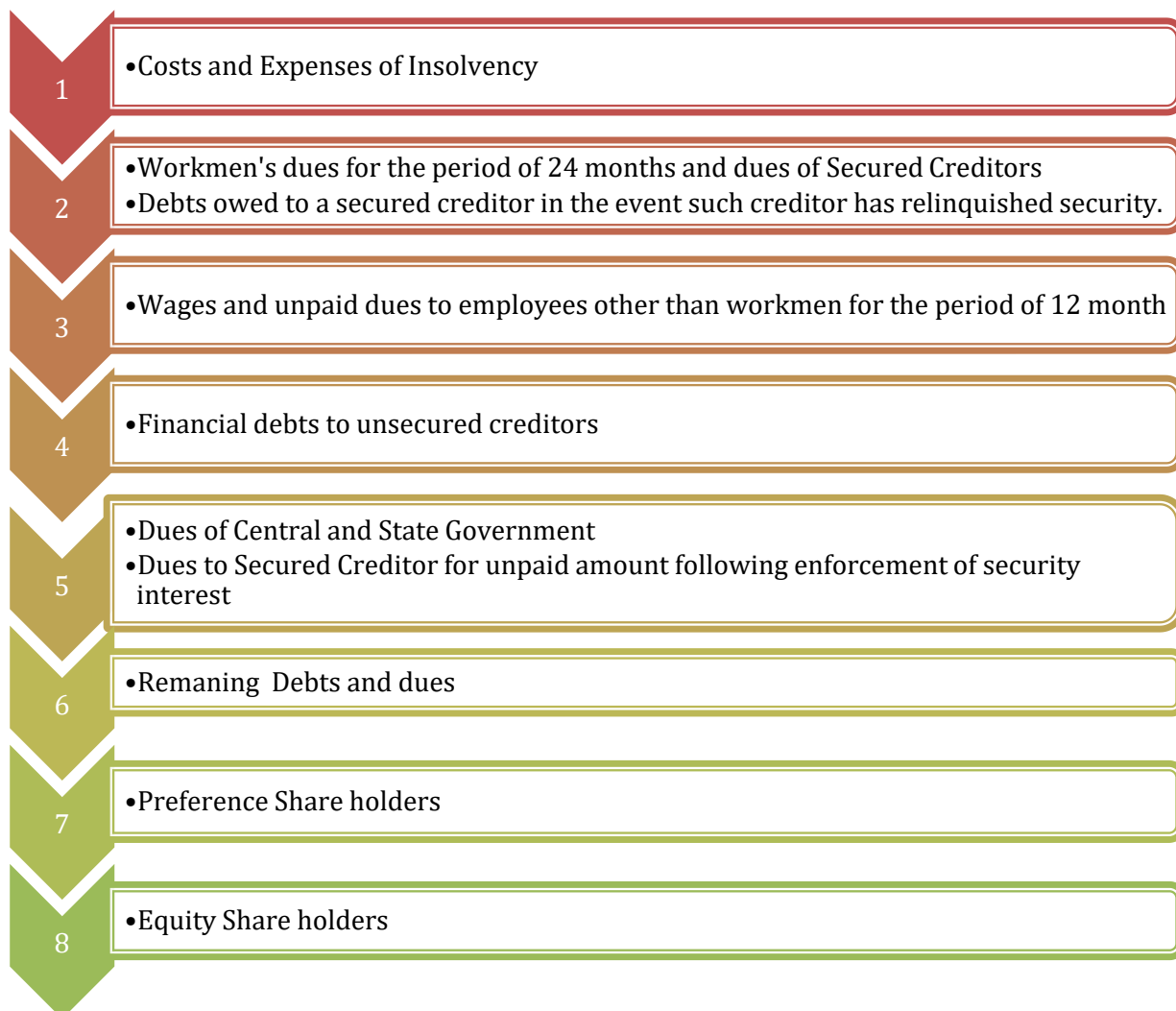
- ✓ The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.
- ✓ **Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53.**

Distribution of Assets

Section 53

The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:-

- (a) the insolvency resolution process costs and the liquidation costs paid in full
- (b) the following debts which shall rank equally between and among the following :—
 - ✓ workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
 - ✓ debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date
- (d) financial debts owed to unsecured creditors
- (e) the following dues shall rank equally between and among the following:—
 - ✓ any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - ✓ debts owed to a secured creditor for any amount unpaid following the enforcement of security interest
- (f) any remaining debts and dues; Other debts and dues Unsecured Financial creditors Dues of Central Government & State Government Wages and any unpaid dues owed to employees, other than workmen, for the period of 12 months Workmen's dues for the period of 24 months & dues of secured creditors Costs and Expenses of Insolvency
- (g) preference shareholders, if any; and
- (h) equity shareholders or partners, as the case may be.



Dissolution of Corporate Debtor

Section 54

- ✓ **Where** the **assets** of the corporate debtor have been **completely liquidated**, the **liquidator** shall **make** an **application** to the Adjudicating Authority **for** the **dissolution** of such corporate debtor.
- ✓ The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.
- ✓ A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

Fast Track CIRP	Not covered in Syllabus
Pre- Packaged Insolvency Resolution Process (PPIRP)	Not covered in Syllabus

Personal Insolvency

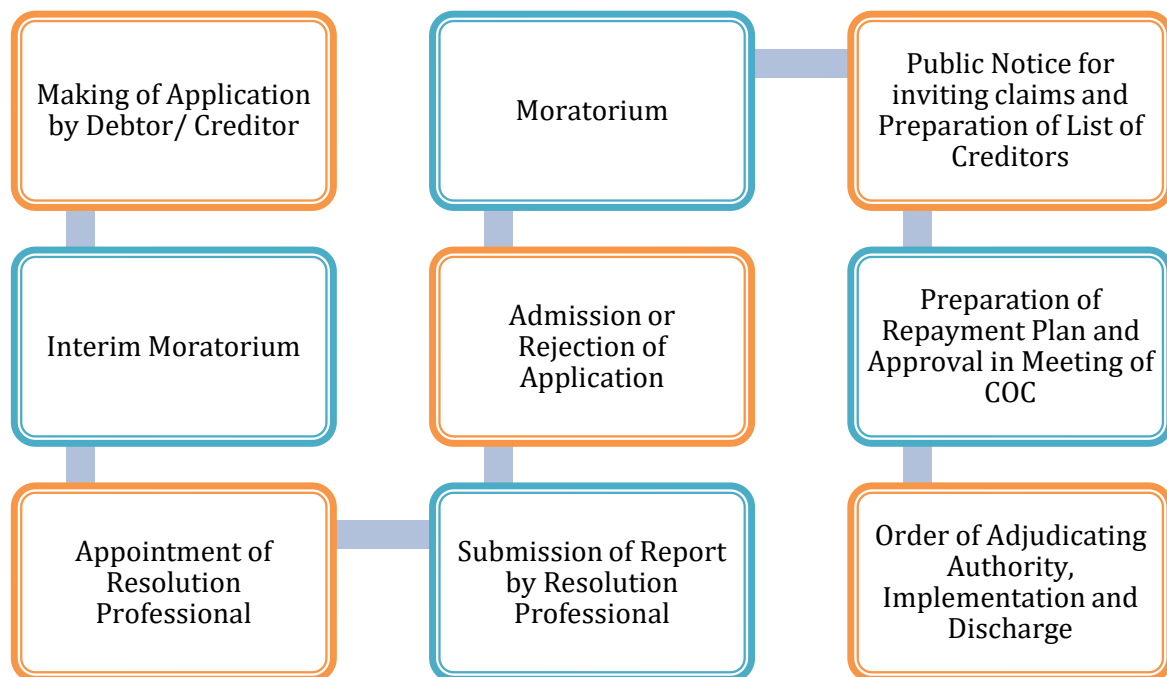
Part III of the Insolvency & Bankruptcy Code, 2016 relates to Insolvency resolution and Bankruptcy of Individuals and Partnership Firms.

Chapter I	Preliminary	Sections 78 & 79
Chapter II	Fresh Start Process	Sections 80- 93
Chapter III	Insolvency Resolution Process	Sections 94- 120
Chapter IV	Bankruptcy Order for Individuals and Partnership Firms	Sections 121- 148
Chapter V	Administration and Distribution of the estate of Bankrupt	Sections 149-178
Chapter VI	Adjudicating Authority for Individuals and Partnership Firms	Sections 179- 183
Chapter VII	Offences and Penalties	Sections 184- 187

Basics

Process:	Fresh Start/ Insolvency Resolution followed by Bankruptcy Order
Process by:	Resolution Professional
Adjudicating Authority	Debt Recovery Tribunal (DRT)
Appellate Authority	Debt Recovery Appellate Tribunal (DRAT)

Process of Insolvency Resolution (Only for Reading- Not to be learnt for Exam)



**Process of Bankruptcy
(To be learnt for Exam)****When an Application for Bankruptcy may be filed?**

Application of bankruptcy can be made by Debtor/ creditor under sections 122 and 123 singly or jointly against-

	Explanation:
order under 100(4) relating to defrauding a creditor	If the application referred to in section 94 or 95, as the case may be, is rejected by the Adjudicating Authority on the basis of report submitted by the resolution professional or that the application was made with the intention to defraud his creditors or the resolution professional, the creditor becomes entitled to file for a bankruptcy order
order under 115(2) regarding rejection of the repayment plan	Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors become entitled to file an application for bankruptcy
order under 118(3) on non satisfaction of the debt as per repayment plan.	The Adjudicating Authority passes an order on the basis of the report that the repayment plan has not been completely implemented and the debtor or the creditor, whose claims under repayment plan have not been fully satisfied, become entitled to apply for a bankruptcy

within 3 months of the order, along with relevant documents of evidence, details of claim, and copy of the order referred above.

Application cannot be withdrawn without permission of adjudicating authority

Interim Moratorium

An interim-moratorium shall commence on the date of the making of the application on all actions against the properties of the debtor in respect of his debts and such moratorium shall cease to have effect on the bankruptcy commencement date.

During interim moratorium,

- ✓ all litigation shall be stayed and
- ✓ no new litigation can be initiated.

However, this shall not apply to such transactions as CG may notify

Appointment of Insolvency Professional as Bankruptcy Trustee

- ✓ The IP proposed shall be continued/rejected by Adjudicating Authority(AA) based on information on IP to be sent by the Board.
- ✓ In case none is proposed, the AA shall request for nomination within 7 days to Board and Board shall nominate within 10 days.
- ✓ COC may with 75% voting replace the Bankruptcy trustee (BT) who may also resign suo moto. Replacement can be done with the consent of the Board and Adjudicating Authority (section 145 and 146)

Passing of Order

The Adjudicating Authority shall pass a bankruptcy order within fourteen days of receiving the confirmation or nomination of the bankruptcy trustee under section 125.

Inviting Public Claims

- ✓ Adjudicating Authority to send notice within 10 days to creditors with relevant document asking for submission of claim with last date.
- ✓ A public notice shall also be issued.

Registration of Claims

- ✓ Creditor shall register claim within 7 days of public notice to bankruptcy trustee who shall make a list of creditors within 14 days.
- ✓ Bankruptcy Trustee shall call a meeting of creditors within 21 days of bankruptcy commencing date and in the meeting constitute COC, will decide, along with other businesses.
- ✓ Interested creditors shall not vote.

Completion of Administration

- ✓ The bankruptcy trustee shall convene a meeting of the committee of creditors on completion of the administration and distribution of the estate of the bankrupt in accordance with the provisions of Chapter V
- ✓ The bankruptcy trustee shall provide the committee of creditors with a report of the administration of the estate of the bankrupt in the meeting of the said committee to be approved by COC within 7 days of receipt and decide to release the BT.
- ✓ BT has to present before AA within 7 days thereafter for his release.
- ✓ BT may also apply for release after one year, in case released by COC.

Order

- ✓ Under section 126, the Adjudicating Authority shall pass an order within 14 days of confirmation of IP/ trustee by the Board, which shall be valid till the debt is discharged.
- ✓ The estate will vest on the trustee.
- ✓ The creditor shall be barred to take legal action against the debtors/properties. Secured creditors shall have to take action to realize within 30 days, failing which his interest shall be forfeited.
- ✓ Where an order has been passed, the bankrupt shall submit his statement of financial position or any other information required by the trustee.

Discharge of Bankruptcy Trustee (BT)

- ✓ Once the authority passes order of discharge, the BT shall be discharged from his functions and responsibilities subject to conditions.
- ✓ The bankrupt shall be released from all his debts. Any such order may be modified on application by the person effected. BT/IP shall be deemed to have been released on confirmation of appointment for new BT/IP

Disqualification /Restriction on the bankrupt

During bankruptcy proceeding, bankrupt, shall:

- a) not be appointed as trustee, public servant, election of local authority,
- b) not to act as director, taking part in formation of companies,
- c) disclose in all transaction about the bankruptcy proceedings,

- d) travel overseas The functions, powers of the BT and the process to be followed is similar to liquidation process of corporate.

The provisions are mentioned in detail in chapter V from section 149 to 178 with chapter heading as- "Administration and Distribution of the Estate of the Bankrupt"

Adjudicating Authority (Chapter VI)

Section 179 to 180 provides for the adjudicating authorities, their powers and duties.

- ✓ the Authority shall be the Debt Recovery Tribunal having territorial jurisdiction over the place where individual debtor actually resides or carries on business or works for gain.
- ✓ The Tribunal shall function as a court as per Civil Procedure Code.
- ✓ Civil Court shall have no jurisdiction
- ✓ The decision of DRT can be appealed DRAT within 15days.
- ✓ The decision of DRAT on question of law can be appealed to Supreme Court