

# 21

## CHAPTER

# Corporate Insolvency Resolution Process, Liquidation and Winding Up: An Overview

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IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

IBBI (Liquidation Process) Regulations, 2016
IBBI (Voluntary Liquidation Process) Regulations, 2017
IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021
Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

### 21.1 Introduction

The Insolvency and Bankruptcy Code Bill was drafted by a specially constituted "Bankruptcy Law Reforms Committee" (BLRC) under the Ministry of Finance. The Insolvency and Bankruptcy Code was introduced in the Lok Sabha on 21st December, 2015 and was subsequently referred to a Joint Committee of Parliament. The Committee submitted its recommendations and the modified Code was passed by Lok Sabha on 5th May, 2016. The Code was passed by Rajya Sabha on 11th May, 2016 and it received the Presidential assent on 28th May, 2016.

*Note: The Code has an overriding effect over other enactments. The question of overriding effect was first in question in the case of 'M/s. Innovative Industries Ltd. vs. ICICI Bank' which is the very first case in the Code itself. It was held by Supreme Court that IBC shall prevail over Maharashtra Relief Undertaking (Special Provisions Act) 1958. In another case of 'Pr. Commissioner of Income Tax vs Monnet Ispat and Energy Ltd.', Supreme Court confirmed that Insolvency and Bankruptcy Code, 2016 will override anything inconsistent contained in any other enactment, including the Income-tax Act.*

### 21.2 Insolvency and bankruptcy are not synonymous

- ◆ The words "Insolvency" and "Bankruptcy" are generally used interchangeably in common parlance but there is a marked distinction between the two. Insolvency and bankruptcy are not synonymous.
- ◆ The term "insolvency" denotes the state of one whose assets are insufficient to pay his debts; or his general inability to pay his debts. The term "insolvency" is used in a restricted sense to express the inability of a party to pay his debts as they become due in the ordinary course of business.
- ◆ The word "bankruptcy" denotes a legal status of a person or an entity who cannot repay debts to creditors. The bankruptcy process begins with filing of a petition in a court or before an appropriate authority designated for this purpose. The debtor's assets are then evaluated and used to pay the creditors in accordance with law.

Therefore, while insolvency is the inability of debtors to repay their debts, the bankruptcy. On the other hand, is a formal declaration of insolvency in accordance with law of the land. Insolvency describes a situation where the debtor is unable to meet his/her obligations and bankruptcy occurs when a court determines insolvency, and gives legal orders for it to be resolved. Thus, insolvency is a state and bankruptcy is the conclusion. The term insolvency is used for individuals as well as organisations/corporates. If insolvency is not resolved, it leads to bankruptcy in case of individuals and liquidation in case of corporates.

### 21.3 Salient Features of Insolvency and Bankruptcy Code, 2016

- ◆ To ensure a formal and time bound insolvency resolution process, the Code creates a new institutional framework consisting of the Insolvency and Bankruptcy Board of India (IBBI), Adjudicating Authorities (AAs), Insolvency Professionals (IPs), Insolvency Professional Agencies (IPAs) and Information Utilities (IUs). The foundation of the Code rests on the said five pillars.
- ◆ The Insolvency Professionals control the assets of the debtor during the insolvency resolution process. The insolvency professional verifies the claims of the creditors, constitutes the committee of creditors, runs the debtor's business during the moratorium period and assists the creditors in finalising the revival plan. In liquidation, the insolvency professional acts as a liquidator. The Insolvency and Bankruptcy Board of India has framed the IBBI (Insolvency Professional) Regulations, 2016 to regulate the working of Insolvency Professionals.
- ◆ While the Insolvency professionals assist in the insolvency resolution proceedings envisaged in the Code, the Information Utilities, on the other hand, collect, collate, authenticate and disseminate financial information. The purpose of such collection, collation, authentication and dissemination of financial

information of debtors in centralised electronic databases is to facilitate swift decision making in the resolution proceedings. The Insolvency and Bankruptcy Board of India has framed the IBBI (Information Utilities) Regulations, 2017.

- ◆ The Code proposes two Tribunals to adjudicate insolvency resolution cases. In the case of insolvency of companies and Limited Liability Partnerships (LLPs), the adjudication authority is the National Company Law Tribunal (NCLT), while the cases involving individuals and partnership firms are handled by the Debts Recovery Tribunals (DRTs). The insolvency proceeding will be initiated by the said Tribunals, as the case may be, after verification of the application filed under the Code claims of the initiator. Appeals from NCLT orders lie with National Company Law Appellate Tribunal (NCLAT) and thereafter with the Supreme Court of India. Similarly, appeals from DRT orders lie with Debt Recovery Appellate Tribunal (DRAT) and thereafter with the Supreme Court of India.
- ◆ In resolution process for corporate persons, the Code proposes two independent stages:
  - Insolvency Resolution Process, during which the creditors assess the viability of debtor's business and the options for its rescue and revival.
  - Liquidation, in case the insolvency resolution process fails or financial creditors decide to wind-up and distribute the assets of the debtor.
- ◆ A financial creditor (for a defaulted financial debt) or an operational creditor (for an unpaid operational debt) can initiate Corporate Insolvency Resolution Process (CIRP) against a corporate debtor. The defaulting corporate debtor may also file an application for initiation of CIRP. The defaulting corporate debtor shareholders or employees, may also initiate voluntary insolvency proceedings. The National Company Law Tribunal (NCLT) is the designated adjudicating authority in case of corporate debtors.

#### 21.4 Applicability

- ◆ Part II of Insolvency and Bankruptcy Code, 2016 shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one crore rupees. The threshold of one crore rupees was specified by Ministry of Corporate Affairs vide Notification dated 24th March, 2020 prior to which the minimum amount of default was one lakh rupees.
- ◆ Part II of IBC is divided into eight chapters as follows:
  - Chapter I- Preliminary (Section 4-5)
  - Chapter II- Corporate Insolvency Resolution Process (Section 6-32A)
  - Chapter III- Liquidation Process (Section 33-54)
  - Chapter III-A- Pre-Packaged Insolvency Resolution Process (Section 54A-54P)
  - Chapter IV- Fast Track Corporate Insolvency Resolution Process (Section 55-58)
  - Chapter V-Voluntary Liquidation of Corporate Persons (Section 59)
  - Chapter VI-Adjudicating Authority for Corporate Persons (Section 60-67A)
  - Chapter VII- Offences and Penalties (Section 68-77A)
- ◆ Chapter III A is introduced w.e.f. 4th April, 2021 in the Code to provide gateway to MSMEs to revive the adverse financial effects of Covid Pandemic. Each process whether be CIRP, Liquidation, Pre-packaged CIRP, Fast track CIRP or Voluntary Liquidation, is accompanied with Regulations notified by IBBI to complete framework for these processes.
- ◆ IBC, 2016 is a systematic and comprehensive compilation of Insolvency and Bankruptcy laws, rules, or regulations that are consolidated and classified according to subject matter. The Insolvency and Bankruptcy Board of India was established on 1st October, 2016 under the Insolvency and Bankruptcy Code, 2016 (Code). It is a key pillar of the ecosystem responsible for implementation of the Code. IBBI is the regulatory body which lays down regulations for providing framework i.e. timeline, procedure and Forms to execute the insolvency laws provided in the sections of the Code. Central Government is vested with the powers to frame rules under the Code w.r.t. various matters under IBC, 2016.

**Applicability of Code:** Section 2 of the Insolvency and Bankruptcy Code, 2016 as amended *vide* the Insolvency and Bankruptcy Code (Amendment) Act, 2018 provides that the provisions of the Code shall apply to:

- (a) any company incorporated under the Companies Act, 2013 or under any previous company law;
- (b) any other company governed by any special Act for the time being in force;
- (c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;
- (d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf;
- (e) personal guarantors to corporate debtors;
- (f) partnership firms and proprietorship firms; and
- (g) individuals, other than persons referred to in clause (e)

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

**Parts of Code:** The Insolvency and Bankruptcy Code, 2016 consists of total sections 1 to 255 organised in five Parts:

- ◆ Part I deals with the introduction, application and definitions of the Code;
- ◆ Part II deals with insolvency resolution and liquidation for corporate persons;
- ◆ Part III lays down procedure for insolvency resolution and bankruptcy for individuals and partnership firms;
- ◆ Part IV of the Code makes provisions for regulation of Insolvency Professionals, Agencies and Information Utilities; and
- ◆ Part V includes provisions for miscellaneous matters.

**Note:** The Code also has eleven Schedules which amend various other statutes and 12th Schedule lists the Acts for the purpose of section 29A(d) of the Code.

## 21.5 Important Definitions

**"Adjudicating Authority"** for the purposes of Part II means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013.

**"Corporate applicant"** means –

- (a) corporate debtor; or
- (b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or
- (c) an individual who is in charge of managing the operations and resources of the corporate debtor; or
- (d) a person who has the control and supervision over the financial affairs of the corporate debtor.

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

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

**"Corporate Guarantor"** means a Corporate person who is the surety in a contract of guarantee to a corporate debtor.

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

**"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 professional"** means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207.

**"Insolvency professional agency"** means any person registered with the Board under section 201 as an insolvency professional agency.

**"Insolvency resolution process costs"** means –

- ◆ the amount of any interim finance and the costs incurred in raising such finance;
- ◆ the fees payable to any person acting as a resolution professional;
- ◆ any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
- ◆ any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
- ◆ any other costs as may be specified by the Board.

**"Liquidation commencement date"** means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be.

**"Liquidation cost"** means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board.

**"Liquidator"** means insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be.

**"Resolution professional"** for the purposes of Part II means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional.

**"Financial debt"** means a debt along with interest (if any) which is disbursed against the consideration for the time value of money and includes –

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

For the purpose of this sub-clause:

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

The expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zb) of Section 2 of Real Estate (Regulation and Development) Act, 2016.

- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.

#### Questions For Practice

**Ques 1: Define "Insolvency resolution process costs"?**

*Hint: Refer Topic "Insolvency resolution process costs".*

**Ques 2: Define "Financial debt" ?**

*Hint: Refer Topic "Financial debt".*

**21.6 Persons who may Initiate Corporate Insolvency Resolution Process (CIRP)**

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process.

**21.7 Resolution Process****Initiation of CIRP by financial creditor under section 7 of the Code**

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

**In case of financial debt in the form of securities or deposits wherein the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors or where a financial debt is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under section 21(6A)(a) or Section 21(6), an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by:**

- ◆ not less than 100 of such creditors in the same class or
- ◆ not less than 10% of the total number of such creditors in the same class,

**whichever is less.**

**In the case of financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by:**

- ◆ not less than 100 of such allottees under the same real estate project or
- ◆ not less than 10% of the total number of such allottees under the same real estate project,

**whichever is less.**

A default herein includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor

2. The financial creditor shall, along with the application furnish –
  - ◆ record of the default recorded with the information utility or such other record or evidence of default as may be specified;
  - ◆ the name of the resolution professional proposed to act as an interim resolution professional; and
  - ◆ any other information as may be specified by the Board.
3. The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor. If the said Authority has not ascertained the existence of default and passed any such order within such time, it shall record its reason in writing for the same.
4. Where the Adjudicating Authority is satisfied that –
  - (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or
  - (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application.

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

5. The corporate insolvency resolution process shall commence from the date of admission of the application.
6. The Adjudicating Authority shall communicate the order to the financial creditors and the corporate debtor within seven days of admission or rejection of such application, as the case may be.

#### **Initiation of CIRP by operational creditor under section 9 of the Code**

1. An operational creditor may on the occurrence of a default deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.
2. The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor –
  - (a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
  - (b) the payment of unpaid operational debt :
    - ◆ by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
    - ◆ by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

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

3. After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.
4. The operational creditor shall, along with the application furnish-
  - ◆ a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
  - ◆ an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
  - ◆ a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;
  - ◆ a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
  - ◆ any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

#### **Initiation of CIRP by the corporate debtor itself under section 10 of the Code**

1. 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.
2. The corporate applicant shall, along with the application, furnish-
  - (a) the information relating to its books of account and such other documents for such period as may be specified;
  - (b) the information relating to the resolution proposed to be appointed as an interim resolution professional; and
  - (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.

### Suspension Of Initiation Of CIRP

Section 10A: Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf. However, no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

#### Notes:

1. *For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.*
2. *Section 10A was inserted in the IBC on June 5, 2020 by way of an Ordinance.*

### QUESTIONS

**Ques 1:** RKG Infrastructure Ltd. was incurring continuous losses and its financial position went bad to worse. Now, the Company is undergoing a corporate resolution process. Dinesh who is one of the senior employee of the company has not been paid his salary for 3 months amounting to INR 4,50,000. He files an application for initiating corporate insolvency resolution process with an Adjudicating Authority. Analyze and state whether Dinesh is entitled to make an application to initiate corporate insolvency resolution process.

*Hint : Employee of company to whom salary more than Rs. 100 lakh is due can initiate corporate insolvency process being operational creditor of the company under the Insolvency & Bankruptcy Code, 2016 and therefore senior employee whose salary of Rs. 4,50,000 is pending cannot alone file application of Corporate Insolvency Resolution Process.*

**Ques 2:** Yogendra is an allottee of a flat in a real estate project promoted by the company, but he has not been delivered flat as per Agreement. He has approached you to know, whether he can make application under Insolvency and Bankruptcy Code, 2016 and in what status he can make application. Also brief the timelines for Corporate Insolvency Resolution Process.

*Hint: Yogendra being allottee of flat in a real estate project can make an application under the Insolvency & Bankruptcy Code, 2016 in the status of 'financial creditor'.*

### 21.8 Time Limit of Corporate Insolvency Resolution Process

- ◆ Section 12 of the Code provides for time limit within which CIRP shall be completed as envisaged in Preamble of the Code.
- ◆ The corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.
- ◆ The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent of the voting shares.
- ◆ If the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days.

However, corporate insolvency resolution process shall be mandatorily completed within a period of three hundred and thirty days from the insolvency commencement date including any extension of the period of CIRP granted under section 12 and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

**Note: Withdrawal Of Application:** Section 12A of the Code allows the corporate debtor another chance to make good on the default even after the case is admitted to the Adjudicating Authority. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors in the specified manner.

**QUESTION**

**Ques 1:** Time-limit an extension of period in Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016. Comment.

*Hint: Refer Topic 21.8 Time Limit Of Corporate Insolvency Resolution Process.*

**21.9A Moratorium**

On commencement of the CIRP, the adjudicating authority passes an order declaring moratorium for prohibiting all of the following by virtue of section 14 of the IBC:

- ◆ Institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- ◆ Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- ◆ Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under SARFAESI Act, 2002;
- ◆ The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

However, notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.

**Note(s):**

1. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*
2. *The provisions of moratorium are not applicable to :*
  - ◆ *such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*
  - ◆ *a surety in a contract of guarantee to a corporate debtor.*
3. *Effective Date of order: The order of moratorium shall have effect from:*
  - ◆ *the date of order of initiation of CIRP till the completion of CIRP or*
  - ◆ *the date of approval of resolution plan or*
  - ◆ *order of liquidation by the adjudicating authority, as the case may be.*
4. *Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances.*

**QUESTION**

**Ques 1:** National Company Law Tribunal (NCLT) has passed order for Commencement of Corporate Insolvency Resolution Process (CIRP) of Dora Travels Ltd., one of its directors has approached you to know the effects of "Moratorium" upon the commencement of CIRP.

*Hint: Refer Topic 21.9A Moratorium.*

**21.9B Public Announcement of Corporate Insolvency Resolution Process**

Section 15 of the Code makes it mandatory for IRP to make the public announcement of the corporate insolvency resolution process admitted by AA which shall contain the following information, namely:

- ◆ name and address of the corporate debtor under the corporate insolvency resolution process;

- ◆ name of the authority with which the corporate debtor is incorporated or registered;
- ◆ the last date for submission of claims, as may be specified;
- ◆ details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;
- ◆ penalties for false or misleading claims; and
- ◆ the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth days from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

#### Question For Practice

##### **Ques 1: Write Short Note On: Public Announcement Of Corporate Insolvency Resolution Process.**

*Hint: Refer Topic Public Announcement Of Corporate Insolvency Resolution Process.*

#### **21.10A Interim Resolution Professional (IRP)**

- ◆ When a financial creditor or corporate debtor makes an application to AA for initiation of CIRP, it is mandatory for them to propose the name of an insolvency professional to act as IRP. An operational creditor may or may not propose such name. If IRP is proposed by the applicant, AA shall appoint such insolvency professional as IRP on acceptance of application for CIRP, provided that no disciplinary proceedings are pending against such insolvency professional. If IRP is not proposed by the applicant *i.e.* operational creditor, AA will request the Board (*i.e.* IBBI) to recommend name of resolution professional to act as IRP within 10 days.
- ◆ The IRP takes over the management of the corporate debtor and is in charge of day-to-day affairs of the corporate debtor. 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 IRP. He may appoint professionals and consultants to support him in his duties. The IRP is responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.
- ◆ On receipt of claims from the creditors, the IRP shall verify the claims and make list of accepted claims. Within 21 days of commencement of CIRP, the IRP shall constitute a Committee of Creditors (COC) which primarily consists of all financial creditors of the corporate debtor.

The IRP shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern. The first meeting of the Committee of Creditors should be conducted by IRP within 30 days of commencement of CIRP.

- ◆ **Primary Duties of the IRP:** The primary duties of the IRP are to:

- (a) Make public announcement about CIRP of the corporate debtor;
- (b) Invite claims from creditors; and
- (c) Get valuation of the corporate debtor done.

#### **21.10B Resolution Professional (RP)**

- ◆ The Resolution Professional (RP) is a new category of professionals who on meeting stipulated criteria is registered with the Insolvency and Bankruptcy Board of India.
- ◆ Only a person who is registered as an Insolvency Professional can act as such. Company Secretaries are eligible to be registered as Insolvency Professionals subject to meeting stipulated criteria.
- ◆ The resolution professional shall exercise powers and perform duties as are vested or conferred on the IRP under the Code.
- ◆ The RP is appointed in the first meeting of the Committee of Creditors by a majority vote of not less than sixty-six per cent of voting share of the financial creditors either resolving to appoint the IRP as a RP or to replace the IRP by another RP.

**QUESTION**

**Ques 1:** ABC Ltd., has initiated insolvency proceedings against RS Ltd., for recovery of debt of INR 2.86 crore. ABC Ltd. intends to appoint Rahul, one of the employees of its statutory auditors, M/s ASA & Associates, Chartered Accountants, as its resolution professional. In the light of the statutory provisions, examine whether Rahul can be appointed as a resolution professional.

*Hint: Rahul being employee of ABC Ltd. cannot be appointed as resolution professional.*

**Question For Practice**

**Ques 1: Write Short Note On: Interim Resolution Professional (IRP).**

*Hint: Refer Topic 21.10A Interim Resolution Professional (IRP).*

**21.11 Committee of Creditors**

The Committee of Creditors (CoC) is a committee consisting of the financial creditors of the corporate debtor. It is provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

- ◆ This Committee eventually forms the decision making body of various routine tasks involved in Corporate Insolvency Resolution Process (CIRP), responsible for giving approval to the IRP/ RP to carry out actions that might affect the CIRP.
- ◆ The power to ratify the managerial decisions taken by the RP vests upon the CoC. The CoC approves/ rejects the Resolution Plan, extension of CIRP period, decides upon liquidation of the Corporate Debtor, ratifies expenses borne by the RP, etc.
- ◆ The CoC at its first meeting shall appoint a Resolution Professional (RP). In doing so, it may either confirm the appointment of IRP as RP or appoint another RP of its choice. The RP then takes over the management of the corporate debtor from the IRP. The RP shall act under the guidance and superintendence of the CoC.
- ◆ Unless the Code specifies a certain voting percentage for a particular decision of the CoC, all other decisions of the CoC shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors.
- ◆ Each member of the CoC has voting share in proportion to the amount of debt outstanding to the corporate debtor. The RP shall take prior approval of the CoC for matters stipulated in the Code.

**21.12 Resolution Plan**

- ◆ The objective behind the CIRP is that the corporate debtor should get a chance to revive itself from insolvency.
- ◆ The corporate debtor is in insolvency due to various reasons including market conditions, business cycles, and wrongful acts of the promoters, amongst others. The corporate debtor should get a fresh chance to revive itself and recommence its operations either with the same management or a new management. With this intent in mind, the RP invites proposals from prospective resolution applicants to revive the corporate debtor. These proposals are known as "resolution plans" and they can be submitted by any person who is interested in the revival of the company.
- ◆ These plans include proposals to pay off the existing liabilities of the corporate debtor in part or in full and to restart its operations over a period of time. There are safeguards against a defaulting promoter submitting a resolution plan so that such defaulting promoter is not able to take over a debt free company at lower cost by way of a resolution plan.
- ◆ The resolution plan is submitted to the RP, who after confirming that the resolution plan meets the conditions laid down under the Code places all such plans before the CoC.
- ◆ The CoC approves the most suitable resolution plan. Such resolution plan approved by the CoC is submitted to NCLT for its approval.
- ◆ In case the Tribunal approves the resolution plan, the corporate debtor is out of CIRP.

### Question For Practice

**Ques 1: Write Short Note on: "Resolution Plan".**

*Hint: Refer Topic 21.12 Resolution Plan.*

**21.13 Liquidation**

#### Liquidation Process

- ◆ Liquidation of corporate person is considered to be the last resort in order to recover money. When the resolution plan has failed and no other way could be adopted then dissolution of company is the only resort. An auction is conducted where the assets of the company is sold to realize money to return it to the lenders. The provisions dealing with the liquidation of corporate persons are covered in the Chapter III of the Part II of the Insolvency and Bankruptcy Code. Sections 33 to 54 of the Insolvency and Bankruptcy Code, 2016 and IBBI (Liquidation Process) Regulations, 2016 lays down the law relating to liquidation process for corporate persons.
- ◆ An attempt is first made to resolve the insolvency of corporate debtor through corporate insolvency resolution process laid down in Chapter II of Part II of the Code. The provisions relating to liquidation in Chapter III of Part II of the Code comes into effect if the attempts to resolve corporate insolvency under Chapter II of the Code fail.

#### Initiation of Liquidation

1. If the Adjudicating Authority (AA) does not receive the resolution plan under section 30(6) of the Code.
  - ◆ Section 33(1) (a) before the expiry of the Insolvency Resolution Process period or the maximum period permitted for the completion of the corporate insolvency resolution process under section 12; or
  - ◆ Section 33(1)(a) before the expiry of the fast track corporate insolvency resolution process under section 56; or
2. **Section 33(1)(b):** Where the Adjudicating Authority rejects the resolution plan under section 31 for the non-compliance of the requirements; or
3. **Section 33(2):** Where the resolution professional at any time during the corporate insolvency resolution process but before the confirmation of resolution plan intimates the Adjudicating Authority of the decision of committee of creditors to liquidate the corporate debtor; or
4. **Section 33(3):** Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than corporate debtor whose interests are prejudicially affected by such contravention may make an application for liquidation.

**21.14 Lists out the Triggers for Initiating the Liquidation Process for Corporate Persons under section 33 of IBC Code**

- (1) Where the Adjudicating Authority:
  - (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or
  - (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -
    - i. pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
    - ii. issue a public announcement stating that the corporate debtor is in liquidation; and
    - iii. require such order to be sent to the authority with which the corporate debtor is registered.

- (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than 66% of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).
- (3) 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 as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).
- (4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).
- (5) When a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor. However, suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.
- (6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

#### **21.15A Pre-Packaged Insolvency Resolution Process (PPIRP)**

<b>Introduction</b>	PPIRP is introduced in IBC, 2016 by way of Chapter III-A consisting of section 54A to 54P w.e.f. 4th April, 2021. This is a new opportunity for MSME's to come out of Covid Pandemic and resolve their insolvency as "One time settlement with creditors" with the approval of Adjudicating Authority while corporate debtor (CD) is run by existing promoters.
<b>Eligibility</b>	When a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, commits minimum default of Rs. 10 lakhs, it can opt for PPIRP. The Central Government can increase minimum default limit to Rs. 1 crore.
<b>Which MSME can't opt for PPIRP</b>	<ul style="list-style-type: none"> <li>◆ MSME which has completed PPIRP or completed CIRP, as the case may be during the period of three years preceding the initiation date;</li> <li>◆ MSME which is undergoing a CIRP;</li> <li>◆ MSME which is undergoing a liquidation u/s 33; and</li> <li>◆ MSME not eligible to submit a resolution plan under section 29A.</li> </ul>
<b>Proposal of name of Resolution Professional</b>	The financial creditors of the corporate debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the PPIRP of the corporate debtor.
<b>Approval of the name of RP</b>	The financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent in value of the financial debt due to such creditors, have approved the name of RP proposed.
<b>Declaration by the majority of the directors or partners of the corporate debtor</b>	<p>The majority of the partners or directors of the CD shall make a declaration stating:</p> <ul style="list-style-type: none"> <li>◆ an application for initiating PPIRP shall be filed within a definite time period not exceeding ninety days.</li> <li>◆ PPIRP is not being initiated to defraud any person; and</li> <li>◆ the name of the insolvency professional proposed and approved to be appointed as resolution professional by unrelated Financial Creditors.</li> </ul>

<b>Special Resolution by CD</b>	The resolution approving the filing of application for initiating PPIRP shall be passed by a special resolution or at least three-fourth of the total number of partners (as the case may be) of the corporate debtor.
<b>Approval of the Financial Creditors</b>	The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent in value of the financial debt due to such creditors, for the filing of an application for initiating PPIRP. Prior to seeking approval from financial creditors, the corporate debtor shall provide such financial creditors with: <ul style="list-style-type: none"> <li>◆ the declaration as referred above.</li> <li>◆ the special resolution or resolution by majority of partners;</li> <li>◆ a base resolution plan which conforms to the requirements referred to in Section 54K and</li> <li>◆ such other information and documents as may be specified.</li> </ul>
<b>Application to initiate pre-packaged insolvency resolution process</b>	An application with the Adjudicating Authority for initiating PPIRP was filed along with the following by the corporate debtor: <ul style="list-style-type: none"> <li>◆ the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating PPIRP.</li> <li>◆ the name and written consent of the insolvency professional proposed to be appointed as resolution professional and his report about eligibility of CD for initiating PPIRP and base resolution plan.</li> <li>◆ a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI.</li> <li>◆ information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.</li> </ul>
<b>Order by the Adjudicating Authority</b>	The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application by an order- <ul style="list-style-type: none"> <li>(a) admit the application, if it is complete; or</li> <li>(b) reject the application, if it is incomplete.</li> </ul> The Adjudicating Authority shall before rejecting an application, give notice to the applicant to rectify the defect in the application within seven days from the date of receipt of such notice from the Adjudicating Authority.
<b>Commencement of PPIRP</b>	PPIRP shall commence from the date of admission of the application by the Adjudicating Authority.
<b>Time-limit for completion of PPIRP</b>	<ul style="list-style-type: none"> <li>◆ PPIRP shall be completed within 120 (one hundred and twenty) days from the pre-packaged insolvency commencement date (PPICD).</li> <li>◆ RP shall submit approved resolution plan within 90 days of PPICD.</li> <li>◆ If COC doesn't approve resolution plan within 90 days, RP shall submit an application for termination of PPIRP</li> </ul>
<b>Declaration of moratorium and public announcement during PPIRP</b>	The Adjudicating Authority shall, on the PPICD, along with the order of admission: <ul style="list-style-type: none"> <li>◆ declare a moratorium applying section 14(1) &amp; 14 (3) <i>mutatis mutandis</i>;</li> <li>◆ appoint RP named in the application; and</li> <li>◆ cause a Public Announcement of the initiation of PPIRP to be made by resolution professional immediately after his appointment.</li> </ul>

<b>Note: Moratorium shall continue till PPIRP ends.</b>	
<b>List of claims and preliminary information memorandum</b>	The corporate debtor shall, within two days of the PPICD submit to the resolution professional the following information, namely: <ul style="list-style-type: none"> <li>◆ a list of claims, along with details of the respective creditors, their security interests and guarantees, if any; and</li> <li>◆ a preliminary information memorandum containing information relevant for formulating a resolution plan.</li> </ul>
<b>Management of affairs of corporate debtor</b>	During the PPIRP period, the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor who shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern.
<b>Committee of creditors</b>	The resolution professional shall, within seven days of the PPICD, constitute a committee of creditors, based on the list of claims confirmed and update it regularly. The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors following the provisions of section 21 except section 21(1).
<b>Vesting management of corporate debtor with resolution professional</b>	<ul style="list-style-type: none"> <li>◆ At any time during PPIRP, CoC can decide by a vote of not less than sixty-six per cent of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional.</li> <li>◆ The resolution professional shall make an application for this purpose to the Adjudicating Authority (AA).</li> <li>◆ AA shall pass an order vesting the management of the corporate debtor with the resolution professional if it is of opinion that: <ul style="list-style-type: none"> <li>(a) the affairs of the corporate debtor have been conducted in a fraudulent manner; or</li> <li>(b) there has been gross mismanagement of the affairs of the corporate debtor,</li> </ul> </li> <li>◆ From the date of order, the remaining provisions of CIRP will apply to PPIRP.</li> </ul>
<b>Consideration and approval of resolution plan</b>	<ul style="list-style-type: none"> <li>◆ The corporate debtor shall submit the base resolution plan to the resolution professional within two days of the PPICD, and the resolution professional shall present it to the CoC.</li> <li>◆ The CoC may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval or invitation of prospective resolution applicants.</li> <li>◆ The CoC may approve the base resolution plan for submission to the Adjudicating Authority if it does not impair any claims owed by the corporate debtor to the operational creditors.</li> <li>◆ RP shall invite prospective resolution applicants to submit a resolution plan or plans, to compete with the base resolution plan if the CoC does not approve the base resolution plan or the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors.</li> <li>◆ The resolution applicants submitting resolution plans pursuant to invitation, shall fulfil such criteria as may be laid down by the resolution professional with the approval of the committee of creditors.</li> <li>◆ The resolution professional shall provide to the resolution applicants the information memorandum and evaluation criterion.</li> <li>◆ The resolution professional shall present to the committee of creditors, for its evaluation, resolution plans meeting requirement of sec. 30(2).</li> <li>◆ The CoC shall evaluate the plans so presented and select a resolution plan from amongst them.</li> </ul>

	<ul style="list-style-type: none"> <li>◆ If the plan so selected is "significantly better" than the base resolution plan, such resolution plan may be selected for approval.</li> <li>◆ Where the resolution plan selected is not considered for approval or is not significantly better than base resolution plan, it shall compete with the base resolution plan and one of them shall be selected for approval.</li> <li>◆ If the plan finally selected is approved by CoC with 66% voting, RP shall submit the same to AA and if CoC doesn't approve the same, then the resolution professional shall file an application to AA for termination of the PPIRP.</li> </ul>
<b>Approval of resolution plan</b>	<ul style="list-style-type: none"> <li>◆ AA shall approve the resolution plan within 30 days of its receipt if it is satisfied that the resolution plan as approved by the CoC meets the requirements of section 30(2) and the resolution plan has provisions for its effective implementation.</li> <li>◆ Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the above requirements, it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order for termination of PPIRP.</li> <li>◆ If AA has passed order for vesting of management of CD to RP and the resolution plan approved by the CoC does not result in the change in the management or control of the corporate debtor , the Adjudicating Authority shall pass an order — <ul style="list-style-type: none"> <li>(a) rejecting such resolution plan;</li> <li>(b) terminating the PPIRP and passing a liquidation order in respect of the corporate debtor; and</li> <li>(c) declaring that the PPIRP costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.</li> </ul> </li> </ul>
<b>Termination of pre-packaged insolvency resolution process</b>	<p>The Adjudicating Authority shall, within thirty days of the date of application made by RP by an order to terminate the PPIRP:</p> <ul style="list-style-type: none"> <li>◆ If CoC does not approve any resolution plan in 90 days.</li> <li>◆ CoC neither approves selected resolution plan nor base resolution plan.</li> <li>◆ CoC decides to terminate PPIRP by a vote of sixty-six per cent of the voting shares</li> </ul> <p>If AA has passed an order for vesting of management in RP and PPIRP is required to be terminated in above circumstances, then AA shall pass an order of liquidation of corporate debtor.</p>
<b>Initiation of corporate insolvency resolution process</b>	<ul style="list-style-type: none"> <li>◆ The CoC may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, by a vote of sixty-six per cent of the voting shares. The CoC can pass such resolution at any time after the PPICD but before the approving the resolution plan.</li> <li>◆ The Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to: <ul style="list-style-type: none"> <li>(a) terminate the PPIRP and initiate corporate insolvency resolution process.</li> <li>(b) appoint the resolution professional as the interim resolution professional.</li> </ul> </li> <li>◆ The order so passed by the AA shall be deemed to be an order of admission of an application under section 7 and shall have the same effect and CIRP shall commence from the date of such order.</li> </ul>
<b>21.15B Fast Track Corporate Insolvency Resolution Process</b>	
<b>Introduction</b>	<p>The Central Government notified that w.e.f. 14th June, 2017, an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely:</p> <ul style="list-style-type: none"> <li>◆ a small company as defined under clause (85) of section 2 of Companies Act; or</li> <li>◆ a Startup (other than the partnership firm); or</li> <li>◆ an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.</li> </ul>

<b>Time period for completion of fast track corporate insolvency resolution process</b>	<ul style="list-style-type: none"> <li>◆ The fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.</li> <li>◆ An application shall be filed by resolution professional to Adjudicating Authority for extending the time period beyond 90 days if authorised by way of a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy-five per cent of the voting share.</li> <li>◆ The Adjudicating Authority may, by order, extend the duration of such process beyond the said period ninety days by such further period, as it thinks fit but not exceeding forty-five days.</li> <li>◆ Any extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once.</li> </ul>
<b>Manner of initiating fast track corporate insolvency resolution process</b>	<p>An application for fast track corporate insolvency resolution process may be filed by a creditor or corporate debtor as the case may be along with:</p> <ul style="list-style-type: none"> <li>◆ the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and</li> <li>◆ such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process.</li> </ul>
<b>Manner of initiating fast track corporate insolvency resolution process</b>	<p>Applicability of Chapter II to this Chapter. - The process for conducting a corporate insolvency resolution process under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require.</p>

#### Questions for Practice

**Ques 1: Discuss time period for completion of fast track corporate insolvency resolution process?**

*Hint: Refer Topic time period for completion of fast track corporate insolvency resolution process.*

**Ques 2: Write Short Note On: Termination of pre-packaged insolvency resolution process.**

*Hint: Refer Topic Termination of pre-packaged insolvency resolution process.*

**Ques 3: Which MSME can't opt for Pre-packaged Insolvency Resolution Process (PPIRP) ?**

*Hint: Refer Topic "Which MSME can't opt for PPIRP" as discussed above.*

**Ques 4: Write Short Note On: "Application to initiate pre-packaged insolvency resolution process".**

*Hint: Refer Topic Application to initiate pre-packaged insolvency resolution process.*

#### 21.16 Brief of Procedure of Voluntary Liquidation of a Corporate Person under IBC

Section 59 of the Code provides that a Corporate person (includes Company, LLP, etc. in terms of definition under section 3(7)), who intends to liquidate itself voluntarily and has not committed any default, may initiate voluntary liquidation proceedings under the provisions of Chapter V, Part II of Code.

**Procedure:** The procedure of voluntary liquidation of a corporate person under the Code in brief is given below:

**Step 1:** Submission of declaration(s) to ROC, stating that the company will be able to pay its dues and is not being liquidated to defraud any person.

**Step 2:** Passing of special resolution for approving the proposal of voluntary liquidation and appointment of liquidator within 4 weeks of the aforesaid declaration(s). If a corporate person owes debts, approval of two-third majority creditors would also be required.

**Step 3:** Public announcement inviting claims of all stakeholders, within 5 (five) days of such approval, in newspaper as well as on website of the corporate person.

**Step 4:** Intimation to the ROC and the Board about the approval within 7 (seven) days of such approval.

**Step 5:** Preparation of preliminary report about the capital structure, estimates of assets and liabilities, proposed plan of action etc., and submission of the same to a corporate person within 45 days of such approval.

**Step 6:** Verification of claims, within 30 days from the last date for receipt of claims and preparation of list of stakeholders within 45 days from the last date for receipt of claims.

**Step 7:** Opening of a bank account in the name of the corporate person followed by the words 'in voluntary liquidation' in a scheduled bank for the receipt of all moneys due to the corporate person.

**Step 8:** Sale of assets, recovery of monies due to corporate person, realization of uncalled capital or unpaid capital contribution.

**Step 9:** Distribution of the proceeds from realization within 6 months from the receipt of the amount to the stakeholders.

**Step 10:** Submission of final report by the liquidator to the corporate person, ROC and Board and application to the National Company Law Tribunal (NCLT) for the dissolution.

**Step 11:** Submission of NCLT order regarding the dissolution, to the concerned ROC within 14 days of the receipt of order.

**Note(s):**

1. *The liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.*
2. *The liquidator shall endeavour to wind up the affairs of the corporate person within 12 (twelve) months from the voluntary liquidation commencement date.*

**QUESTION**

**Ques 1:** Yuvan Infra Ltd. is continuously making losses and the Directors of the Company are planning to voluntarily wind up the Company. As a Company Secretary advise on conditions and also advise them briefly on procedures for voluntary liquidation.

*Hint: Refer Topic 21.16 Brief Of Procedure Of Voluntary Liquidation Of A Corporate Person Under IBC.*

**21.17 Waterfall Arrangement**

Section 53 of the Code provides for the manner of distribution of assets in case of liquidation and order of priority of distribution. It is pertinent to note that this order of priority is notwithstanding anything contrary which is contained in any other Central or State law. This order of priority is also known as the "waterfall arrangement" since each of category of persons comes in priority after the previous one.

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

- (a) Insolvency resolution process costs and liquidation costs paid in full.
- (b) Following debts shall rank equally between and among the following:
  - i. Workmen's dues for the period of 24 months preceding the liquidation commencement date.
  - ii. Debts owed to secured creditor in the event such secured creditor has relinquished security under section 52.
- (c) Wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date.
- (d) Financial debts owed to unsecured creditors.
- (e) Following dues shall rank equally between and among the following:
  - i. Any amount due to the Central/State Government including amount to be received on account of Consolidated Fund of India and Consolidated Fund of a State, if any, in respect of whole or any part of the period of two years preceding the liquidation commencement date.
  - ii. Debts owed to a secured creditor for any amount unpaid following enforcement of security interest.
- (f) Any remaining debts and dues.
- (g) Preference shareholders, if any; and
- (h) Equity shareholders or partners, as the case may be.

**Notes:**

1. Any contractual arrangements between recipients above with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator.
2. The fees payable to the liquidator shall be deducted proportionately from proceeds payable to each class of recipients and proceeds to the relevant recipient shall be distributed after such deduction.

**QUESTIONS**

**Ques 1:** Elaborate 'Waterfall Arrangement' under the Insolvency and Bankruptcy Code, 2016.

*Hint: Refer Topic 21.17 Waterfall Arrangement.*

**Ques 2:** Describe the procedure mentioned under section 53 of Insolvency and Bankruptcy Code (IBC), 2016 for distribution of assets in case of liquidation.

*Hint: Refer Topic 21.17 Waterfall Arrangement.*

**21.18 Dissolution of Corporate Debtor**

Once the assets of the corporate debtor are completely liquidated, the liquidator shall make an application to NCLT for dissolution of the corporate debtor. The Tribunal shall pass necessary order to dissolve the corporate debtor. Thus, it can be seen that the CIRP and subsequent liquidation process of the corporate debtor is a time bound process aimed at expediting the revival or dissolution of corporate debtors.

**21.19A Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**

IBBI (CIRP) Regulations, 2016 lays down framework (*i.e.* timeline, forms and procedure) for implementation of the provisions of the Code relating to insolvency resolution of corporate debtors as follows:

<b>Independent RP</b>	The regulations lay down the criterion for eligibility of resolution professional <i>e.g.</i> he shall be eligible to be appointed as Independent Director not a related party etc.
<b>Public Announcement</b>	IRP shall make public announcement within 3 days of his appointment provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.
<b>Verification of claims</b>	IRP shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims and maintain list of updated claims with full details.
<b>Committee with only operational creditors</b>	Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall consist of members as under – <ol style="list-style-type: none"> <li>(a) eighteen largest operational creditors by value</li> <li>(b) one representative elected by all workmen</li> <li>(c) one representative elected by all employees.</li> </ol>
<b>Meetings of the CoC</b>	A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights. The notice period of first CoC shall be at least 5 days which may be reduced to 24 hrs for subsequent meetings and in case authorised representative is there, then to 48 hrs.
<b>Quorum at the meeting</b>	At least thirty three per cent of the voting rights are present either in person or by video conferencing or other audio and visual means.
<b>Appointment of registered valuers</b>	The resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor.
<b>Withdrawal of application</b>	The application for withdrawal shall be made by IRP/RP if authorised by CoC with 90% voting.

<b>Information memorandum</b>	The resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.
<b>Invitation for expression of interest</b>	The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.
<b>Request for resolution plans</b>	The resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans, within five days of the date of issue of the provisional list to – <ul style="list-style-type: none"> <li>(a) every prospective resolution applicant in the provisional list; and</li> <li>(b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.</li> </ul>
<b>Approval of resolution plan</b>	A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans along with: <ul style="list-style-type: none"> <li>(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;</li> <li>(b) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct.</li> </ul>
<b>21.19B Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016</b>	
<b>Applicability</b>	These Regulations shall apply to the liquidation process under Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
<b>Contributions to liquidation costs</b>	Where the CoC did not approve a resolution plan under the IBBI (CIRP) Regulations, 2016, the liquidator shall call upon the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by him, in proportion to the financial debts owed to them by the corporate debtor.
<b>Compromise or arrangement</b>	Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013, it shall be completed within ninety days of the order of liquidation.
<b>Eligibility for appointment as liquidator</b>	An insolvency professional shall be eligible to be appointed as a liquidator if he, and every partner or director of the insolvency professional entity of which he is a partner or director, is independent of the corporate debtor i.e. not a related party of the corporate debtor, eligible to be appointed as independent director etc.
<b>Reporting</b>	The liquidator shall prepare and submit– <ul style="list-style-type: none"> <li>(a) a preliminary report;</li> <li>(b) an asset memorandum;</li> <li>(c) progress report(s);</li> <li>(d) sale report(s);</li> <li>(e) minutes of consultation with stakeholders; and</li> <li>(f) the final report prior to dissolution to the Adjudicating Authority.</li> </ul>
<b>Appointment of professionals</b>	A liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions and liquidator shall not appoint a professional who is his relative, is a related party of the corporate debtor or has served as an auditor to the corporate debtor in the five years preceding the liquidation commencement date.
<b>Public announcement by liquidator</b>	The liquidator shall make a public announcement within five days from his appointment.
<b>List of stakeholders</b>	The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims.

<b>Stakeholders' consultation committee</b>	The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date based on the list of stakeholders prepared, to advise him on the matters relating to sale.	
<b>Realisation of Assets</b>	<p>The liquidator may sell-</p> <ul style="list-style-type: none"> <li>(a) an asset on a standalone basis;</li> <li>(b) the assets in a slump sale;</li> <li>(c) a set of assets collectively;</li> <li>(d) the assets in parcels;</li> <li>(e) the corporate debtor as a going concern; or</li> <li>(f) the business (s) of the corporate debtor as a going concern.</li> </ul>	
<b>Mode of sale</b>	<b>Auction</b>	The liquidator shall ordinarily sell the assets of the corporate debtor through an auction.
	<b>Private Sale</b>	<p>The liquidator may sell the assets of the corporate debtor by means of private sale when-</p> <ul style="list-style-type: none"> <li>(a) the asset is perishable;</li> <li>(b) the asset is likely to deteriorate in value significantly if not sold immediately;</li> <li>(c) the asset is sold at a price higher than the reserve price of a failed auction; or</li> <li>(d) the prior permission of the Adjudicating Authority has been obtained for such sale.</li> </ul>
<b>Recovery of monies due</b>	The liquidator shall endeavour to recover and realize all assets of and dues to the corporate debtor in a time-bound manner for maximization of value for the stakeholders.	
<b>Distribution</b>	The liquidator shall distribute the proceeds from realization within ninety days from the receipt of the amount to the stakeholders.	
<b>Completion of liquidation</b>	The liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date.	
<b>Final report prior to dissolution</b>	<ul style="list-style-type: none"> <li>◆ When the corporate debtor is liquidated, the liquidator shall make an account of the liquidation showing how it has been conducted and how the corporate debtor's assets have been liquidated.</li> <li>◆ The liquidator shall submit an application along with the final report and the compliance certificate to the Adjudicating Authority for – <ul style="list-style-type: none"> <li>(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or</li> <li>(b) for the dissolution of the corporate debtor.</li> </ul> </li> </ul>	
<b>21.19C Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017</b>		
<b>Applicability of the Regulations</b>	These Regulations shall apply to the voluntary liquidation of corporate persons under Chapter V of Part II of the Insolvency and Bankruptcy Code, 2016.	
<b>Initiation of Liquidation</b>	<ul style="list-style-type: none"> <li>◆ <i>Declaration</i> from majority of the designated partners or individuals constituting the governing body in case of other corporate persons. Such declaration shall be verified by an affidavit stating that- <ul style="list-style-type: none"> <li>(i) they have made a full inquiry into the affairs of the corporate person and they have formed an opinion that either the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation; and</li> <li>(ii) the corporate person is not being liquidated to defraud any person;</li> </ul> </li> </ul>	

	<ul style="list-style-type: none"> <li>◆ Resolution by a special majority of the partners or contributors, as the case may be, of the corporate person requiring the corporate person to be liquidated and appointing an insolvency professional to act as the liquidator;</li> <li>◆ Creditor's approval: the corporate person owes any debt to any person, creditors representing two-thirds in value of the debt of the corporate person shall approve the resolution passed by members/partners within seven days of such resolution.</li> <li>◆ Notice of resolution: The corporate person shall notify the Registrar and the Board about the resolution to liquidate the corporate person within seven days of such resolution or the subsequent approval by the creditors, as the case may be.</li> <li>◆ Voluntary Liquidation Commencement Date: Subject to approval of the creditors, the liquidation proceedings in respect of a corporate person shall be deemed to have commenced from the date of passing of the resolution by special majority of the partners or contributors of the corporate debtor, as the case may be.</li> </ul>
<b>Effect of liquidation</b>	The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business but the corporate person shall continue to exist until it is dissolved.
<b>Eligibility for appointment as liquidator</b>	An insolvency professional shall be eligible to be appointed as a liquidator if he, and every partner or director of the insolvency professional entity of which he is a partner or director is independent of the corporate person.
<b>Reporting</b>	The liquidator shall prepare and submit- <ol style="list-style-type: none"> <li>(a) Preliminary Report;</li> <li>(b) Annual Status Report;</li> <li>(c) Minutes of consultations with stakeholders; and</li> <li>(d) Final Report.</li> </ol>
<b>Preliminary Report</b>	The liquidator shall submit a Preliminary Report to the corporate person within forty five days from the liquidation commencement date detailing about the financial position of the company.
<b>Public announcement by the liquidator</b>	The liquidator shall make a public announcement within five days from his appointment.
<b>Proof of claim</b>	A person, who claims to be a stakeholder, shall prove his claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.
<b>Verification of claims</b>	The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part as the case may be.
<b>Realisation of Assets</b>	The liquidator may value and sell the assets of the corporate person in the manner and mode approved by the corporate person in compliance with provisions (if any) in the applicable statute.
<b>All money to be paid into bank account</b>	The liquidator shall open a bank account in the name of the corporate person followed by the words 'in voluntary liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate person.
<b>Distribution</b>	The liquidator shall distribute the proceeds from realization within six months from the receipt of the amount to the stakeholders.
<b>Completion of liquidation</b>	The liquidator shall endeavour to complete the liquidation process of the corporate person within twelve months from the liquidation commencement date.
<b>Final Report</b>	On completion of the liquidation process, the liquidator shall prepare the Final Report send the Final Report forthwith to the Registrar and the Board. The liquidator shall submit the Final Report to the Adjudicating Authority along with the application under section 59(7) for dissolution of the company.

<b>21.19D Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process For Corporate Persons) Regulations, 2017</b>	
<b>Applicability of the Regulations</b>	These Regulations shall apply to the fast track process under Chapter IV of Part II of the Code.
<b>Public announcement</b>	An insolvency professional shall make a public announcement within three days of his appointment as an interim resolution professional. Public announcement shall provide the last date for submission of proofs of claim, which shall be ten days from the date of appointment of the interim resolution professional.
<b>Verification of claims</b>	The interim resolution professional or the resolution professional as the case may be shall verify every claim, as on the fast track commencement date, within seven days from the last date of the receipt of the claims.
<b>Committee with only operational creditors</b>	Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee formed shall consist of: <ul style="list-style-type: none"> <li>(a) eighteen largest operational creditors by value.</li> <li>(b) one representative elected by all workmen and</li> <li>(c) one representative elected by all employees.</li> </ul>
<b>Filings by the interim resolution professional</b>	<ul style="list-style-type: none"> <li>◆ The interim resolution professional shall file a report certifying the constitution of the committee to the Adjudicating Authority on or before the expiry of twenty-one days from the date of his appointment.</li> <li>◆ The interim resolution professional shall convene the first meeting of the committee within seven days of filing the report(s) under this Regulation.</li> </ul>
<b>Meetings of the committee</b>	A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty-three per cent of the voting rights.
<b>Appointment of registered valuer</b>	The resolution professional shall within seven days of his appointment, appoint one registered valuer to determine the fair value and the liquidation value of the corporate debtor.
<b>Sale of assets outside the ordinary course of business</b>	With the approval of CoC, the resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case. However, the book value of all assets sold during fast track process period in aggregate under this sub-regulation shall not exceed ten per cent of the total claims admitted by the interim resolution professional.
<b>Information Memorandum</b>	The resolution professional shall submit the information memorandum in electronic form to: <ul style="list-style-type: none"> <li>(a) each member of the committee within two weeks of his appointment as resolution professional.</li> <li>(b) each prospective resolution applicant latest by the date of invitation of resolution plan under clause (h) of sub-section (2) of section 25 of the Code.</li> </ul>
<b>Invitation of Resolution Plans</b>	The resolution professional shall issue an invitation, including evaluation matrix to the prospective resolution applicants to submit resolution plans at least fifteen days before the last date of submission of resolution plans.
<b>Resolution Plan</b>	A resolution plan shall provide for the measures, as may be necessary for insolvency resolution of the corporate debtor for maximization of value of its assets.
<b>Approval of resolution plan</b>	The resolution professional shall submit the resolution plan approved by the committee to the Adjudicating Authority, at least fifteen days before the expiry of the maximum period permitted under section 56 for the completion of the fast track corporate insolvency resolution process, with the certification that— <ul style="list-style-type: none"> <li>(a) the contents of the resolution plan meet all the requirements of the Code and the Regulations; and</li> </ul>

	<p>(b) the resolution plan has been approved by the committee.</p> <p>The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.</p>
<b>Extension of the fasttrackprocess period</b>	<p>The committee is of the opinion that the fast track process cannot be completed within the stipulated 90 days, it may instruct the resolution professional to make an application to the Adjudicating Authority under section 56 to extend the fast track process period.</p> <p>The resolution professional shall on receiving an instruction from the committee under this Regulation make an application to the Adjudicating Authority for such extension.</p>

#### **21.19E Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021**

<b>Effective Date</b>	9th April, 2021
<b>Initiation Process</b>	<ul style="list-style-type: none"> <li>◆ <b>Meeting of the unrelated financial creditors:</b> 5 day's notice shall be given to unrelated financial creditor for meeting which may be called at shorter notice if agreed by them.</li> <li>◆ <b>Proposal of name of IRP:</b> The financial creditors who are not related parties of the corporate debtor and have not less than ten per cent of the value of the total financial debt of such creditors may propose names of insolvency professionals.</li> <li>◆ <b>Meeting of Operational Creditors:</b> Where the corporate debtor has no financial debt or where all financial creditors are related parties, the applicant shall convene a meeting of operational creditors, who are not related parties of the corporate debtor.</li> </ul>
<b>Public announcement</b>	The resolution professional shall make a public announcement within two days of the commencement of the process.
<b>Meetings of the Committee of Creditors</b>	<ul style="list-style-type: none"> <li>◆ A resolution professional may convene when considers necessary and shall convene a meeting, if a request to that effect is made by members of the committee representing thirty-three per cent of voting share.</li> <li>◆ Notice period shall be at least 3 days. A meeting of the committee shall quorate if members of the committee representing at least thirty three per cent of the voting share are present either in person or by video conferencing or other audio and visual means.</li> </ul>
<b>Appointment of registered valuers</b>	The resolution professional shall within three days of his appointment, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor.
<b>Information memorandum</b>	The resolution professional shall finalise the information memorandum and submit to members of the committee within fourteen days of the pre-packaged insolvency commencement after receiving an undertaking of confidentiality from a member of the committee.
<b>Invitation for resolution plans</b>	The resolution professional shall publish brief particulars of the invitation for resolution plans not later than twenty-one days from the pre-packaged insolvency commencement date.
<b>Evaluation of resolution plans</b>	The resolution plans received which comply with the requirements of the Code and these Regulations, shall be evaluated on the basis for evaluation. The resolution plan which gets the highest score shall be selected for competition with the base resolution plan.
<b>Approval of resolution plan</b>	<ul style="list-style-type: none"> <li>◆ The resolution plan selected shall be considered by the committee for approval. If it is significantly better than the base resolution plan (BRP).</li> <li>◆ Where no resolution plan is received, which complies with the requirements of the Code and these Regulations, the base resolution plan may be considered by the committee for approval.</li> <li>◆ If resolution plan is selected but it is not significantly better than BRP, then the resolution professional shall disclose the scores of the resolution plan selected and the base resolution plan to submitters of these resolution plans and invite them to improve their resolution plans by competing with each other.</li> </ul>

	<ul style="list-style-type: none"> <li>◆ Improvement at each time shall be at least by tick size. This process shall be completed within a time-window of forty-eight hours.</li> <li>◆ The resolution plan having higher score on completion of process of improvement shall be considered by the committee for approval.</li> </ul>
<b>Application to Adjudicating Authority</b>	<ul style="list-style-type: none"> <li>◆ Where a resolution plan is approved by the committee, the resolution professional shall submit an application, along with a compliance certificate to the Adjudicating Authority for approval.</li> <li>◆ The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.</li> <li>◆ Where no resolution plan is approved by the committee or where the committee has approved the termination of process, the resolution professional shall file an application to the Adjudicating Authority for termination of process.</li> </ul>

#### 21.20 Winding up

<b>Object and Scope of the law</b>	One of the hallmarks of a reliable economy is the time taken for a company to wind-up. India's record in this area was not satisfactory. This was a major sore point for foreign investors who were looking for a way to close down the operations within a reasonable time. With this as one of its intents, the Insolvency and Bankruptcy Code was brought into effect in the year 2016. The Code is a game changer in the way insolvency is dealt with in this country.
<b>Meaning of Winding-up</b>	Winding-up is the process of closing down the legal existence of a company or LLP. During this process, the assets of the entity are realized, its liabilities are paid off and any surplus is distributed amongst the contributors. Once the adjudicating authority is convinced that these processes are completed, the entity is dissolved.
<b>Insolvency and Bankruptcy Code, 2016 has made significant amendments to provisions relating to winding up in the Companies Act, 2013</b>	<ul style="list-style-type: none"> <li>◆ "<b>Winding up</b>" means winding up under the Companies Act, 2013 or liquidation under the Insolvency and Bankruptcy Code, 2016 as applicable. [Section 2(94A)].</li> <li>◆ <b>Voluntary winding up</b> – Provisions relating to voluntary winding up in the Companies Act, 2013 i.e., Sections 304 to 323 have been omitted by the Insolvency and Bankruptcy Code, 2016. Voluntary liquidation is now dealt with under section 59 of the Insolvency and Bankruptcy Code, 2016.</li> <li>◆ <b>Inability to pay debts</b> – Insolvency and Bankruptcy Code, 2016 has substituted Section 271 of the Companies Act, 2013. Winding-up due to inability to pay debts is now governed by the Code.</li> </ul>
<b>Difference Between 'Winding Up' and 'Dissolution'</b>	<p><b>There are very important differences in these two terms which are given below:</b></p> <ul style="list-style-type: none"> <li>◆ Winding up is the first stage of ending the legal existence of the entity. In this stage, the assets of the entity are realized, its liabilities paid off and surplus, if any, is distributed amongst the contributors, whereas dissolution is the final stage after completion of winding up process and by act of law, the legal existence of the entity comes to an end.</li> <li>◆ The winding up process is handled by a liquidator/insolvency professional. The dissolution can happen only by way of an order passed by the adjudicating authority.</li> <li>◆ Creditors can prove their claims during winding up but not on dissolution since the entity no longer exists on dissolution.</li> <li>◆ Winding up need not result in dissolution in all cases. A company which is in winding up can be taken over/ amalgamated by any other entity / company which will result in the company coming out of winding up process and being handed over to the shareholders. This is not possible in case of dissolution.</li> </ul> <p><b><i>In nutshell, many times the terms 'winding up' and 'dissolution' are used interchangeably. This is not correct.</i></b></p>

<b>Companies (Winding up) Rules, 2020</b>									
<b>Introduction</b>	With a view to systemize the procedure of winding up of a Company under the Act, the Ministry of Corporate Affairs ('MCA') vide Notification dated 24th January 2020, had notified the Companies (Winding Up) Rules, 2020 ("The Rules"). The Rules are applicable to companies going into "winding up for the circumstances mentioned u/s 271" as well as "Summary procedure for liquidation u/s 361" of the Act. The Rules comprise of 191 rules and 95 forms and shall become applicable from 1st April 2020.								
<b>Important Highlights</b>	<p>It allows the following companies (on the basis of latest audited balance sheet) to wind up their business by making an application to Central Government without approaching NCLT:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Companies accepting deposit and having total outstanding deposits</td><td style="padding: 2px;">Upto INR 25 Lacs</td></tr> <tr> <td style="padding: 2px;">Companies having total outstanding loan including secured loan</td><td style="padding: 2px;">Upto INR 50 Lacs</td></tr> <tr> <td style="padding: 2px;">Companies having total turnover</td><td style="padding: 2px;">Upto INR 50 Crores</td></tr> <tr> <td style="padding: 2px;">Companies with Paid-up Share Capital</td><td style="padding: 2px;">Upto INR 1 Crore</td></tr> </table> <p>Above companies are allowed to approach Central Government for summary liquidation only if they have book value of assets up to Rs. 1 crore.</p> <p>The provisions of the rules relating to filing and audit of the Company Liquidator's accounts and its procedure as well as disposing of assets shall be applicable to above class of companies with the Central Government instead of NCLT.</p> <p>It lays down the process for meeting of creditors and contributories of the Company, and specifies the scenarios in which creditors can and cannot vote;</p> <p>It makes it necessary for all the money lying in the bank account of Company Liquidator, which is not immediately required for the purposes of winding up, to be invested in government securities or in interest bearing deposits in any scheduled bank;</p> <p>It lay down the procedure for maintenance of registers and books of account by the Company Liquidator; and</p> <p>It also outlines the procedure for creditors to prove their debts and claims against the company and if the proof of such debt gets rejected by the Company Liquidator, there is also a provision and process for creditor to make an appeal to Tribunal.</p>	Companies accepting deposit and having total outstanding deposits	Upto INR 25 Lacs	Companies having total outstanding loan including secured loan	Upto INR 50 Lacs	Companies having total turnover	Upto INR 50 Crores	Companies with Paid-up Share Capital	Upto INR 1 Crore
Companies accepting deposit and having total outstanding deposits	Upto INR 25 Lacs								
Companies having total outstanding loan including secured loan	Upto INR 50 Lacs								
Companies having total turnover	Upto INR 50 Crores								
Companies with Paid-up Share Capital	Upto INR 1 Crore								
In nutshell, the winding up rules has reduced the burden of winding up on NCLT by shifting the power to Central Government in specified cases, which will help in shortening the winding up timelines drastically.									
<b>PAST EXAMINATION QUESTION</b>									
<b>Ques 1: The term 'Winding-up' and 'Dissolution' can be used interchangeably to denote cessation of existence of a legal entity.</b>									
<i>Hint: Refer Topic Difference Between 'Winding Up' and 'Dissolution'.</i>									

<b>21.21 Winding up by Tribunal</b>	
<b>Grounds for winding up of the company by the Tribunal</b>	<p>Section 271 of the Companies Act, 2013 provides grounds for winding up of the company by NCLT. According to section 271, a company may be wound up by NCLT on a petition in following cases:</p> <ul style="list-style-type: none"> <li>◆ If the company has, by special resolution, resolved that the company be wound up by the Tribunal;</li> <li>◆ If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;</li> <li>◆ If on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned</li> </ul>

	<p>in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;</p> <ul style="list-style-type: none"> <li>◆ If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or</li> <li>◆ If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.</li> </ul>
<b>Person who can make this petition</b>	<p>For commencing proceedings under section 271, a petition is to be made to the Tribunal. According to section 272, this petition may be made by any of the following persons:</p> <ul style="list-style-type: none"> <li>(a) The company;</li> <li>(b) Any contributory or contributories;</li> <li>(c) All or any of the persons specified in clauses (a) and (b);</li> <li>(d) The Registrar;</li> <li>(e) Any person authorised by the Central Government in that behalf; or</li> <li>(f) In a case falling under clause (b) of section 271, by the Central Government or a State Government.</li> </ul> <p>Any petition filed by the company shall be accompanied by a statement of affairs in prescribed form. A petition can be filed by the Registrar only with previous sanction of the Central Government which shall be accorded only after giving to the company a reasonable opportunity of being heard.</p> <p>Any petition filed under this section, apart from that filed by the Registrar himself, shall be served on the Registrar and the Registrar shall submit his views to the Tribunal within 60 days of receipt of such petition.</p>
<b>Order passed by Tribunal</b>	<p>On a petition filed under section 272, the Tribunal may pass any of the following orders within 90 days of presentation of the petition:</p> <ul style="list-style-type: none"> <li>(a) Dismiss it, with or without costs;</li> <li>(b) Make any interim order as it thinks fit;</li> <li>(c) Appoint a provisional liquidator of the company till the making of a winding up order;</li> <li>(d) Make an order for the winding up of the company with or without costs; or</li> <li>(e) Any other order as it thinks fit.</li> </ul> <p>The Tribunal shall give an opportunity of being heard to the company before appointment of a Provisional Liquidator. The order for winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories.</p>
<b>An application to the Tribunal for constitution of a winding up committee</b>	<p>Within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator and such winding up committee shall comprise of the following persons, namely:</p> <ol style="list-style-type: none"> <li>i. Official Liquidator attached to the Tribunal;</li> <li>ii. nominee of secured creditors; and</li> <li>iii. a professional nominated by the Tribunal.</li> </ol> <p>The Company Liquidator shall be the convener of the meetings of the winding up committee.</p>

<b>Liquidators' Report for submission to Tribunal</b>	<p>The liquidator is required to submit to the Tribunal, a report containing the following particulars within sixty days from the order of winding up or appointment of liquidator:</p> <ul style="list-style-type: none"> <li>◆ Nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any held by the company.</li> <li>◆ Valuation Report of the assets obtained from registered valuers.</li> <li>◆ Amount of capital issued, subscribed and paid-up.</li> <li>◆ Guarantees (if any) extended by the company.</li> <li>◆ List of contributors and dues, if any, payable by them and details of any unpaid call.</li> <li>◆ Details of trademarks and intellectual properties, if any, owned by the company.</li> <li>◆ Details of subsisting contracts, joint ventures and collaborations, if any.</li> <li>◆ Details of holding and subsidiary companies, if any.</li> <li>◆ Debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof.</li> <li>◆ Existing and contingent liabilities of the company including names, addresses and occupations of its creditors stating separately the amount of secured and unsecured debts and in the case of secured debts particulars of the securities given whether by the company or an officer thereof their value and the dates on which they were given.</li> <li>◆ Details of legal cases filed by or against the company.</li> <li>◆ Any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.</li> </ul>
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**QUESTION****Ques 1: Who can present the petition for winding-up?***Hint: Refer Topic Person who can make petition.***Questions For Practice****Ques 1: Discuss Liquidators' Report for submission to Tribunal in case of Winding Up by Tribunal?***Hint: Refer Topic Liquidators' Report for submission to Tribunal.***Ques 2: Discuss grounds for winding up of the company by the Tribunal ?***Hint: Refer Topic Grounds for winding up of the company by the Tribunal.*