A Practical Guide to Corporate Insolvency

(Including case studies, specimen forms and effective advocacy)

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2nd Edition-September, 2017
As an Insolvency Professional, we render the following services:

- Act as an Interim Resolution Professional / Resolution Professional as the case may be;
- Preparation of Information Memorandum;
- Assisting for Public Announcement;
- Formulation of Resolution Plan;
- Analysing the financial statements of the Company;
- Drafting of Notice and Agenda for convening the meeting of the Committee of Creditors;
- Assisting for appointing Registered Valuer in order to determine Liquidation value of the Corporate Debtor;
- Managing the affairs of the Corporate Debtor as a going concern;
- Studying various business verticals of the Company in which it operates;
- Verification of all claims received by the Creditors and determining the amount of claim followed by maintaining the list of creditors;
- Exploring various other restructuring options;
- Filing an Application with the Adjudicating Authority and Representing before them;
- Act as a Liquidator;
- Recovery under various relevant Laws;
- Factoring, Loan & Sale Documentation;
- Assessment of distressed assets, cash position, due diligence and turnaround feasibility;
- Advice on optimum utilization of resources.
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Preface

Corporate insolvency becomes a major concern now a day. It is a situation when the company is unable to pay the money owed and the net liabilities of its business becomes greater than the assets possessed by the business organization. Thus, the Insolvency and Bankruptcy Code, 2016 was enacted to provide for a corporate insolvency resolution process in a time bound and effective manner.

The Corporate Insolvency resolution process can be initiated by the financial creditor, an operational creditor or the corporate debtor and the application shall be made to the National Company Law Tribunal. It also requires appointment of Interim Resolution Professional. Further the Central Government has authorised the Reserve Bank of India to direct banking companies to initiate action under the Insolvency and Bankruptcy Code, 2016 with respect to their stressed assets. The detailed procedure is prescribed in this book.

This book strives to serve full guidance on understanding the corporate insolvency resolution process, provisions under the Insolvency and Bankruptcy Code, 2016, and a guide for the insolvency professionals. This book on corporate insolvency provides various timelines and serves many useful purposes.

This book provides practical guidance to the debtors, creditors, corporate applicant and insolvency professionals. This book contains brief analysis of the code, complete corporate insolvency resolution process, process of initiation of Insolvency Resolution Process by creditors and corporate debtor, detailed procedure after admission of application, timeline, case studies, liquidation process of corporate person, fast track insolvency process, voluntary liquidation of corporate person, authorities involved in the process, inspection and investigation, offences and penalties, insolvency resolution process for non-corporate persons, effective advocacy before tribunal and specimen forms.

I hope this book will be very helpful and will become an interesting source of information for the readers.

Thank You!

Dr. Rajkumar S. Adukia
From Gaining Expertise to Authoring Books

Dear reader

The road to progress and development doesn’t just end with knowledge and experience gained. Knowledge continues to grow when it is shared among fellow aspirants.

I feel proud of the fact that I am amidst hardworking people who have made their way to the pinnacle of success, by overcoming obstacles and hurdles in their journey through professional life and achieving the most needed knowledge and expertise.

My unquenchable thirst for knowledge has been my constant inspiration to read more and gain more knowledge. It has also been the source of motivation to author books, which has enabled me to author 200 plus books on a wide range of subjects over a period of time.

I find it apt to remember English Historian and Geologist Charles Darwin’s famous quote

“In the long history of humankind those who learned to collaborate and improvise most effectively have prevailed.”

In collaboration lies the spirit of greater achievements and carving a niche for ourselves by setting the most inspiring example for others to follow.

I take this opportunity to invite both budding and established professionals/entrepreneurs/academicians/readers to join me in sharing the knowledge and expertise with our fellow professionals and aspirants by developing knowledge series in the form of books on a wide range of topics for example, business laws, various forms of audits, accounting standards, arbitration and mediation, self-help and self-development and management topics to name a few.

It will be my pleasure to co-author books with esteemed colleagues who will be interested in presenting an innovative approach with respect to any subject within the ambit of finance and its related fields.

You may feel free to contact me at rajkumarradukia@caaa.in or reach me on my mobile phone 9820061049 by whatsapp for further details and discussions in this regard.

Regards

Dr. Rajkumar S Adukia
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Introduction

Corporate insolvency is dealt under the Insolvency and Bankruptcy Code, 2016. Recently, the Government of India enacted the Insolvency and Bankruptcy Code, 2016 to establish regulatory framework for liquidation and insolvency resolution in India. Basically, the Insolvency and Bankruptcy Code, 2016 provides insolvency resolution process for two types of entities i.e. corporate person and non-corporate person. Part II of the Insolvency and Bankruptcy Code, 2016 deals with insolvency resolution and liquidation for corporate persons.

Earlier, there was no single law in India that deals with insolvency and bankruptcy. Liquidation of Companies was handled by the High Courts. Individual Bankruptcy and Insolvency was dealt with by the Courts. The Indian Judiciary was highly overburdened, leading to time consuming process.

The Acts dealing with the insolvency and bankruptcy for companies were:

- Sick Industrial Companies (Special Provisions) Act, 1985,
- the Recovery of Debt Due to Banks and Financial Institutions Act, 1993,
- the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and
- the Companies Act, 2013.

The existing framework for insolvency and bankruptcy was inadequate and ineffective resulting in undue delays in resolution. Lack of an insolvency and bankruptcy code had proved costly for the creditors (mainly banks) in many cases like the recent Kingfisher Airlines case. The Insolvency and Bankruptcy Code seeks to create a unified framework to resolve insolvency and bankruptcy in India.

So, the path of the Insolvency and Bankruptcy Code, 2016 was paved. It was introduced as a single window to provide for an effective and time bound process for resolution of insolvency and bankruptcy in the country with a view to promote ease of doing business and facilitation of more investments for higher economic growth.

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

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

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

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

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


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

Sections of the IBC were first notified on 5th August, 2016. The Insolvency and Bankruptcy Board of India was formed on 1st October, 2016.

**Constitutional Aspects of the Code**

- Under the Constitution of India, Entry 9 in List III - Concurrent List, (Article 246 – Seventh Schedule to the Constitution) i.e. both Center and State Governments can make laws relating to ‘Bankruptcy & Insolvency’.
- Entry 43 of List I deals with ‘incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies’ whereas Entry 44 of List I deals with ‘incorporation, regulation and
winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.’

**Scope of The Code**

The provisions of this Code shall apply to-

a) any company incorporated under the Companies Act, 2013 or under any previous company law;

b) any other company governed by any special act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;

c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;

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

e) partnership firms and individuals,

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

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

Part II applies to Corporate Person other than Financial Service Provider. A separate legislation for financial service providers is in draft stage.

**The Draft Financial Resolution and Deposit Insurance Bill, 2017**

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

The Legislation is named as the Financial Resolution and Deposit Insurance Bill, 2017.

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

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

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

Composition of the Committee:

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

Committee submitted its report on 21st September, 2016.

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

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

On June 14, 2017, the Union Cabinet chaired by Prime Minister, Mr. Narendra Modi approved the proposal to introduce a Financial Resolution and Deposit Insurance Bill, 2017.

On 10th August, 2017, the Financial Resolution and Deposit Insurance Bill, 2017 was introduced in Lok Sabha.

The Financial Resolution and Deposit Insurance Bill, 2017 has been referred to a Joint Parliamentary Committee and the Joint Committee invited views and suggestions from various stakeholders and public at large on the provisions of the Bill till 29th September, 2017.
Present Legal Framework for Deposit Insurance and Resolution in India

1. For Deposit insurance: The Deposit Insurance and Credit Guarantee Corporation (DICGC), created and governed under the DICGC Act, 1961.

2. For resolution of scheduled commercial banks: The Banking Regulation Act, 1949


4. Resolution of insurance firms: The Insurance Act, 1938


6. Resolution of pension funds: The Pension Fund Regulatory Authority of India Act (PFRDA Act)


DRAFT “FINANCIAL RESOLUTION AND DEPOSIT INSURANCE BILL, 2017”

Preamble

i. to provide for the resolution of certain categories of financial service providers in distress;

ii. the deposit insurance to consumers of certain categories of financial services;

iii. designation of systemically important financial institutions;

iv. and establishment of a Resolution Corporation for protection of consumers of specified service providers and of public funds for ensuring the stability and resilience of the financial system and for matters connected therewith or incidental thereto.

Financial Service provider
The term has not been specifically defined under the Financial Resolution and Deposit Insurance Bill, 2017. It has the same meaning as assigned to it under section 3(17) of the Insolvency and Bankruptcy Code, 2016.

As per section 3(17) of the Insolvency and Bankruptcy Code, 2016, "financial service provider" means a person engaged in the business of providing financial services in terms of authorization issued or registration granted by a financial sector regulator.

**Constitution of Separate Administrative Body**

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

The Corporation will be a body corporate having, -

(a) perpetual succession;
(b) a common seal;
(c) the power to acquire, hold or dispose of property;
(d) the power to enter into contracts; and
(e) the power to sue and be sued by the said name.

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

**Funds of Corporation**

Where the officer or agent of the Corporation or of the appropriate regulator, Clause 21 of Draft Bill states the requirement of constitution of funds for the Corporation:

(a) a fund for Deposit Insurance provided by the Corporation to the insured service providers, called the Corporation Insurance Fund;
(b) a fund for meeting the expenses of carrying out resolution of insured service providers, called the Corporation Resolution Fund; and
(c) a fund for all other functions of the Corporation called the Corporation General Fund.
The Funds of the corporation shall be credited in the following manner—
(a) premium for deposit insurance collected from insured service providers, in the Corporation Insurance Fund;
(b) fees for resolution collected from the specified service providers in the Corporation Resolution Fund; and
(c) all other fees in the Corporation General Fund.

Repeal

The Deposit Insurance and Credit Guarantee Corporation Act, 1961.

Amendments to the Acts

Fourth Schedules of the draft bill proposes amendments to the following Acts:

1. INDIAN STAMP ACT, 1899
2. RESERVE BANK OF INDIA ACT, 1934
3. THE INSURANCE ACT, 1938
4. THE BANKING REGULATION ACT, 1949
5. THE STATE BANK OF INDIA ACT, 1955
6. THE LIFE INSURANCE CORPORATION ACT, 1956
7. THE SECURITIES CONTRACTS (REGULATION) ACT, 1956
8. THE STATE BANK OF INDIA (SUBSIDIARY BANKS) ACT, 1959
9. THE INCOME-TAX ACT, 1961
10. THE CUSTOMS ACT, 1962
11. THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1970
12. THE GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972
13. THE REGIONAL RURAL BANKS ACT, 1976
14. THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS)
15. THE EXPORT-IMPORT BANK OF INDIA ACT, 1981
16. THE FINANCE ACT, 1994
17. THE MULTI-STATE COOPERATIVE SOCIETIES ACT, 2002
18. THE COMPANIES ACT, 2013
19. THE PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY ACT, 2013
20. THE INSOLVENCY AND BANKRUPTCY CODE, 2016
21. THE CENTRAL GOODS AND SERVICES TAX ACT, 2017
Analysis of the Insolvency and Bankruptcy Code, 2016

Structure of the Code

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

- Part I- Preliminary- Sections 1 to 3
- Part II- Insolvency Resolution and Liquidation for Corporate Persons- Sections 4 to 77
- Part III - Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms- Sections 78 to 187
- Part IV - Regulation of Insolvency Professionals, Agencies and Information Utilities- Sections 188 to 223
- Part V – Miscellaneous- Sections 224 to 255

Insolvency Resolution and Liquidation for Corporate Persons is prescribed under Part II. It contains 7 Chapters-

- Chapter I – Preliminary- Section 4 & 5
- Chapter II - Corporate Insolvency Resolution Process- Sections 6 to 32
- Chapter III - Liquidation Process- Sections 33 to 54
- Chapter IV - Fast Track Corporate Insolvency Resolution Process- Sections 55 to 58
- Chapter V - Voluntary Liquidation of Corporate Persons- Section 59
- Chapter VI - Adjudicating Authority for Corporate Persons- Sections 60 to 67
- Chapter VII - Offences and Penalties- Sections 68 to 77

Schedules to the Code

- THE FIRST SCHEDULE - Amendment to the Indian Partnership Act, 1932- Section 245
- THE SECOND SCHEDULE - Amendment to the Central Excise Act, 1944- Section 246
- THE THIRD SCHEDULE - Amendment to the Income-Tax Act, 1961- Section 247
- THE FOURTH SCHEDULE - Amendment to the Customs Act, 1962- Section 248
- THE FIFTH SCHEDULE - Amendment to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993- Section 249
- THE SIXTH SCHEDULE - Amendment to the Finance Act, 1994- Section 250
- THE SEVENTH SCHEDULE - Amendment to the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002- Section 251
- THE EIGHTH SCHEDULE - Amendment to the Sick Industrial Companies (Special Provisions) Repeal Act, 2003- Section 252
➢ THE NINTH SCHEDULE - Amendment to the Payment and Settlement Systems Act, 2007- Section 253
➢ THE TENTH SCHEDULE - Amendment to the Limited Liability Partnership Act, 2008- Section 254
➢ THE ELEVENTH SCHEDULE - Amendments to the Companies Act, 2013- Section 255

Rules & Regulations

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

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

Other relevant rules in this regard

3. The Companies (Transfer of Pending Proceedings) Rules, 2016 - notified on 7th December, 2016, w.e.f. 15th December, 2016, except rule 4 which shall come into effect from 1st April, 2017

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

1. The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 - notified on 21st November 2016
2. The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016 - notified on 21st November, 2016
3. The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 - notified on 23rd November 2016, w.e.f. 29th November, 2016
4. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - notified on 30th November 2016, w.e.f. 1st December, 2016
5. The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 - notified on 15th December, 2016
6. The Insolvency and Bankruptcy Board of India (Engagement of Research Associates and Consultants) Regulations, 2017 - notified on 30\textsuperscript{th} January, 2017
7. The Insolvency and Bankruptcy Board of India (Advisory Committee) Regulations, 2017 - notified on 30\textsuperscript{th} January, 2017
8. The Insolvency and Bankruptcy Board of India (Procedure for Governing Board Meetings) Regulations, 2017 - notified on 30\textsuperscript{th} January, 2017
9. The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 - notified on 31\textsuperscript{st} March, 2017, w.e.f. 1\textsuperscript{st} April, 2017
10. Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 - notified on 31\textsuperscript{st} March, 2017, w.e.f. 1\textsuperscript{st} April, 2017
11. The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 - notified on 12\textsuperscript{th} June, 2017
12. The Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 - notified on 14\textsuperscript{th} June, 2017 w.e.f. 14\textsuperscript{th} June, 2017
13. The Insolvency and Bankruptcy Board of India (Employees’ Service) Regulations, 2017- notified on 24 August, 2017
Corporate Insolvency Resolution Process (CIRP)

Sections 6 to 32 of the Chapter II of Part II of the Insolvency and Bankruptcy Code, 2016 deals with the corporate insolvency resolution process. The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are applicable to the corporate insolvency resolution process.

Who may initiate corporate insolvency resolution process?

Section 6 of the Code prescribes that on the event of default, an application for initiating corporate insolvency resolution process in respect of such corporate debtor may be made by the following persons:

a) financial creditor under Section 7
b) an operational creditor under Section 9 or
c) the corporate debtor itself under Section 10

Minimum amount of default

Minimum amount of default shall be one lakh rupees. However, the Central Government may specify the minimum amount of default of higher value which shall be not be more than one crore rupees. (Sec. 4)

What constitutes Corporate Person?

As per Section 3(7): "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of 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.

Terminologies used in corporate insolvency resolution process

As per Section 3(12): "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.
As per Section 3(11): "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

As per Section 3(6): "Claim" means-

a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;
b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.

As per Section 5(6): "dispute" includes a suit or arbitration proceedings relating to-

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

As per Section 5(5): "corporate applicant" means-

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

As per Section 3(8): "corporate debtor" means a corporate person who owes a debt to any person.

As per Section 5(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

As per Section 5(8): "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

a) money borrowed against the payment of interest;
b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
e) receivables sold or discounted other than any receivables sold on nonrecourse basis;
f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.

As per Section 5(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

As per Section 5(21): "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.
Initiation of Insolvency Resolution Process by Financial Creditor

Financial Creditor may file an application under Section 7 of the Code either by itself or jointly in Form 1 (Provided in Annexure I) as prescribed in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a fee of Rs. 25000 and the form must contain the name of the Interim Resolution Professional.

This application shall be filed along with:

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

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

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

**Adjudicating Authority on receipt of application by financial creditor**

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

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

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

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

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

**Initiation of Insolvency Resolution Process by Operational creditor**

As per Section 8 of the Insolvency and Bankruptcy Code, 2016, before filing an application for insolvency resolution process, an operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor.

This demand notice shall be in **Form 3** specified in Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. (*Provided in Annexure II*)
Copy of an invoice demanding payment of the amount involved in the default to the corporate debtor shall be in **Form 4 (Provided in Annexure III)** specified in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

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

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

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

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

a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

b) the repayment of unpaid operational debt-
   i. by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
   ii. by sending an attested copy of record that the operational creditor has encashed a cheques issued by the corporate debtor.

The application for initiation of Insolvency Resolution Process by Operational creditor shall be filed in **Form 5 (Provided in Annexure IV)** specified in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Application form shall be accompanied with:

- a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
- an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
- a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor
The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

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

**Adjudicating Authority on receipt of application by operational creditor**

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

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

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

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

Adjudicating Authority shall, before rejecting the application, give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.
The corporate insolvency resolution process shall commence from the date of admission of the application.
Initiation of Insolvency Resolution Process by Corporate Applicant

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. (Sec. 10)

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

Corporate debtor not entitled to make application: Section 11 of the Code

a) a corporate debtor undergoing a corporate insolvency resolution process; or
b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
d) a corporate debtor in respect of whom a liquidation order has been made.

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

Time-limit for completion of Insolvency Resolution Process

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

If the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days. It shall not be granted more than once. (Sec. 12)

Note: The Adjudicating Authority may permit withdrawal of the application made by the financial creditor, operational creditor or corporate applicant, as the case may be, on a request made by the applicant before its admission as per Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
Procedure After Admission of Application under Section 7, 9 and 10

I. Declaration of Moratorium and Public Announcement on Admission: Section 13 of the Code

On admission of application, the Adjudicating Authority shall

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

Moratorium: Section 14 of the Code

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

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

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

c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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

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

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

II. Appointment of interim resolution professional

"Resolution professional", for the purposes of Corporate Insolvency Resolution Process, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional (Sec 5(27)). Interim resolution professional is responsible to constitute a committee of creditors and receive and collate all the claims submitted by creditors to him.
The Adjudicating Authority shall appoint an interim resolution professional **within fourteen days** from the insolvency commencement date.

**Scenario in case the application is made by operational creditor**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Term of Resolution Professional**

As per Section 16(5) of the Code the term of the interim resolution professional shall not exceed thirty days from date of his appointment.

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

From the date of appointment interim resolution professional-

a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;
c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

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

**Duties of Interim Resolution Professional: Section 18 of the Code**

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

a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to-
   i. business operations for the previous two years;
   ii. financial and operational payments for the previous two years;
   iii. list of assets and liabilities as on the initiation date; and
   iv. such other matters as may be specified;

b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made;

c) constitute a committee of creditors;

d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

e) file information collected with the information utility, if necessary; and

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

"assets" shall not include the following, namely:

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

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

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

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

The IBBI has designated its own website www.ibbi.gov.in for the purpose of publishing Public Announcement. It also monitors the IRPs to ensure that they made the due Announcements on the designated website within the stipulated time.

Information to be contained in Public Announcement

(a) name and address of the corporate debtor under the CIRP;
(b) name of the authority with which the corporate debtor is incorporated or registered;
(c) the last date for submission of claims;
(d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving the claims;
(e) penalties for false or misleading claims; and

(f) the date on which the CIRP shall close shall be the 180th day from the date of the admission of the application u/s 7, 9 or 10 of the Code, as the case may be. (Sec. 15)

IV. Claims and Constitution of Committee of Creditors

Who can submit claims?

1. Financial Creditor

2. Operational Creditor (Other than workmen & employees)

3. Claims by Workmen & Employees

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

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

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

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

   a) the records available with an information utility, if any; or

   b) other relevant documents, including –

      i. a contract for the supply of goods and services with corporate debtor;

      ii. an invoice demanding payment for the goods and services supplied to the corporate debtor;

      iii. an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or

      iv. financial accounts.

Claims by financial creditors: Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
1. A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the interim resolution professional in electronic form in Form C of the Schedule:

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

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

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

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

Provided that such person may submit supplementary documents or clarifications in support of the claim, on his own or if required by the interim resolution professional, before the constitution of the committee.

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

3. The existence of dues to workmen or employees may be proved by them, individually or collectively on the basis of –
   a) records available with an information utility, if any; or
b) other relevant documents, including –
   i. a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
   ii. evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made; or
   iii. an order of a court or tribunal that has adjudicated upon the non-payment of a dues, if any.

Claims by other creditors: Regulation 9A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

A person claiming to be a creditor, other than those covered under regulations 7, 8, or 9, shall submit proof of its claim to the interim resolution professional or resolution professional in person, by post or by electronic means in Form F of the Schedule.

The existence of the claim of the creditor referred to in sub-section (1) may be proved on the basis of –
(a) the records available in an information utility, if any, or
(b) other relevant documents sufficient to establish the claim, including any or all of the following:
   (i) documentary evidence demanding satisfaction of the claim;
   (ii) bank statements of the creditor showing non-satisfaction of claim;
   (iii) an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any.”

(Note: Regulation 9A inserted under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017 notified on the 16th August, 2017)

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

The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.
Verification of Claims: Regulation 13 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

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

Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

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

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

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

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

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

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

Committee of Creditors: Section 21 of the Code

Provisions with respect to committee of creditors:

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

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

**Composition of Committee**

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

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

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

b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

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

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

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

a) eighteen largest operational creditors by value:

Provided that if the number of operational creditors is less than eighteen, the committee shall include all such operational creditors;

b) one representative elected by all workmen other than those workmen included in operational creditor; and

c) one representative elected by all employees other than those employees included in operational creditor.

**Note:** A related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.
Notice of the meeting: Regulation 19 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

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

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

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

a) members of Committee of creditors;

b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

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

Note: Draft notice to the Committee of Creditors provided in Annexure VIII

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

A notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

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

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

2) The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through an authorized representative:
Provided that such participant shall inform the resolution professional, in advance of the meeting, of the identity of the authorized representative who will attend and vote at the meeting on its behalf.

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

4) The notice of the meeting shall-
   a. state the process and manner for voting by electronic means and the time schedule, including the time period during which the votes may be cast:
   b. provide the login ID and the details of a facility for generating password and for keeping security and casting of vote in a secure manner; and
   c. provide contact details of the person who will address the queries connected with the electronic voting.

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

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

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

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

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

The resolution professional shall provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system.
Once a vote on a resolution is cast by a member of the committee, such member shall not be allowed to change it subsequently.

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

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

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

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

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

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

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

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

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

The members of the committee of creditors may meet in person or by electronic means. All meetings of the committee of creditors shall be conducted by the resolution professional. The resolution professional shall act as the chairperson of the meeting of the committee.

**Participation through video conferencing: Regulation 23 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**
The notice convening the meetings of the committee shall provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with this Regulation.

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

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**Matters requiring approval of committee: Section 28 of the Code**

1. raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
2. create any security interest over the assets of the corporate debtor;
3. change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
4. record any change in the ownership interest of the corporate debtor;
5. give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
6. undertake any related party transaction;
7. amend any constitutional documents of the corporate debtor;
8. delegate its authority to any other person;
9. dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
10. make any change in the management of the corporate debtor or its subsidiary;
11. transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
12. make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
13. make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.
Any action other than those listed above requiring approval of the committee may be considered in meetings of the committee.

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

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

V. Appointment of Resolution Professional: Section 22 of the Code

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

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

Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

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

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

Duties of Resolution Professional: Section 25 of the Code

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

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

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

VI. Preparation of information memorandum: Section 29 of the Code

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

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

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

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

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

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

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

VII. Preparation and submission of Resolution Plan

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

1. A resolution plan may provide for the measures required for implementing it, including but not limited to the following-

(a) transfer of all or part of the assets of the corporate debtor to one or more persons;
(b) sale of all or part of the assets whether subject to any security interest or not;
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
(d) satisfaction or modification of any security interest;
(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;
(f) reduction in the amount payable to the creditors;
(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
(h) amendment of the constitutional documents of the corporate debtor;
(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; and
(j) obtaining necessary approvals from the Central and State Governments and other authorities.

2. Mandatory contents of the resolution plan (Regulation 38): A resolution plan shall identify specific sources of funds that will be used to pay the -
   (a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;
   (b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and
   (c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

3. A resolution plan shall provide:
   (a) the term of the plan and its implementation schedule;
   (b) the management and control of the business of the corporate debtor during its term; and
   (c) adequate means for supervising its implementation.

Submission of Resolution Plan: Section 30 of the Code

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

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

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

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

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

**Approval of resolution plan by Adjudicating Authority: Section 31 of the Code**

If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

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

After the order of approval, -

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

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

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

i. The approved resolution plan is in contravention of the provisions of any law for the time being in force;

ii. There has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

iii. The debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

iv. The insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

v. The resolution plan does not comply with any other criteria specified by the Board.

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

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

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

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

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>DAYS (For Operational Creditor)</th>
<th>DAYS (For Financial Creditor and Corporate Debtor)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing of Application</td>
<td>A</td>
<td>A</td>
</tr>
<tr>
<td>Admission of Application/ CIRP commencement date/ Declaration of Moratorium</td>
<td>A+14 days= X days</td>
<td>A+14 days= X days</td>
</tr>
<tr>
<td>NCLT to appoint interim Resolution Professional (IRP)</td>
<td>X+ 14 days</td>
<td>X days</td>
</tr>
<tr>
<td>Public Announcement (not later than three days from the date of his appointment)</td>
<td>X+14+3 days</td>
<td>X+3 days</td>
</tr>
<tr>
<td>Appointment of Registered Valuer to calculate Liquidation value (within seven days of his appointment)</td>
<td>X+ 21 days</td>
<td>X+ 7 days</td>
</tr>
<tr>
<td>Creditors to submit claims (fourteen days from the date of appointment of the interim resolution professional)</td>
<td>X+ 28 days</td>
<td>X+14 days</td>
</tr>
<tr>
<td>IRP to constitute COC &amp; submit Report (IRP file report certifying constitution of the committee to the Adjudicating Authority on or before the expiry of thirty days from the date of his appointment)</td>
<td>X+ 44 days</td>
<td>X+ 30 days</td>
</tr>
<tr>
<td>Notice of the first meeting of COC (7 days’ notice criteria)</td>
<td>X+ 44 days</td>
<td>X+ 30 days</td>
</tr>
<tr>
<td>1st COC Meeting (IRP shall convene the first meeting of COC within seven days of filling the report to Adjudicating Authority)</td>
<td>X+ 51 days</td>
<td>X+ 37 days</td>
</tr>
<tr>
<td>Preparation of Information memorandum (within fourteen days of the First Meeting)</td>
<td>X+ 65 days</td>
<td>X+ 51 days</td>
</tr>
<tr>
<td>Submission of Resolution Plan (within 30 days before expiry of the maximum period permitted under section 12 for the completion of the CIRP)</td>
<td>X+ 150 days</td>
<td>X+ 150 days</td>
</tr>
<tr>
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</tr>
<tr>
<td>Initiation of Liquidation Process</td>
<td>X+ 180 days</td>
<td>X+ 180 days</td>
</tr>
</tbody>
</table>

Various forms need to be filed

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Forms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application by financial creditor</td>
<td>Form 1 (Prescribed in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)</td>
</tr>
<tr>
<td>Demand notice by operational creditor</td>
<td>Form 3 (Prescribed in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)</td>
</tr>
<tr>
<td>Copy of an invoice</td>
<td>Form 4 (Prescribed in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)</td>
</tr>
<tr>
<td>Application by operational creditor</td>
<td>Form 5 (Prescribed in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)</td>
</tr>
<tr>
<td>Application by corporate applicant</td>
<td>Form 6 (Prescribed in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)</td>
</tr>
<tr>
<td>Public announcement</td>
<td>Form A (Prescribed in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)</td>
</tr>
<tr>
<td>Claims by operational creditors</td>
<td>Form B (Prescribed in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)</td>
</tr>
<tr>
<td>Claims by financial creditors</td>
<td>Form C (Prescribed in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)</td>
</tr>
<tr>
<td>Claims by workmen and employees</td>
<td>Form D (Prescribed in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)</td>
</tr>
</tbody>
</table>
Measures taken by RBI and SEBI

A significant rise in non-performing assets (NPAs) of the banking system is a matter of concern. The Central Government has authorised the Reserve Bank of India to direct banking companies to initiate action under the Insolvency and Bankruptcy Code, 2016 with respect to their stressed asset. Accordingly, two new Sections has been inserted (viz. 35AA and 35AB) after Section 35A in the Banking Regulation Act, 1949 and the timelines for Stressed Assets Resolution was issued by RBI vide circular dated May 5, 2017. This circular is issued in exercise of the powers conferred by Sections 21, 35A and 35AB of the Banking Regulation Act, 1949.

Insolvency proceedings for the recovery of bad loans

In order to give more powers to RBI to deal with non-performing assets, the Ordinance was passed to amend the Banking Regulation Act, 1949. This Ordinance may be called the Banking Regulation (Amendment) Ordinance, 2017.

The Ordinance authorizes the "Reserve Bank of India to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default under the provisions of the Insolvency and Bankruptcy Code (IBC), 2016"

The Banking Regulation (Amendment) Act, 2017

The Government of India has notified the Banking Regulation (Amendment) Ordinance, 2017 on 4th May, 2017, to strengthen RBI in dealing with bank’s stressed assets.

The two new Sections has been inserted (viz. 35AA and 35AB) after Section 35A of the Banking Regulation Act, 1949 which enables:

1) RBI is authorised to issue directions to any bank to initiate insolvency resolution process in respect of a default under the Insolvency and Bankruptcy Code, 2016.

2) The RBI has also been empowered to issue other directions for resolution, and appoint or approve for appointment, authorities or committees to advise banking companies for stressed asset resolution.

Note: The Banking Regulation (Amendment) Bill, 2017 was introduced in Lok Sabha on 24.07.2017 and passed on 03.08.2017

Passed in Rajya Sabha on 10.08.2017 and receives President assent-25/08/2017
Therefore, on May 22, 2017, RBI issued a press release and directed to bring the following changes to the existing regulations on dealing with stressed assets.

i. It was clarified that a corrective action plan could include flexible restructuring, SDR and S4A.

ii. With a view to facilitating decision making in the JLF, consent required for approval of a proposal was changed to 60 percent by value instead of 75 percent earlier, while keeping that by number at 50 percent.

iii. Banks who were in the minority on the proposal approved by the JLF are required to either exit by complying with the substitution rules within the stipulated time or adhere to the decision of the JLF.

iv. Participating banks have been mandated to implement the decision of JLF without any additional conditionality.

v. The Boards of banks were advised to empower their executives to implement JLF decisions without further reference to them.

It was made clear to the banks that non-adherence would invite enforcement actions.

On 22 May, 2017, the RBI also announced that it will form a committee to recommend cases for the IBC process. Accordingly, Internal Advisory Committee (IAC) was formed on 13 June, 2017.

**IAC recommendation-on 13th June, 2017**

The IAC also arrived at an objective, non-discretionary criterion for referring accounts for resolution under IBC. In particular, the IAC recommended for IBC reference all accounts with fund and non-fund based outstanding amount greater than 5000 crores, with 60% or more classified as non-performing by banks as of 31 March, 2016. The IAC noted that under the recommended criterion, 12 accounts totaling about 25 per cent of the current gross NPAs of the banking system would qualify for immediate reference under IBC.

As regards the other non-performing accounts which do not qualify under the above criteria, the IAC recommended that banks should finalise a resolution plan within six months. In cases where a viable resolution plan is not agreed upon within six months, banks should be required to file for insolvency proceedings under the IBC.

The Reserve Bank, based on the recommendations of the IAC, will accordingly be issuing directions to banks to file for insolvency proceedings under the IBC in respect of the identified accounts. Such cases will be accorded priority by the National Company Law Tribunal (NCLT).
1. The Reserve Bank of India had issued a Press Release on May 22, 2017 outlining the steps taken and those on the anvil pursuant to the promulgation of the Banking Regulation (Amendment) Ordinance, 2017. The Press Release had mentioned inter alia that the RBI would be constituting a Committee comprised majorly of its independent Board Members to advise it in regard to the cases that may be considered for reference for resolution under the Insolvency and Bankruptcy Code, 2016 (IBC).

2. An Internal Advisory Committee (IAC) was accordingly constituted and it held its first meeting on June 12, 2017. The IAC, in the meeting, agreed to focus on large stressed accounts at this stage and accordingly took up for consideration the accounts which were classified partly or wholly as non-performing from amongst the top 500 exposures in the banking system.

3. The IAC also arrived at an objective, non-discretionary criterion for referring accounts for resolution under IBC. In particular, the IAC recommended for IBC reference all accounts with fund and non-fund based outstanding amount greater than ₹ 5000 crore, with 60% or more classified as non-performing by banks as of March 31, 2016. The IAC noted that under the recommended criterion, 12 accounts totaling about 25 per cent of the current gross NPAs of the banking system would qualify for immediate reference under IBC.

4. As regards the other non-performing accounts which do not qualify under the above criteria, the IAC recommended that banks should finalise a resolution plan within six months. In cases where a viable resolution plan is not agreed upon within six months, banks should be required to file for insolvency proceedings under the IBC.

5. The Reserve Bank, based on the recommendations of the IAC, will accordingly be issuing directions to banks to file for insolvency proceedings under the IBC in respect of the identified accounts. Such cases will be accorded priority by the National Company Law Tribunal (NCLT).

6. The details of the resolution framework in regard to the other non-performing accounts will be released in the coming days.

7. The circular on revised provisioning norms for cases accepted for resolution under the IBC is being issued separately.

Amendment in press release issued by RBI on 13th June. 2017

Reserve Bank of India’s Circular dated June 13, 2017 directing National Company Law Tribunal (NCLT) to accord priority to the cases of 12 defaulters identified.
The third line of paragraph no. 5 of the Press Release, which reads as follows: Such cases will be accorded priority by the National Company Law Tribunal (NCLT).... stands deleted.

SEBI

SEBI issued a Circular dated July 18, 2017 by which it required listed banks to disclose to the stock exchanges divergence in the asset classification and provisioning in certain two circumstances, viz. where (i) the additional provisioning requirements assessed by the Reserve Bank of India (RBI) exceed 15 percent of the published net profits after tax for the reference period; or (ii) the additional gross non-performing assets (NPAs) identified by the RBI exceed 15 percent of the published incremental gross NPAs for the reference period. SEBI’s circular also provides for the format in which the above disclosures are to be made.

The Board has also approved the proposal to provide exemption from open offer obligations, under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, for acquisitions pursuant to resolution plans approved by NCLT under the Insolvency and Bankruptcy Code, 2016.

As per the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2017 acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016.

The Ordinance authorizes the "Reserve Bank of India to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default under the provisions of the Insolvency and Bankruptcy Code (IBC), 2016"
Cases filed by financial creditor under Section 7 of the Code

1. ICICI Bank (FC) Vs Innoventive Industries Ltd (CD), Mumbai, Dated January 17, 2017

This case was Filed by financial creditor (ICICI Bank Ltd) under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Bank provided term loan facility to Corporate Debtor. Corporate Debtor has defaulted in making payment of 12,22,10,737 towards RTL facility, 7,50,05,661 towards Working Capital facility and 11,47,58,969 towards External Commercial Borrowing facility. Petition has been filed by the Financial Creditor.

Corporate Debtor received relief from liabilities under the Maharashtra Relief Undertakings (Special Provisions) Act, 1958.

Bank files petition under Section 7. Respondent took defense of said relief.

Tribunal cited Section 238 which gives overriding powers to the Code. The petition was admitted by the Tribunal.

2. VIP Finvest Consultancy Pvt Ltd (FC) Vs Bhupen Electronic Ltd (CD), Mumbai, Dated January 19, 2017

Financial Creditor was assignee of assets and liabilities of the Corporate Debtor for consideration of term loan.

Petition under Section 7 was filed. It is evident that that the assignment of assets and liabilities by IIBI Ltd. were assigned to M/s. India SME Asset Reconstruction Co. Ltd. and then M/s. India SME Reconstruction Co. Ltd. further assigned to this applicant M/s. VIP Finvest Consultancy Pvt Ltd., the financial creditor proving the existence of debt and also the default.

Since the petition was compliant with Section 7. Tribunal admitted the petition.

3. ICICI Bank (FC) Vs Starlog Enterprise Ltd (CD), Mumbai, Dated February 17, 2017

Bank provided financial facilities to Corporate Debtor and could not realize. Bank filed application under Section 7 for insolvency proceedings. All requirements of the Code were fulfilled.

Tribunal found the application a fit case for admission and the same was admitted.
4. Culrros Opportunities SP and Peter Beck & Partners (FC) Vs Sharon Bio-Medicine Ltd (CD), Mumbai, Dated April 11, 2017

Corporate Debtor issued convertible bonds to foreign nationals. However, it could not repay the amount.

Petition was moved to the Tribunal under Section 7 of the Code. Tribunal considered the application a fit case and admitted.

5. Indian Bank (FC) Vs Varun Resources Pvt Ltd (CD), Mumbai, Dated June 14, 2017

Varun Resources Ltd availed credit facility from the consortium of Banks. However, it could not repay the debt. Petition by one of the Bank under Section 7 was filed.

Corporate argued

- All Banks have faith in Company except the petitioner
- Petitioner holds only 1% of total debt
- Section 7(5) uses the word “may”. Which shall be interpreted as discretionary power given to the Adjudicating Authority not the mandatory powers for admission of application
- Admission of this application would derail Corrective Action Plan.

Tribunal expressed that Code is for default. Default in the present cases is clearly visible amounting 2300 Crores. Petition was admitted.

6. Urban Infrastructure Trustee Ltd (FC) Vs Neelkamal Infrastructure Pvt Ltd (CD), Mumbai, Dated April 21, 2017

Corporate Debtor failed to redeem Optionally Convertible Debenture Certificates held by Financial Creditor. Financial Creditor moved application under Section 7.

Corporate Debtor argued that:

1. Debt is time barred and Creditor cannot seek relief now
2. Debenture Certificates are not adequately stamped
3. Financial Creditor is a shareholder of Company
4. Matter is sub judice.

Tribunal expressed debt may be time barred but Code requires only debt and default. Tribunal cited case Sahara Real Estate Corporate Ltd Vs SEBI and expressed that Optionally Convertible
Debenture of this private company are not marketable and hence no stamping required. On the objection of Financial Creditor being shareholder and matter is being sub judice, Tribunal again cited that debt and default shall exist for application under this Code.

Tribunal admitted the application.

7. Bank of India (FC) Vs HDO Technologies Ltd (CD), Mumbai, Dated April 28, 2017

Corporate Debtor has defaulted in making payment of various credit facilities provided to it by Bank. Application under Section 7 was filed.

Tribunal considered the applications as a fit case for admission and same was admitted.

8. Punjab National Bank (FC) Vs DLS Industries Ltd (CD), Mumbai, Dated May 03, 2017

Default was made by Corporate Debtor in making payment of various credit facilities provided by the Bank. Petition under Section 7 was moved by the Bank.

Tribunal admitted the petition as it is compliant with the Code.

9. Indus Financials Ltd (FC) Vs Quantum Ltd (CD), Mumbai, Dated May 29, 2017

Corporate Debtor committed default in paying financial assistance provided by Financial Creditor. One another creditor filed petition for recover with Debt Recovery Tribunal. And the applicant got order in his favor.

Tribunal expressed that although there will be parallel legal proceedings are there. But the Code provides for moratorium order under Section 14. The Code has limited time for resolution of insolvency proceedings.

Tribunal admitted the petition.

10. Edelweiss Assets Reconstruction Company Ltd (FC) Vs Bharati Defence and Infrastructure Ltd (CD), Mumbai, Dated June 06, 2017

Petitioner was assignee of credit facility provided to Corporate Debtor by IDBI Bank. Petition was moved to the Tribunal. Matter was also sub judice in Bombay High Court.

Corporate Debtor took defense that

- matter is sub judice
- there is no information utility to “default” cannot be said to exist
• Petitioner is not a “debtor”.

Tribunal expressed that the Code (especially Section 7) does not deal with pending proceedings of Corporate Debtor. Only information utility is not only provided way by which “default” can be said to exist. Also, the definition of debtor also includes assignee.

Tribunal admitted the application.

11. Pine Forest Products and Investment Ltd (FC) Vs Zenith Computers Ltd (CD), Mumbai, Dated June 12, 2017

Corporate Debtor failed to repay financial debt availed from the financial creditor. Application was filed under Section 7.

Tribunal found the application a fit case for admission and the same was admitted.


Corporate Debtor availed financial assistance from the financial creditor. However, Corporate Debtor was unable to pay the debt and so the default occurred.

Petition under Section 7 was filed by financial creditor. All requirements of the Code were complied with.

Tribunal admitted the petition.

13. Bank of India (FC) Vs Hindustan Dorr-Oliver Ltd (CD), Mumbai, Dated April 21, 2017

Bank has provided Credit facilities to the Corporate Debtor. Petition was filed by Bank u/s 7.

Tribunal admitted the petition being compliant with Code.

14. Nisus Finance & Investment Managers LLP (FC) Vs Lokhandwala Kataria Constructions Pvt Ltd (CD), Mumbai, Dated June 15, 2017

Corporate Debtor was guarantor to its group company names Vista Homes Pvt Ltd for redemption of debentures. Principal Debtor committed default in redemption.

Corporate Debtor argued that petitioner is not financial creditor and for filing petition, 51% voting of debenture holders is required. Also, there is difference in rate of interest.
Tribunal expressed that guarantor as per Trust deed shall indemnify the liability and hence becomes the debtor as per definition provided by the Code. Also, the rates are expressly provided in Trust deed and clearly Corporate Debtor made a default.

Tribunal admitted the petition.

**15. Punjab National Bank (FC) Vs Charbhuja Industries Pvt Ltd (CD), Mumbai, Dated June 19, 2017**

Corporate Debtor failed to repay outstanding debt to Financial Creditor. Petition was filed u/s 7. Corporate Debtor took defense of letter received from SBI, which shows intentions of SBI providing resolution plan to the Corporate Debtor.

Tribunal expressed that resolution plan’s intention are not of financial creditor, other’s intentions do not have any impact on this proceeding.

Petition was admitted.

**16. Peerless Financial Services Ltd (FC) Vs Rasoya Proteins Ltd (CD), Mumbai, Dated June 27, 2017**

Financial Creditor originally filed petition under Section 433 of the Companies Act, 1956. Same was transferred to Tribunal.

Tribunal concluded that Corporate Debtor has made default. Also, the petition has been made as per requirement of the Code.

Tribunal admitted the petition.

**17. Standard Chartered Bank (FC) Vs Prag Distillery Pvt Ltd (CD), Mumbai, Dated June 27, 2017**

Financial Creditor provided term loan facility via External Commercial Borrowings to Corporate Debtor. Corporate Debtor committed default. Petition was files under Section 7.

Tribunal concluded that Debtor has made default and petition is complete in all aspects of the Code.

Tribunal admitted the petition.

**18. Nikhil Mehta & Sons (FC) Vs AMR Infrastructures Ltd (CD), Principal Bench, New Delhi, Dated January 23, 2017**
Petitioner invested in two commercial and residential projects of the respondent. In return, respondent agreed to pay monthly assured return till possession of the property. However, respondent was not paying the agreed monthly return.

Petitioner moved an application under Section 7 of the Code in return.

Petition was rejected due to absence of “time value of money” element in this transaction. The sum paid to Respondent was on behalf of property not for getting returns.

19. Indian Bank (FC) Vs Athena Demwe Power Ltd (CD), Principal Bench, New Delhi, Dated May 12, 2017

Corporate Debtor was a Special Purpose Vehicle for distribution and generation of electricity. It has availed financial facility from the Indian Bank and was not able to repay.

The notice required under Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was not sent to registered office of the Company.

Tribunal rejected the petition on above ground.

20. Jindal Saxena Financial Services Pvt Ltd (FC) Vs Mayfair Capital Pvt Ltd (CD), Principal Bench, New Delhi, Dated June 27, 2017

This is a case filed by a Non-Banking Financial Company. Corporate Debtor availed financial assistance in form of inter corporate deposit from financial creditor. In that respect, an Inter Corporate Deposit Agreement was executed between the parties. The corporate debtor has committed default and failed to repay the loan as per the terms of agreement along with interest despite demand raised by the financial creditor.

Financial Creditor moved an application under Section 7 and all requirements were complied.

Petition was admitted.

21. DBS Bank Ltd (FC) Vs Edu Smart Service Pvt Ltd (CD), Principal Bench, New Delhi, Dated June 27, 2017

Bank provided finance in 2011 to the Corporate Debtor by creating charge on receivables from the Schools. Corporate Debtor made default. Repayment notice was sent and also replied by the Corporate Debtor stating the inability to repay debt on account of financial distress. Petition was moved by the Bank under Section 7.
Tribunal admitted the application considering a fit case under Section 7 for admission.

22. Charria Holdings Pvt Ltd (FC) Vs Brys International Pvt Ltd (CD), Principal Bench, New Delhi, Dated June 27, 2017

Corporate Debtor availed financial assistance from Financial Creditor in December 2013 and January 2014.

Petition was moved by financial creditor under Section 7. However, name of proposed interim resolution professional was not there.

Tribunal considered the application as incomplete and rejected the same.

23. Parag Gupta (FC) Vs B K Educational Services Pvt Ltd (CD), New Delhi II, Dated April 25, 2017

There was a dispute between liability between financial creditors and corporate debtor. Corporate debtor alleged that not all financial assistance availed by it are genuine. Some of them are false as they were manipulated by relatives of financial creditor working with him and with corporate debtor. However, one of such debt was genuine.

Corporate debtor agreed to repay the debt on same day and the application was rejected.

24. Tripat Kaur (FC) Vs Kaliber Associates Pvt Ltd (CD), New Delhi II, Dated April 26, 2017

Financial Creditor provided financial assistance to the Corporate Debtor. Later on, Corporate Debtor stopped to repay monthly installments.

Financial Creditor filed a petition under Section 7 of the Code. Tribunal admitted the petition being complete in all aspects.

25. Davesh Singh (FC) Vs Mega Soft Infrastructure Pvt Ltd (CD), New Delhi II, Dated May 08, 2017

Financial Creditor invested in commercial projects of other organization. That organization offered him for assured monthly return. However, the project could not become a reality. Later on, this project was taken over by the corporate debtor and hence the liability. Corporate Debtor was also not paying assured monthly returns.

Davesh Singh, filed a petition under Section 7. The petition was rejected as Davesh Singh is not a financial creditor. The Case of Nikhil Mehta & Sons (FC) Vs AMR Infrastructures Ltd (CD) was also referred.
26. Hero Fincorp Ltd (FC) Vs Steel Konnect (India) Pvt Ltd (CD), Ahmedabad, Dated April 19, 2017

Corporate Debtor acquired a machinery funded by the financial creditor. Corporate Debtor agreed to pay monthly payment in return.

However, Corporate Debtor could not repay its debt. Financial Creditor filed petition. Petition was complete as per requirements of Section 7.

Petition was admitted by the Tribunal.

27. Vasanti Petrochem Ltd (FC) Vs Anil Ltd (CD), Ahmedabad, Dated May 09, 2017

Corporate Debtor made a default by not repaying the debt. Financial Creditors filed an application under Section 7 of the Code.

Both parties came to mutual settlement before the admission of application. Tribunal allowed the withdrawal.

28. IDBI Bank (FC) Vs Asian Natural Resources India Ltd (CD), Ahmedabad, Dated May 23, 2017

IDBI Bank provided working capital to the Corporate Debtor. Bank hypothecated moveable properties of the Corporate Debtor. Corporate Debtor also provided guarantee to the Bank.

Bank moved petition to the Tribunal.

Petition was in compliance with Section 7 of the Code. Tribunal admitted the petition.

29. IDBI Bank (FC) Vs Bhatia Global Trading Ltd (CD), Ahmedabad, Dated May 23, 2017

Financial Creditor provided financial assistance by securing moveable assets of the Corporate Debtor. Financial Creditor also served notice to the Corporate Debtor for recovery.

Petition under Section 7 of the Code was filed by Financial Creditor. Petition was in compliance of the Section 7. Tribunal admitted the petition.

30. Kunal Finance Credit Pvt Ltd (FC) Vs Anil Ltd (CD), Ahmedabad, Dated May 25, 2017

Corporate Debtor made a default by not repaying the debt. Financial Creditors filed an application under Section 7 of the Code.
Both parties came to mutual settlement before the admission of application. Tribunal allowed the withdrawal.

31. State Bank of India, Colombo (FC) Vs Western Refrigeration Pvt Ltd (CD), Ahmedabad, Dated May 26, 2017

State Bank of India, Colombo, provided financial assistance to Haikawa Industries (P) Ltd, Sri Lanka. This assistance was secured by Western Refrigeration Pvt Ltd, India by way of corporate guarantee.

Haikawa Industries (P) Ltd had defaulted and went into liquidation. Western Refrigeration Pvt Ltd later on terminated the guarantee by intimating the Bank in 2010. Also, the matter was pending in Court of Colombo.

Tribunal admitted that guarantee has been duly terminated and informed as well. And Courts in India have no jurisdiction to entertain the case of State Bank of India, Colombo and Haikawa Industries (P) Ltd, Sri Lanka.

Tribunal could not find “Default” in place and hence rejected the petition.

32. Jhaveri Trading & Investment Pvt Ltd (FC) Vs Oasis Textiles Ltd (CD), Ahmedabad, Dated May 31, 2017

Corporate Debtor borrowed a sum of 1.23 Crores from financial creditor by way of inter corporate deposit and entered into an agreement. Respondent also executed promissory note according to which the respondent shall repay the amount to the petitioner or its order on demand and executed Inter Corporate Deposit Receipt.

It is clear from all the documents that there is a debt due to the petitioner from the respondent and the respondent has committed default in payment of said debt.

Financial Creditor filed a petition under Section 7. Petition was admitted by the Tribunal.

33. Punjab National Bank (FC) Vs James Hotels Ltd (CD), Chandigarh, Dated April 27, 2017

Bank has provided secured loan to the Corporate Debtor. Corporate Debtor was not able to repay the debt. The amount of default was not accessible as there was dispute between the parties.

Bank filed petition under Section 7 along with all requirements.
Tribunal expressed that “default” defined in the Code does not require the amount to be certain. It has to exist. The petition was admitted.

34. Giridhar Infracon Pvt Ltd (FC) Vs Y K Developers Pvt Ltd (CD), Chandigarh, Dated May 09, 2017

Financial Creditor agreed to provide loan amount rupees 2.5 Crore to Corporate Debtor. Out of this 2 Crore was disbursed against hypothecation of property. Remaining 50 Lakhs were never disbursed. One of the person (not being director or shareholder) from the Corporate Debtor declared that he has full powers provided by Board Resolution to sign mortgage deed. But there was no such resolution in place.

Tribunal considered the application not a fit case as the petitioner could not produce the material documents. Also, the agreement was not having details of time period and interest rate. However, in the petition, Financial Creditor submitted that time to return the loan was two years. Tribunal rejected the petition as there was no merit prevailing.

35. BVS Lakshmi (FC) Vs Geomatrix Laser Solutions Pvt Ltd (CD), Chandigarh, Dated March 13, 2017

Financial Creditor provided financial assistance to the Corporate Debtor in the year 2014. Financial Creditor issued statutory notice under Section 434 of the Companies Act, 1956. However, Corporate Debtor denied of such liability. The Court found the debt a bonafide one. The petition was later on withdrawn by the petitioner.

Since the claims were disputed as evidenced from the conduct of the petitioner. Tribunal rejected the application.
Cases filed by Operational creditor under Section 9 of the Code

1. One Coast Plaster (OC) Vs Ambience Pvt Ltd (CD), Principal Bench, New Delhi, Dated January 23, 2017

Corporate Debtor issued work order to the Operational Creditor. Operational Creditor claimed that it has completed all the work orders. Out of the total dues, a sum of rupees 9 lakhs was pending. For which notice was issued by Operational Creditor under section 8 to the Corporate Debtor. Petition was presented to the Tribunal.

Corporate Debtor claimed that work done was of poor quality and it does not have liability towards Operational Creditor.

Tribunal expressed that certification of completion from architect/authorized representative of the organization is a general norm is such kind of works. Also, Corporate Debtor informed about the dispute on receipt of notice under section 8.

Petition was rejected.

2. Col. Vinod Awasthy (OC) Vs AMR Infrastructures Ltd (CD), Principal Bench, New Delhi, Dated March 01, 2017

Petitioner invested in residential projects of the respondent. In return, respondent agreed to pay monthly assured return till possession of the property. However, respondent was not paying the agreed monthly return.

Petition was filed under section 9 of the Code.

Tribunal expressed that current default in not in the meaning of operational debt as this is related to goods and services and Tribunal also cited case of Sajive Kanwar Vs. AMR Infrastructure Ltd.

Petition was rejected.

3. Ishwar Khandelwal (OC) Vs Amrapali Infrastructure Pvt Ltd (CD), Principal Bench, New Delhi, Dated March 22, 2017

Petitioner provided steel and iron goods to respondent company and his group companies. Respondent did not pay the amount to the petitioner.

Petition under section 9 was filed for not only the respondent Company but for the whole group.
Tribunal expressed that Group Companies are not covered in the definition of “corporate person” so as in the “corporate debtor”.
Petition was rejected.

4. Annapurna Infrastructure Pvt Ltd & Ors (OC) Vs Soril Infra Resources Ltd (CD), Principal Bench, New Delhi, Dated March 24, 2017

The dispute was arising out of the lease deed dated November 23, 2005. The matter was under arbitral proceedings and award has been passed on September 9, 2016.

Petition was filed under section 9.

Tribunal cited Section 10 of the Code of Civil Procedure, 1908 which states the no court shall proceed with trail of same suit which is pending with another Court. In the opinion of Tribunal, petitioner had already taken benefit of judiciary.

Tribunal dismissed the petition with a cost of one lakh.

5. Pawan Dubay (OC) Vs J.B.K. Developers Pvt Ltd (CD), Principal Bench, New Delhi, Dated March 31, 2017

Petitioner booked a residential flat in projects of Respondent Company. Petitioner has paid the agreed amount. Possession was agreed to be given in 30 months. However, it could not be happened. In one meeting, it was mutually agreed that refund will be issued along with 18% interest. Respondent also defaulted in this agreement.

Petition was filed under section 9.

Tribunal expressed that operational debts are those which are related to goods and services. Present case is not that case. Tribunal also cited case of Sajive Kanwar Vs. AMR Infrastructure Ltd.

Petition was rejected.

6. Mukesh Kumar & Ors (OC) Vs AMR Infrastructures Ltd (CD), Principal Bench, New Delhi, Dated March 31, 2017

Petitioner invested in commercial projects of the respondent. In return, respondent agreed to pay monthly assured return till possession of the property. However, respondent defaulted in payment.
Tribunal expressed that current default in not in the meaning of operational debt. Operational debts are those which are related to goods and services. Tribunal also cited case of Sajive Kanwar Vs. AMR Infrastructure Ltd.

Petition was rejected.

7. Deem Roll - Tech Ltd (OC) Vs R L Steel & Energy Ltd (CD), Principal Bench, New Delhi, Dated March 31, 2017

Petitioner supplied goods to the respondent company. As per petitioner, respondent company did not pay 5.5 lakhs balance amount.

In this regard, petitioner already filed civil suit in Ahmedabad Court and received ex parte decree for recovery of due.

Tribunal expressed that petitioner had already enjoyed his legal rights. This Tribunal cannot act as an executing authority for decree obtained.

Petition was rejected.

8. Prideco Commercial Projects Ltd (OC) Vs Era Infra Engineering Ltd (CD), Principal Bench, New Delhi, Dated April 12, 2017

The Corporate Debtor (respondent) awarded a contract to the Operational creditor (petitioner) by placing seven work orders to it. Respondent Company issued postdated cheques of 2014. Except one all other cheques were dishonored. The petitioner has successfully completed the awarded projects.

The petitioner has demanded the outstanding amount but respondent did not respond.

Corporate Debtor argued that this claim cannot be considered as it is time barred. According to the petitioner the issuance of post-dated cheques and its non-payment would give a fresh lease of limitation period. The petitioner contended that the claim cannot be considered as barred by limitation.

Petition under section 9 was filed complying all the requirements.

Petition was admitted.

9. Creative Solutions (OC) Vs AMR Infrastructures Ltd (CD), Principal Bench, New Delhi, Dated April 12, 2017
Petitioner provided services related to design and engineering of project of respondent company. From this, sum of rupees 1.9 Crore was due from the respondent company.

Petition under section 9 was filed. Respondent argued that all invoices are bogus. Invoices even does not have name of parties for whom the bill was raised. Also, Bill does not have Service Tax Registration Number or Sales Tax Registration Number printed on it.

Petition was rejected.

10. Nowfloats Technologies Pvt Ltd (OC) Vs Getit Infoservices Pvt Ltd (CD), Principal Bench, New Delhi, Dated April 12, 2017

Petitioner provided IT services to the respondent company and default in payment was made by respondent company.

Petitioner filed under section 433 of the Companies Act, 1956 for winding up on ground of inability to pay debts. Delhi High Court appointed Official Liquidator.

Tribunal referred the Companies (Removal of Difficulties) Fourth Order, 2016 and expressed that current proceedings are not transferrable.

Petition was rejected.

11. Satish Mittal (OC) Vs Ozone Builders & Developers Pvt Ltd (CD), Principal Bench, New Delhi, Dated April 27, 2017

Petitioner booked a residential plot in one of the projects of respondent company. This plot was booked by depositing agreed sum to the respondent company.

However, respondent company neither given possession of the property nor refunded the money.

Petition was filed under section 9.

Tribunal could not find any merits in the case as petitioner does of fall in the ambit of operational creditor. Case of Vinod Awasthy Vs. AMR Infrastructures Ltd was also cited.

Petition was rejected.

12. S R Constructions (OC) Vs International Recreation and Amusement Ltd (CD), Principal Bench, New Delhi, Dated April 28, 2017
Respondent made default in payment related to work done by petitioner. Completion Certificate was also issued by the respondent company.

Petition was filed under section 9.

Petition was admitted on grounds of merits.

13. Eviro International Corporation (OC) Vs Gold Plus Glass Industry Ltd (CD), Principal Bench, New Delhi, Dated April 28, 2017

Petitioner was awarded with contract to supply, erection, installation, and commissioning of wet scrubber system at respondent’s float glass manufacturing facility. Respondent alleged that machinery was not working at its full efficiency. On Petitioner’s observation allegation found to be false.

Petitioner also argued that respondent got environmental clearance which is not possible without machinery.

Tribunal found that machinery was defective so the dispute exists in this regard.

Petition was rejected.

14. Agarwal Marketing & Services (Energy) Pvt Ltd (OC) Vs Max Tech Oil & Gas Services Pvt Ltd (CD), Principal Bench, New Delhi, Dated May 01, 2017

Petitioner provided seismic services to the respondent. Respondent made a default in payment.

Petition was filed under section 9. Respondent argued that it is in process of revival and needs time for repayment.

Tribunal expressed that Code is all about time bound procedures. Present petition is fit case for admission.

Petition was admitted.

15. Manish Kumar (OC) Vs Iyogi Technical Services Pvt Ltd (CD), Principal Bench, New Delhi, Dated May 01, 2017

Petitioner was an employee of the respondent company. Due was arising out of employment for non-payment of salary and Provident fund.

Petition was filed under section 9. The petitioner is required to give notice of default within ten days as contemplated under section 8 of the Insolvency & Bankruptcy Code, 2016. The notice
of demand as mandatorily required to be issued and delivered upon the corporate debtor has not been complied with by the petitioner in invoking the provisions of IBC.

Tribunal rejected the petition citing that delivery of notice under section 8 is “sine quo non” for putting in motion the further proceedings.

16. Anant Overseas Pvt Ltd (OC) Vs Global Houseware Ltd (CD), Principal Bench, New Delhi, Dated May 03, 2017

Petitioner was regular supplier of goods to the respondent company. Respondent did not pay for such goods. The ‘Operational Creditor’ used to raise invoices for the supply of goods and the Corporate Debtor would not raise any objection. Thus, there is no dispute ever raised with regard to the quality, quantity and price. In the year 2016-17, Operational Creditor made regular supply of SS Coils (excisable goods) to Corporate Debtor, who failed to adhere to the financial discipline defaulted in payment. Eventually, the 'Operational Creditor' issued notice of demand upon the Corporate Debtor after repeated requests made earlier.

Petition was filed under section 9.

Since the petition was in merits of the Code. Petition was admitted.

17. Shiv Narain Sarin (OC) Vs Eminent Infradevelopers Pvt Ltd (CD), Principal Bench, New Delhi, Dated May 05, 2017

Petitioner booked a residential plot in one of the projects of respondent company. This plot was booked by depositing agreed sum to the respondent company. Petition was filed under section 9.

Respondent company neither given possession of the property nor refunded the money.

Tribunal could not find any merits in the case as petitioner does of fall in the ambit of operational creditor. Case of Vinod Awasthy Vs. AMR Infrastructures Ltd was also cited.

Petition was rejected.

18. Pacific Maintenance Services Pvt Ltd (OC) Vs JDS Apparels Pvt Ltd (CD), Principal Bench, New Delhi, Dated May 18, 2017
Petitioner was facility management service provider. It provided services to the respondent in consideration of maintenance charges.

Since the petition was in merits of Section 9. Same was admitted by the Tribunal.

19. Macquarie Bank Ltd (OC) Vs Shilpi Cable Technologies Ltd (CD), Principal Bench, New Delhi, Dated May 24, 2017

Respondent Company acquired goods from S V Overseas Ltd. Respondent Company did not pay the due. This debt was assigned to the petitioner.

Notice under section 8 was sent to respondent and respondent asked for more time to repay. Later on, respondent argued that petitioner is not an operational creditor. Also, if there is default in payment, then such liability shall be borne by insurance company.

Tribunal expressed the definition of “operational creditor” includes assignee as well and petition is in merits.

Petition was admitted.

20. TV 18 Broadcast Ltd (OC) Vs Amrapali Media Vision Pvt Ltd (CD), Principal Bench, New Delhi, Dated May 30, 2017

Petitioner was providing advertising services to the respondent by airing advertisements on their channels. Respondent defaulted in payment related to such service.

Petition was filed by complying all the requirements of the Code.

Tribunal admitted the petition.

21. Sports and Leisure Apparel Ltd (OC) Vs Bhasin Infotech and Infrastructure Pvt Ltd (CD), Principal Bench, New Delhi, Dated May 31, 2017

Petitioner agreed to take on lease shops in upcoming real estate project of respondent company. Respondent failed to deliver possession in agreed time. Also, respondent did not return the deposit money.

Tribunal could not find any merits in the case as petitioner does of fall in the ambit of operational creditor. Case of Vinod Awasthy Vs. AMR Infrastructures Ltd was also cited.

Petition was rejected.
22. Vertex Chemicals (OC) Vs Mahan Proteins Ltd (CD), Principal Bench, New Delhi, Dated June 27, 2017

Petitioner supplied edible grade lactose to the respondent. Petitioner did not receive his payment.

Petition was filed. Since the case was in merits of the provisions of the Code, Tribunal admitted the petition.

23. Vidul Sharma (OC) Vs Technopak Advisors Pvt Ltd (CD), Principal Bench, New Delhi, Dated June 27, 2017

Petitioner was employee of the respondent. Although due was paid, but it was paid significantly later. Petition was presented for recovery of agreed interest on due arising out of employment.

Tribunal after hearing argument of both side, concluded that said amount is disputed and hence petition was dismissed.

24. Portrait Advertising & Marketing Pvt Ltd (OC) Vs Mother Pride Dairy India Pvt Ltd (CD), Principal Bench, New Delhi, Dated June 27, 2017

Petitioner provided marketing and advertising services to the respondent. Petition was filed u/9. Respondent argued that quality of services like was very poor and this has been well informed to the petitioner as evidencing from emails. However, respondent continued to take services of the petitioner.

Tribunal considered that there is no dispute and petition is in compliance with Section 9. Petition was admitted.

25. Speculum Plast Pvt Ltd (OC) Vs PTC Techno Pvt Ltd (CD), Principal Bench, New Delhi II, Dated April 11, 2017

Petitioner provided electroplating services to the respondent. Respondent did not pay for bill raised. Last bill was raised on September 19, 2013. However, petition was filed on March 29, 2017.

Tribunal expressed that debt is time barred and is not legally enforceable.

Petition was rejected.
26. R S Polychem (OC) Vs Ekdantam Infra Pvt Ltd (CD), Principal Bench, New Delhi II, Dated April 13, 2017

Petitioner supplied goods to the respondent and did not receive his consideration. Petition was filed in compliance of Section 9.

Tribunal admitted the petition.

27. VDS Plastics Pvt Ltd (OC) Vs Pal Mohan Electronics Pvt Ltd (CD), Principal Bench, New Delhi II, Dated April 21, 2017

Petitioner supplied electrical plastic moulded components to the respondent. Petition was filed under section 9. Respondent expressed its concern over dispute in alleged default before the Tribunal. At one instance, irregularity was also admitted by the petitioner but the same was not reflected in ledgers.

Operational Creditor argued that requirement of dispute is related to prior suit or initiation of arbitration proceedings.

Tribunal considered the default as “disputed” and rejected the petition.

28. R M Housekeeping (OC) Vs Helpline Hospitality Pvt Ltd (CD), Principal Bench, New Delhi II, Dated April 24, 2017

Petitioner and respondent was in agreement for a period of three years from April 1, 2012 that petitioner will provide services related garbage disposal and drainage cleaning system.

Petition was filed under section 9.

Tribunal admitted the petition.

29. Steel India Corporation (OC) Vs Shree Radha Raman Packaging Pvt Ltd (CD), Principal Bench, New Delhi II, Dated April 28, 2017

Petitioner supplied goods to the respondent and respondent made default in payment. Respondent neither replied to notice under section 8 nor notice of Tribunal for filing of petition under section 9.

Tribunal found the case in merits of Section 9 and admitted the petition.

30. Design Worx Infrastructures Pvt Ltd (OC) Vs Premier Restaurant Pvt Ltd (CD), Principal Bench, New Delhi II, Dated May 08, 2017
Petitioner carried out civil work for respondent. However, petitioner did not receive his payment. The respondent was not satisfied with the job work as evidenced by emails.

Since the dispute was in existence, Tribunal rejected the petition.

31. Design Worx Infrastructures Pvt Ltd (OC) Vs Premier Restaurant Pvt Ltd (CD), Principal Bench, New Delhi II, Dated June 01, 2017

Petitioner supplied goods to the respondent. Notice under section 8 and no objections were received from the respondent.

Tribunal admitted the application considering a fit case for admission.

32. BMM Ispat Pvt Ltd (OC) Vs A J Casting Pvt Ltd (CD), Principal Bench, New Delhi II, Dated June 01, 2017

Petitioner supplied goods to respondent. Respondent did not pay the amount raised by invoices. Petition was filed under section 9. All the requirements were complied.

Tribunal admitted the petition.

33. Ingram Micro India Pvt Ltd (OC) Vs NOIDA Software Technology Park Ltd (CD), Principal Bench, New Delhi III, Dated May 25, 2017

Petitioner supplied set up boxes to the respondent for which payment was to be done in 90 days. Cheque was issued. However, cheque was dishonored. Petitioner proceeded with Section 138 of the Negotiable Instruments Act, 1881. Petitioner could not produce certificate from financial institution for non-receipt of payment and respondent took defense of it. Also, petitioner did not reflect in his ledger those cheques which were honored.

Tribunal found the petition not a fit case for admission and rejected.

34. Ingram Micro India Pvt Ltd (OC) Vs Jain Video on Wheels Ltd (CD), Principal Bench, New Delhi III, Dated May 25, 2017

Petitioner supplied set up boxes, modems and other electronic equipment to the respondent. Cheques were issued but were dishonored. Petition was filed under section 9. But Petitioner could not produce certificate required under section 9(3) of the Code.

Tribunal referred the case of Smart Timing Steel Ltd Vs. National Steel and Agro Industries Ltd and cited that noncompliance would result in automatic rejection.
Petition was rejected.


Petitioner supplied Sarees to the respondent and did not get his due. Notice under section 8 was issued. Still, payment was not received from the respondent.

Petition was filed under section 9.

Petition was admitted as all the requirements were fulfilled.

36. Umiya Trading (OC) Vs Stratus Foods Pvt Ltd (CD) Ahmedabad, Dated April 10, 2017

Respondent purchased goods from the petitioner and did not pay the due towards such purchase of goods. Petitioner issued demand notice and after non-receipt of payment filed petition under section 9 of the Code.

All the requirements for admission of petition were fulfilled and petition was admitted by the Tribunal.

37. Gujarat State Cooperative Cotton Federation Ltd (OC) Vs STI India Ltd (CD) Ahmedabad, Dated May 05, 2017

Petitioner supplied cotton bales to the respondent. Respondent did not pay the due. This due was later on transferred to STI Finance Ltd by an agreement.

However, respondent alleged that claims of petitioner are false. Proceedings were also pending in Court. BIFR also concluded that liability of petitioner has been set aside by transfer.

Petitioner argued that Section 60 of the Code provides that AA is empowered to entertain claim by or against any subsidiary of corporate debtor in India.

Tribunal cited that this refers to pending proceedings.

Since respondent was not the corporate debtor, petition was rejected.

38. Narmada Construction (Indore) Pvt Ltd (OC) Vs Agroh Infrastructure Developer Pvt Ltd (CD) Ahmedabad, Dated May 18, 2017

Respondent awarded contract for road construction to the petitioner. Default in payment was occurred on August 31, 2014 and petition was filed on April 4, 2017. Petitioner served notice of the petition to the respondent but representative of respondent refused to accept.
All the requirements to admit a petition u/s 9 were fulfilled and Tribunal admitted the petition.


Petitioner supplied goods to respondent and raised invoices against this supply. Petitioner did not receive his payment. This was matter of 2013.

On January 15, 2017, petitioner issued demand notice for recovery of his due. Respondent admitted the liability. Petition u/s 9 was filed and respondent argued that there is dispute in alleged default. Also, respondent put in notice to the Tribunal that there was a settlement agreement and petitioner accepted the agreement by accepting cheques at that time.

Tribunal agreed that default exists but there is no dispute in place and admitted the petition.

40. Capital Partners (OC) Vs Reliance Defence & Engineering Ltd (CD) Ahmedabad, Dated June 02, 2017

One of the partner of the respondent was providing services to the respondent company. At that time, Company was registered in the name of Pipavav Defence & Offshore Engineering Ltd. The services were agreed for a period of 5 years beginning from December 1, 2011. Petitioner and Partner reminded several times for payment. Respondent denied about such liability on grounds of the allegations that petitioner was not able to fulfill the terms of services.

Tribunal expressed that dispute is existing and it is a bonafide dispute. Petition was rejected.
Cases filed by Corporate Debtor under Section 10 of the Code

1. Unigreen Global Pvt Ltd, Principal Bench, New Delhi Dated May 08, 2017

Corporate Debtor was owing sum of more than rupees 100 crores to four Banks. Four immoveable properties were held as security against the debt. Corporate Debtor moved an application to the Tribunal under section 10 of the Code.

Tribunal considering the huge amount as debt in existence, sent notice for seeking objections (If any) from the petition to the said four banks.

The objections received from the Banks revealed that Corporate Debtor has not made full disclosures. The Directors of the Corporate Debtor are responsible for such material event. False litigations on title of the mortgaged properties were pending in Courts so as to avoid the liability on mortgaged properties.

The Tribunal cited Section 65 of the Code which is for false insolvency proceedings filed with Tribunal. Penalty of rupees 10,00,00 was imposed on two directors.

2. Gujarat Oleo Chem Ltd, Ahmedabad Dated April 13, 2017

Corporate Debtor was in default and moved a petition under section 10 of the Code for insolvency proceedings.

The petition was found to be a merit of Section 10 of the Code and was admitted.

3. JEKPL Pvt Ltd, Allahabad Dated March 17, 2017

Corporate Debtor was in default and has applied under section 10 of the Code for insolvency proceedings. Corporate Debtor complied with all requirements of the Code.

Petition was found to be in merits of the Code and was admitted.

4. JEKPL Pvt Ltd, Allahabad Dated March 17, 2017

Corporate Debtor filed a petition under section 10 of the Code. It was in default for repaying the debt procured for petroleum operation in contract area for certain organizations.

Petition was in requirement of the Code and was admitted by the tribunal.

5. Raman Ispat Pvt Ltd, Allahabad Dated April 11, 2017
Corporate Debtor was in default for no payment of debt amounting rupees 750 lakhs from Union Bank. Bank after giving notice proceeded with recovery of mortgaged asset. Matter was also referred to BIFR.

Petition was found to be in line with requirements of Section 10 and was admitted.

6. Clutch Auto Ltd, Principal Bench, New Delhi Dated March 10, 2017

In this Case, Operational Creditor as well as the Corporate Debtor filed for insolvency proceedings under the Code. However, Debtor filed the petition under section 10 before the Operational Creditor. The Debtor complied with all requirements of Section 10 of the Code. Debtor was in default for last more than 3 years.

Since, default was in existence and the requirements of Section 10 have been fulfilled. The petition was admitted on the merits of the case.

7. LML Ltd, Allahabad Dated May 23, 2017

Corporate Debtor was in default of rupees 35121 lakhs.

Petition was admitted as the petition was in merits of Section 10 of the Code.

8. 24x7 Learning Pvt Ltd, Bengaluru Dated April 28, 2017

Corporate Debtor has availed finance from operational as well as financial creditors. Subsequently it made default in repayment.

Creditors has no objection in the petition.

Tribunal found the petition in the merits of the Code and same was admitted.

9. Hind Motors Ltd, Chandigarh Dated February 02, 2017

Directors of the Corporate Debtor filed petition under section 10 of the Code. Corporate Debtor availed financial facility from the financial creditors.

Petition was in merits of the Section 10 of the Code and was admitted.

10. Recorders and Medicare Systems Pvt Ltd, Chandigarh Dated March 16, 2017

Corporate Debtor was in default for no payment debt from financial creditors. Petition was found to be in merits of the provisions of the Code and was admitted.

11. Sky Blue Papers Pvt Ltd, Chandigarh Dated April 07, 2017
Corporate Debtor availed financial assistance from financial creditor and was not able to repay. At the same it was not able to repay the debt of operational creditors.

Tribunal found the petition a fit case under Section 10 of the Code and admitted the same.

12. SRS Modern Sales Ltd, Chandigarh Dated April 17, 2017

Corporate Debtor was in default for non-payment of financial as well as operational debt. VAT was also not paid by the Corporate Debtor. Corporate Debtor has also received notice under the SARFAESI Act, 2002.

Tribunal admitted the application as the application was in merits of Section 10 of the Code.

13. Dunn Foods Pvt Ltd, Chandigarh Dated May 02, 2017

Corporate Applicant was owing sum to financial creditors, operational creditors and Government Authorities. Also, financial creditors have sent notice under the SARFAESI Act, 2002.

Corporate Debtor Complied with requirements of Section 10 of the Code and the petition was admitted.


Corporate Debtor has made default in repayment of debt from financial creditors. It has also received notice under the SARFAESI Act, 2002 on August 11, 2014.

Petition was found to be a fit case under Section 10 by the Tribunal and was admitted.

15. Chhaparia Industries Pvt Ltd, Mumbai Dated February 24, 2017

Corporate Debtor committed in repaying debt amounting to rupees 38 Crores. Corporate Debtor also received notice under the SARFAESI Act, 2002 on February 03, 2015.

All the requirements of Section 10 have been complied by the Corporate Debtor. Petition was admitted by the Tribunal.

16. Shree Rajeshwar Weaving Mills Pvt Ltd, Mumbai Dated March 02, 2017

Corporate Debtor has made default by non-payment of debt amounting to rupees 1.5 Crore.

All the requirements of Section 10 were complied with and the same was admitted by the Tribunal.

17. Ultra Drytech Engineering Ltd, Mumbai Dated March 06, 2017
Corporate Debtor availed financial assistance from financial creditors. It could not repay on time and made default.

Petition was a fit case for admission under section 10 of the Code in the opinion of the Tribunal and was admitted.

18. Factor Steel Ltd, Mumbai Dated March 06, 2017

Corporate Debtor was owing sum to financial creditor (Indian as well as other than Indian [(Baltic International Bank)]. Bank also sent a notice under the SARFAESI Act, 2002.

Debtor filed an application under section 10 of the Code and the same was admitted on grounds of merits.

19. Gupta Coal India Pvt Ltd, Mumbai Dated March 09, 2017

Corporate Debtor moved an application under section 10 of the Code. All the requirements of Section 10 were duly complied.

Application was admitted.

20. Marmagoa Steel Ltd, Mumbai Dated March 20, 2017

Corporate Debtor made default and filed an application under section 10 of the Code by complying all the requirements. On perusal of the application, Tribunal found that case was also referred to BIFR. However, Scheme of revival was not successful.

Tribunal admitted the application on the grounds of merits.


Corporate Debtor was not able to pay its debts and hence was in default. It moved an application under section 10 of the Code complying with all requirements.

Petition was found to be fit case for admission. Tribunal admitted the petition.

22. Gupta Corporation Pvt Ltd, Mumbai Dated April 03, 2017

Corporate Debtor availed financial assistance and subsequently was not able to repay. Application under section 10 of the Code was filed by the Debtor.

Application was complete in all aspects and was admitted by the Tribunal.

23. Swift Shipping and Freight Logistics Pvt Ltd, Mumbai Dated April 19, 2017
Corporate Debtor committed default by not paying debt amounting rupees 5.5 Crore. All the requirements of Section 10 of the Code were complied.

Tribunal accepted the application.

24. Shirdi Industries Ltd, Mumbai Dated May 18, 2017

Corporate Debtor was having outstanding financial credit of rupees 411 Crores. Financial Creditors also issued notice under the SARFAESI Act, 2002.

Debtor filed an application under section 10 of the Code and complied with all requirements.

Application was accepted by the Tribunal.

25. Trinity Auto Components Ltd, Mumbai Dated May 25, 2017

Corporate Debtor was a sick industrial company. From December 1, 2016, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 stood abated and petition was moved to NCLT. Corporate Debtor was also referred to BIFR and BIFR also approved scheme for rehabilitation.

Tribunal expressed that although there will be parallel legal proceedings are there. But the Code provides for moratorium order under section 14. The Code has limited time for resolution of insolvency proceedings.

Tribunal admitted the petition.


Corporate Debtor was a sick industrial company. From December 1, 2016, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 stood abated and petition was moved to NCLT. Corporate Debtor was also referred to BIFR and BIFR also approved scheme for rehabilitation.

Tribunal expressed that although there will be parallel legal proceedings are there. But the Code provides for moratorium order under section 14. The Code has limited time for resolution of insolvency proceedings.

Tribunal admitted the petition.

27. Futuristic Offshore Services and Chemical Ltd, Mumbai Dated June 12, 2017

Corporate Debtor was in default of making repayment of its debts. Corporate Debtor moved an application under section 10 of the Code.
Application was in compliance with Section 10 and was admitted.

28. Amar Remedies Ltd, Mumbai Dated June 16, 2017

Corporate Debtor was not able to repay its debts. It moved an application under section 10 of the Code and the same was admitted by the Tribunal.

29. Antrix Diamond Exports Pvt Ltd, Mumbai Dated June 20, 2017

Corporate Debtor was owing debt to financial as well as operational creditor. It was in default on account of non-payment. Moveable as well as immovable properties were mortgaged for financial assistance. Consortium of financial creditors have started to recover their dues by claiming rights under the provisions of the SARFAESI Act, 2002. Since the proceedings were almost complete to claim rights on mortgaged assets.

All requirements of Section 10 were complied with. Petition was rejected by Tribunal on the grounds of not being a fit case for admission and to avoid misuse of Section 10 of the Code.

30. Unity Infraprojects Ltd, Mumbai Dated June 20, 2017

Corporate Debtor was owing sum of rupees 385 Crores to various financial institutions and was in default since 2014.

Debtor moved application under section 10 of the Code. All requirements of the Code were compiled and the same was accepted by the Tribunal.

31. Vandanaa Udhyog Ltd, Mumbai Dated June 21, 2017

Corporate Debtor made default in repaying debt acquired from IL & FS Financial Services Ltd.

All the requirements of Section 10 were compiled and the petition for insolvency proceedings was admitted by the Tribunal.

32. Leo Duct Engineers & Consultants Ltd, Mumbai Dated June 22, 2017

Corporate Debtor was owing debt to financial creditors as well as operational creditors. The financial assistance provided by Banks was having charge on assets of the Corporate Debtor.

Banks already initiated proceedings under the SARFAESI Act, 2002 and was about to claim rights on mortgaged assets.

Tribunal considered facts of the Case and rejected the application to not to disrupt the proceedings of Banks to recover their dues. Petition was rejected by the Tribunal.
Cases Identified by RBI for insolvency proceedings

1. Essar Steel case
   ➢ M/s.Standard Chartered Bank Ltd vs Essar Steels Ltd
   ➢ M/s.State Bank of India vs Essar Steels Ltd
   ➢ Case filed under Section 7
   ➢ Order Pronounced on 2.08.17
   ➢ Cases filed at Ahmedabad Bench of NCLT
   ➢ Two separate applications were filed by SCB and SBI. But both the applications are disposed of by common order because both the applications are filed against one corporate debtor. The total Debt due was Rs 45,000 crore. In case of SCB direction of RBI is not applicable. The direction given to SBI by RBI is held to be valid by High court.
   ➢ The Name of IRP was proposed by both. IRP proposed by SBI is to be appointed as the value of debt of JLF is far more than the value of SCB.

2. Monnet Ispat & Energy
   ➢ SBI vs. Monnet Ispat & Energy
   ➢ Mumbai bench
   ➢ Case filed under Section 7
   ➢ Debt- Rs 1539.33 crore
   ➢ Lenders invoked the strategic debt restructuring (SDR) scheme to convert the company's debt into equity in August 2015. But they have failed to find a new investor for the company.
   ➢ Since State Bank of Patiala, State Bank of Mysore, State Bank of Bikaner and Jaipur, State Bank of Hyderabad, State Bank of Travancore have been merged with State Bank of India, with effect from 1.4.2017, the resulting bank, i.e. State Bank of India has filed this Petition for initiation of Insolvency Resolution Process on the ground that this Debtor defaulted to repay 1539,33,72,303.63 was due outstanding as on 21.6.2017.
   ➢ Petition is admitted
   ➢ Order Pronounced on 18.07.17
   ➢ IRP- Mr. Sumit Binani
3. Bhushan Steel
- M/s. State Bank of India Vs Bhushan Steel Limited
- Case filed at Principal Bench
- Case filed under Section 7
- Debt-4390.75 Crore, 49,684,877-towards foreign currency loan
- This petition is admitted
- Order Pronounced on 26.07.2017

4. Bhushan Power & Steel
- Punjab National Bank vs. Bhushan Power & Steel
- Case filed at Principal Bench
- Case filed under Section 7
- Defaulted amount under the Term Loan Agreement I as on 31.05.2017 is Rs. 17,04,00,000/- , Term Loan Agreement II, the defaulted amount is claimed -Rs.34,73,00,000/-
- This petition is admitted
- Order Pronounced on 26.07.2017
- IRP- Mr. Mahender Kumar Khandewal

5. Era Infra Engineering
- Union Bank of India Vs. Era Infra Engineering Limited
- Principal bench of the National Company Law Tribunal
- Case filed under section 7
- Amount claimed to be in default is 681.04 Crores and External Commercial Borrowing of USD 11,971,939.12
- Order Pronounced on 21.08.17
- The National Company Law Tribunal (NCLT) has referred insolvency proceedings against Era Infra Engineering Ltd to the president of the tribunal for transferring it to a larger bench or to take any other decision deemed fit.
- The tribunal president will form a larger bench that will decide the matter
6. ABG Shipyards

- M/s. ICICI Bank Ltd. vs. ABG Shipyard Ltd.
- Case filed at Ahmedabad bench
- Case filed under Section 7
- Total debt - 4291.90 crores
- Petition is admitted
- Order Pronounced on 1.08.17
- IRP - Mr. Sundares Bhatt

7. Jaypee Infratech

- IDBI Bank Limited Vs. Jaypee Infratech Limited
- Case filed at Allahabad bench
- Case filed under Section 7
- Total amount of default - Rs. 526, 11, 40, 827
- Petition is admitted
- Order Pronounced on 9.08.17
- Mr. Anuj Jain appointed as an Insolvency Resolution Professional

8. Amtek Auto

- Corporation Bank Vs. Amtek Auto Limited
- Case filed at Chandigarh bench
- Case filed under Section 7
- Petition is admitted
- Order Pronounced on 10.08.17
- Dinkar Tiruvannadapuram Venkatsubramanian appointed as an Insolvency Resolution Professional

9. Alok Industries

- State Bank of India Vs. Alok Industries Limited
- Case filed at Ahmedabad bench
- Case filed under Section 7
- Order Pronounced on 18.07.17
Petition is admitted
Shri Ajay Joshi appointed as an Insolvency Resolution Professional

10. Lanco Infratech
- IDBI Bank Limited Vs. Lanco Infratech Limited
- Case filed at Hyderabad bench
- Case filed under Section 7
- Amount defaulted-Rs. 2,34,96,12,889
- Petition is admitted
- Order Pronounced on 7.08.17
- Sri Savan Godiawala appointed as an Insolvency Resolution Professional

11. Electrosteel Steels
- SBI Vs. Electrosteel Steels Ltd.
- Case filed under Section 7
- Case filed at Kolkata bench
- Petition is admitted
- Order Pronounced on 21.07.17

12. Jyoti Structures
- State Bank of India Vs. Jyoti Structures Ltd.
- Case filed at Mumbai bench
- Case filed under Section 7
- Amount of debt defaulted is Rs. 1600.74 Crores
- Petition is admitted
- Ms. Vandana Garg appointed as an Insolvency Resolution Professional
Liquidation Process of Corporate Person

Liquidation process is governed by Part II, Chapter III covering Sections 33-54 read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 under the Insolvency and Bankruptcy Code, 2016.

The Insolvency and Bankruptcy Code, 2016 has amended the definition of the Liquidator as provided under Section 2(23) of the Companies Act, 2013 and has also introduced a new definition of winding up under Section 2(94A) of the Companies Act, 2013:

‘Company Liquidator’ means a person appointed by the Tribunal as a Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act.

and, ‘Winding up’ means winding up under this act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.

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

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

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

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

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

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

On happening of above circumstances, Adjudicating Authority shall:

i. pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

ii. issue a public announcement stating that the corporate debtor is in liquidation; and

iii. require such order to be sent to the authority with which the corporate debtor is registered.

Consequences of passing an order of liquidation by Adjudicating Authority

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

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

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

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

Liquidator

Where the Adjudicating Authority passes an order for liquidation of the corporate debtor, the resolution professional appointed for the corporate insolvency resolution process under Chapter II of Part II shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.
On the appointment of a liquidator, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

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

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

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

in the last three financial years.

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

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

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

- before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under or the fast track corporate insolvency resolution process, as the case may be, does not receive a resolution plan.  
- Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor.

In all cases, other than those covered, the liquidator shall be entitled to a fee as a percentage of the amount realized net of other liquidation costs, and of the amount distributed, as under:
<table>
<thead>
<tr>
<th>Amount of Realization / Distribution (In rupees)</th>
<th>Percentage of fee on the amount realized / distributed</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>in the first six months</td>
<td>in the next six months</td>
</tr>
<tr>
<td>Amount of Realization (exclusive of liquidation costs)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>On the first 1 crore</td>
<td>5.00</td>
<td>3.75</td>
</tr>
<tr>
<td>On the next 9 crores</td>
<td>3.75</td>
<td>2.80</td>
</tr>
<tr>
<td>On the next 40 crores</td>
<td>2.50</td>
<td>1.88</td>
</tr>
<tr>
<td>On the next 50 crores</td>
<td>1.25</td>
<td>0.94</td>
</tr>
<tr>
<td>On further sums realized</td>
<td>0.25</td>
<td>0.19</td>
</tr>
<tr>
<td>Amount Distributed to Stakeholders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>On the first 1 crore</td>
<td>2.50</td>
<td>1.88</td>
</tr>
<tr>
<td>On the next 9 crores</td>
<td>1.88</td>
<td>1.40</td>
</tr>
<tr>
<td>On the next 40 crores</td>
<td>1.25</td>
<td>0.94</td>
</tr>
<tr>
<td>On the next 50 crores</td>
<td>0.63</td>
<td>0.48</td>
</tr>
<tr>
<td>On further sums distributed</td>
<td>0.13</td>
<td>0.10</td>
</tr>
</tbody>
</table>

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

**Powers of liquidator to access information: Section 37 of the Code**

The liquidator shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely: -
a) an information utility;
b) credit information systems regulated under any law for the time being in force;
c) any agency of the Central, State or Local Government including any registration authorities;
d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;
e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;
f) any database maintained by the Board; and
g) any other source as may be specified by the Board.

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

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

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

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

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

The liquidator shall prepare and submit:

a) a preliminary report;
b) an asset memorandum;
c) progress report(s);
d) sale report(s);
e) minutes of consultation with stakeholders; and
f) the final report prior to dissolution
to the Adjudicating Authority in the manner specified under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

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

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

a) Cash Book;
b) Ledger;
c) Bank Ledger;
d) Register of Fixed Assets and Inventories;
e) Securities and Investment Register;
f) Register of Book Debts and Outstanding Debts;
g) Tenants Ledger;
h) Suits Register;
i) Decree Register;
j) Register of Claims and Dividends;
k) Contributories Ledger;
l) Distributions Register;
m) Fee Register;
n) Suspense Register;
o) Documents Register;
p) Books Register;
q) Register of unclaimed dividends and undistributed properties deposited in accordance with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.; and
r) such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor.

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

Public announcement by liquidator: Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016
The liquidator shall make a public announcement in **Form B** of Schedule II within five days from his appointment.

The public announcement shall-

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

The announcement shall be published-

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

**Liquidation Estate: Section 36 of the Code**

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

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

h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

i) all proceeds of liquidation as and when they are realized.

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

a) assets owned by a third party which are in possession of the corporate debtor, including-
   i. assets held in trust for any third party;
   ii. bailment contracts;
   iii. all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
   iv. other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
   v. such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

d) assets of any Indian or foreign subsidiary of the corporate debtor; or

e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

Asset memorandum

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

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

The liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date, detailing-
a) the capital structure of the corporate debtor;  
b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate debtor:  
Provided that if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate debtor are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;  
c) whether, he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate debtor or the conduct of the business thereof; and  
d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a) the first Progress Report within fifteen days after the end of the quarter in which he is appointed;
b) subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator; and

Provided that if an insolvency professional ceases to act as a liquidator during the liquidation process, he shall file a Progress Report for the quarter up to the date of his so ceasing to act, within fifteen days of such cessation.

A Progress Report shall provide all information relevant to liquidation for the quarter, including
a) appointment, tenure of appointment and cessation of appointment of professionals;

b) a statement indicating progress in liquidation, including-
   i. settlement of list of stakeholders,
   ii. details of any property that remain to be sold and realized,
   iii. distribution made to the stakeholders, and
   iv. distribution of unsold property made to the stakeholders;

c) details of fee or remuneration, including-
   i. the fee due to and received by the liquidator together with a description of the
      activities carried out by him,
   ii. the remuneration or fee paid to professionals appointed by the liquidator
      together with a description of activities carried out by them,
   iii. other expenses incurred by the liquidator, whether paid or not;

d) developments in any material litigation, by or against the corporate debtor;

e) filing of, and developments in applications for avoidance of transactions in accordance
   with Chapter III of Part II of the Code; and

f) changes, if any, in estimated liquidation costs.

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

a) his receipts and payments during the quarter; and

b) the cumulative amount of his receipts and payments since the liquidation
   commencement date.

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

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

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

Provided that in case an insolvency professional ceases to act as liquidator, the audited accounts
of his receipts and payments for that part of the financial year during which he has acted as
liquidator, shall be enclosed with the Progress Report to be filed after cessation of his
appointment.
Illustration: An insolvency professional becomes a liquidator on 13th February, 2017, and ceases to act as liquidator on 12th February, 2019. He shall submit Progress Reports as under:

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

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

<table>
<thead>
<tr>
<th>Audited Account No.</th>
<th>Period covered in the Year</th>
<th>Last Date of Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>13th February - 31st March, 2017</td>
<td>15th April, 2017</td>
</tr>
<tr>
<td>2</td>
<td>April - March, 2018</td>
<td>15th April, 2018</td>
</tr>
<tr>
<td>3</td>
<td>April - 12th February, 2019</td>
<td>27th February, 2019</td>
</tr>
</tbody>
</table>

**Claims of Creditors: Section 38 of the Code**

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

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

A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility:
Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor.

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

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

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

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

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

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

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

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

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

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

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

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

a) the records available in an information utility, if any;

b) certificate of registration of charge issued by the Registrar of Companies; or

c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.

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

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

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

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

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

A claimant shall bear the cost of proving its claim.

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

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

**Determination of quantum of claim: Regulation 25 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016**
Where the amount claimed by a claimant is not precise due to any contingency or any other reason, the liquidator shall make the best estimate of the amount of the claim based on the information available with him.

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

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

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

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

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

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

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

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

\[ X/ (1+r)^n \]

where—

a) “X” is the value of the admitted claim;

b) “r” is the closing yield rate (%) of government securities of the maturity of “n” on the date of distribution as published by the Reserve Bank of India; and

c) “n” is the period beginning with the date of distribution and ending with the date on which the payment of the debt would otherwise be due, expressed in years and months in a decimalized form.
**Mutual credits and set-off**: Regulation 29 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

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

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

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

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

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

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

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

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

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

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

The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of claims, and the filing of the list shall be announced to the public.
The liquidator may apply to the Adjudicating Authority to modify an entry in the list of stakeholders filed with the Adjudicating Authority, when he comes across additional information warranting such modification, and shall modify the entry in the manner directed by the Adjudicating Authority.

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

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

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

**Appeal against rejection of claim by Liquidator: Section 42 of the Code**

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

**Preferential Transactions: Section 43 of the Code**

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

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

A preference shall not include the following transfers-

- transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
- any transfer creating a security interest in property acquired by the corporate debtor to the extent that-
i. such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and

ii. such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

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

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

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

a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;

b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;

d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;

e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;

f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process.
for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

**Avoidance of Undervalued Transactions: Section 45 of the Code**

A transaction shall be considered undervalued where the corporate debtor-

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

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

**Relevant period for Avoidable Transactions: Section 46 of the Code**

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

i. such transaction was made with any person within the period of one year preceding the insolvency commencement date; or

ii. such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

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

**Application for Undervalued Transactions: Section 47 of the Code**

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

a) undervalued transactions had occurred; and

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

it shall pass an order—

a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner of avoiding preferential transaction and undervalued transactions;

b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

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

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

a) require any property transferred as part of the transaction, to be vested in the corporate debtor;

b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;

c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or

d) require the payment of such consideration for the transaction as may be determined by an independent expert.

Transactions Defrauding Creditors: Section 49 of the Code

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

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

b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order—
i. restoring the position as it existed before such transaction as if the transaction had not been entered into; and

ii. protecting the interests of persons who are victims of such transactions:

Provided that an order -

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

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

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

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

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

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

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

Where the Adjudicating Authority after examining the application made is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order-
a) restore the position as it existed prior to such transaction;
b) set aside the whole or part of the debt created on account of the extortionate credit
transaction;
c) modify the terms of the transaction;
d) require any person who is, or was, a party to the transaction to repay any amount
received by such person; or
e) require any security interest that was created as part of the extortionate credit
transaction to be relinquished in favour of the liquidator or the resolution professional,
as the case may be.

Secured creditor in liquidation proceedings: Section 52 of the Code

Secured creditor in the liquidation proceedings may—

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

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

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

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

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

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

Where the secured asset is realized, where liquidator does not inform the secured creditor the
liquidator shall bear the cost of incurred to identify the buyer.
The amount of insolvency resolution process costs, due from secured creditors who realise their security interests, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

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

**Realisation of Assets**

The liquidator may

a. sell an asset on a standalone basis; or

b. sell

   i. the assets in a slump sale,
   ii. a set of assets collectively, or
   iii. the assets in parcels.

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

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

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

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

All payments out of the account by the liquidator above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.
The liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority.

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

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

**Order of priority for Distribution of Assets: Section 53 of the Code**

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

1. the insolvency resolution process costs and the liquidation costs paid in full;
2. the following debts which shall rank equally between and among the following: -
   i. workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
   ii. debts owed to a secured creditor in the event such secured creditor has relinquished security;
3. wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
4. financial debts owed to unsecured creditors;
5. the following dues shall rank equally between and among the following: -
   i. any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
   ii. debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
6. any remaining debts and dues;
7. preference shareholders, if any; and
8. equity shareholders or partners, as the case may be.
The term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

**Dissolution of the Corporate Debtor: Section 54 of the Code**

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

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

A copy of an order for dissolution shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.
Fast Track Insolvency Process (FTIP)

Sections 55 to 58 under Chapter IV of Part II of the Code read with the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 deals with the Fast Track Insolvency Process.

Applicable to the following categories of corporate debtors:

Corporate debtors who can make application for fast track corporate insolvency resolution process-
- a small company, or
- a startup (other than the partnership firm), or
- an unlisted company with total assets, not exceeding Rs.1 crore

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

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

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

Only one such grant for extension is allowed.

Initiating FTIP: Section 57 of the Code

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

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

Other Procedure
The other Procedure for fast track corporate insolvency resolution process are same as prescribed under corporate insolvency resolution process under chapter II.

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

2. Public announcement.
An insolvency professional shall make a public announcement not later than three days on his appointment as an interim resolution professional.
The procedure of public announcement is same as prescribed under corporate insolvency resolution process under chapter II.
The expenses on the public announcement shall not form part of fast track process costs.

3. Claims and constitution of Committee of Creditors
Claims by operational creditors shall be in Form B.
Claims by financial creditors shall be in Form C.
Claims by workmen and employees in Form D.
Claim by Authorised Representative of workmen and employees in Form E.
Claims by other creditors in Form F.

Substantiation of claims
The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

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

Meetings of the committee
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.

4. Conduct of The Fast Track Process

Appointment of registered valuer
The interim resolution professional shall within seven days of his appointment, appoint one registered valuer to determine the liquidation value of the corporate debtor in accordance with Regulation 34.

The following persons shall not be appointed as the registered valuer:
(a) a relative of the interim resolution professional;
(b) a related party of the corporate debtor;
(c) an auditor of the corporate debtor in the five years preceding the fast track commencement date; or
(d) a partner or director of the insolvency professional entity.

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

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

Sale of assets outside the ordinary course of business
The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business. It requires the approval of the committee.

5. Fast track process costs: Regulation 30 of The Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017

It includes-
(a) the amount of any interim finance and the costs incurred in raising such finance;
(b) the fees payable to any person acting as a resolution professional;
(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
(d) any costs incurred at the expense of the Government to facilitate the process;
(e) amounts due to suppliers of essential goods and services under Regulation 31;
(f) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
(g) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 32;
(h) expenses incurred on or by the resolution professional fixed under Regulation 33; and
(i) other costs directly relating to the fast track process and approved by the committee.

6. Resolution Plan

Estimation of Liquidation value

After meeting all the expenses related to fast track process costs, Liquidation value is to be estimated. It is computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor. The resolution professional shall provide the liquidation value to the committee in electronic form.

Information memorandum

An information memorandum has to be submitted to each member of the committee within fourteen days of the first meeting in electronic form by the interim resolution professional or the resolution professional.

Resolution plan

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

**Approval of resolution plan**
Resolution plan is required to be submitted to the resolution professional by the resolution applicant thirty days before expiry of the maximum period permitted under section 56 for the completion of the fast track process.
Resolution professional, after approval of the Committee submit the resolution plan to the Adjudicating Authority.

**Applicable provisions of Part II of the Code: Section 58 of the Code**
The process for conducting a corporate insolvency resolution process under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require.
Voluntary Liquidation of Corporate Person

Chapter V of Part II of the Code covering section 59 of the Code read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 under the Insolvency and Bankruptcy Code, 2016 deals with the voluntary liquidation. Earlier, Voluntary Winding Up was dealt with under Chapter XX of Part II of the Companies Act, 2013.

But under Schedule XI, the Insolvency and Bankruptcy Code, 2016 amended the Companies Act, 2013. Accordingly, Chapter XX of the Companies Act, 2013 Part II— Voluntary winding up – From Section 304 to 323 along with heading are omitted.

The omission of Chapter XX Part II— Voluntary Winding Up is due to the inclusion of the Voluntary Winding Up Process in the Code. Due to this omission, the related provisions in the Companies Act, 2013 have also been omitted.

Application for voluntary Liquidation: Section 59 of the Code

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

Commencement of Voluntary Liquidation:

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

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

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

| A declaration from majority of | • the designated partners, if a corporate person is a LLP, |
| ——— | ——— |
| • individuals constituting the governing body in case of other corporate persons, as the case may be, |
The declaration under shall list each debt of the corporate person as on that date and state that the corporate person will be able to pay all its debts in full from the proceeds of assets to be sold in the liquidation.

| Affidavit                                      | • they have made a full inquiry into the affairs of the corporate person and they have formed an opinion that either the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation; and
|                                               | • the corporate person is not being liquidated to defraud any person |

| Documents to be accompanied                    | • audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later;
|                                               | • a report of the valuation of the assets of the corporate person, if any prepared by a registered valuer; |

| Within 4 weeks of declaration                 | • Resolution passed by special majority of partners or contributories, of the corporate person requiring the corporate person to be liquidated and appointing an insolvency professional to act as the liquidator; or
|                                               | • a resolution of the partners or contributories, as the case may be, requiring the corporate person to be liquidated as a result of expiry of the period of its duration, if any, fixed by its constitutional documents or on the occurrence of any event in respect of which the constitutional documents provide that the corporate person shall be dissolved, as the case may be, and appointing an insolvency professional to act as the liquidator |
If the corporate person owes any debt to any person, creditors representing **two-thirds** in value of the debt of the corporate person shall approve the resolution within seven days of such resolution.

(In case the Corporate Person owes any debt to any person: Take NOC from the creditors representing 2/3rd of the value of debt of the Corporate person or pass special resolution at a duly convened meeting, within 7 days from the date of passing of Special Resolution).

<table>
<thead>
<tr>
<th>Effect of Voluntary Liquidation on Status of Corporate Person: Regulation 4 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017</th>
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<tbody>
<tr>
<td>The corporate person shall from the voluntary liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business:</td>
</tr>
<tr>
<td>Provided that the corporate state and corporate powers of the corporate person shall continue until it is dissolved.</td>
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<tr>
<th>Eligibility for appointment as Liquidator: Regulation 6 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017</th>
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<tr>
<td>- 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.</td>
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<tr>
<td>- He shall not be eligible to be appointed as a liquidator if he, or the insolvency professional entity of which he is a partner or director is under a restraint order of the Board.</td>
</tr>
<tr>
<td>- He shall disclose the existence of any pecuniary or personal relationship with the concerned corporate person / its stakeholders, to the Board and the Registrar</td>
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The remuneration payable to the liquidator shall form part of the liquidation cost. (Regulation 7 of the IBBI (Voluntary Liquidation Process) Regulations, 2017).

Preliminary Report

The Liquidator shall submit a **preliminary report** under Regulation 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, within 45 days detailing –
a) the capital structure of the corporate person

b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate person – if he is of the opinion that the books of the corporate person are not reliable, he shall make it in writing and provide for the estimates based on reliable records and data available to him.

c) Whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate person or the conduct of the business thereof; and

the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

Public Announcement

To comply with the provisions of Regulation 14 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations, 2017, Liquidator shall make Public Announcement in Form A within 5 days, which shall be published –

i) English and Regional Language Newspapers;
ii) On the website of the Company, if any;
iii) On the website designated by the Board.

The Public Announcement shall call upon stakeholders to submit their claims within 30 days from the date of application.

Proof of Claims - 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.

1. Claims by operational creditors - Form B
2. Claims by financial creditors - Form C
3. Claims by workmen and employees – Form D and Form E
4. Claims by other stakeholders - Form F

Realisation of Assets

Mode of Sale:
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.

**Proceeds of Liquidation and Distribution of Proceeds**

**All Monies to be paid into a bank Account:**

- Opening of separate Bank Account in a scheduled bank, in the name of the corporate person followed by the words ‘in voluntary liquidation’.

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

- All the money deposited in the Bank Account shall not be used except as prescribed in Section 53(2).

All the payments above INR 5,000 shall be made by cheques drawn or online banking transactions against the bank account. (Regulation – 34 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations, 2017)

**Distribution:**

- Distribution of the proceeds from realization within 6 months from the receipt of the amount to the stakeholders.

- Before distribution, liquidation cost shall be deducted.

In case if an asset is not sold than the same can be distributed to stakeholders. (Regulation 35 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)

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

The liquidator shall endeavor to complete the liquidation process of the corporate person within **twelve months** from the liquidation commencement date.

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

a. call a meeting of the contributories of the corporate person within fifteen days from the end of the year in which he is appointed, and at the end of each succeeding year; and

b. shall present a Status Report indicating progress in liquidation, including-
i. settlement of list of stakeholders,
ii. details of any property that remain to be sold and realized,
iii. distribution made to the stakeholders, and
iv. distribution of unsold property made to the stakeholders;

v. developments in any material litigation, by or against the corporate person; and

vi. filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.

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

**Final Report by the Liquidator**

On completion of the liquidation process, the liquidator shall prepare the Final Report consisting of:

a) audited accounts of the liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date; and

b) a statement demonstrating that –

   (i) the assets of the corporate person have been disposed of;

   (ii) the debt of the corporate person has been discharged to the satisfaction of the creditors;

   (iii) no litigation is pending against the corporate person or sufficient provision has been made to meet the obligations arising from any pending litigation.

   c) a sale statement in respect of all assets containing –

   (i) the realized value; (ii) cost of realization, if any; (iii) the manner and mode of sale; (iv) an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets under section 59(3)(b)(ii) or Regulation 3(1)(b)(ii), as the case may be; (v) the person to whom the sale is made; and (vi) any other relevant details of the sale.

The Final Report shall be sent to the Board and the Registrar. Submission of the Final Report to the Adjudicating Authority along with the application under section 59(7). (Regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations, 2017)
Dissolution

Liquidator shall make application to the NCLT for dissolution of Corporate Person. On receipt of the application, NCLT shall pass an order that the corporate person shall be dissolved from the date of order. A copy of an order of dissolution shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.

Liquidation and Voluntary Liquidation Process: Comparative Study

<table>
<thead>
<tr>
<th>S.No</th>
<th>Particulars</th>
<th>Part/Regulation</th>
<th>Liquidation of Corporate Persons</th>
<th>Voluntary Liquidation of Corporate Persons</th>
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<tr>
<td>1</td>
<td>Sections applicable</td>
<td>Both fall under Part II of the Code on INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS</td>
<td>Chapter III Sections 33-54</td>
<td>Chapter V Section – 59</td>
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<td>69 to 77 for Liquidation – for the penal provision.</td>
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<td>5</td>
<td>Liquidation Commencement Date</td>
<td>Defined under IBC code 2016 Section3(17) - &quot;Liquidation commencement date&quot; means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be; Insolvency Commencement Date (Sec 50, Sec 46, Sec 43, Sec 36, Date of the Commencement of the Liquidation (Sec 38), Liquidation Commencement Date (Sec 53). Definition of Insolvency Commencement Date – Sec 3(12) of the IBC Code 2016 - &quot;insolvency commencement date&quot; means the date of admission of an</td>
<td>defined under Regulation 2(1)© - The date on which the proceedings for voluntary liquidation commence as per section 59(5) and Regulation 3(4)</td>
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<td>Stakeholders</td>
<td>Regulations 2(1)(k)</td>
<td>Regulations 2(1)(f)</td>
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<td>- “stakeholders” means the stakeholders entitled to distribution of proceeds under section 53.</td>
<td>“stakeholders” mean the stakeholders entitled to proceeds from the sale of liquidation assets under section 53.</td>
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6. **Stakeholders**

**Regulations 2(1)(k)**
- “stakeholders” means the stakeholders entitled to distribution of proceeds under section 53.

**Regulations 2(1)(f)**
- “stakeholders” mean the stakeholders entitled to proceeds from the sale of liquidation assets under section 53.

7. **Creditor’s Approval**

There is no question of approval of creditors in a regular liquidation process from section 33 to 54.

Section 59 – Regulations Proviso to Regulation 3(1)© - Creditors representing 2/3rds of the value of debt shall approve within seven days from the
| 8 | Initiation of Liquidation Process | Liquidation of a Corporate Person Is Initiated under Section 33 of IBC, 2016 by an order of the Adjudicating Authority - When Resolution plan is not received or - When the Resolution Plan is rejected - Decision of the Committee of Creditors to liquidate the Corporate Debtor - On Contravention of the Resolution Plan approved by AA, application to AA by those Voluntary Liquidation Proceedings of a corporate person is initiated by a declaration, resolution, approval and information -Of a company given under Section 59 (3) of the IBC 2016 -Other than a company under Regulation 3 | date of passing of the resolution |
9 | Appointment of Liquidator | Section 34 of the IBC, 2016
- Resolution
Professional appointed for CIRP under Chapter II of Part II shall act as a Liquidator

whose interest is affected
|   | **Replacement of Liquidator** | Under section 34(4) of the IBC, 2016 the AA replaces the liquidator on two grounds  
- The Resolution plan submitted u/s 30 fails to meet the requirement  
- The board recommends replacement of liquidator | According to section 59(6) all the provisions of Chapter III are applicable with suitable modifications. |
|---|---|---|
| 11. | **Liquidator’s Fee** | Section 34(9) states that the Liquidator’s fee shall be paid from the proceeds of liquidation estate. According to Regulation 4  
- Fee agreed upon by the Committee of Creditor before Liquidation order passed under 33(1)(a) and 33(2). (Reg 4(2))  
- Fee as a percentage of assets realized | According to regulation 7 the liquidator remuneration will form part of Liquidation Cost |
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<th>12</th>
<th>Powers and Duties of the Liquidator</th>
<th>Section 35 of the IBC 2016</th>
<th>Section 35(1) (a) to (o) defines 15 duties and powers of the Liquidator</th>
<th>Chapter IV covering regulations 8-14</th>
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<td>3. Appointment of Professionals</td>
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<td>4. Consultation with Stakeholders</td>
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<td>6. Disclaimer of Onerous property</td>
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<td>7. Extortionate Credit transactions</td>
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<tr>
<td>13</td>
<td>Power of the Liquidator to access information</td>
<td>Section 37 of the IBC 2016</td>
<td>Notwithstanding anything contained in any other law for the time being in</td>
<td>Same thing applicable for Voluntary liquidation due to application of section 59(6)</td>
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</table>
|   | Liquidation Estate | Section 36 (1) to (4) – The liquidator holds it in a fiduciary capacity | Estate of the assets listed under section 36 mainly those on which it has ownership rights. It also includes assets that do not form part of the assets under 36(4) mainly assets owned by a third party | Section 59 (6) - The provisions of sections 35 to 53 of Chapter III shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be

14 |          | force, the liquidator can access information from - an information utility - credit information systems - agency of Central, State or Local Government - Financial/Non-Financial information utility - Information systems for securities - Database of the board - Any other source specified by the board |
| 15 | Consolidation and Verification of Claims | Section 38 & 39 of the IBC 2016 | - The liquidator shall receive or collect claims within **30 days** from the date of commencement of Liquidation  
- Both financial and operational creditors shall submit claims with supporting documents  
- Claims can be withdrawn within 14 days from the date of submission  
- The claims are verified and further supporting evidence may be requested by the liquidator | - Same provisions - Section 59(6) |
| 16 | Admission, Rejection, Appeal against claims and Determination | Section 40, 41 and 42 of the IBC, 2016 | **Accept /Reject** - The liquidator may, after verification of claims under section 39, either admit or | Same provisions apply for Voluntary Liquidation |
reject the claim, in whole or in part, as the case may be:
Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection. The same shall be intimated to the creditors and corporate debtor within 7 days from such rejection or admission.

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

**Appeal** - A creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims within fourteen days of the receipt of such decision.
|   | Preferential Transactions | Section 43 and 44 | Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions. A corporate debtor shall be deemed to have given a preference, if— (a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent | Same provisions apply |
financial debt or operational debt or other liabilities owed by the corporate debtor; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

| 18. | Undervalued transactions | Section 45, 46 and 47, 48 of the IBC 2016 | If the liquidator or the resolution professional determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter. | Same provisions apply |
| 19. | Transactions Defrauding Creditors | Section 49 | Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered | Same provisions apply |
into by such corporate
debtor, it shall make an
order—
(i) restoring the
position as it existed
before such transaction
as if the
transaction had not
been entered into; and
(ii) protecting the
interests of persons
who are victims of such
transactions

| 20 | Extortionate  
(Exorbitant)  
credit  
Transactions | Section 50 | Where the corporate
debtor has been a party
to an extortionate
credit transaction
involving the receipt of
financial or operational
debt during the period
within two years
preceding the
insolvency
commencement date,
the liquidator or the
resolution professional
as the case may be, may
make an application for
avoidance of such
transaction to the
Adjudicating Authority
if the terms of such
transaction required | Same provisions apply |
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| **21** | **Secured creditor in Liquidation proceedings** | **Section 52** | A secured creditor in the liquidation proceedings may—

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or

(b) realise its security interest in the manner specified in this section.

A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor. |

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<tbody>
<tr>
<td><strong>22</strong></td>
<td><strong>Distribution of Assets</strong></td>
<td><strong>Section 53</strong></td>
<td><strong>Notwithstanding anything to the contrary contained in any law enacted by the</strong></td>
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|   |   |   | Same provisions apply until section 53 |
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, namely:

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

(b) the following debts which shall rank equally between and among the following:
   (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
   (ii) debts owed to a secured creditor in the event such secured creditor
has relinquished security in the manner set out in section 52;
(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
(d) financial debts owed to unsecured creditors;
(e) the following dues shall rank equally between and among the following:—
(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
|   |   | (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest; (f) any remaining debts and dues; (g) preference shareholders, if any; and (h) equity shareholders or partners, as the case may be. Any contractual arrangements between recipients if disrupting the order of priority under that sub-section shall be disregarded by the liquidator. The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the |
|   | Dissolution of Corporate Debtor | Section 54 - Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor. The Adjudicating Authority shall on an application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order. |
|   |   | Section 59 - Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person. The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order. |
Authorities Involved

1. The Insolvency and Bankruptcy Board of India (IBBI)
Insolvency and Bankruptcy Board of India has been constituted under the code as an insolvency regulator. It regulates insolvency professionals, insolvency professional agencies and information utilities.

It was setup on October 1, 2016 under the Chairmanship of Dr. M. S. Sahoo. The address of head office is 7th Floor, Mayur Bhawan, Shankar Market, Connaught Circus, New Delhi.

Functions of the Board
The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely:

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;
(b) specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;
(c) levy fee or other charges for the registration of insolvency professional agencies, insolvency professionals and information utilities;
(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;
(e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;
(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;
(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;
(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;
(i) publish such information, data, research studies and other information as may be specified by regulations;
(j) specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data;
(k) collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases;
(l) constitute such committees as may be required including in particular the committees laid down in section 197;
(m) promote transparency and best practices in its governance;
(n) maintain websites and such other universally accessible repositories of electronic information as may be necessary;
(o) enter into memorandum of understanding with any other statutory authorities;
(p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;
(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;
(r) conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board;
(s) specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations;
(t) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor; and
(u) perform such other functions as may be prescribed.

The Board may make model bye-laws to be adopted by insolvency professional agencies which may provide for-

(a) the minimum standards of professional competence of the members of insolvency professional agencies;
(b) the standards for professional and ethical conduct of the members of insolvency professional agencies;
(c) requirements for enrolment of persons as members of insolvency professional agencies which shall be non-discriminatory;
"Non-discriminatory" means lack of discrimination on the grounds of religion, caste, gender or place of birth and such other grounds as may be specified;
(d) the manner of granting membership;
(e) setting up of a governing board for internal governance and management of insolvency professional agency in accordance with the regulations specified by the Board;
(f) the information required to be submitted by members including the form and the time for submitting such information;
(g) the specific classes of persons to whom services shall be provided at concessional rates or for no remuneration by members;
(h) the grounds on which penalties may be levied upon the members of insolvency professional agencies and the manner thereof;
(i) a fair and transparent mechanism for redressal of grievances against the members of insolvency professional agencies;
(j) the grounds under which the insolvency professionals may be expelled from the membership of insolvency professional agencies;
(k) the quantum of fee and the manner of collecting fee for inducting persons as its members;
(l) the procedure for enrolment of persons as members of insolvency professional agency;
(m) the manner of conducting examination for enrolment of insolvency professionals;
(n) the manner of monitoring and reviewing the working of insolvency professional who are members;
(o) the duties and other activities to be performed by members;
(p) the manner of conducting disciplinary proceedings against its members and imposing penalties;
(q) the manner of utilising the amount received as penalty imposed against any insolvency professional.

2. The Insolvency Professional Agencies

As per Section 3(20), "insolvency professional agency" means any person registered with the Board under section 201 as an insolvency professional agency.

Name of Insolvency Professional Agencies

1. Indian Institute of Insolvency Professionals of ICAI
2. ICSI Insolvency Professionals Agency
3. Insolvency Professional Agency of Institute of Cost Accountants of India
Functions of insolvency professional agencies

An insolvency professional agency shall perform the following functions, namely: -

(a) grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee;
(b) lay down standards of professional conduct for its members;
(c) monitor the performance of its members;
(d) safeguard the rights, privileges and interests of insolvency professionals who are its members;
(e) suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws;
(f) redress the grievances of consumers against insolvency professionals who are its members; and
(g) publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations.

Insolvency professional agencies to make bye-laws

Every insolvency professional agency shall make bye-laws consistent with the model bye-laws specified by the Board i.e. The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

Appeal to National Company Law Appellate Tribunal

Any insolvency professional agency which is aggrieved by the order of the Board made under section 201 may prefer an appeal to the National Company Law Appellate Tribunal within a period of thirty days of receipt the impugned order.

3. The Insolvency Professionals

Insolvency Professionals who are registered as member of an insolvency professional agency and registered with the Board are regulated by Insolvency Professional Agency.

Functions and obligations of insolvency professionals

Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, in the following matters, namely: -
(a) a fresh start order process under Chapter II of Part III;
(b) individual insolvency resolution process under Chapter III of Part III;
(c) corporate insolvency resolution process under Chapter II of Part II;
(d) individual bankruptcy process under Chapter IV of Part III; and
(e) liquidation of a corporate debtor firm under Chapter III of Part II.

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

(a) to take reasonable care and diligence while performing his duties;
(b) to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;
(c) to allow the insolvency professional agency to inspect his records;
(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and
(e) to perform his functions in such manner and subject to such conditions as may be specified.

4. The Information Utilities

An information utility shall provide services such as core services and other services under in accordance with the Code.

An information utility shall maintain a list of the
(i) registered users;
(ii) the unique identifiers of the registered users; and
(iii) the unique identifiers assigned to the debts under Regulation 20.

An information utility shall store all information in a facility located in India and the facilities to be governed by the laws of India.

NeSL

National e-Governance Services Ltd. (NeSL), a union government company has received an in-principle approval for establishing Information Utility in India. It was incorporated on 24th June 2016. It is an information infrastructure institution dealing with critical financial information projects. Shri N Rangachary, Former Chairman, IRDA, CBDT, CDSL group is the Chairman of NeSL.

Obligations of information utility

For the purposes of providing core services to any person, every information utility shall-
(a) create and store financial information in a universally accessible format;
(b) accept electronic submissions of financial information from persons who are under obligations to submit financial information under sub-section (1) of section 215, in such form and manner as may be specified by regulations;
(c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;
(d) meet such minimum service quality standards as may be specified by regulations;
(e) get the information received from various persons authenticated by all concerned parties before storing such information;
(f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;
(g) publish such statistical information as may be specified by regulations;
(h) have inter-operability with other information utilities.

Procedure for submission of financial information

(a) Any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fee and submit information in such form and manner as may be specified by regulations.
(b) A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations.
(c) An operational creditor may submit financial information to the information utility in such form and manner as may be specified.

Duties of information utility

1. General duties: It shall provide services with due and reasonable care, skill and diligence and shall hold the information as a custodian

2. Non-discrimination: An information utility shall provide services without discrimination in any manner
3. Other duties:
   An information utility shall-
   a. provide services to a user based on its explicit consent;
   b. guarantee protection of the rights of users;
c. establish adequate procedures and facilities to ensure that its records are protected against loss or destruction;

d. adopt secure systems for information flows;

e. protect its data processing systems against unauthorized access, alteration, destruction, disclosure or dissemination of information; and

f. transfer all the information submitted by a user, and stored with it to another information utility on the request of the user.

**Services to insolvency professionals**

It includes-

1. An insolvency professional may submit reports, registers and minutes in respect of any insolvency resolution, liquidation or bankruptcy proceedings to an information utility for storage.

2. The information utility shall not provide access to the reports, registers and minutes submitted to any person other than the concerned insolvency professional, the Board or the Adjudicating Authority.

3. The information utility shall discharge the duties specified in Chapter VI in respect of the reports, registers and minutes submitted.

**5. Adjudicating Authorities for Corporate Persons**

The National Company Law Tribunal will be the Adjudicating Authority in relation to insolvency resolution and liquidation for corporate persons.

The National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

a) any application or proceeding by or against the corporate debtor or corporate person;

b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or
against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

**Appeals and Appellate Authority: Section 61 of the Code**

Any person aggrieved by the order of the National Company Law Tribunal may prefer an appeal to the National Company Law Appellate Tribunal within thirty days of the order.

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

**Appeal to Supreme Court: Section 62 of the Code**

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

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

**Civil Courts have no jurisdiction on matters having jurisdiction of NCLT or NCLAT: Section 63 of the Code**

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code.

**Expeditious disposal of applications: Section 64 of the Code**

The President of the National Company Law Tribunal or the Chairperson of the National Company Law Appellate Tribunal, as the case may be, may, after taking into account the reasons so recorded, extend the period specified in the Act but not exceeding ten days where an application is not disposed of or an order is not passed within the period specified in this Code, the National Company Law Tribunal or the National Company Law Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified.
**Inspection and Investigation**

Applicable framework:

- Part IV, Chapter VI covering sections 217-220
- The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017

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

Any person aggrieved by the functioning of an insolvency professional agency or insolvency professional or an information utility may file a complaint to the Board. The board shall have the power to conduct inspections of records of such service providers as may be decided by it.

**Investigation of insolvency professional agency or its member or information utility**

Where the Board, on receipt of a complaint under or has reasonable grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may

- at any time by an order in writing, direct any person or persons to act as an investigating authority to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility.

**Conduct of inspection/Investigation**

The Inspecting Authority/Investigating Authority shall serve a notice of inspection or investigation, as the case may be, to the service provider at least 10 days before the commencement of inspection or investigation.

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

Show cause notice may be issued by the Board, upon completion of an inspection or investigation, to such insolvency professional agency or insolvency professional or information utility, and carry out inspection of such insolvency professional agency or insolvency professional or information utility in such manner, giving such time for giving reply, as may be specified by regulations.
Offences and Penalties

Punishment for concealment of property: Section 68 of the Code

Officer of corporate debtor or corporate debtor shall be debtor, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both, if within the twelve months immediately preceding the insolvency commencement date officer of the corporate debtor or corporate debtor has:

- a) wilfully concealed any property or part of such property of the corporate debtor or concealed any debt due to, or from, the corporate debtor, of the value of ten thousand rupees or more; or
- b) fraudulently removed any part of the property of the corporate debtor of the value of ten thousand rupees or more; or
- c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the corporate debtor or its affairs, or
- d) wilfully made any false entry in any book or paper affecting or relating to the property of the corporate debtor or its affairs; or
- e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the corporate debtor or its affairs; or
- f) wilfully created any security interest over, transferred or disposed of any property of the corporate debtor which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the corporate debtor; or
- g) wilfully concealed the knowledge of the doing by others of any of the acts mentioned in clauses (c), (d) or clause (e); or
- h) at any time after the insolvency commencement date, committed any of the acts mentioned in sub-clause (a) to (f) of clause (i) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of clause (i); or
- i) at any time after the insolvency commencement date, taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed.

A person shall not be liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.
Punishment for transactions defrauding creditors: Section 69 of the Code

On or after the insolvency commencement date, if an officer of the corporate debtor or the corporate debtor-

a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the corporate debtor;

b) has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor,

such officer of the corporate debtor or the corporate debtor, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Punishment for misconduct in course of corporate insolvency resolution process: Section 70 of the Code

An officer of the corporate shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both if, on or after the insolvency commencement date, where debtor

a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or

b) does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or

c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver; or

d) fails to inform their solution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or

e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or
f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date,

Such person shall not be liable to any punishment if he proves that he had no intent to do so in relation to the state of affairs of the corporate debtor.

If an insolvency professional deliberately contravenes the provisions of this Part the shall be punishable with imprisonment for a term which may extend to six months, or with fine which shall not be less than one lakh rupees, but may extend to five lakhs rupees, or with both.

**Punishment for falsification of books of corporate debtor: Section 71 of the Code**

Person shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both, if on and after the insolvency commencement date, where such person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the corporate debtor with intent to defraud or deceive any person.

**Punishment for willful and material omissions from statements relating to affairs of corporate debtor: Section 72 of the Code**

Officer of the corporate debtor shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both where an officer of the corporate debtor makes any material and willful omission in any statement relating to the affairs of the corporate debtor.

**Punishment for false representations to creditors: Section 73 of the Code**

Officer of the corporate debtor shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both where any officer of the corporate debtor-
a) on or after the insolvency commencement date, makes a false representation or commits any fraud for the purpose of obtaining the consent of the creditors of the corporate debtor or any of them to an agreement with reference to the affairs of the corporate debtor, during the corporate insolvency resolution process, or the liquidation process;

b) prior to the insolvency commencement date, has made any false representation, or committed any fraud, for that purpose.

**Punishment for contravention of moratorium or the resolution plan: Section 74 of the Code**

Where the corporate debtor or any of its officer violates the provisions of orders of the Adjudicating Authority on admission of application for insolvency resolution process, any such officer who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable with imprisonment for a term which shall not be less than three years, but may extend to five years or with fine which shall not be less than one lakh rupees, but may extend to three lakh rupees, or with both.

Where any creditor violates the provisions of moratorium order, any person who knowingly and willfully authorised or permitted such contravention by a creditor shall be punishable with imprisonment for a term which shall not be less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

**Punishment for false information furnished in application by financial creditor: Section 75 of the Code**

Where any person furnishes information in the application made, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material, such person shall be punishable with fine which shall not be less than one lakh rupees, but may extend to one crore rupees.
**Punishment for non-disclosure of dispute or repayment of debt by operational creditor: Section 76 of the Code**

Where-

a) an operational creditor has wilfully or knowingly concealed in an application for insolvency resolution process the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final repayment of the unpaid operational debt; or  
b) any person who knowingly and wilfully authorised or permitted such concealment under clause (a),

such operational creditor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year but may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees, or with both.

**Punishment for providing false information in application made by corporate debtor: Section 77 of the Code**

Such corporate debtor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both where-

a) a corporate debtor provides information in the application for insolvency resolution process which is false in material particulars, knowing it to be false and omits any material fact, knowing it to be material; or  
b) any person who knowingly and wilfully authorised or permitted the furnishing of such information under sub-clause (a),

For the purposes of this section and sections 75 and 76, an application shall be deemed to be false in material particulars in case the facts mentioned or omitted in the application, if true, or not omitted from the application as the case may be, would have been sufficient to determine the existence of a default under this Code.
Insolvency Resolution Process for Non-Corporate Persons
(Individual and Partnership Firms)

Applicable framework:
➢ Part III, 7 Chapters, Sections 78 to 187

Applicability of this part: Section 78 of the Code
This Part shall apply to matters relating to fresh start, insolvency and bankruptcy of individuals and partnership firms where the amount of the default is not less than one thousand rupees.

Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one lakh rupees.

Adjudicating Authority
1. Debt Recovery Tribunal (DRT)
2. Debt Recovery Appellate Tribunal (DRAT)

The different processes involved are:
A. Fresh Start Process
A debtor, who is unable to pay his debt, may apply to the DRT, either personally or through a resolution professional, for a fresh start in respect of his qualifying debts to the Adjudicating Authority if-

(a) the gross annual income of the debtor does not exceed sixty thousand rupees;
(b) the aggregate value of the assets of the debtor does not exceed twenty thousand rupees;
(c) the aggregate value of the qualifying debts does not exceed thirty-five thousand rupees;
(d) he is not an undischarged bankrupt;
(e) he does not own a dwelling unit, irrespective of whether it is encumbered or not;
(f) a fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; and
(g) no previous fresh start order under this Chapter has been made in relation to him in the preceding twelve months of the date of the application for fresh start.
A resolution professional appointed examines the application, receives claims from creditors, accepts or rejects the application and submits a report with reasons to the DRT. On the basis of the said report, the DRT accepts or rejects the application.

B. Insolvency Resolution Process

Unlike, fresh start process, application for insolvency resolution process may be filed by any individual or partnership firm who has committed default.

Application can be filed by the creditor or by the debtor itself. When an application is filed by debtor or creditor an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application.

Stages involved:

- Appointment of resolution professional
- Submission of Report by Resolution Professional
- Consideration of Application by Adjudicating Authority
- Commencement of Moratorium Period
- Public notice and Claims of Creditors
- Registering of claims by creditors
- Preparation of list of creditors
- Preparation of Repayment Plan
- Submission of Repayment Plan along with Report by Resolution Professional to the Adjudicating Authority
- Meeting of Committee of Creditors
- Approval of Repayment Plan by Committee
- Report of meeting of Creditors on Repayment Plan
- Passing of discharge order by adjudicating authority

C. Bankruptcy

The process of bankruptcy is similar to liquidation of corporate person. An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely:

(a) where an order has been passed for rejection of application for insolvency resolution process on account on the conclusion that the application was made with the intention
to defraud his creditors or the resolution professional by an Adjudicating Authority under sub-section 4 of section 100; or
(b) where an order for rejection of repayment plan has been passed by an Adjudicating Authority under sub-section 2 of section 115; or
(c) where an order has been passed by an Adjudicating Authority on an application by resolution professional on premature end of repayment plan under sub-section 3 of section 118.

An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority.

Where the debtor is a firm, the application may be filed by any of its partners.

When an application for bankruptcy is filed by debtor or creditor, an interim-moratorium shall commence on the date of the making of the application on all actions against the properties of the debtor in respect of his debts and such moratorium shall cease to have effect on the bankruptcy commencement date.

A bankruptcy trustee is appointed by the DRT on the basis of Board’s confirmation of nominated person by applicant or Board’s recommendation of another person. A bankruptcy trustee may be replaced by 75% voting of committee of creditors. Estate of bankrupt vests in the bankruptcy trustee and he shall divide it among creditors.

The Adjudicating Authority shall send notices inviting Claims of Creditors within ten days of the bankruptcy commencement date. The creditors shall register claims with the bankruptcy trustee within seven days of the publication of the public notice. The bankruptcy trustee shall, within fourteen days from the bankruptcy commencement date, prepare a list of creditors of the bankrupt.

The bankruptcy trustee shall, within twenty-one days from the bankruptcy commencement date, issue a notice for calling a meeting of the creditors, to every creditor of the bankrupt. The bankruptcy trustee shall be the convener of the meeting of the creditors summoned.

The bankruptcy trustee shall decide the quorum for the meeting of the creditors, and conduct the meeting only if the quorum is present.

The bankruptcy trustee shall perform the following functions:

(a) investigate the affairs of the bankrupt;
(b) realise the estate of the bankrupt; and
(c) distribute the estate of the bankrupt.

Priority of payment of debts

(a) firstly, the costs and expenses incurred by the bankruptcy trustee for the bankruptcy process in full;
(b) secondly, -
   (i) the workmen's dues for the period of twenty-four months preceding the bankruptcy commencement date; and
   (ii) debts owed to secured creditors;
(c) thirdly, wages and any unpaid dues owed to employees, other than workmen, of the bankrupt for the period of twelve months preceding the bankruptcy commencement date;
(d) fourthly, any amount due to the Central Government and the State Government including the amount to be received on account of Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date;
(e) lastly, all other debts and dues owed by the bankrupt including unsecured debts.

The bankruptcy trustee shall convene a meeting of the committee of creditors on completion of the administration and distribution of the estate of the bankrupt. The committee of creditors shall approve the report submitted by the bankruptcy trustee within seven days of the receipt of the report and determine whether the bankruptcy trustee should be released under section 148.

Discharge order

The bankruptcy trustee shall apply to the Adjudicating Authority for a discharge order-

(a) on the expiry of one year from the bankruptcy commencement date; or
(b) within seven days of the approval of the committee of creditors of the completion of administration of the estates of the bankrupt under section 137, where such approval is obtained prior to the period mentioned in clause (a).

The Adjudicating Authority shall pass a discharge order on an application by the bankruptcy trustee.
Effective Advocacy before Tribunal

Advocacy is a practice which involves an active promotion of a cause or principle and requires formulation of strategies for achieving desired goals. Active participation or involvement of the person practicing advocacy is the basic framework on which ease of representation and winning cases at the Tribunals is based. Also, respecting the privacy and confidentiality of others, and following the basic rules of ethical conduct, to be effective and to maintain credibility. Advocacy is all about patience, persistence and perseverance.

Good Advocacy includes:

- Listening to all parties in a believing and nonjudgmental manner;
- Clarifying issues;
- Suggesting options;
- Documenting;
- Locating and providing information;
- Speaking on the client’s behalf when they cannot speak for themselves;
• Helping the client with written correspondence or phone calls;
• Problem solving;
• Educating clients;
• Assisting clients
• Following up.

There is no fixed recipe for a correct advocacy approach. Based on individual traits and experiences, everyone has particular style and unique approach to solving problems. Qualities and skills develop and acquire flexibility with experience. However, the three common characteristics of good Tribunal advocacy which have remained constant over all the years are:

• Passion and Enthusiasm both at time of preparation and presentation
• Assertive disposition and right communication
• Knowledge of all laws, rules and regulations associated with the case

DO’S & DON’TS POLICY

It is the vital matter to look into ‘what to do and what not to do’. While preparing and presenting cases before Tribunals one needs to be aware of this do’s and don’ts policy as the basic rules one must follow:

Advocacy Do’s:

• Be informed! - Know the issue, the system and the key players.
• Form relationships! - Don’t wait until you need something to contact policymakers
• Be open to talking to legislative staff.
• Be honest! - Do not exaggerate. It’s ok to admit that you don’t know something and that you’ll get back to the legislator with more information later.
• Be concise! - Keep all visits, calls, testimonies brief and to the point.
• Practice, practice, practice!
• Seek out new partnerships & alliances with others who share your views.
• Be specific! - Know what you want your legislator to do, and ask for it!
• Stay active! - Maintain communication with policymakers.
• DO be courteous, firm and confident.
• Be patient, persistent and positive.
• Do stay up-to-date with research.

Advocacy Don’ts:
• Wait until you need something to contact policymakers.
• Ignore or be disrespectful to legislative staff.
• Exaggerate.
• Send form letters or emails
• Make threats—Telling legislators that they have to do what you want
• Expect the impossible or insist on immediate action.
• Pretend to speak for everyone.
• Bury them with paper.
• DON’T get defensive and frustrated
• Don’t argue—if it’s clear the policymaker will not support your position, just give them the facts and ask him or her to consider your viewpoint.
• Don’t give up!

Skills required for Representation before Tribunals
• Knowledge of substantive and procedural law relating to the legislation concerned.
• Knowledge of Constitutional law, particularly when a case is to be represented before Tax Tribunals
• In depth understanding of court procedure and appellate mechanism and regulations and rules governing the above.
• Practical / hands-on experience in appearance before the forums concerned and putting forth arguments and advancing contentions.
• Skill of advocacy, examination of witnesses, cross-examination and re-examination of witnesses.
• Ability to summarize arguments after conducting examination of witnesses.
• Skill in Presentation of the case effectively before the officer
• Knowledge of compilation procedure in relation to
  ➢ appeal petitions,
  ➢ paper books,
  ➢ annexure,
  ➢ case law citations,
  ➢ Material documents relating to evidence to be appreciated by the concerned forum.
• Advancing counter arguments, improvising of arguments impromptu etc.

**Procedural Aspects of Representation at National Company Law Tribunal (NCLT)**

The National Company Law Tribunal Rules, 2016 notified on 21st July, 2016 lay down the procedural aspects for application and proceedings at NCLT.

An applicant meaning a petitioner or an appellant or any other person or entity capable of making an application including an interlocutory application or a petition or an appeal under the Companies Act 2013, is eligible to apply to NCLT.

A legal practitioner or authorised representative shall be entitled to appear and act, in any proceeding before the Tribunal only if he files into Tribunal vakalatnama or Memorandum of Appearance as the case may, duly executed by or on behalf of the party for whom he appears. While appearing before the Tribunal, the authorised representatives shall wear the same professional dress as prescribed in their Code of Conduct.

An applicant can file application including interlocutory application to the NCLT. Every petition or application or reference shall be filed in form as provided in Form No. NCLT-1 with attachments thereto accompanied by Form No. NCLT-2. In case of an interlocutory application, the petition or application shall be filed in Form No. NCLT-1 accompanied by such attachments thereto along with Form No. NCLT-3.

The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party. Applicants have to file the petitions/applications/documents in triplicate before all benches of the NCLT.
The Tribunal shall issue notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the Notice.

The following points with respect to institution of proceedings, petitions, appeals etc. are laid down in Rule 20 of the National Company Law Tribunal Rules, 2016 (NCLT Rules 2016).

(1) Every appeal or petition or application or caveat petition or objection or counter presented to the Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form;

(2) The cause title shall state “Before the National Company Law Tribunal” and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.

(3) Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.

(4) Where Saka or other dates are used, corresponding dates of Gregorian Calendar shall also be given. (‘Saka’ is a term used to imply the Indian national calendar)

(5) Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.

(6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.

(7) These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.

(8) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.
(9) Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

The procedural aspects for presentation of petition or appeal as laid down in Rule 23 of the NCLT Rules 2016 are as follows

(1) Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.

(3) All the documents filed in the Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.

(5) In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative.

(6) The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum of appeal.

For the purpose of endorsement and verification of the petition, appeal, pleading, the following points need to be ensured:

(1) At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.

(2) Every petition or appeal shall be signed and verified by the party concerned in the manner provided by the NCLT Rules 2016.

Procedural Aspects of Representation at National Company Law Appellate Tribunal (NCLAT)
Under section 432 of the Companies Act 2013, a party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be. The authorization must be in writing.

Where an advocate is engaged to appear for and on behalf of the parties, he shall submit Vakalatnama. The professionals like chartered accountants or company secretaries or cost accountants shall submit Memorandum of Appearance.

While appearing before the Appellate Tribunal, the authorised representative shall wear the same professional dress as prescribed in their Code of Conduct.

Procedural aspects of appeals to NCLAT as specified in the NCLAT Rules 2016 are as follows:

(1) Every appeal to the Appellate Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type-written or printed in double spacing on one side of standard paper with an inner margin of about four centimeters width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.

(2) The cause title shall state “In the National Company Law Appellate Tribunal” and also set out the proceedings or order of the authority against which it is preferred.

(3) Appeal shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.

(4) Where Saka or other dates are used, corresponding dates of Gregorian calendar shall also be given.

(5) Full name, parentage, description of each party and address and in case a party sue or being sued in a representative character, shall also be set out at the beginning of the appeal and need not be repeated in the subsequent proceedings in the same appeal.

(6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party and these numbers shall not be changed and in the event of the death of a party during the pendency of the appeal, his legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.
(7) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

(8) Every proceeding shall state immediately after the cause title and the provision of law under which it is preferred.

(9) Every interlineation, eraser or correction or deletion in any appeal shall be initialed by the party or his authorised representative.

(10) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(11) Every appeal shall be accompanied by a certified copy of the impugned order.

(12) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(13) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(14) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(15) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

(16) The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

(17) At the foot of every appeal or pleading there shall appear the name and signature of the authorised representative and every appeal or pleadings shall be signed and verified by the party concerned in the manner provided by these rules.

(18) Where an appeal purported to be instituted by or on behalf of an association, the person who signs or verifies the same shall produce along with such appeal, for verification by the Registrar of the Appellate Tribunal, a true copy of the resolution of the association empowering such person to do so. The Registrar may at any time call upon the party to produce such further
materials as he deems fit for satisfying himself about due authorization. The appeal shall set out the list of members for whose benefit the proceedings are instituted.

Annexure I

FORM 1
(See sub-rule (1) of rule 4)
APPLICATION BY FINANCIAL CREDITOR(S) TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE CODE.

(Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

[Date]

To,

The National Company Law Tribunal

[Address]

From,

[Names and addresses of the registered offices of the financial creditors]

In the matter of [name of the corporate debtor]

Subject: Application to initiate corporate insolvency resolution process in the matter of [name of the corporate debtor] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,
[Names of the financial creditor(s)], hereby submit this application to initiate a corporate insolvency resolution process in the matter of [name of corporate debtor]. The details for the purpose of this application are set out below:

**PART-I**

**PARTICULARS OF APPLICANT (PLEASE PROVIDE FOR EACH FINANCIAL CREDITOR MAKING THE APPLICATION)**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Name of financial creditor</td>
</tr>
<tr>
<td>2.</td>
<td>Date of incorporation of financial creditor</td>
</tr>
<tr>
<td>3.</td>
<td>Identification number of financial creditor</td>
</tr>
<tr>
<td>4.</td>
<td>Address of the registered office of the financial creditor</td>
</tr>
<tr>
<td>5.</td>
<td>Name and address of the person authorised to submit application on its behalf (enclose authorisation)</td>
</tr>
<tr>
<td>6.</td>
<td>Name and address of person resident in India authorised to accept the service of process on its behalf (enclose authorisation)</td>
</tr>
</tbody>
</table>

**PART-II**

**PARTICULARS OF THE CORPORATE DEBTOR**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Name of the corporate debtor</td>
</tr>
<tr>
<td>2.</td>
<td>Identification number of corporate debtor</td>
</tr>
<tr>
<td>3.</td>
<td>Date of incorporation of corporate debtor</td>
</tr>
<tr>
<td>4.</td>
<td>Nominal share capital and the paid-up share capital of the corporate debtor and/or details of guarantee clause as per Memorandum of Associations (As Applicable)</td>
</tr>
</tbody>
</table>
5. **Address of the registered office of the corporate debtor**

### PART-III

**PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL**

1. Name, address, email address and the registration number of the proposed interim resolution professional

### PART-IV

**PARTICULARS OF FINANCIAL DEBT**

1. Total amount of debt granted date(s) of disbursement

2. Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form)

### PART-V

**PARTICULARS OF FINANCIAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]**

1. Particulars of security held, if any, the date of its creation, its estimated value as per the creditor.
   
   Attach a copy of a certificate of registration of charge issued by the Registrar of Companies (if the corporate debtor is a company)

2. Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any
   
   (Attach a copy of the Order)

3. Record of default with the information utility, if any
   
   (Attach a copy of such Record)

4. Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925)
   
   (Attach a Copy)
5. The latest and complete copy of the financial contract reflecting all amendments and waivers to date (Attach a Copy)

6. A record of default as available with any credit Information Company (Attach a Copy)

7. Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891) (Attach a Copy)

8. List of other documents attached to this application in order to prove the existence of financial debt, the amount and date of default

I, hereby certify that, to the best of my knowledge, [name of proposed insolvency professional], is fully qualified and permitted to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Code, 2016 and the associated rules and regulations.

[Name of the financial creditor] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of person authorised to act on behalf of the financial creditor

Name in block letters

Position with or in relation to the financial creditor

Address of person signing

**Instructions**

Please attach the following to this application:

Annex I  Copies of all documents referred to in this application.

Annex II  Written communication by the proposed interim resolution professional as set out in Form 2.
Annex III  Proof that the specified application fee has been paid.

Annex IV  Where the application is made jointly, the particulars specified in this form shall be furnished in respect of all the joint applicants along with a copy of authorisation to the financial creditor to file and act on this application on behalf of all the applicants.
(See clause (a) of sub-rule (1) of rule 5)

FORM OF DEMAND NOTICE/INVOICE DEMANDING PAYMENT UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

(Under rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

[Date]

To,

[Name and address of the registered office of the corporate debtor]

From,

[Name and address of the registered office of the operational creditor]

Subject: Demand notice/invoice demanding payment in respect of unpaid operational debt due from [corporate debtor] under the Code.

Madam/Sir,

1. This letter is a demand notice/invoice demanding payment of an unpaid operational debt due from [name of corporate debtor].

2. Please find particulars of the unpaid operational debt below:

<table>
<thead>
<tr>
<th>PARTICULARS OF OPERATIONAL DEBT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due</td>
</tr>
<tr>
<td>2. Amount claimed to be in default and the date on which the default occurred (Attach the workings for computation of default in tabular form)</td>
</tr>
</tbody>
</table>
3. Particulars of security held, if any, the date of its creation, its estimated value as per the creditor. Attach a copy of a certificate of registration of charge issued by the Registrar of Companies (if the corporate debtor is a company)

4. Details of retention of title arrangements (if any) in respect of goods to which the operational debt refers

5. Record of default with the information utility (if any)

6. Provision of law, contract or other document under which debt has become due

7. List of documents attached to this application in order to prove the existence of operational debt and the amount in default

3. If you dispute the existence or amount of unpaid operational debt (in default) please provide the undersigned, within ten days of the receipt of this letter, of the pendency of the suit or arbitration proceedings in relation to such dispute filed before the receipt of this letter/notice.

4. If you believe that the debt has been repaid before the receipt of this letter, please demonstrate such repayment by sending to us, within ten days of receipt of this letter, the following:

(a) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(b) an attested copy of any record that [name of the operational creditor] has received the payment.
5. The undersigned, hereby, attaches a certificate from an information utility confirming that no record of a dispute raised in relation to the relevant operational debt has been filed by any person at any information utility. (if applicable)

6. The undersigned request you to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate a corporate insolvency resolution process in respect of [name of corporate debtor].

Yours sincerely,

| Signature of person authorised to act on behalf of the operational creditor |
| Name in block letters |
| Position with or in relation to the operational creditor |
| Address of person signing |

Instructions

1. Please serve a copy of this form on the corporate debtor, ten days in advance of filing an application under section 9 of the Code.

2. Please append a copy of such served notice to the application made by the operational creditor to the Adjudicating Authority.
FORM 4
(See clause (b) of sub-rule(1) of rule 5)
FORM OF NOTICE WITH WHICH INVOICE DEMANDING PAYMENT IS TO BE ATTACHED
(Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

[Date]

To,

[Name and address of registered office of the corporate debtor]

From,

[Name and address of the operational creditor]

Subject: Notice attached to invoice demanding payment

Madam/Sir,

[Name of operational creditor], hereby provides notice for repayment of the unpaid amount of INR [insert amount] that is in default as reflected in the invoice attached to this notice.

In the event, you do not repay the debt due to us within ten days of receipt of this notice, we may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process under section 9 of the Code.

Yours sincerely,
Application by operational creditor to initiate corporate insolvency resolution process under the Code.

(Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

[Date]

To,

The National Company Law Tribunal

[Address]

From,

[Name and address for correspondence of the operational creditor]

In the matter of [name of the corporate debtor]

Subject: Application to initiate corporate insolvency resolution process in respect of [name of the corporate debtor] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,
[Name of the operational creditor], hereby submits this application to initiate a corporate insolvency resolution process in the case of [name of corporate debtor]. The details for the purpose of this application are set out below:

PART-I

<table>
<thead>
<tr>
<th>PARTICULARS OF APPLICANT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Name of operational creditor</td>
</tr>
<tr>
<td>2. Identification number of operational creditor (If any)</td>
</tr>
<tr>
<td>3. Address for correspondence of the operational creditor</td>
</tr>
</tbody>
</table>

PART-II

<table>
<thead>
<tr>
<th>PARTICULARS OF CORPORATE DEBTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Name of the corporate debtor</td>
</tr>
<tr>
<td>2. Identification number of corporate debtor</td>
</tr>
<tr>
<td>3. Date of incorporation of corporate debtor</td>
</tr>
<tr>
<td>4. Nominal share capital and the paid-up share capital of the corporate debtor and/or details of guarantee clause as per memorandum of association (AS applicable)</td>
</tr>
<tr>
<td>5. Address of the registered office of the corporate debtor</td>
</tr>
<tr>
<td>6. Name, address and authority of person submitting application on behalf of operational creditor (enclose authorisation)</td>
</tr>
<tr>
<td>7. Name and address of person resident in India authorised to accept the service of process on its behalf (enclose authorisation)</td>
</tr>
</tbody>
</table>

PART-III
### PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL [IF PROPOSED]

1. Name, address, email address and the registration number of the proposed Insolvency professional

### PART-IV

### PARTICULARS OF OPERATIONAL DEBT

1. Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due

2. Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and dates of default in tabular form)

### PART-V

### PARTICULARS OF OPERATIONAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]

1. Particulars of security held, if any, the date of its creation, its estimated value as per the creditor.
   Attach a copy of a certificate of registration of charge issued by the Registrar of Companies (if the corporate debtor is a company)

2. Details of reservation/retention of title arrangements (if any) in respect of goods to which the operational debt refers

3. Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)

4. Record of default with the information utility, if any (attach a copy of such record)

5. Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)

6. Provision of law, contract or other document under which operational debt has become due
7. A statement of bank account where deposits are made or credits received normally by the operational creditor in respect of the debt of the corporate debtor (attach a copy)

8. List of other documents attached to this application in order to prove the existence of operational debt and the amount in default

I, [Name of the operational creditor/person authorised to act on behalf of the operational creditor] hereby certify that, to the best of my knowledge, [name of proposed insolvency professional], is fully qualified and permitted to act as an insolvency professional in accordance with the Code and the rules and regulations made thereunder. [Where Applicable]

[Name of the operational creditor] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

<table>
<thead>
<tr>
<th>Signature of person authorised to act on behalf of the operational creditor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name in block letters</td>
</tr>
<tr>
<td>Position with or in relation to the operational creditor</td>
</tr>
<tr>
<td>Address of person signing</td>
</tr>
</tbody>
</table>

Instructions

Please attach the following to this application:

Annex I Copy of the invoice/demand notice as in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 served on the corporate debtor.

Annex II Copies of all documents referred to in this application.

Annex III Copy of the relevant accounts from the banks/financial institutions maintaining accounts of the operational creditor confirming that there is no payment of the relevant unpaid operational debt by the operational debtor, if available.

Annex IV Affidavit in support of the application in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Annex V Written communication by the proposed interim resolution professional as set out in Form 2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. [WHERE APPLICABLE]
Annex VI  Proof that the specified application fee has been paid.

**Note:** Where workmen/employees are operational creditors, the application may be made either in an individual capacity or in a joint capacity by one of them who is duly authorised for the purpose.

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**Annexure V**

**FORM 6**

*(See sub-rule (1) of rule 7)*

APPLICATION BY CORPORATE APPLICANT TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE CODE.

*(Under rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

[Date]

179
To,
The National Company Law Tribunal
[Address]

From,
[Name and address for correspondence of the corporate applicant]

In the matter of [name of the corporate debtor]

Subject: Application to initiate corporate insolvency resolution process in respect of [name of the corporate debtor] under the Code.

Madam/Sir,

We, hereby submit this application to initiate a corporate insolvency resolution process in respect of [name of corporate debtor]. The details for the purpose of this application are set out below:

PART-I

<table>
<thead>
<tr>
<th>PARTICULARS OF THE CORPORATE APPLICANT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Name address, email address, identification number and address for communication of the corporate applicant</td>
</tr>
<tr>
<td>2. Name address, email address, identification number and address of the registered office of corporate debtor</td>
</tr>
<tr>
<td>3. Names and addresses of all directors, promoters, designated partners of the corporate debtor (as applicable)</td>
</tr>
<tr>
<td>4. Date of incorporation of corporate debtor</td>
</tr>
<tr>
<td>5. Nominal share capital and the paid-up share capital of the corporate debtor and/or details of guarantee clause as per memorandum of association (as applicable)</td>
</tr>
</tbody>
</table>
6. Name, address and authority of person submitting application on behalf of corporate applicant (enclose Authorisation)

7. Name and address of person resident in India authorised to accept the service of process on its behalf (enclose authorisation)

8. Documentation to show that the corporate applicant is authorised to initiate the corporate insolvency resolution process

<table>
<thead>
<tr>
<th>PART-II</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PARTICULARS OF PROPOSED INTERIM RESOLUTION PROFESSIONAL</strong></td>
</tr>
<tr>
<td>1. Name, address, email address and the registration number of the proposed interim resolution professional</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART-III</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PARTICULARS OF FINANCIAL/OPERATIONAL DEBT [CREDITOR WISE, AS APPLICABLE]</strong></td>
</tr>
<tr>
<td>1. Name(s) of financial/operational creditor(s)</td>
</tr>
<tr>
<td>2. Address of correspondence of the financial/operational creditor(s)</td>
</tr>
<tr>
<td>3. Total debt raised and amount in default</td>
</tr>
<tr>
<td>4. Date when the financial/operational debt was incurred</td>
</tr>
<tr>
<td>5. Particulars of security held, if any, the date of its creation, its estimated value as per the creditor. Attach a copy of a certificate of registration of charge issued by the Registrar</td>
</tr>
<tr>
<td>of Companies (if the corporate debtor is a company)</td>
</tr>
<tr>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>6. Details of retention of title arrangements (if any) in respect of goods to which the operational debt refers</td>
</tr>
<tr>
<td>7. Record of default with the information utility, if any</td>
</tr>
<tr>
<td>8. List of documents attached to this application in order to prove the existence of financial/operational debt and the amount in default</td>
</tr>
</tbody>
</table>

I, certify that, to the best of my knowledge, [name of proposed insolvency professional], is fully qualified and permitted to act as an insolvency professional in accordance with the Code and the associated rules and regulations.

[Name of the corporate applicant] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

<table>
<thead>
<tr>
<th>Signature of person authorised to act on behalf of the corporate applicant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name in block letters</td>
</tr>
<tr>
<td>Position with or in relation to the corporate applicant</td>
</tr>
<tr>
<td>Address of person signing</td>
</tr>
</tbody>
</table>

Instructions

Please attach the following to this application:

Annex I In case of financial debt, record of default obtained through the information utility or all documents listed in serial number 8 of part –III of this application.

Annex II In case of operational debt, (i) copy of invoice/demand notice served by an operational creditor on the corporate debtor and (ii) record of default obtained through the information utility or all documents listed in serial number 8 of part-III of this application.
Annex III  Written communication by the proposed interim resolution professional as set out in Form 2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Annex IV  Copy of the relevant books of accounts of the corporate debtor evidencing the default to creditors.

Annex V  Copies of audited financial statements of the corporate debtor for the last two financial years and the provisional financial statements for the current financial year made upto a date not earlier than fourteen days from the date of the application.

Annex VI  A statement of affairs made up to a date not earlier than fourteen days from the date of application including the following document, namely:—

(a) a list of the corporate debtor’s assets and liabilities, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;

(b) in the case of any property on which a claim against the corporate debtor is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created;

(c) the names and addresses of the financial creditors and operational creditors of the corporate debtor, with the amounts due to each of them;

(d) particulars of any debts owed by or to the corporate debtor to or by persons connected with it;

(e) whether any, and if so what, guarantees have been given in relation to the debts of the corporate debtor by other persons, specifying which, if any, of the guarantors is a related party to the corporate debtor and the corporate applicant; and

(f) the names and addresses of the members and partners of the corporate debtor, as the case may be, with details of their respective shareholdings.

Annex VII  A copy of:
(a) relevant extract of any constitutional document or shareholders' agreement that records the authority of the corporate applicant to make this application, where the corporate applicant is a member or partner of the corporate debtor; or

(b) relevant extract of an employment agreement, constitutional document or filings made to the Registrar of Companies confirming the authority of the corporate applicant to make this application, where the corporate applicant is an individual in charge of managing the operations and resources of the corporate debtor or has control and supervision over the financial affairs of the corporate debtor.

Annex VIII Affidavit in support of the application in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Annex IX Proof that the specified application fee has been paid.
Annexure VI

FORM 2
(See sub-rule (1) of rule 9)
(Under rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

WRITTEN COMMUNICATION BY PROPOSED INTERIM RESOLUTION PROFESSIONAL

[Date]

To,
The National Company Law Tribunal

[Address]

From,

[Name and address of the registered office of the proposed interim resolution professional]

In the matter of [name of the corporate debtor]
Subject: Written communication in connection with an application to initiate corporate insolvency resolution process in respect of [name of the corporate debtor]

Madam/Sir,

I, [name of proposed interim resolution professional], an insolvency professional registered with [name of insolvency professional agency] having registration number [registration number] have been proposed as the interim resolution professional by [name of applicant financial creditor] in connection with the proposed corporate insolvency resolution process of [name of the corporate debtor].

In accordance with rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, I hereby:

(i) agree to accept appointment as the interim resolution professional if an order admitting the present application is passed;

(ii) state that the registration number allotted to me by the Board is [insert registration number] and that I am currently qualified to practice as an insolvency professional;

(iii) disclose that I am currently serving as an interim resolution professional/resolution professional/liquidator in [insert number of proceedings] proceedings;

(iv) certify that there are no disciplinary proceedings pending against me with the Board or [name of the insolvency professional agency he is a member of];

(v) affirm that I am eligible to be appointed as a resolution professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;

(Signature of the insolvency professional)

(Name in block letters)

(Name of insolvency professional entity, if applicable)

[Optional certification, if required by the applicant making an application under these Rules]

I, hereby, certify that the facts averred by the applicant in the present application are true, accurate and complete and a default has occurred in respect of the relevant corporate debtor. I have reached this conclusion based on the following facts and/or opinion: —
[Please give details].

(Signature of the insolvency professional)
(Name in block letters)
(Name of insolvency professional entity, if applicable)

Annexure VII

FORM A
PUBLIC ANNOUNCEMENT


<table>
<thead>
<tr>
<th>RELEVANT PARTICULARS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Name of Corporate debtor</td>
</tr>
<tr>
<td>2</td>
<td>Date of incorporation of corporate</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>3</td>
<td>Authority under which corporate debtor is incorporated / registered</td>
</tr>
<tr>
<td>4</td>
<td>Corporate Identity Number / Limited Liability Identification Number of corporate debtor</td>
</tr>
<tr>
<td>5</td>
<td>Address of the registered office and principal office of corporate debtor</td>
</tr>
<tr>
<td>6</td>
<td>Insolvency commencement date in respect of corporate debtor</td>
</tr>
<tr>
<td>7</td>
<td>Estimated date of closure of Insolvency Resolution Process</td>
</tr>
<tr>
<td>8</td>
<td>Name, address, Email address and the registration number of the interim resolution professional</td>
</tr>
<tr>
<td>9</td>
<td>Last date for submission of claims</td>
</tr>
</tbody>
</table>

Notice is hereby given that the National Company Law Tribunal has ordered the commencement of a corporate insolvency resolution process against the ________________ on _________.

The creditors of ________________ are hereby called upon to submit a proof of their claims on or before ________________ to the interim resolution professional at the address mentioned.

The financial creditors shall submit their proof of claims by electronic means only. The operational creditors, including workmen and employees, may submit proof of claims by in person, by post or electronic means.

Submission of false or misleading proofs of claim shall attract penalties.

____________

Interim Resolution Professional Date:
Place:
Notice to the Committee of Creditors

Of

Name of the Company
(CIN:
)

NOTICE IS HEREBY GIVEN that the First meeting of committee of creditors of
____________(Name of the company) will be held at ______________(Venue of the
Meeting) ) on Day, Date and Time to transact the business as specified in enclosed agenda.

The participants may also attend the aforementioned meeting through video conferencing or
other audio and visual means. If any participant wants to attend the aforementioned Meeting
through such means, may kindly write to the undersigned at the email id mentioned herein
below, along with the Location, at least 48 hours before the time fixed for the Meeting, so that
necessary arrangements can be made. It is to be noted that the participants attending the
aforementioned Meeting through video conferencing or other audio and visual means would also
be considered as part of quorum for the aforementioned Meeting and a roll call will be carried
out as per Regulation 24 (2) of the of the Insolvency and Bankruptcy Board of India (Insolvency
Resolution Process for Corporate Persons) Regulations, 2016 for such participants.

You are requested to kindly make it convenient to attend the Meeting.

Name of the Insolvency Resolution Professional
Insolvency Resolution Professional

Name of the Company
(Company undergoing Corporate Insolvency Resolution Process)
E-mail ID: IRP
Contact No.: IRP
IBBI Registration No.:
Date:
Place:

Encl: Agenda and notes to agenda for the First Meeting of Committee of Creditors
AGENDA for the First Meeting of the Committee of Creditors of Name of the company constituted in terms of the provisions of Section 21 of the Insolvency and Bankruptcy Code, 2016 to be held at _______________ (Venue of the Meeting) on Day, Date and Time.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. List of Matters to be discussed/noted</td>
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<tr>
<td>1.</td>
<td>The Resolution Professional to take the Chair</td>
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<tr>
<td>2.</td>
<td>To ascertain the quorum of the Meeting and carry out roll call if any of the participants is attending through video conferencing.</td>
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<tr>
<td>3.</td>
<td>To take note of the actions taken by Interim Resolution Professional under CIRP</td>
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<tr>
<td>4.</td>
<td>To take note of the List of Creditors prepared by the Interim Resolution Professional</td>
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<tr>
<td>5.</td>
<td>To take note of the Initial Information Memorandum submitted by the Interim Resolution Professional containing matters referred to in Regulation 36(1)(a) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</td>
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<tr>
<td>B. List of Issues to be voted upon after discussions</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>To take note and approve the remuneration and expenses on or by the interim Resolution Professional Including that on professional advisors which shall constitute Corporate Insolvency Resolution Process costs, till the date of meeting. (attached as Annexure – 1 hereto) and matters incidental thereto.</td>
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<tr>
<td>2.</td>
<td>To fix time limit up to which the Resolution Professional, without the Permission of the committee, is entitled to initiate a debit transaction with the financial institutions/ banks maintaining accounts of corporate Debtor.</td>
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<tr>
<td>3.</td>
<td>To reimburse cost of Public announcement as per Regulations 6(3) of CIRP</td>
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</tbody>
</table>
4. To appoint IRP as Resolution professional and to fix the Remuneration and expenses, which shall constitute Corporate Insolvency Resolution Process costs or to replace IRP by another resolution professional as per section 22 (2) of IBC. Interim Resolution Professional being eligible offers himself for the appointment of such Resolution Professional.

5. Any other matter with the permission of the chair.

C. Copies of all the matters to be discussed and voted upon is attached herewith whenever necessary.

Name of the Insolvency Resolution Professional  
Insolvency Resolution Professional  
Name of the Company  
(Company undergoing Corporate Insolvency Resolution Process)  
E-mail ID: IRP  
Contact No.: IRP  
IBBI Registration No.:  
Date:  
Place:  

NOTES

1. As per Regulation 21(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a Participant may attend the Meeting either in person or through an Authorised Representative. A Participant attending through an Authorised Representative, shall inform the signatory of the Notice, at least 24 hours in advance, the identity of the Authorised Representative who will attend and vote at the Meeting on its behalf. The Authorised Representative is requested to carry an Identity Card for its identification.

2. A Participant being a Financial Creditor shall only be entitled to vote at the Meeting or by electronic means. The Directors of the Corporate Debtor and one representative of the
Operational Creditor(s), if any, attending the Meeting shall not have any right to vote at the Meeting and shall not form a part of the quorum. A financial creditor being a related party of the Corporate Debtor shall not have any right of representation, participation or voting in the Meeting.

3. As per Regulation 13(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the list of creditors is available for inspection.

4. At the conclusion of voting at the Meeting, the decision taken on each of the items along with the names of the Members of the Committee of Financial Creditors (COC) who voted for or against the decision, or abstained from voting will be announced.

5. As per Regulation 21(3) (b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a vote of the Members of the COC shall not be taken at the Meeting unless ALL Members are present at the Meeting.

6. In terms of Regulation 25(5) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, if ALL Members of the COC are not present at the Meeting, then the vote of the members of the Committee shall not be taken and the voting will be done through electronic means provided in the manner laid down below (as per the requirements of Regulation 26 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016):

Annexure 1

Insolvency Resolution Process Costs means as per Section 5 (13)

a. the amount of any interim finance and the costs incurred in raising such finance;
b. the fees payable to any person acting as a resolution professional
c. any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
d. any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

e. any other costs as may be specified by the Board

Regulation 31. Insolvency resolution process costs.

“Insolvency resolution process costs” under Section 5(13)(e) shall mean-

a. amounts due to suppliers of essential goods and services under Regulation 32;
b. amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
c. expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;
d. expenses incurred on or by the resolution professional fixed under Regulation 34; and
e. other costs directly relating to the corporate insolvency resolution process and approved by the committee.

Regulation 32 Essential supplies.

The essential goods and services referred to in section 14(2) shall mean-

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

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

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

Regulation 33. Costs of the interim resolution professional.

1. The applicant shall fix the expenses to be incurred on or by the interim resolution professional.
2. The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub regulation (1).
3. The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.
4. The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

Explanation- For the purposes of this Regulation, “expenses” mean the fee to be paid to the interim resolution professional and other expenses, including the cost of engaging professional advisors, to be incurred by the interim resolution professional.

Regulation 34. Resolution professional costs.

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

Explanation- For the purposes of this Regulation, “expenses” mean the fee to be paid to the resolution professional and other expenses, including the cost of engaging professional advisors, to be incurred by the resolution professional.

The instructions for e-voting:

Depending upon the e-voting Agency
Format of List of Creditors
BEFORE THE HON’BLE NATIONAL COMPANY LAW TRIBUNAL

.........................BENCH
Case No........................................

In the Matter, of
M/s.........................................Limited (name of Corporate Debtor) ...Financial Creditor/Operational Creditor or the Corporate Debtor (to fill the name of applicant of CIRP)

List of Creditors under Regulation 13(2)(d) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations by .........................(name of interim Professional) under the Insolvency and Bankruptcy Code 2016
1. The application for Corporate Insolvency Resolution Process filed by .............................. (name of applicant) .......... under ................. (Section 7, section 9 or section 10 as the case may be) of the Insolvency and Bankruptcy Code read with Rule ................. of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 was admitted by .................................... (details of NCLT Bench) vide order no.................. dated ......................... wherein ................................, the undersigned (name of the Interim Professional) was appointed as Interim Resolution Professional who is directed to take necessary actions in accordance with the relevant provisions of the Insolvency and Bankruptcy Board of India.
2. In Compliance with Regulation 13(2)(d) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016, a list of creditors along with amount claimed, claims admitted, security interest in respect of claims is enclosed at Annexure A in quadruplicate

INTERIM RESOLUTION PROFESSIONAL
In the matter of .................................................................(Name of the Corporate Debtor)
(Name of Interim Professional)
Registration Number

Place

197
Annexure A

(Name of the debtor)

List of creditors

as on _ _ (date of Insolvency Commencement Date)

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of Creditors</th>
<th>Address</th>
<th>Amount claimed by the Creditors (inRs.)</th>
<th>Amount admitted (in Rs. Crore)</th>
<th>Security Interest, if any, in respect of such claim</th>
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<td>TOTAL</td>
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</table>
Useful Website
1. http://www.ibbi.gov.in/- Insolvency and Bankruptcy Board of India
2. http://www.mca.gov.in/- Ministry of Corporate Affairs
5. www.iiipical.org- Indian Institute of Insolvency Professionals of ICAI
6. www.icsiipa.com- ICSI Insolvency Professionals Agency
7. www.ipaicmai.in- Insolvency Professional Agency of Institute of Cost Accountants of India
Profile of Dr. Rajkumar S Adukia

Dr. Rajkumar S Adukia
Author of more than 200 Books

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

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Email Id: rajkumarradukia@caaa.in

Introduction

Dr. Rajkumar S. Adukia is an eminent International Forensic Expert, Business Advisor, Author, Speaker and an authority on Insolvency Laws, Indian GAAP, IFRS and Ind AS. He has been conducting seminars and lectures across various countries.

Education

He has graduated from Sydenham College of Commerce & Economics, Mumbai in 1980 as the 5th rank holder in Mumbai University and he also received a Gold Medal for the highest marks in Accountancy & Auditing. He cleared the Chartered Accountancy Examination as the 1st Rank in the Intermediate level and the 6th Rank in the Final. He secured the 3rd Rank in the Final Cost Accountancy Course. He has been awarded the G.P. Kapadia prize for best student of the year in 1981. He holds a Degree in law, PhD in Corporate Governance in Mutual Funds, MBA, Diploma in IFRS (UK), Diploma in Labour law and Labour welfare, Diploma in IPR and Diploma in Criminology. Recently, he has cleared limited insolvency examination.

Professional Service

Dr. Adukia’s service and contribution to the profession

- International Member of Professional Accountants in Business Committee (PAIB) of International Federation of Accountants (IFAC) from 2001 to 2004.
• Member of Inspection Panel of Reserve Bank of India.
• Member of J.J. Irani committee (which drafted Companies Bill 2008).
• Member of Secretarial Standards Board of ICSI.
• Member of Working Group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc.
• Independent Director of Mutual Fund Company and Asset Management Company.
• Worked closely with the Ministry of Corporate Affairs on the drafting of various enactments.
• Actively involved with ICAI as a Central Council Member during the period when the convergence to IFRS was conceptualized in India and has been instrumental in materializing the idea.

**Professional Expertise, Training and Authorship**

Dr. Adukia’s contribution towards professional expertise and academics is highly acclaimed

- Author of more than 200 books on a wide variety of topics ranging from those dealing with Insolvency and Bankruptcy, Trade, Taxation, Finance, Real Estate to topics like Time Management and Professional Opportunities.
- A successful Chartered Accountant in practice since last 30 years in varied field of Financial Planning, Taxation and Legal Consulting.
- Business advisor for various companies on varied subjects.
- Travelled across the globe for his professional work and knowledge sharing. He has widely travelled three fourth of globe addressing international conferences and seminar on various international issues like Insolvency and Bankruptcy, Corporate Social Responsibility, Corporate Governance, Business Ethics etc.
- He has lectured on Insolvency and Bankruptcy and providing personal assistance on related issues.
- His Contribution in the field of Accounting Standards
  - He has lectured on IFRS at various prestigious forums including National Academy of Audit and Accounts.
  - He has been associated with many corporates and banks (like DENA Bank & Central Bank of India) in their convergence procedure both directly and by giving training on Ind AS to their staff members.
  - He has also trained staff members of various regulatory bodies like Regional Director and Registrar of Companies, Western Region, Ministry of Corporate Affairs, CBDT and CBEC.

**Current Membership**

- CAG Advisory Audit Committee,
- International Financial Reporting Standards Foundation SME Group
- INSOL International

**Awards and Accolades**

He has been felicitated with awards like
• The Jeejeebhoy Cup for proficiency and character,
• State Trainer by the Indian Junior Chamber,
• “Rajasthan Shree” by Rajasthan Udgosh, a noted Social Organization of Rajasthan
• Several other awards as a successful leader in various fields.