

*PRESENTATION*  
*ON*  
*INSOLVENCY &*  
*BANKRUPTCY CODE, 2016*

*Section wise coverage*

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*THE INSOLVENCY AND BACKUP CODE, 2016*

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# Part I-Preliminary

## SECTION 1 TO 3

### Section 1



**IBC**

**Extends to whole India** 

### Section 2

#### **Applicable to-**

- Co's in corporate Under 2013 or any previous Act
  - Co's governed by any special Act
  - LLP registered Under LLP 2008 Act
  - Any body incorporated-notified by Govt
  - Partnership firms, **Proprietor Firms** & Individuals
  - Personal Guarantors of Corporate Debtor
- Insolvency
  - Liquidation
  - Voluntary Liquidations
  - Bankruptcy
  - Part-III Individual & Partnership Insolvency

# SECTION 1 TO 3..

## **2(19) Insolvency professional**

- Enrolled u/s 206 with IPA
- Registered u/s 207 with IBBI

## **2(20) Insolvency Professional Agency (IPA)**

- Person registered with IBBI u/s 201 as IPA.

## **2 (21) Information Utilities**

- Person registered with IBBI u/s 210 as IU.

**2 (23) Person-** Includes Individual, HUF, Co, Trust, Partnership LLP, any other incorporated body & INCLUDES person resident outside India

Person resident in India – As defined u/s 2 (v) of FERA, 1999.

**2 (31) Security Interest** – right, title claim to property created in favour of Secured Creditor which secures payment & includes mortgage, charge, hypothecation assignment BUT DOES NOT Include Performance Guarantee

## **2(18) Financial Sector regulator**

- Authority Constituted to regulate services of financial sector & Includes – RBI, SEBI, IRDAI, PFRA (pension fund regulation Authority) Any Other authority notified by C. Govt.

# SECTION 1 TO 3..

## Section 3

**3 (6) – Claim means** (a) A right to payment – Fixed disputed Undisputed, legal Equitable, Secured or Unsecured  
(b) Right to remedy for breach of contract- Give rise to right to payment- fixed, matured, Un matured, disputed undisputed, secured or unsecured

**3 (10) Creditor** – person to whom debt is owed includes, FC, OC, Secured Creditor, Unsecured Creditor and a Decree-holder

**3 (13) Financial Information-** one or more Category of following Information

- (a) records of the debt of the person
- (b) records of Liabilities when the person is solvent
- (c) records of assets of person over which security interest has been created
- (d) records of instances of default by the person against any debt.
- (e) record of the B/Sheet & Cash Flow Statement of person
- (f) Such other information as may be specified.

**3 (14) Financial Institution means**

- (a) A Scheduled Bank
- (b) Financial Institution defined u/s 45(1) of RBI Act
- (c) Public Financial Institution as per 2(72) of Co's Act { LIC, IDFC, UTI and Institution notified by C/G – where 51% holding is with Govt.
- (d) Other Institution notified by C. Govt.

# SECTION 1 TO 3

## Section 3

**3 (16) Financial Services** – Includes following services

- (a) Accepting Deposits
- (b) Administration of assets ( Financial products) belonging to another person



Securities, insurance, deposit, loan & advance by Banks, Currency Contracts

- (c) Effecting Contracts of Insurance
- (d) Offering / managing financial product belonging to another person
- (e) rendering advice or soliciting ( For Consideration)
  - Buying, Selling financial product
  - Availing financial **services**
  - **Exercising associated rights with financial product/services.**
- (f) Establishing or operating an investment scheme
- (g) Maintaining, transferring record of ownership of financial product
- (h) Underwriting the issuance of financial product
- (i) Selling, providing- payment instrument or payment sources

# Part II Chapter 1

## SECTION 4 TO 5

### Section 4

#### Insolvency & Liquidation of Corporate Debtor

When default is minimum – 1 lakh

Or

Higher amount provided by C.G by notification (BUT SHALL NOT be more than 1 crore)

### Section 5

5 (5) Corporate Applicant means

- Corporate Debtor or
- Authorised member or partner of the Corporate Debtor in case of LLP
- Individual, who is in charge of managing the operations & resources of the Corporate Debtor
- Person, Controls & Supervision over financial affairs of Corporate Debtor.

5 (8) Financial Debt means debt along with interest disbursed against the Consideration for the time value of money & Includes

- (a) money borrowed against payment of Interest
- (b) Amount raised under acceptance credit facility or its de-materialised equivalent
- (c) Amount raised by issue of bonds, notes, debentures, loan stock



# SECTION 4 TO 5..

## Section 5

- (d) Amount of lease liability or hire purchase agreement which is deemed as finance or Capital **lease**
- (e) Receivable sold or discounted [Except sold on non – recourse basis]
- (f) Amount raised under forward sale or purchase agreement, having the commercial effect of borrowing
- (g) **Derivative** transaction
- (h) counter- indemnity obligation in respect of guarantee L/C, Indemnity bond issued by Bank / Financial Institution
- (i) Liability in respect of guarantee or Indemnity for item in above clauses.

**Home buyer covered in the definition of Financial Debt vide Explanation to Section 5(8)(c).**

**Initiation date** - When Application is made to AA

**Section 5(12) Commencement date** - When Application is admitted by AA or when IRP is appointed whichever is later

**Insolvency process cost**

- (a) Amount of Interim finance and its raising cost
- (b) Fees payable to RP
- (c) cost incurred by RP for running business on going concern basis
- (d) cost incurred at the Exp of Govt to **facilitate** RP process
- (e) Any other cost specified by IBBI

# SECTION 4 TO 6..

## Section 5

### Insolvency resolution process period (180 days)

Beginning **from** the insolvency commencement date

Ending on 180<sup>th</sup> day

### 5 (24) Related party

- (a) Director, Partners or their relatives
- (b) KMP or **their** relatives
- (c) LLP, Partnership firm where Director, Partner or manager or their relative is partner
- (d) Private company where Director, Partner/Manager is director AND holds more than 2% Share Capital along with relatives
- (e) Public Co where Director, Partner/manager is director AND hold more than 2% share capital along with relatives
- (f) Body corporate who acts on advice, instruction of director/manager/partner in the ordinary course of business
- (g) LLP who acts in advice, instruction of director/manager partner in the ordinary course of business
- (h) Person on whose advice director/manager/partner-Acts
- (i) Body Corporate which is holding, subsidiary or an associate **company**.
- (j) Person controls more than 20% of voting rights

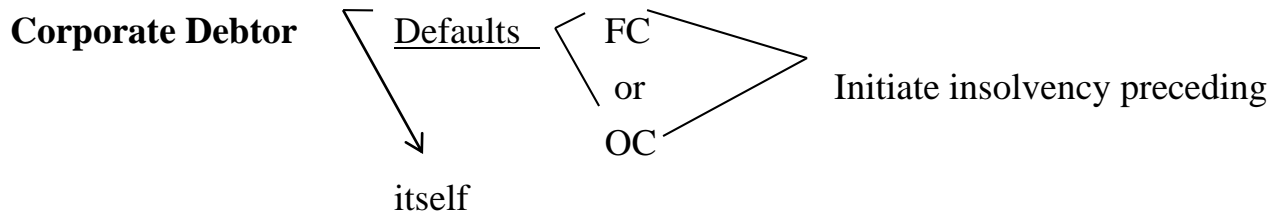
# SECTION 4 TO 5

## Section 5

- (k) Person in whom corporate Debtor Controls more than 20% of voting rights
- (l) Person who Control Composition of Board of Corporate Debtor
- (m) Person, who is associated with Corporate Debtor on A/c of- Policy **making**, essential technical **information** having more than 2 directors common, Inter change of managerial person.

## Chapter 2: Sections 6 to 32

## Section 6



## Section 7

FC

Itself **OR** Jointly with other FC

File Application to AA

- Record of the default

- name of RP to act as IRP

- Any other information specified by Board

\* Default includes for financial Debt not only to applicant  
But to any other financial creditor

# SECTION 7 TO 9..

## Section 7

FC

Itself **OR** Jointly with other FC

File Application to AA

- Record of the default
- name of RP to act as IRP
- Any other information specified by Board

\* Default includes for financial Debt not only to applicant  
But to any other financial creditor

AA



within 14 days

Ascertaining (1) default has occurred

(2) No disciplinary proceeding pending against proposed RP

No default

**Admits the application**

**reject the application**

*Before rejecting given notice to rectify the defect WITHIN 7 Days of receipt of such notice from AA  
Communication within 7 days to creditors*

# SECTION 7 TO 9..

## Section 8

OC

On occurrence of default

-Deliver a demand notice to Debtor/ or copy of unpaid invoice

Corporate Debtor within 10 days **of receipt** of demand notice

-Bring to the notice of OC

-Existence of dispute if any or record of pending suit, arbitration process **may or may not have been filed before receipt** of such notice

OR

repay the amount /send attest copy of record of electronic transfer/ or attest copy of record of encashed cheque by OC

## Section 9

After the expiry of 10 days from the date of delivery of notice or invoice

OC

File application to AA

↓  
Copy of invoice demanding payment or demand notice

Affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational Debt

Copy of Certificate from the financial institution/information utility maintaining accounts of the operational Debtor Confirming that no payment is received **if available**

Such other **information as specified**

# SECTION 7 TO 9

## Section 9

\* OC → May Propose a RP to act as IRP

AA  
↓

within 14 days of receipt of application

**Admit**

reject  
↓

Before rejecting give notice to rectify the defect

↓

within 7 days of receipt of Such notice from AA

# SECTION 10 TO 12..

## Section 10

Corporate Debtor



has committed a default



itself file application to AA. Special resolution passed by the shareholders of the corporate debtor or 3/4th of the total number of partners.

Books of Accounts & other document as specified

RP proposed to be appointed or IRP and no disciplinary proceedings are pending



**AA**

within 14 days of receipt of application

**Admit**

**reject**

Before rejecting give notice to rectify defect

within 7 days from date of receipt of such notice from AA

# SECTION 10 TO 12..

## Section 11

### Persons not entitled to make application

- (a) Corporate Debtor Undergoing Insolvency process
- (b) CD Completed insolvency process 12 months preceding the date of making the application
- (c) CD/ FC Violated any term of resolution plan approved 12 months before the date of making application
- (d) CD for whom liquidation order has been passed.

**No proceeding shall be initiated against IRP/RP for the action of CD, prior to the ICD.  
Resolution Plan has to be approved by COC**

### **IRP/RP for claims**

- a) Form A – Public Announcement by IRP
- b) Form B – Proof of claim by OC Except workmen & Employees [post or electronic]
- c) Form C – Proof of claim by financial Creditors [Electronic mean]
- d) Form D – Proof of claim by workman or an Employee [Post or Electronic]
- e) Form E – Proof of claim Authorised representative of workmen & Employees [ Post or Electronic]



# SECTION 10 TO 12

## Section 12

Time line for IR process



180 days → Extension Application by RP should be made to AA before completion of 180days  
AND

Extension not Exceeding 90 days → Instructed by resolution passed by Co C with **66%** voting



Shall be granted once only

## Section 12A

Provision for withdrawal of application even after admission if COC agrees with 90% voting power majority

## Section 13

AA → After admission of application

U/S 7, 9 & 10

(a) declare moratorium

(b) Appoint IRP

(c) Cause a public announcement of invitation of CIRP- Shall be made immediately after appointment of IRP (3 days) & Call for submission of claim U/S 15

# SECTION 13 TO 15..

## Section 13

AA 

After admission of application

U/S 7, 9 & 10

(a) declare moratorium

(b) Appoint IRP

(c) Cause a public announcement of invitation of CIRP- Shall be made immediately after appointment of IRP (3 days) & Call for submission of claim U/S 15

## Section 14

### Moratorium

AA On insolvency Commencement date declare moratorium (Till completion of CIRP process or initiation of Liquidation of such order passed)

### Prohibits

(a) Institution of Suits, Continuation of Pending Suits, including execution of decree or order in any tribunal /court /arbitration

(b) Transferring, encumbering, alienating or disposing any of its (CD) assets or beneficial Interest

(c) Any action to foreclose, enforce any security interest of its property including action against SARFAESSI ACT

(d) Recovery of any property by owner OR LESSOR where such property is occupied or in possession of CD

(Exception- Supply of Essential goods or services or any other transactions specified by the Central Government). Moratorium granted to corporate debtor will not apply to surety of corporate debtor.

# SECTION 13 TO 15

## Section 15

### Public announcement

#### Contents

- Name & address of CD
- Name of authority under which CD incorporated
- Last date for Submission of Claim as may be specified
- details of IRP
- Penalties for false or misleading claim
- Date on which CIRP process close (180 days from date of admission)

# SECTION 16 TO 18..

## Section 16

AA

appoint IRP within 14 days from the insolvency Commencement date (Admission of application)

If application is U/S 7, 10  
(FC) (CD)

IP (Insolvency Professional) shall be appointed as IRP  
(if no disciplinary proceeding pending)

If application is U/S 9 (OC)

no proposal for IRP

Proposal is made for IRP

AA make reference to IBBI

Shall be appointed as IRP

(If no disciplinary proceeding pending)

Board within 10 Days of receipt of reference

Recommend the IRP name

The term of IRP is till RP is appointed u/s 22

# SECTION 16 TO 18..

## Section 17

### From date of appointment (IRP)

- Management of affairs of CD vested in him
- Power of BOD / Partner suspended & exercised by IRP
- Officer/Manager of CD report to him & provide access to records of CD
- FI/Banks maintaining CD account act on instruction of IRP
- RP responsible for complying with the requirements under any law.

### IRP-Duties of IRP -Section 18

#### (1) Collect information ( Asset, financial, operation ) of CD for

- Business operations for previous 2 years
- Financial & Operational payment for previous 2 years
- List of asset & liabilities on initiation date

#### (2) Receive & Collate Claims

#### (3) Constitute COC

#### (4) Take Control of CD assets

- \* Even assets owned by CD located in foreign country
- \* Or may not be in CD possession
- \* However, asset shall not include

(a) asset owned by third party in possession of CD held under trust or contractual arrangement including bailment

(b) Asset of any **Indian or foreign subsidiary of CD**

# SECTION 19 TO 20

## Section 19

\* If any personnel of CD/ Promoter/ any other person is not assisting or co- operating → IRP make application to AA for direction

### Section -20

**Manage the operation of the Corporate Debtor as a going concern & have authority to**

- (a) Appoint, accountant, legal or other professional
- (b) Enter into Contracts/amend/modify the contracts even entered before commencement of CIRP
- (c) Raise Interim Finance



No Security interest shall be created on Encumbered property **without prior consent** of Creditors whose debt is secured over such property



No prior consent - Where value of such property is not less than the amount equivalent to twice the amount of Debt

### **IRP**

After collation of all claims

# SECTION 21

## Section 21

Constitute a committee of Creditors (COC)

Comprises of all financial Creditor (FC)

Related party even FC, does not have right of representation, participation or Voting

Where financial debt is extended through consortium All FC of consortium will be member of COC

Voting share on basis of financial debt owed

-Where a person is FC as well as OC – is FC to the extent of Financial debt



OC to the extent of operational debt – Voting share proportionally to that extent



Where the consortium agreement provide for single trustee/agent each FC may



(a) authorise agent /trustee to act on his behalf to the extent of Voting share

(b) represent himself in COC to the extent of Voting share

IRP to report Constitution of COC within 30 days

IRP to report first meeting within further 7 days

# SECTION 21

## Section 21

(c) appoint IP (other than RP) at his own cost to represent to the extent of voting share

(d) exercise his Voting right with one or more FC jointly or severally

-All decisions in COC shall be taken by not less than 51% of Vote save as otherwise provided in the code.

-Where No FC ,then COC consists of 18 largest OC,

-COC may ask IRP to furnish financial information which IRP has to submit within 7 days of such requisition



# SECTION 22 TO 24

## Section 22

The First meeting of COC shall be held within 7 days of constitution– may appoint IRP as RP (66% of Voting required) or replace IRP with another RP

Where there is only one financial creditor and no operational creditor, COC will be constituted by the Board.

Where COC replace IRP & appoint another RP

Files application with AA

AA forward the name of RP to Board

Board within 10 days not confirm → then AA by order

Direct the IRP to continue as RP until such time as Board confirms the appointment of proposed RP.

**COC**                      -May meet in person OR    ]    All meeting of COC shall be conducted by RP  
   -by such Electronic means    ]

## Section 23

RP responsible for carrying out CIRP and managing the operations.

In case IRP not appointed as RP-IRP to facilitate smooth transition and provide records/assistance.

## Section 24

**RP** Give notices to

(a) member of COC

(b) member of suspended BOD or partners of CD → May attend the meeting but have no right to vote

(c) operational Creditors (if amount of their aggregate dues is not less than 10 % of the Debt)

-Member of COC can appoint Insolvency professional other than RP to represent in COC – his fees is payable by them

-Voting right- based on financial debt – RP determine the Voting share Consigned to each Cr in the manners specified by Board

# SECTION 25 TO 27

## Section 25

### Duties of RP-

- to preserve and protect the assets of the corporate debtor
- to invite prospective lenders, investor and other persons to put forward resolutions plans,
- present such plan to the committee of creditors and
- file applications for the avoidance of specified transactions in accordance with Chapter III of the Code.
- to raise interim finance, with the prior approval of the committee of creditors.

## Section 26

Application for avoidance of transactions not to affect proceedings of the corporate insolvency process.

## Section 27

- ▶ Replacement of RP by COC-66% majority
- ▶ COC will recommend another RP.
- ▶ AA after confirmation from IBBI shall appoint RP

# SECTION 28 TO 30..

## Section 28

### RP

Shall not take following functions without the prior approval of COC – 66% or more

(a) Raise any interim finance in excess of amount decided by COC (b) Create any security interest over assets of CD. (c) Change Capital Structure of CD.(d) Record any change in the ownership interest of the CD. (e) Give Instruction to FI for debt transaction in excess of amount decided by COC. (f) Undertake any related party transaction. (g) Amend any Constitutional documents of the CD. (h) Delegates its authority to any other person. (i) Dispose shares of CD or their nominees to third parties. (j) make any change in the management of CD or its Subsidiary. (k) transfer financial/operational debt/right other than in ordinary course of business

(l) Make changes in appointment or terms of contract of statutory auditor or Internal auditor of CD.



Without prior consent of COC



Any such action of RP is Void.

## Section 29

RP Shall prepare the information memorandum ( within 14 Days after constitution of COC)

# SECTION 28 TO 30

## Section 30

A Resolution Applicant →

-may submit a resolution plan to RP on the basis of information memorandum

-RP examine the Resolution plan confirming the following:-

- (a) includes Insolvency resolution process cost
- (b) Repayment of OC which shall not be less than the amount which OC would get in case of Liquidation of CD
- (c) Provides management of affairs of CD
- (d) Implementation & Supervision of Resolution plan
- (e) doesn't Contravene any provision of any law
- (f) Confirms requirements Specified by Board.



RP Present the plan to COC for approval (66% or more)



- Resolution applicant shall not vote at COC meeting unless he is FC
- No restrictions on who can be a resolution applicant- even include promoters of the corporate debtor. This provision would facilitate proposals from persons interested in commercially viable but insolvent businesses to rescue such entities, creating value for all stakeholders in the process.

# SECTION 31 TO 33

## Section 31

AA to review the resolution plan sanctioned by the committee of creditors for ensuring that the resolution plan (a) meets the criteria set out in section 30(2), (b) provides for the repayment to operational creditors of at least the amount which they would have been entitled to if the corporate debtor were to be liquidated and (c) satisfies such other conditions as may be prescribed by the Insolvency and Bankruptcy Board of India criterion. The Adjudicatory Authority is also required to be satisfied that the resolution plan is approved by the committee of creditors under section 30(4) meets the requirements as referred in clauses (a) to (e) of section 32(2). Thereafter resolution plan shall be approved which shall be binding on the corporate debtor, etc. involved in the resolution plan. Further, the moratorium imposed under section 14 ceases to have effect upon approval of the plan.

# **SECTION 31 TO 32**

## **Section 32**

### **APPEAL**

Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.

# Part II-Chapter 3

## Section 33 LIQUIDATION PROCESS

### When AA

- does not receive resolution plan (COC doesn't approve any plan or decide for Liquidation)
- or -Reject the resolution plan
- or -Resolution plan is Contravened by CD

- (a) Pass Liquidation order
- (b) Issue a Public announcement stating CD is in Liquidation




- (c) Sent the order to the authority with which CD is registered



when a liquidation order is passed



No suit or legal proceeding by or against the CD. Exception (Liquidator may institute proceeding on behalf of CD with the prior approval of AA)

Liquidation Order  Shall be deemed to be a notice of discharge

officers, employee & workmen of CD



**Except when business** of CD is Continued during the Liquidation process by Liquidator

# SECTION 34 TO 36..

## Section 34

When AA passes Liquidation order

RP appointed for resolution (CIRP)

Act as Liquidator



unless replaced by AA on appointment of Liquidator

All Power of Board / KMP / Partner Vested in Liquidator

When AA by order shall replace RP it

- Resolution plan submitted by RP was rejected U/S 30(2)

→ OR

- Board recommends the replacement of RP by recording the reasons in writing

AA direct Board to recommend another IP within 10 days of the direction issued

AA on receipt of proposal from Board order to appoint IP as Liquidator

Insolvency Professional (IP) Shall charge fee in proportion to the Value of Liquidation Estate asset, as Specified by Board.



# SECTION 34 TO 36..

## Section 35

Subject to the Direction of AA, the liquidator has following powers/duties

- (a) Verify claims of all the Creditors
- (b) Take Custody of assets, properties & actionable claims of CD
- (c) Evaluate asset & property of CD- And prepare a report
- (d) Carry business of CD for its beneficial liquidation
- (e) Sell immovable, movable property & actionable claim By public auction or private Contract or sell the same in Parcels.
- (f) draw, accept or endorse NI (B/E, hindi) on behalf of CD
- (g) collect money due & payable from Contributory or his estate
- (h) Obtain any professional assistance from any person.
- (i) Invite & Settle claims of Creditors & claimants
- (j) Investigate financial affairs of CD to determine under -valued or preferential transactions
- (k) Report the progress of liquidation process.

Liquidator has power to Consult any stakeholder entitled for distribution



Provided such consultation shall not be binding on liquidator

# SECTION 34 TO 36

## Section 36

Liquidator Shall prepare Liquidation Estate Comprises of all liquidation assets

### Includes

- (a) Asset owned by CD as per B/Sheet or Information utility
- (b) Asset may or may not be in possession of CD including, but not limited to encumbered assets
- (c) Tangible assets (movable or Immovable)
- (d) Intangible assets (Including shares held in Subsidiary of CD)
- (e) Assets subject to the determination of ownership by the court
- (f) Asset value recovered through proceeding for avoidance of Transaction
- (g) Asset in which Secured Creditor has relinquished Security Interest
- (h) Any property belongs/vested to CD at Insolvency Commencement date
- (i) All proceeds of liquidation as & when they are realised

### Doesn't Includes

- (a) Assets owned by third party but in possession of CD
  - Assets held in trust for 3<sup>rd</sup> party
  - Bailment Contract
  - Sum due to workman/Employee from PF/ Pension/ Gratuity fund.
  - Contractual arrangement for use of assets only
- (b) Asset in Security collateral held by financial service
- (c) Personal asset of any shareholder or partner of CD.
- (d) Asset of any Indian or Foreign subsidiary of CD.

# SECTION 37 TO 42..

## Section 37

Creditor



May require liquidator to provide them financial Information related to CD



Liquidator within 7 days of receipt of such request shall provide the information.

## Section-38

Liquidator



Shall receive or collect the claim of Creditors



within 30 days from the date of Commencement of the Liquidation process ( 14 Days in CIRP)



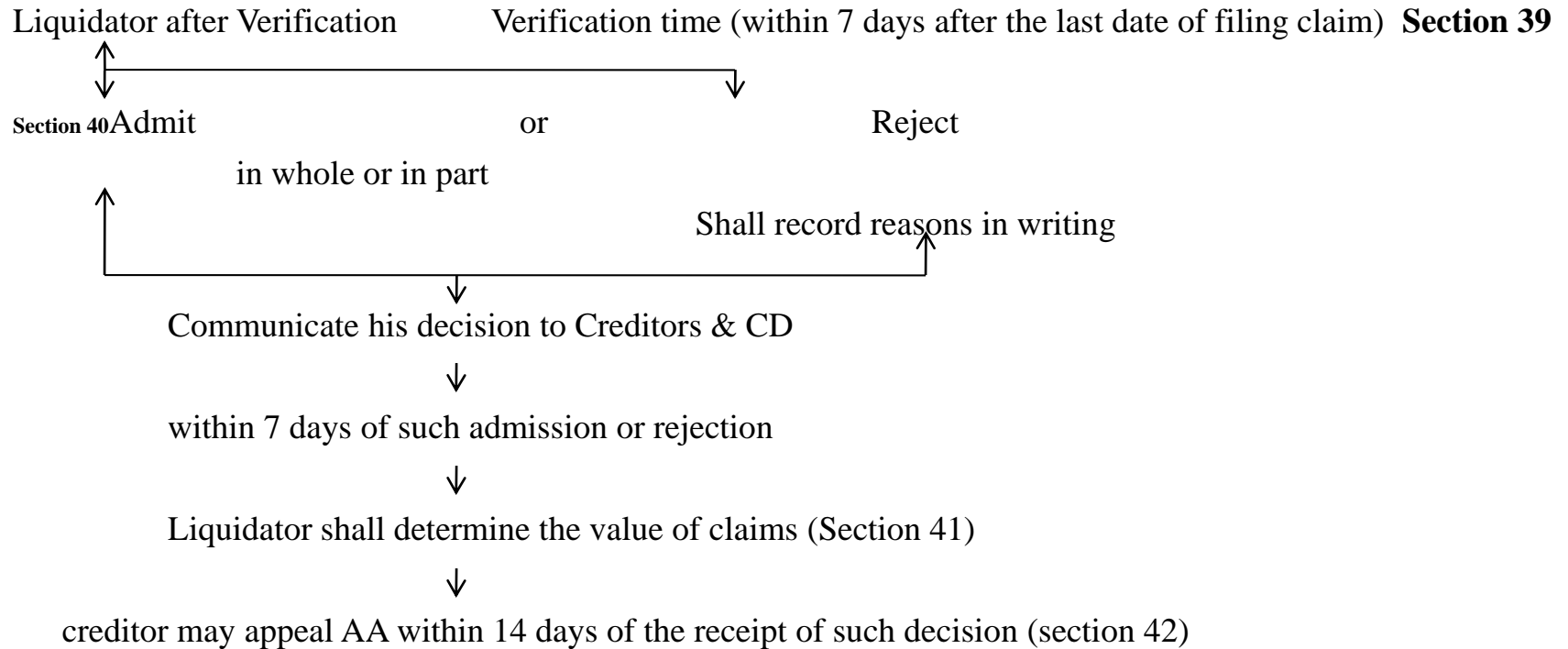
A Creditor may withdraw his claim (Similar option is not available in CIRP)



within 14 days of its Submission

# SECTION 39 TO 42

## Section 39,40,41,42



# SECTION 43 TO 45

## Section 43

### Liquidator

Shall apply to AA for order

If liquidator is of the opinion that CD has Executed a **preferential transaction**

CD Shall deemed to be given a preference, if

Transfer of property for benefit of Creditor/Security/Guarantor for any Financial debt, operational debt or other liability owed

and

Such transfer but Creditor/security/Guarantor in beneficial position

In event of distribution of assets

Preference does not include

Transfer made in ordinary course of the business

Any transfer Creating Security interest in property acquired by CD provided that

Such Security interest secures new value

& Such transfer was registered with IU or on before 30 days

# SECTION 43 TO 45

\* Any transfer under order of a court is not precluded under preferential transfer

Preference shall be deemed to be given

If it is given to **related party** ( other than by reason of being an employee ) during the **period of 2 years** preceding the insolvency commencement date

or

If It is given to **person other than related party** during **1 year** preceding ICD

\* Order of AA shall not

Affect any interest in property Which was acquired from a person other than CD & was acquired in Good faith and for value.

Undervalued Transactions(Sections 45,46 and 47)

\* If liquidator or RP

on examination of the transaction  
determines they are undervalued

shall make application to the AA to declare such transaction as void → AA may order

**Section 44**

-require property  
trfd back to CD  
-release or discharge  
security  
-require person to  
pay sum back

\* **Section 45** Transaction Consider Undervalued where CD

- Makes a gift to a person or
- Consideration is significantly less than the value provided by CD.

And such transaction has not  
taken place in the ordinary  
course of business

•Such undervalued transaction was made

-within 1 year preceding ICD to any person

-within 2 years preceding ICD to Related party

-If **liquidator fails to report transaction**, Any member/Creditor may make application to AA

-AA may order to **reverse the transaction** & Require IBBI to initiate disciplinary action against liquidator /RP

# SECTION 46 TO 49

## Section 46

- Relevant period during which a transaction must be entered into for it to be challenged as a transaction at undervalue.
- Two years preceding the insolvency commencement date for related parties and
- One year preceding the insolvency commencement date for all other persons.

## Section 47

This section permits creditors, shareholder or partners of the corporate debtor to make an applications to the adjudicating authority to set aside a transaction at undervalue where the liquidator or resolution professional has not reported such transaction to the adjudicating authority.

## Section 48

This section sets out the orders that may be passed by the adjudicating authority setting aside the transaction at undervalue. The order that may be given are aimed at reversing the effect of the undervalued transaction and requiring the person who benefits from such transaction to pay back any gains he may have made as a result of such transactions

## Section 49

Transactions entered into with the intention of putting the assets of the corporate debtor beyond the reach of, or otherwise prejudicing the interests of a person who is making or may make a claim against the corporate debtor. No time limit during which the transaction much have been entered into for it to be challenged as a transaction defrauding creditors.

# SECTION 50 TO 52

## Section 50-51

### Section 50-Extortionate Transactions

Where any financial/operational debt during 2 years preceding ICD is extortionate

#### Section -51

liquidator / RP – make application to AA → order to → restore/ set-aside / modify the terms

#### Section 52

\* A Secured Creditor

in liquidation process



-Relinquish its Security Interest

Inform liquidator

or

-Realise its Security Interest

Where amount is realised in excess of debts

Secured Creditor shall tender the surplus to liquidator

The amount of insolvency resolution process cost shall be deducted from realisation

Where Secured Assets are not adequate to repay Debt

Unpaid Debt of such Secured Creditor Shall be paid as per distribution of assets prescribed



# SECTION 53 TO 55

## Section 53

### Distribution of Assets order of priority (water fall)

(1) Insolvency Resolution cost and the Liquidation cost

(2) - Workmen's dues – 24 months preceding LCD

- Debts owed to Secured Creditors who have relinquished their Security

Pari-Passes distribution

(3) Wages owed to employees – 12 months preceding LCD

(4) Financial Debts owed to unsecured Creditor

(5) - Amount due to Govt – 2 year preceding LCD

- Debt owed to secured Creditor for amount unpaid after realising Security

Pari-Passes distribution

(6) Any remaining debts & dues

(7) Preference Shareholders

(8) equity shareholders

\* Fees payable to the liquidator – deducted proportionately from the proceeds payable to recipient ( payable after deduction)

\* Meaning of workmen dues ( As per Co's Act S-326)

(1) wages or salary

(2) Accrued holiday remuneration

(3) PF, pension fund gratuity

# SECTION 53 TO 55

**Section 54**-Liquidator, after liquidating Complete (All) assets

Make application to AA for

Dissolution of such CD

Copy of AA order shall be forwarded to the authority with which CD is registered within 7 days of such order .

## **Liquidation Process**

An IP

Can be Liquidator if

He or every partner/director of IPE is **Independent**

Eligible for appointment as Independent Director U/S Co Act, 2013

Not a related party of CD

Has not be an employee, Partner or Proprietor of

- IN last three  
Financial year
- Firm of Auditor/Co secretary/ Cost auditor of CD or
  - Legal firm
  - Consulting firm having turnover 10 % or more of his gross turnover from CD

Liquidator shall disclose, if have any pecuniary interest

# Chapter IV

## Fast Track Corporate insolvency resolution process

### Section-55

Corporate Debtors :

with assets and income below a specified level,

with such class of creditors or such amount as specified

Such other categories as may be notified

### Section 56

#### Time period for completion of fast track corporate insolvency resolution process –

- (1) Subject to the provisions of sub-section (3), the fast track corporate insolvency resolutions shall be completed within a period of ninety days from the insolvency commencement date.
- (2) The resolutions professional shall file an application to the adjudicating authority to extend the period of the fast track corporate insolvency resolution process beyond ninety days if instructed to do so by a resolution passed at a meeting of the committee of creditors and supported by a vote of 75 percent of the voting share.
- (3) On receipt of an application under sub-section (2), if the adjudicating authority is satisfied that the subject matter of the case is such that fast track corporate insolvency resolution process cannot be completed within a period of ninety days by such further period, as it thinks fit, but not exceeding forty-five days:  
PROVIDED that any extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once.

# SECTION 57 TO 58

## **Section-57**

### **Manner of initiating fast track corporate insolvency resolution process-**

An application for fast track corporate insolvency resolution process may be filed by a creditor or corporate debtor, as the case may be, along with:-

- (a) The proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and
- (b) Such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process.

## **Section-58**

### **Applicability of Chapter II to this chapter**

The process of conducting a corporate insolvency resolution process under chapter II and the provision relating to offences and penalties under chapter VII shall apply to this chapter as the context may require.

# Part II-Chapter 5

## SECTION 59

### Section-59

#### Voluntary Liquidation of Corporate Person

CD, may initiate, if has not committed any default

Where Corporate person is registered as a company [ as LLP ] shall meet following Condition

(a) declaration from majority of Directors/ Designated partner



shall accompanied

(1) Audited financial statement of previous 2 years

(2) Report of the valuation of the asset

- Made full enquiry into affairs of Co & co has no debt or able to pay its debts in full
- Co is not liquidated to defraud any person

within 4 WEEKS of declaration →

special resolution passed in General meeting

Provided where Co owes any debt

Creditors representing 2/3<sup>rd</sup> in value shall

approve the special resolution within

7 days of such resolution

Co shall notify the ROC & Board within 7 days of such resolution or Subsequent approval of Creditors

**The date of Commencement of Voluntarily liquidation is date of resolution passed in AGM ( special resolution)**

On complete liquidation Application to AA for dissolution within 14 days from such order forwarded to authority where corporate person is registered.

# Part II-Chapter 6

## SECTION 60 TO 67

### **Section-60**

Adjudicating authority in case of

-Corporate persons is NCLT.

-Corporate guarantor or personal guarantor of Corporate Debtor – NCLT

### **Section- 61**

Appellate Authority -NCLAT

### **Section- 62**

Appeal to Supreme Court

### **Section- 63**

Civil Court not to have Jurisdiction

### **Section- 64**

NCLT and NCLAT to adhere to time limits

Expeditious Settlement and record reasons for delay

President of NCLT and chairperson of NCLAT may extend the period by 10 days.

### **Section: 65**

Fraudulent or malicious initiation of Insolvency resolution process or liquidation or Voluntary Liquidation - penalty of one lakh to one crore.

# SECTION 60 TO 67.

## **Section- 66**

Fraudulent trading or wrongful trading

on the application of resolution professional, AA may direct the person liable for fraudulent transaction to make contribution to assets.

## **Section-67**

In case any charge created, mortgage, Liability to be borne by him.

# **Part II –Chapter 7**

## **SECTION 68 TO 77..**

### **Section- 68**

Punishment for concealment of property

within twelve months preceding the ICD or at any time after the ICD –  
Imprisonment of 3 years to 5 years or fine of one lakh to one crore  
or both.

### **Section- 69**

Punishment for transactions defrauding creditors.

Gift, transfer, concealment, removal of property to defraud creditors.

Imprisonment – one year to five year

Fine – one lakh to 5 crore or both.

Not punishable if act was committed 5 years before the ICD



# SECTION 68 TO 77..

## Section- 70

On or after ICD

- i. Does not disclose details of property
- ii. Does not deliver property
- iii. Does not deliver books & papers
- iv. Does not give information

-Punishment – 3 years to 5 years

-Or Fine – one lakh to one crore or both

-Lesser Punishment for IP

- Imprisonment upto 6 Months or fine one lakh to five lakhs or both.

## Section- 71

Punishment for falsification of books of corporate debtor On and after ICD  
3 to 5 years

one lakh to one crore or both.

## Section- 72

Punishment for willful and material omissions by officer:-

3 to 5 years

One lakh to one crore or both.

# SECTION 68 TO 77

## Section- 73

Punishment for false representations to creditors. Whether before or after ICD

3 years to 5 years

One lakh to one crore or both

## Section-74

Punishment for contravention of moratorium or the resolution plan.

1. Contravention of moratorium by corporate debtors or officer-. 3 to 5 years, one lakh to three lakh or both.
2. Contravention of moratorium by creditors. one years to 5 years, one lakh to one crore or both.
3. Contravention of Resolution Plan by officer or creditors. -one years to five years, one lakh to one crore or both.

## Section- 75

Punishment for false information Furnished in application.

False Application U/S 7- one lakh to one crore.

# SECTION 68 TO 77

## **Section- 76**

Punishment for non – disclosure of dispute by operational creditor.

One year to five years

one lakh to one crore

or both

## **Section-77**

Punishment for providing false information in application made by corporate debtor.

3 Years to 5 Years

one lakh to one crore

or both

RP shall be independent of Corporate Debtor

- (a) Eligible to appoint as independent director U/co Act
- (b) Not a related party to CD
- (c) Not an employee, proprietor or a partner

Not under the restrain order of Board

In last  
Preceding  
3 years

- Auditor/ Co sec / cost auditor
- Legal firm
- Consultant – fees 10 % or more of gross turnover of such firm from CD

Can't continue, if director /partner of IPE represent other stakeholder in the same process

**Public announcement**

within 3 days of his appointment [ form A]

- Published in English + regional newspaper [ R/ office, H / office, Material Business place ]
- Website of CD

Providing for

- Last date of Submission of Claims [ shall be 10 days from the date of his appointment ]

\* Public announcement cost is borne by applicant, unless ratified by COC It shall not form part of Fast track process Cost

→

\* Creditor shall bear the cost of proving the debt

Submission of Claims      Creditor shall submit on or before last date mentioned in Public announcement

If failed to Submit, then Submit to IRP, till the approval of resolution plan by the COC

If financial Creditor, then shall be included in COC from the date of Submission of Claims

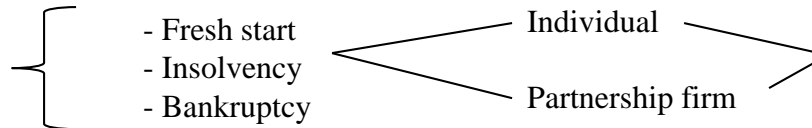
Such inclusion shall not affect Validity of decision taken prior to inclusion by COC.

# Part-II Chapter 1

## SECTION 78 TO 79

### IP & Bankruptcy for Individuals & Partnership firm-Section 78

This Chapter applies to



Associates means -immediate family member

- Relative or Spouse of relative
- Partner or Spouse of Partner or relative of Partner
- Employer or Employee of Debtor
- Trustee of a trust, where Debtor is beneficiary
- Company, where Debtor along with its associates owns more than 50% Capital

\* Relative means if they are related as member of HUF [only for this part] or in the manner as prescribed.

## Section-79 (5)

Bankruptcy Debt-

- (a) Any Debt owed on Bankruptcy Commencement date
- (b) Debt in which he become liable after Bankruptcy Commencement date by reason of transaction entered before Commencement.
- (c) Any interest which is a part of Debt U/S 171.

Bankruptcy Commencement date → on which order is passed by AA (DRT)

Bankruptcy Trustee → IP appointed as trustee for the estate of Bankrupt

## Section-79 (14)

**Excluded Assets**

(a) Unencumbered 

{	- Tools	}	necessary for	{	- Personal use	}	of Debtor or Bankrupt
	- Books				- Employment		
	- Vehicles				- Business		
	- Other Equipment				- Vocation		

(b) Unencumbered 

{	Furniture	}	necessary for	→	Domestic needs	→	Of Bankrupt or His immediate family
	House hold						
	Equipment						
	Provisions						

(c) Unencumbered → Personal Ornament → of Debtor or immediate family → Can not parted away due to religious usage

(d) Unencumbered → life insurance or pension plan → in name of Debtor or Immediate family

(e) **Unencumbered** → Single Dwelling Unit → Owned by Debtor

## **Section-79 (15)**

### **Excluded Debt**

- (a) Liability to pay fine imposed by court
- (b) Liability to pay damage for negligence or legal obligation
- (c) Liability to pay maintenance to any other person under law
- (d) Liability in relation to a student loan
- (e) Any other debt as may be prescribed

## **Section-79 (18)**

Partnership Debt          Debt          for which all partner are Jointly Liable

## **Section-79 (19)**

### **Qualifying Debt**

Amount due with interest payable immediately or at a certain future date

But does not include

- (a) An Excluded Debt
- (b) Debt to the extent it is Secured &
- (c) Debt incurred 3 months prior to Fresh start application

## Part -II Chapter 2

### FRESH START PROCESS-Sections 80-93

**Section 80**-Eligibility Debtor Either personally or through RP.

For fresh start in respect of his qualifying assets  
to AA, if

- (a) Gross Income does not exceed Rs 60,000
- (b) Aggregate value of asset does not exceed Rs 20,000
- (c) Aggregate value of Qualifying Debt does not exceed Rs 35,000
- (d) He is not an undischarged insolvent
- (e) He does not own any dwelling unit, whether encumbered or not
- (f) Fresh start, Insolvency, Bankruptcy process is not Subsisting against him
- (g) No fresh start order for him in the preceding 12 months from the date of application for fresh start.

**Section 81**-Interim Moratorium period commence on filling of application Effect → No new legal  
Proceeding & all Existing stayed →



Cease to effect on date of admission or rejection of application

**Section 82:**

Where application is filed through RP



AA → Board → to confirm within 7 days of receipt of application → No disciplinary proceeding pending



Communicate to AA in writing ( Confirming /rejecting) RP



Where application is filed by Debtor

AA → direct Board → within 7 days of receipt of application → to nominate RP

Board within 10 days of receiving direction  
nominate  
RP

**Section 83:** RP Examine the application & within 10 days of his appointment

Submit a report to AA recommending  of application

Application Contents (Supported by an Affidavit)

- (a) List of all debts owed & name of Creditor
- (b) Interest payable on Debt
- (c) List of Security held in respect of any Debt
- (d) Financial information, himself & immediate family 2 prior years
- (e) Particulars of Debtor's personal defaults
- (f) The reason for making the application
- (g) Particulars of known legal proceedings
- (h) Confirmation No previous fresh start in proceeding 12 months of application

**Section 84:**

Acceptance ← RP recommending → Rejection

- Information Supplied indicates he is unable to pay debt & Reason to believe, there is no change in financial Circumstances of Debtor since application

- Does not Satisfy the Qualifying Conditions (60,000,20,000, 35,000) U/S 80
- Debt disclosed are not Qualifying Debts
- Deliberately made false representation

AA within 14 days of Submission of report by RP

Accept

Reject

Copy provided to Creditor within 7 days of order

**Section 85:**

Moratorium Commence

1. No legal proceeding, Existing stayed
2. Not act as director, directly or indirectly control company.
3. Not dispose any assets – can not travel outside India Except with AA permission

Moratorium ceases to effect

At the end of 180 days of admission unless revoked by AA

**Section 86:** Creditor within 10 days of receipt of order

Can file objection to RP

**Section 87:**

Where Debtor or any Creditor

Make application to AA

Wants to replace RP

direct Board

in 7 days of receipt of application

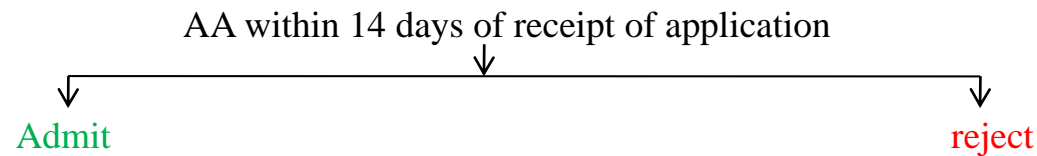


within 10 days recommend the name of RP

**Section 91:**RP may submit application to AA

For revoking fresh start order

- if (a) Due to change in financial circumstances Debtor is ineligible for fresh start
- (b) Non- Compliance by Debtor of restriction imposed
- (c) Debtor has acted malafide



Moratorium ceases

Send a copy to Board for recording in the register U/S 196

**Section 92:\*** RP prepare a list of Qualifying debts & submit list to AA at least 7 days before end of moratorium period AA pass discharge orders

## Part III-Chapter 3

### Sections 94 to 120

Insolvency Resolution Process

Firm, Individual

Debtor



Individual

Commits default

Partnership Firm

Apply personally  
or through RP

Can not apply UNLESS ALL or majority of partner file application Jointly

Can not file application if

- Undischarged Bankrupt
- Undergoing fresh start
- Undergoing Insolvency

- Creditor may apply himself or Jointly with other Creditors or through RP
- In Case of application against partnership firm, he can file (a) any one or more partner OR (b) the firm
  - Undergoing Bankruptcy process
  - 12 Months preceding the date of submission of application have not elapsed

Application shall be accompanied by

- ▶ Debt owed to the creditor on date of application
- ▶ Failure by debtor to pay debt within 14 days of services of demand notice
- ▶ Relevant Evidence of such default/ non- payment

\* Interim moratorium period will commence on filing of application & cease to effect on date of admission /rejection



Where application is filed through RP

Where application is filed by Debtor/Creditor himself

AA direct Board → within 7 days of receipt of application

AA direct board → within 7 days of receipt of appl.



Confirms no disciplinary proceeding pending within days of direction



Board within days nominate the RP



AA by order appoint RP

\* Where Debtor/ Creditor wants to replace RP makes application to AA 7 + 10 days Board

RP Examine application & within 10 days of his appointment

Recommend AA to

**Accept**

**Reject**

AA within 14 days of receipt of report from RP pass the order

Copy of order provide to Creditor within 7 days of order

**Moratorium Commence** & Cease to effect at the end of period of 180 days beginning within 180 days of admission of **application**

Moratorium shall operate against all the partners of the firm

AA

Issue a Public Notice  
within 7 days of passing order

Inviting Claims from all Creditors within 21 days of such issue  
( in case of CIRP claim period 14 days, and in case of voluntary liquidation 30 Day)

Communications/ Courier / speed post / registered letters

RP submit a repayment plan Along with his Report within 21 days from the last date of submission of claim

May call for meeting of Creditors ( After 14 days but before 28 days)

by giving notice of 14 days

Creditor may approve / modify / reject

RP obtain Consent of Debtor

- Creditor shall Entitled to vote with the Voting share assigned
- A Creditor shall not be entitled to vote in respect of a debt for an unliquidated amount.
- Secured Creditors shall be entitled to participate & Vote in the meeting of Creditor



But forfeit his right to enforce Security during repayment plan

Creditor approved the plan by 3/4<sup>th</sup> value.

AA reject or approve the repayment plan

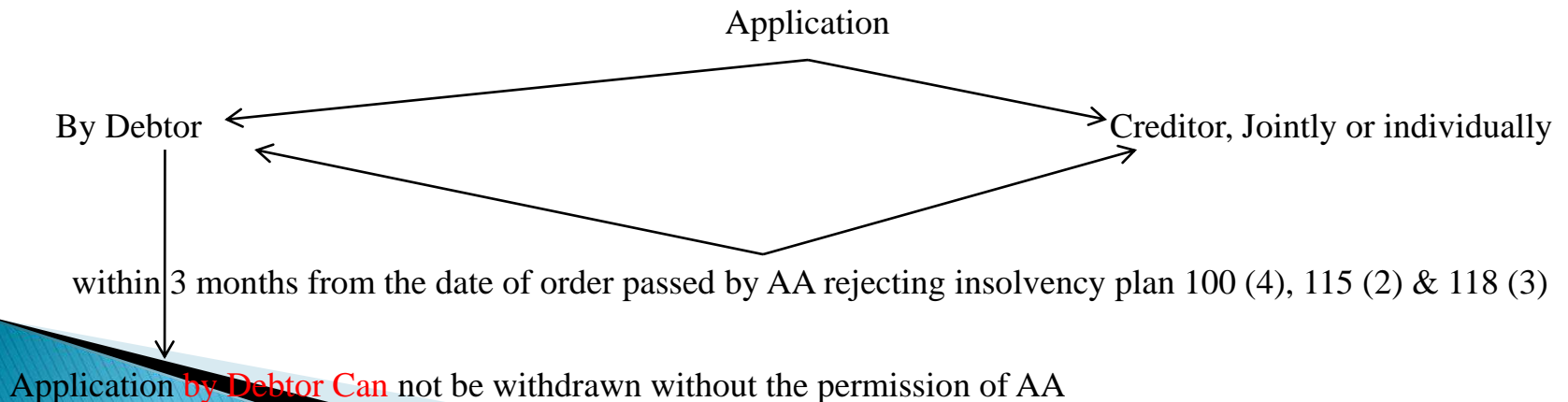
Where AA rejects plan

Debtor/ Creditor shall be entitled to file application for Bankruptcy under Chapter IV

## Section-121-148

### Chapter –IV

#### BANKRUPTCY ORDER FOR INDIVIDUAL & PARTNERSHIP



An application for Bankruptcy in case of deceased debtor may be filed against his legal representative.

An interim moratorium Commence on making of application

Which shall operate against all the partners of the firm ( in case of firm )

**If IP**

If not proposed

is proposed as Bankruptcy trustee

AA direct within 7 days to Board

AA shall direct the Board within 7 days of receipt of application

To nominate the trustee

To confirm that no disciplinary proceeding pending

Board shall nominate within 10 days  
Of receipt of director

Board within 10 days of receipt of direction confirm/ reject the  
appointment ( In waiting )

The AA shall pass Bankruptcy order within 14 days of receiving the Confirmation

A copy of order provided to Creditor within 7 days of passing the order

Effect of Bankruptcy order

- ▶ The Estate of Bankrupt vests in Bankruptcy trustee
- ▶ The Estate shall be divided among his Creditors



- ❖ A Bankruptcy order shall not effect the right of secured Creditor to realise his security interest, it take action to realise within 30 days from the said order.



Where Bankruptcy order is passed on application of Creditor



Bankrupt(Debtor) shall submit a Statement of his financial position to trustee within 7 days from commencement date/ order.

- ❖ AA shall



Send notice to Creditor [ within 10 days of Bankruptcy order ]

+

Issue a Public order to invite claims from Creditors

English + local language

Affixed in premises of AA

Placed on website of AA



Creditors shall submit their claims to Bankruptcy trustee → within 7 days of notice.



Bankruptcy trustee within 14 days of Commencement date prepare a list of Creditor



& within 21 days call meeting of Creditors



\* Trustee shall be the convenor of meeting



he shall decide the Quorum

& not adjourn the meeting of creditors for more than 7 days at a time.

\* A Creditor shall not be entitled to vote in respect of a debt for an unliquidated amount.

- (a) Bankruptcy trustee shall submit the report on Estate of Bankrupt in the meeting of Creditor
- (b) COC shall approve the report within 7 days of receipt of report & determine whether he can be released or not.

The trustee shall apply to AA for discharge order

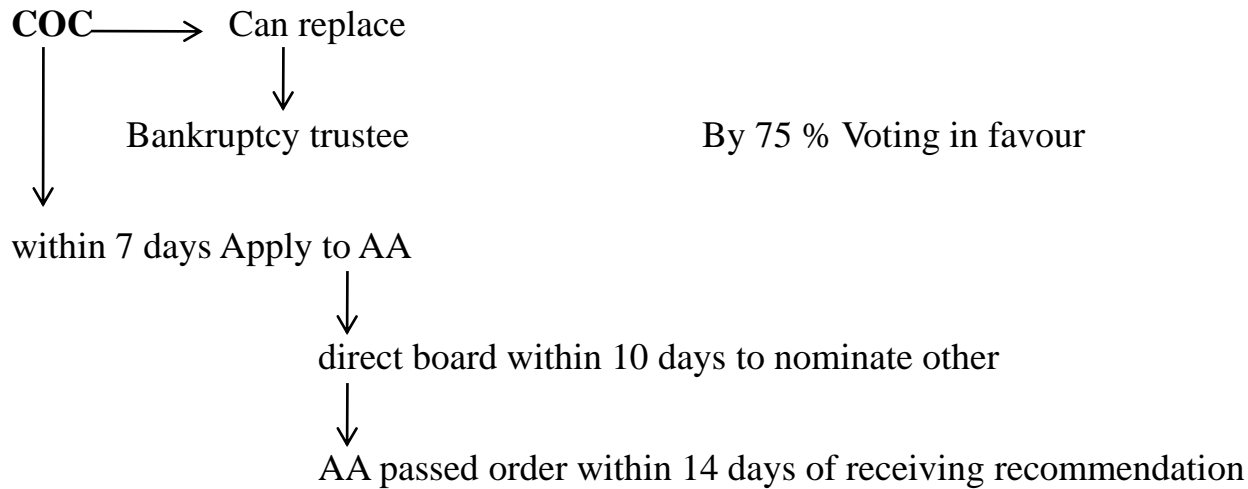
- (a) on the expiry of 1 year from commencement date OR
- (b) within 7 days of approval of COC of Completion of administration

\* A Bankrupt shall be disqualified from

- (a) Being appointed as a trustee for any trust
- (b) Being appointed or acting as public servant
- (c) Being Elected to Public office
- (d) Being Elected as member of any local authority.

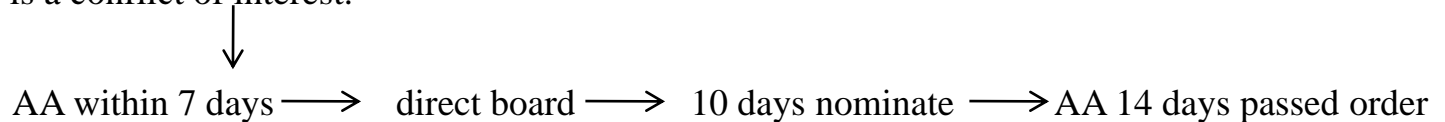
\* He shall not act as ( from the date of commencement of order)

- (a) Director of any company
- (b) Prohibited from Creating any charge on his asset
- (c) Required to inform his partner that he is going through Bankruptcy process
- (d) Not permitted to travel overseas



\* A Bankruptcy trustee may resign, if

- a. Intent to cease practice, as IP or
- b. there is a conflict of interest.



The Estate of Bankrupt shall not include

- a) Excluded Assets
- b) Property held by the Bankrupt on trust for any other person
- c) All sums due to workman / Employee from the provident fund/ pension/ Gratuity fund.
- d) Such **assets notified** by C.G in consultation with any financial regulator

\* Where estate of Bankrupt Consist of Actionable claims they shall be deemed to assigned to Bankruptcy trustee, without any notice of assignment.

\* Transfer of property by Bankrupt Between → application to commencement date is void → & not given any right to any person

↓  
Even if he obtained property

- a) In good faith
- b) For value &
- c) Without notice of filing of application for Bankruptcy.

However, if any person, acquired any After- acquired property from Bankrupt, in good faith & for value

Cannot be taken back by Bankruptcy trustee.

Onerous property

- (a) Any unprofitable contract and
- (b) Any property which is unsalable or may give rise to a claim

↓  
Trustee may disclaim with the permission of COC.

Undervalued transactions

↓  
Trustee may apply to AA for order → to declare it void.

- a. Transaction entered into during 2 years ending on the filing of application for Bankruptcy
- b. Caused Bankruptcy process to be triggered.

↓  
Can not pass Void order, it undertaken into ordinary course of Business

- 1. Makes a gift to a person, (2) No Consideration has received by Bankrupt, (3) It is in consideration of marriage and (4) Consideration is significantly less than value provided by Bankrupt.

## Preference Transaction

- ▶ If entered with Associates during the period of 2 years from the date of application for Bankruptcy
- ▶ within 6 months in case of other person

Extortionate Credit Transaction      Entered into by the Bankrupt during the period of 2 years ending on the Bankruptcy commencement date

- ▶ If a Bankrupt dies during Bankruptcy, proceeding shall continue, as if he were alive.
- ▶ Legal representative of the deceased Bankrupt claim the funeral & testamentary Exp.

Which shall rank Equally to the Secured Creditors in priority followed U/S178

### ❖ If surplus remains

After-payment in full with interest to all Creditors

- Payment of bankruptcy Exp
- Bankrupt/ Legal representative shall be entitled to the surplus.

### Priority of Payment of Debt

1. Cost of Bankruptcy process
2. Workmen dues 24 months preceding Commencement date
  - Debts owed to Secured Creditors
3. Wages & Unpaid dues to employees
  - 12 month proceeding commencement date
4. Amount due to Govt – 2 year preceding the Commencement date
5. All other unsecured Creditors / Debts.
6. Surplus remaining for paying interest on Debt for the period of O/standing SINCE Bankruptcy  
**Commencement date**

## AA for Individual & Partnership Firms

- DRT      having territorial jurisdiction over the place
- (1) where Debtor actually or Voluntarily resides OR
  - (2) Carries on business
  - (3) Personally work for gain

Not outstanding anything in other act, DRT shall have jurisdiction to entertain

- (a) any seat, proceeding by or against individual Debtor
- (b) Question of priorities, law & facts under this code.

\* Moratorium Period shall be excluded for limitation Act, 1963

DRT      (30 days + 15 days Extension)

Appeal lies in DRAT

↓  
order can be challenged [ 45 days + 15 days extension]  
in Supreme court if it is Question of law

\* If appeal is not filed within the prescribed period, chair person of DRAT Can extend by 10 days

## Part IV (Section-188-223)

The Insolvency & Bankruptcy Board of India



A body Corporate



Common Seal, perpetual Succession

Can sue or be sued

Head office - in NCR → may establish office in India

Constitution of Board

(1) Chair person (Not below cabinet Secretary Rank)

(2) 3 members – Ex- officio

(3) 1 member nominated by RBI ( Ex- officio)

(4) 5 other Nominated by C Govt [At least 3 shall be the whole time members]

{ -Ministry of finance  
- Ministry of Corporate affairs  
- Ministry of Law

Appointment of chairman & members other than Ex- officio

office obtaining selection committee consists of

- cabinet Secretary
- Secretary to the Govt
- Chairperson of IBBI
- 3 Experts of repute from finance law management insolvency

Chairman -1 Nos  
&  
Members – 5 Nos

Other than  
Ex-officio

Appointed for 5 years  
or  
Till attain Age of 65  
Whichever is earlier  
↓  
& Eligible for re- appointment

C Govt may remove a member if

1. He is an undischarged bankrupt
2. Has become physically or mentally incapable
3. Convicted of an offence, involving moral turpitude
4. Abused the position, detrimental to Interest of Public

Salary

OPT for any one

Chairperson

Rs 4,50,000

-Salary Admissible to  
secretary to Govt

Whole- Time  
Members

Rs 4,00,000

- Salary admissible to  
Additional secretary to Govt

- (1) Rent free unfurnished accommodation
- (2) If using personal house then gets 10% of Basic pay
- (3) Staff car for official purpose
- (4) Dearness Allowances as entitled under grade.



\* No Bonus

\* No Sitting fees

Entitled for

- Leaves Earned, casual

- Entertainment Allowance Rs. 6,000 P.A.

- **P. Fund**

- Travelling Allowance

- Medical treatment

\* If they are receiving any pension Gratuity Government, then their Salary is reduced to that extent

\* They shall not accept any employment before the expiry of a period of 1 year from the date of demitting the Board, except with the previous section of C. Govt.

Part – time Members

1. Every Part- time member → holds office for period not- exceeding 3 years → eligible for reappointment
2. Entitled to receive remuneration Rs 1,000 /- per meeting + Travelling allowance

**IBBI**

Governing Board

Shall have at least 4 meeting / 1 in each Quarter

Member may attend through video conferencing

resolution can be passed through circulation

Any three members may require chairman / secretary to convene meeting

Not less **than 7 days notice** ( unless dispensed by chairman)

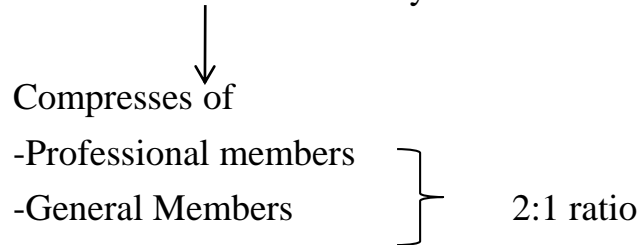
Quorum → 5 Members, if board has 8 or more members: 3 members, if board has less than 8 Members

### Code of Conduct

- ✓ Any Gift above 5,000 should be handed over to IBBI
- ✓ Shall not accept gift to the extent possible

### Advisory Committee

IBBI → Constitute Advisory Committee → To obtain expert advice



\* Term of Member → shall not exceed 3 years

\* 50% of the Existing strength Consists of required Quorum

\* Member is entitled for Rs 10,000 as sitting fee for a meeting

• Any member, who is director in a Co & if any matters related to that company come up → should disclose the fact

## Section – 196(3)

Board shall have power of civil court under the code of civil procedure (CPC), 1908 while trying suit in respect of

- (a) Discovery & production of books of A/Cs and other documents
- (b) Summoning & enforcing the attendance of person examining oath
- (c) Inspection of any book, register of any person at any place
- (d) Issuing of Summons for the examination of witnesses or document.

## Insolvency Professional Agencies (IPA)

\* No person to function as Insolvency agency without valid certificate of registration issued by Board

Application for registration [Form A]

to Board

By order

Accept

Reject

[Form B]

- No rejection without giving opportunity of being heard

Order should be Communicated to applicant within 15 days

Registration can be renewed

IPA

Shall Submit its bye-laws

Along with application for registration as IPA

] to IBBI

Governing Board (Board of Direction) of IPA

Can Commend its Bye- laws ( By 75% of Votes on Favour )

Resolution shall be filed within 7 days of its passing to Board for its approval

Amend mend come info  
Effect on the 7 the day of receipt of  
approval, unless specified otherwise

IPA shall file a printed Copy of  
amended Bye-laws with Board within  
15 days from the date, when such  
amend mend is made effective.

Governing body

Minimum 7 directors

- More than 1/2th shall be person resident in India
- Not more than 1/4<sup>th</sup> shall be Insolvency professional
- More than 1/2th shall be Independent director
- \* More them half rounded off to next higher level
- \* Not more them 1/2 rounded off to next lower number

No meeting of Governing body without presence of at least one Independent director

- No pecuniary relationship with IPA
- Not a stakeholder of IPA
- Not a relative of director of the Governing Body

Director shall elect an Independent director as the chairperson of the Governing body.

\* IPA agency shall not carry other function other than prescribed under CODE

### Committees of the IPA

- Advisory committee development of Ethics, best practices
- Membership committee ( Not less than 3 members & at least one of whom is professional member of agency (IP)
- Grievance Redressed Committee at least one member nominated by Board
- Disciplinary Committee

\*The Chairperson of above committees shall be an Independent Director of agency (IPA)

### Eligibility for Enrolment

only person eligible to be registered with IBBI, can be enrolled

### Rejection of Application

↓  
Communicated to Applicant, within 30 days of receipt of application

↓  
Aggrieved applicant

↓  
Appeal to membership committee →

within 30 days of receipt of such decision

↓  
committee pass order within 30 days of receipt of appeal

## IPA

\* Shall maintained a register of its professional member

Records relating to Professional member shall be available for Inspection to

(1) The Board (2) AA (3) COC, where IP is appointed of IRP (4) Any other person, who has obtained the consent of the member for such inspection.

\* A professional member submit information (ATLEAST TWICE A YEAR) included on going & concluded Engagement as insolvency professional

Disciplinary Proceeding                      IPA

shall convenience disciplinary proceeding against member  
reference given by  
committee

Suo moto, court of law, board  
Grievance                      redressed

May passed order for

- Expulsion
- Suspension for certain beyond
- Admonishment of the professional member
- Imposition of monetary penalty

## **Expulsion order can be passed**

(a) On offence under any law, punishable with imprisonment for a term exceeding Six month or on offence involving moral turpitude

(b) A gross violation of code, rules, regulations

DC order shall be placed on IPA website within 7 days of passing order & copy provided to the parties

Aggrieved person Can appeal to Appellate Board within 30 days of receipt of order

Consist of one Independent Director + One technical member + One member appointed by Board

(c) Upon non-payment of membership fee despite at least two notices served in electing.

## **Temporary Suspension**

(a) Becomes a person not resident in India

(b) Takes up employment

(c) Starts any business, Except permitted under code of Conduct

## **Surrender of Professional membership**

- Name Struck from register after 30 days of its acceptance of surrender application

Form A Certificate of Professional membership [ Issued under Bye-law 10 of IPA bye- laws ]

IPA should be a Company U/S 8 of Co's Act, 2013

(a) Sole objective carry function of IPA

(b) By laws as per regulations

(c) Minimum Net-worth 10 Crore

(d) Paid- up Share Capital of 5 Crore

(e) Not under the Control of Person resident outside India

(f) Not more than 49 % of its share held by person resident O/S India

(g) Not a subsidiary of a body corporate through more than one layer

(h) itself, its promoters, directors & person holding 10% or more of capital are fit & proper - Integrity  
- absence of Conviction  
- Financial Solvency

For renewal Apply in form A with fees of Rs. 5.00 lakh before the expiry of Six month of registration

Board Grant registration in [Form B]

within 60 days of receipt of application

Certificate of registration is for 5 years from the date of issue

IPA shall

Pay a fee of Rs. 5.00 lakhs every year after the year in which certificate is granted /renewed

Seek approval of Board, when a person, other than statutory body, seeks to hold more than 10% of share capital, directly or indirectly



Board

within 45 days of receipt of application

Accept

IPA  
not rejected

reject

Give 15 days of notice to provide Opportunity to explain, why

Can Surrender/ Registration

Board within 7 days invite objection to be submitted within 14 days of publication of notice

Satisfy publish a notice of its website

In Principle Approval

Board may grant, if applicant submit the application with a non refundable fee of Rs. 10.00 lakh

such approval is valued for one year

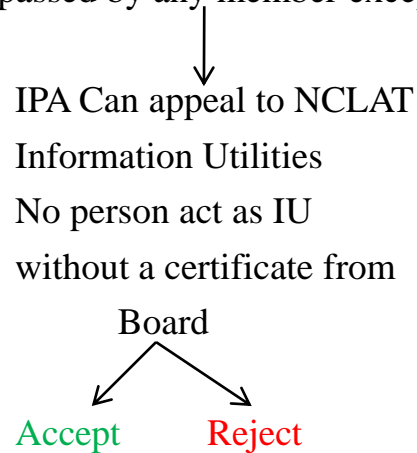
if within one year Form A for registration is submitted no need to pay fees

Form A Application for Certificate of registration

Form B Certificate of registration issued

-Board by order suspend or cancel the certificate/ grounds are

- (a) obtained registration by false statement / mis-representation
  - (b) failed to comply with regulations / Bye – laws
  - (c) Contravened provisions of Act/ rules
  - (d) any other ground, as specified by regulations
- No order shall be passed by any member except whole time members of the Board



- \* Board, may by order suspend or cancel the certificate, if
- a) Obtain by false statement / mis- representation
  - b) failed to comply with regulations/ bye – laws
  - c) Contravened provision of Act/ rules
  - d) Any other ground, as specified

- No order shall passed by any member except whole time member
- No order shall be made without giving opportunity of being heard

Appeal lies with NCLAT

(within 30 days of receipt of order)

\* Any person, FC, OC shall submit the financial information to IU can access by payment of fees.

\* Any person who intends to update, security error in financial information make application to IU.

IU Not eligible, unless it is a Public company

(A) Sale objective is to provide service under there regulates

(B) Shareholding (1) No person shall hold, directly or indirectly 10 % of paid-up equity capital / voting power

(2) following hold, singly or jointly up to 25% of paid up equity capital / voting power

-Govt Co

-Stock exchange

-Depository

-Bank

-Insurance Company

-Public Financial Institution.

(3) A person resident in India, must hold up to 51% of paid-up equity /voting power till the expiry of 3 years from date of its registration

(4) C Govt. & state Govt – no restriction applies

(C) Governing Board- (1) More than ½ of its directors shall be independent directory

(2) No meeting shall be held without the presence of at least one independent director

(3) The director shall elect an Independent director as chairperson of the G Board

(D) Bye- laws are in consistent with code

(E) Minimum Net worth of 50 Crore.

(F) Not under the Central of person resident outside India

(G) Not more than 49 % of its paid up capital/voting power is directly/ indirectly held by the person resident O/S India

(H) Itself, its promoters, its paid up capital/ voting power are fit & fine - integrity - absence of Conviction - financial insolvency

IU

Application to Board in Form A + non-refundable fees Rs 5.00 lakh

Renewal at least 6 months prior to expiry in Form A + Non – refundable fees of Rs. 5.00 ;

Board shall action application within 7 days of receipt

Satisfy

Issue certificate of registration

Reject/further details req

within 45 days communicate the reason

**Form B**

within 60 days of receipt of application  
communicate

give opportunity to be heard within 15 days of above

Then Accept /reject the application within 30 days

Certificate of registration is valid for 5 years from date of issue

## Condition

- Pay a fee of Rs. 50.00 lakh (annual fees) within 15 days of issuing certificate & every year thereafter. ( within 15 days from the end of every year

Seek prior approval of Board it

- (a) person acquiring more than 5 % of paid up/voting power directly or indirectly
- (b) Change of control
- (c) Merge, acquisition or restricting
- (d) sale, disposal of whole/ substantial undertaking
- (e) Voluntarily Liquidation or discontinuance of business

Intimate Board it person holding more than 5 % of paid up equity / voting power cease to hold within 15 days

In – principle approval Application + fee 5.00 lakh  
Approval valid for 1 year

Amendment IU Bye- laws

Governing body → Amend [ 75% of votes ]

Resolution file with Board within 7 days of its approval

Amendment shall effacer on 7 days of receipt of approval

IU shall file a printed amended bye-laws within 15 days from the effective date to Board

## Registration of User

- A person shall register → Submitting information to OR Accessing information stored

\* A person registered with an IU shall not register itself with any IU again.

\* A information utility shall accept information submitted by Co user in Form C

On receipt of information, IU shall authenticate & Vertis

After authentication, communicate to → { the creditor of the Debtor who is defaulted  
Partner & sureties to the debt

\* IU shall store all information in a facility located in India.

Access to Information

- (1) The user who has submitted
- (2) Partner to the debt and the host Bank
- (3) CD & its auditors
- (4) IP
- (5) Board
- (6) AA
- (7) Person authorised under any law

\* An IU shall not outsource the provision of Core-service to a third party service provider

\* The fees charged for access to information shall not exceed the fees charged for submission of Information to IU.

IV

Form A – Application for Certificate of Registration

Form B – Certificate of Registration Issued

Form C – Submission of Information to IU

## INSOLVENCY PROFESSIONAL

- No individual shall be eligible to be registered as IP, if he

(a) is a minor

(b) is not a person resident in India

(c) Does not have Qualification & Experience as per regulation 5&9/

(d) Convicted for offence with imprisonment exceeding 6 months or involving moral turpitude and a period of 5 yrs not expired provided if Convicted for a period of 7 years or more he shall not be eligible to be registered

(e) Undischarged insolvent

(f) unsound mind or

(g) Not a fit & proper person - integrity - absence of conviction - financial insolvencies

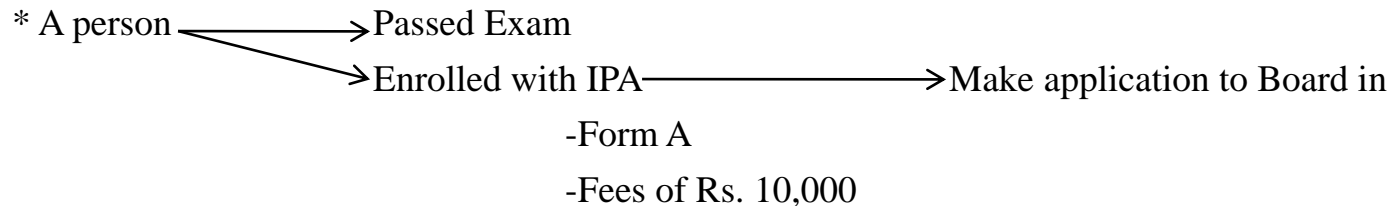
- shall be eligible for registration

(a) Passed National Insolvency Exams

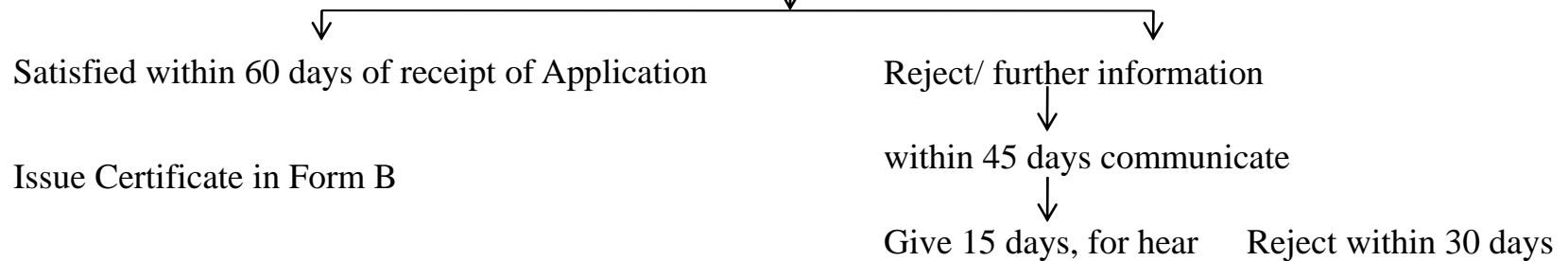
(b) Passed limited Insolvency + 15 years exp in management after received Bachelor degree from a recognised university

(c) Passed Limited Insolvency + 10 years exp as

- member of ICAI, ICSI, ICWAI, Bar Council



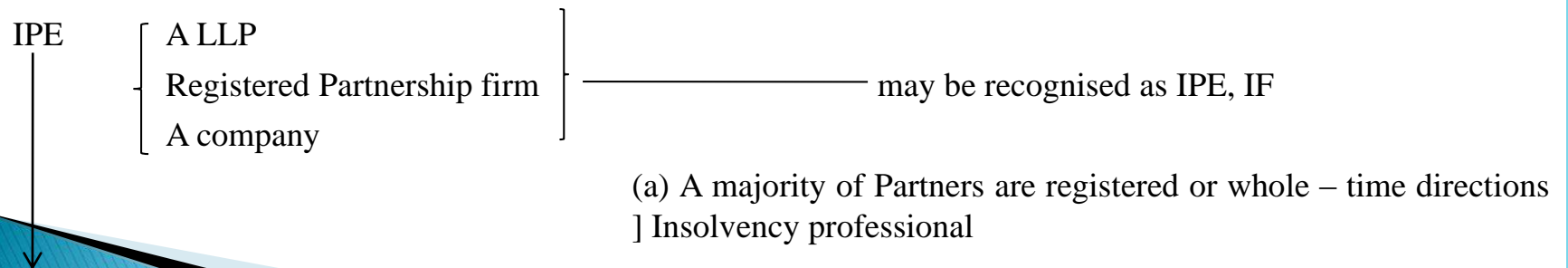
Board action application within 7 days of receipt



**-Conditions**

- (1) Pay a fees of Rs 10000 Every 5 yrs after the year in which certificate is granted
- (2) Not render service, as an IP, unless become Partner or director of IPE, if he is not a certain of India
- (3) Take prior permission of Board for shifting membership from IPA to other and after receiving NOC from both Concerned IPA.
- (4) Maintain records of all his assignment for at least 3 years from the completion of such assignment.

\*An order of Disciplinary Committee shall not become effective until 30 days have elapsed from the date of Issue of order, unless stated otherwise



Make application in form C of Ind schedule



Issue Certificate in Form – D

### **Condition**

(a) Inform Board, within 7 days when an IP Joins/ ceases to be its partner/ Director

### **First Schedule**

Code of Conduct for IPs

### **Second Schedule**

Form A- Application for Registration of IP

Form B- Certificate of Registration for IP

Form C- Application for Registration of IPE

Form D- Certificate of Registration to IPE

### **Inspection & Investigation**

any person aggrieved with the functioning of IPA, IU, or IP

Complaint to Board

may direct any person to investigate/ inspection

Investigating authority submit report to Board

Board issue show cause notice & Can Constitute a disciplinary Committee

Consists of whole-time members only

If satisfy, impose penalty, suspend a cancel registration

**Penalty**

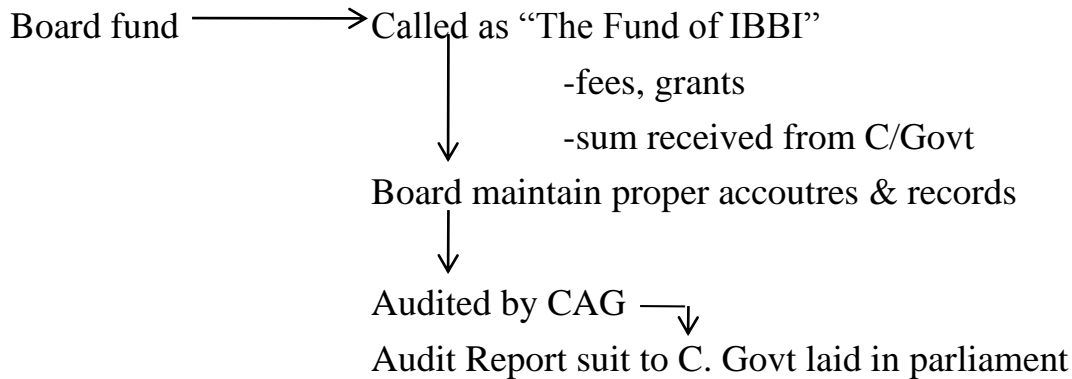
3 times of amount of loss caused

or

3 times of amount of unlawful gain made → Whichever is higher

Where unlawful gain are not quantifiable, amount of penalty can not exceed Rs. 1.00 crore

### **Finance, Accounts & Audit**



Any person Contributed to fund, if insolvency proceeding initiated against him, make application to Board to take back the Contribution for payment to workmen

C. Govt                      Opinion that Board is not able to discharge its duties  
By notification, suspend the Board for Six months  
All member shall vacate office                      Can be appointed when new Board is formed

Inspection                      Board may  
-Conduct inspection of IPE, IP, IPA  
-Direct an inspecting authority to inspect the records

Inspecting authority —————> shall provide at least 10 —————> However may reduce the notice  
days notice before commencement of inspection period by recording reasons in writing

Submit interim Inspection report to Board



Board Satisfy that gross violation of provisions, rules



Refer to Disciplinary Committee



May pass an Interim order which shall laps on expiry of 90 days

Shall send draft Inspection report to —————> Service provider to its comments within 15 days of receipt

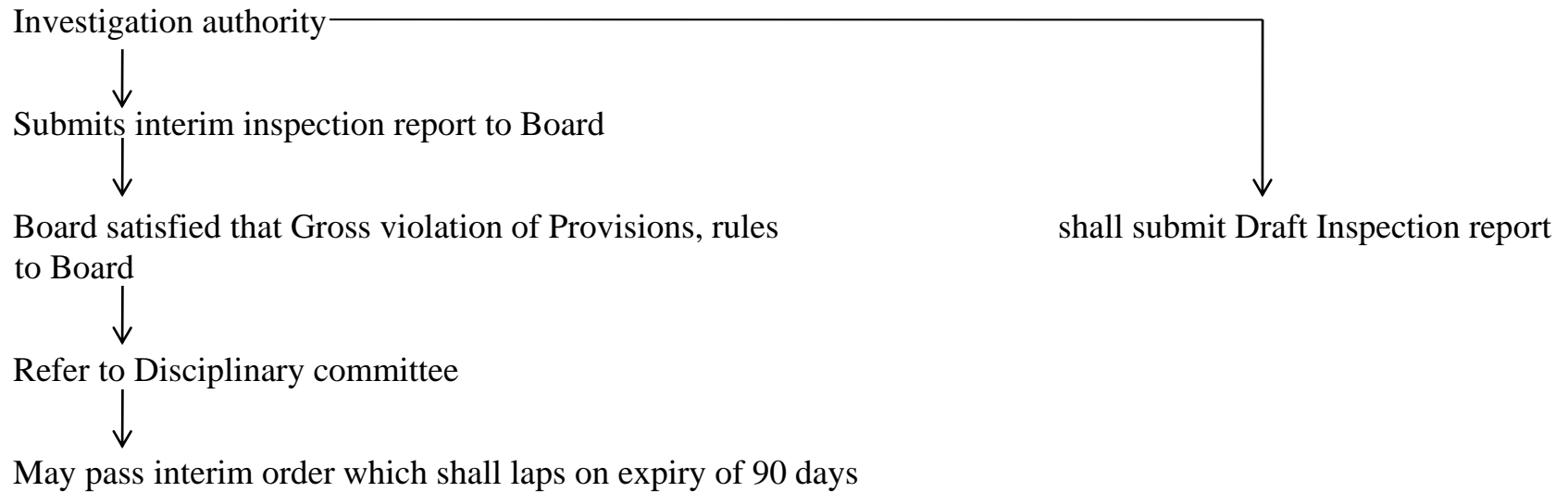


Also submits a copy to Board


Investigation —————> Board may conduct the investigation of service provider U/S 218

Investigation authority —————> Serve at least 10 days notice before —————> However may reduce notice period  
Commencement of investigation by recording reasons in writing

May keep custody of any record up to 6 months & thereafter shall —————> & may call again —————> may apply to court for  
return order for seizure of records



\* Interim Investigation report is not required to submit to service provider for Comments like interim Inspection report

Board consider  Draft Inspection report  
Draft Investigation report

Issue show cause notice providing 21 days notice to service provider to make a written submission

Refer to disciplinary committee who dispose of the case within 180 days from date of issue of show cause notice

Form A

To be filed for claim  
who has made losses

U/S 220 (4)

For submitting claim where  
amount is disgorge by service provider by indulging the  
activities in contravention of this code.

- Board by special order delegate the power to any member Except power to make regulation ( as defined U/S 240)
- Chairperson, members & offices of Board shall be deemed of Public Servant within meaning of IPC ( Indian Penal code)
- C. Govt may enter into agreement with the Govt of any country O/side India for entering provision of this code.
- Provision of this code to override other laws ( Non- obstante clause) (sec-238)
- Repealed the acts
  - The presidency Towns Insolvency Act, 1909
  - The Provincial Insolvency Act, 1920

All proceeding pending there will continue

## Acts amended

1 <sup>st</sup> Schedule	Indian Partnership Act, 1932
2 <sup>nd</sup> Schedule	Central Excise Act, 1944
3 <sup>rd</sup> Schedule	Income Tax Act, 1961
4 <sup>th</sup> Schedule	Customs Act, 1962
5 <sup>th</sup> Schedule	The recovery of Debts due to Bank & financial Institution Act, 1993
6 <sup>th</sup> Schedule	Finance Act, 1994
7 <sup>th</sup> Schedule	S A R F A E S I ACT, 2002
8 <sup>th</sup> Schedule Repeal Act, 2003)	Sick Industrial Companies(Special provisions
9 <sup>th</sup> Schedule	Payment & settlement system act, 2007
10 <sup>th</sup> Schedule	Limited Liability partnership Act, 2008
11 <sup>th</sup> Schedule	Companies Act, 2013

P E I C R F S S P L C

## Period Specified Under the Code for Performance of Acts by IBBI..

Section	Matter	Period in Days
<b>16(4)</b>	To recommend the name of an insolvency professional to the adjudication authority against whom no disciplinary proceeding are pending	10 Days
<b>22(4) and (5)</b>	To confirm the name of the resolution professional to be appointed in place of Interim Resolution Professional	10 Days
<b>34(6)</b>	Proposing the name of another insolvency professional when the Adjudicating Authority decides to replace the resolution profession	10 Days
<b>82(2)</b>	To communicate to the Adjudicating Authority in writing either (a) confirmation of the appointment of the resolution professional who filed an application under sub-section (1) of section 82, or (b) rejection of the appointment of the resolution professional who filed an application under sub-section (1) of section 82 and nominate a resolution professional suitable suitable for the fresh start process.	No period specified
<b>82(40)</b>	To nominate a resolution professional within ten days of receiving the direction issued by the adjusting Authority under sub-section (3) of section 82.	10 days
<b>97(2)</b>	To confirm the appointment of the resolution professional or reject the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.	7 Days
<b>98(3)</b>	To recommend the name of the resolution professional to the adjudicating Authority against whom no disciplinary proceeding are pending.	10 Days
<b>98(6)</b>	To send a communication either (a) confirming appointment of the nominated resolution professional and recommend a new resolution of professional.	10 days
<b>125(2)</b>	To confirm the appointment of the proposed insolvency professional as the bankruptcy trustee for the bankruptcy process, or reject the appointment of the proposed insolvency professional as the bankruptcy trustee and nominate another bankruptcy trustee for the bankruptcy process.	10 Days

## Period Specified Under the Code for Performance of Acts by IBBI

Section	Matter	Period in Days
<b>125(4)</b>	To Nominate a bankruptcy trustee.	10 days
<b>145(5)</b>	To recommended a bankruptcy trustee for replacement against whom no disciplinary proceeding are pending.	10 days
<b>146(3)</b>	<i>To recommended another bankruptcy trustee as a replacement</i>	10 days
<b>147(3)</b>	Recommended a bankruptcy trustee as a replacement.	10 days



## Timeline Chart on Timings Mentioned in IBC Code, 2016..

Section	Matters	Period in Days	Applicable on
7(4),9,10	Ascertainment of Default By NCLT from date of receipt of application	14	NCLT
7,9,10	Removal of Defect in application by applicant from receipts of notice from NCLT	7	Applicant
7,9	Communication of Order of admission to FC and CD, and Order of Rejection to FC only by NCLT	7	NCLT
8,9,10	Reply of Demand Notice by CD to OC	10	CD
12	Time Limit for completion of CIRP	180+90	RP
16	Appointment of IRP by NCLT from insolvency commencement date	14	NCLT
17	Providing info. To COC by IRP/RP from request from COC	7	IRP/RP
22,37	Convening of First Meeting of COC from the date of constitution of COC by IRP/Liquidator	7	IRP, Liquidator
38	Collection of claims by liquidator from Liquidation commencement date	30	Liquidator
38	Withdrawal or variation of claim by creditor from the date of Submission	14	creditor
40	Communication of Decision by Liquidator of acceptance or rejection of claim	7	Liquidator
42	Appeal agt. Decision of Liquidator to NCLT by Creditor	14	Creditor

## Timeline Chart on Timings Mentioned in IBC Code, 2016..

Section	Matters	Period in Days	Applicable on
54	Forwarding of Copy of Dissolution Order by NCLT to ROC	7	NCLT
56	Time period for completion of Fast Track	90+45	RP
59	Approval by Creditors of Resolution passed for Voluntary Dissolution by members of company from date of passing resolution	7	creditors
59	Intimation of passing of Resolution/Approval of Resolution by company to ROC and Board of Directors	7	Company
59	Copy of Dissolution Order by NCLT to ROC	14	NCLT
61, 181	Appeal to NCLAT agt. Order of NCLT, appeal to DRAT agt. Order of DRT	30+15	Aggrieved Person
62, 182	Appeal to SC agt. Order of NCLAT, Appeal to SC agt. Order of DRAT	45+15	Aggrieved Person
64, 183	Power of President/Chairperson of NCLT,NCLAT/DRT, DRAT to extend time period to dispose of application upto 10 days If application is not disposed off or order is not passed in specified time in the code. Note: In Section 183, Power of Extension is given to Chairperson of DRAT only	10	If application is not disposed off or order is not passed in specified time in the code, President /Chairman may extend the period upto 10 days

## Timeline Chart on Timings Mentioned in IBC Code, 2016..

Section	Matters	Period in Days	Applicable on
<b>FRESH START POROCCESS</b>			
<b>83</b>	Examination of Application of Fresh Start by RP from his appointment	10	RP
<b>83</b>	Providing further information by Debtor or any other person as requested by RP from date request	7	Debtor
<b>84</b>	Passing of Order on application for Fresh Start by NCLT	14	NCLT
<b>85</b>	Copy of Order passed u/s 84 to Creditors by NCLT	2	NCLT
<b>85</b>	Period of Moratorium under Fresh Start from the date of admission of application	180	
<b>86</b>	Objection agt. NCLT order by Creditors under Fresh Start to RP	10	Creditor
<b>86</b>	Examination of Objection and decision thereon by RP	10	RP
<b>87</b>	Challenge application by Debtor or Creditor agt. Decision of RP u/s 86 to NCLT	10	Debtor/creditor
<b>87</b>	Decision by NCLT on challenge application u/s 87	14	NCLT
<b>91</b>	Revocation of order passed u/s 84 by NCLT on application by RP on following grounds: i) change in financial circumstances of debtor and hence becomes ineligible; or ii) non-compliance by the debtor of the restrictions imposed u/s 85(3); or iii) if the debtor has acted in a mala fide manner and has willfully failed to comply with the provisions of this Chapter	14	NCLT
<b>92</b>	Submission of final list of qualifying debts by RP to NCLT	7	RP

## Timeline Chart on Timings Mentioned in IBC Code, 2016..

Section	Matters	Period in Days	Applicable on
<b>INSOLVENCY RESOLUTION PROCESS</b>			
<b>95</b>	Period for payment of debts by debtor from service of notice of demand	14	debtor
<b>99</b>	Examination of application u/s 94,95 and submission of report by RP	10	RP
<b>99</b>	Further information by Debtor or any other person as requested by RP	7	Debtor / creditor
<b>100</b>	Order by AA on application u/s 94,95 from the date of submission of report by RP	14	AA
<b>100</b>	Copy of order passed to creditor	7	AA
<b>101</b>	Moratorium period from the date of admission of application	180	
<b>102</b>	Publication of notice by AA from passing of order of insolvency u/s 100	7	AA
<b>102</b>	Period for submission of claims by creditors from the date of publication	21	Creditor
<b>104</b>	Preparation of list of creditor by RP from the date of publication	30	RP
<b>106</b>	Submission of repayment plan with his report to AA from the last date of submission of claims	21	RP
<b>106</b>	Convening Meeting of creditors from the date of submission of report	14 -28	RP

## Timeline Chart on Timings Mentioned in IBC Code, 2016..

Section	Matters	Period in Days	Applicable on
<b>INSOLVENCY RESOLUTION PROCESS</b>			
107	Notice period for meeting of creditor	Atleast 14 days	RP
108	Adjournment of meeting	Not more than 7 days at a time	RP
117	Forwarding of following documents by RP to parties bound by repayment plan: a) a notice that the repayment plan has been fully implemented; b) copy of a report prepared RP summarizing all receipts and payments	14+7	RP
<b>BANKRUPTCY ORDER FOR INDIVIDUALS AND PARTNERSHIP FIRMS</b>			
126	Passing of bankruptcy order by AA from confirmation or nomination by IBBI	14	AA
126	Copy of bankruptcy order to bankrupt , creditors, BT by AA from passing order	7	AA
129	Submission of statement of financial position to BT by bankrupt from BCD	7	Bankrupt
130	Notice to creditor by AA from BCD	10	AA
130	Issue of public notice inviting claims from BCD	10	AA
131	Registration of claims by creditors with BT from publication of Notice	7	Creditors
132	Preparation of list of creditors by BT from BCD on the basis of: i) application u/s 118, ii) ii) Statement of affairs filed by bankrupt u/s 125 and iii) iii) claims recd. u/s 130	14	BT

## Timeline Chart on Timings Mentioned in IBC Code, 2016..

Section	Matters	Period in Days	Applicable on
<b>BANKRUPTCY ORDER FOR INDIVIDUALS AND PARTNERSHIP FIRMS</b>			
<b>133</b>	Convening of meeting of creditors by BT from BCD	21	BT
<b>134</b>	Adjournment of meeting	Not more than 7 days at a time	BT
<b>137</b>	Approval of report of BT by COC from receipt of report	7	Creditors
<b>138</b>	Application to AA for discharge order by BT	1 year or with in 7 days from approval by creditors, whichever is earlier	BT
<b>145</b>	Appointment of BT in replacement by AA	14	AA
<b>146</b>	Appointment of BT by AA in case of resignation	14	AA
<b>146,147</b>	Notice of appointment to bankrupt by New BT( New BT appointed in case of replacement/vacancy)	7	BT
<b>150</b>	Notice by bankrupt for increase in income or acquisition of property	7	Bankrupt
<b>159</b>	Notice by BT to bankrupt for after acquired property from the date of knowledge	15	BT
<b>161</b>	Period for taking decision by BT regarding disclaimer of onerous property	7	BT
<b>162</b>	Objection agt. Disclaim of lease hold interest by interest person from receipt of notice	14	Interested person

## Timeline Chart on Timings Mentioned in IBC Code, 2016

Section	Matters	Period in Days	Applicable on
<b>BANKRUPTCY ORDER FOR INDIVIDUALS AND PARTNERSHIP FIRMS</b>			
<b>171</b>	Notice to creditors for submission of proof of debt from preparation of list of creditors	14	BT
<b>172</b>	Right to sell secured property with the permission of AA if creditors does not submit proof of security with in	30	Creditor
<b>201</b>	Ack. Of application for registration of IPA by IBBI	7	IBBI
<b>201</b>	Communication of rejection order to IPA	15	IBBI
<b>210</b>	Ack. Of application for registration of IU by IBBI	7	IBBI
<b>Eighth schedule</b>	Period for making Reference to NCLT by company in respect of appeal, reference or inquiry stands abated under SICA RPEAL ACT	180	Company

*Note: Time line applicable on IBBI other than mentioned in sec. 201 and 210 given in separate chart*

***Disclaimer: Best efforts have been made to compile the above chart and maintain accuracy of the same. However, due to human nature, zero discrepancies in above chart can not be claimed by the compiler.***

## Corporate Offence & Penalties

S. NO	Process	Section No.	Process	Provision	When	Fine (Not Less than)	Imprisonment
1	Insolvency and Resolution Process for Corporates	68	Punishment for concealment of property	<p>Any officer of CD has (if could not prove not-guilty):-</p> <ul style="list-style-type: none"> <li>-Concealed any debt due to/from CD or wilfully concealed or fraudulently removed any part of / property of CD of value <math>\geq</math>Rs. 10,000/-</li> <li>- wilfully concealed, destroyed, mutilated, falsified or made false entry w.r.t any book / paper of property / affairs of CD- fraudulently parted/ altered/ omitted any doc of property / affairs of CD</li> <li>- wilfully concealed knowledge of others doing above two</li> <li>-wilfully created any security int./ transferred / disposed any prop obtained on credit &amp; not paid for</li> <li>- taken in pawn or pledge or received property knowing it to be so secured, transferred / disposed (only after i.c.d)</li> </ul>	<p>Within in 12 months immediately preceding the Insolvency commencement date</p> <p>Or</p> <p>any time after insolvency commencement dt</p>	1 lakh To 1 crore	3 – 5 years



## Corporate Offence & Penalties

S. NO	Process	Section No.	Process	Provision	When	Fine (Not Less than)	Imprisonment
2	Insolvency and Resolution Process for Corporates	69	Punishment for transactions <b>defrauding</b> Creditors	<p>Any officer of CD has (if could not prove not-guilty):-</p> <ul style="list-style-type: none"> <li>-made/created any gift/transfer or charge on or caused for execution of decree/order against property of CD</li> <li>-concealed or removed part/property of CD within 2 months before date of unsatisfied judgment/decreed/order for payment of money obtained against CD</li> </ul> <p>[if first pt. beyond 5 years of i.c.d then not offence]</p>	On or after insolvency commencement date	1 lakh To 1 crore	1 – 5 years
3	Insolvency and Resolution Process for Corporates	70	Punishment for misconduct in course of CIRP	<p>Any officer of CD has (if could not prove not-guilty):-</p> <ul style="list-style-type: none"> <li>-does not disclose details of prop/txns/info to RP</li> <li>- does not deliver control or custody of part/property to RP</li> <li>- does not deliver books/papers of CD in his control to RP</li> <li>- fails to inform RP about the information in his knowledge about falsely proved debt by any person during CIRP</li> <li>- prevents production of book/paper w.r.t prop/affair of CD</li> <li>- Accounts for any part/prop of CD by fictitious loss/exp. or has attempted during any meeting of Crs. of CD within 12 months</li> </ul>	On or after insolvency commencement date	1 lakh To 1 crore	3 – 5 years

## Corporate Offence & Penalties

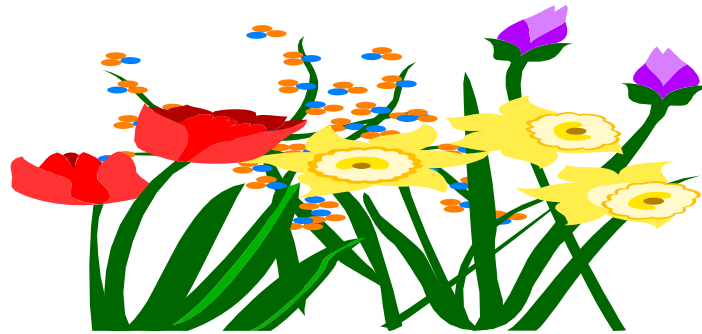
S. NO	Process	Section No.	Process	Provision	When	Fine (Not Less than)	Imprisonment
3a	Insolvency and Resolution Process for Corporates	70	Punishment for misconduct in course of CIRP	If an Insolvency Proff (IP) deliberately contravenes above (mentioned in pt. 3)	On or after insolvency commencement date	1 lakh To 5 Lakh	6 Months
4	Insolvency and Resolution Process for Corporates	71	Punishment for falsification of books of CD	any person destroys, mutilates, alters or falsifies any books / papers / securities, or makes or is in the knowledge of making of any false / fraudulent entry in any register, books of account or document of CD with intent to defraud or deceive any person	On or after insolvency commencement date	1 lakh to 1 crore	3 – 5 years
5	Insolvency and Resolution Process for Corporates	72	Punishment for wilful & material omissions from statements relating to affairs of CD	any officer of CD makes any material & wilful omission in any statement relating to affairs of CD	No time limit	1 lakh to 1 crore	3 – 5 years
6	Insolvency and Resolution Process for Corporates	73	Punishment for false representations to Crs.	any officer of CD– (a) makes a false representation or commits any fraud for the purpose of obtaining the consent of the creditors of CD or any of them to an agreement with reference to the affairs of CD, during the CIRP, or the liquidation process (b) has made any false representation, or committed any fraud, for that purpose	(a) On or after insolvency commencement date  (b) Prior to insolvency commencement date	1 lakh to 1 crore	3 – 5 years

## Corporate Offence & Penalties

S. NO	Process	Section No.	Process	Provision	When	Fine (Not Less than)	Imprisonment
7	Insolvency and Resolution Process for Corporates	74	Punishment for contravention of moratorium or the resolution plan	CD or any officer of CD directly or indirectly violates sec 14 (i.e., moratorium), then officer held responsible	During Moratorium	1 lakh to 3 lakhs	3 – 5 years
7a	Insolvency and Resolution Process for Corporates	74	Punishment for contravention of moratorium or the resolution plan	any creditor violates sec 14 (i.e., moratorium), then person allowing held responsible	During Moratorium	1 lakh to 1 crore	1 – 5 years
7b	Insolvency and Resolution Process for Corporates	74	Punishment for contravention of moratorium or the resolution plan	CD or any officer of CD or any creditor or any person on whom approved Resolution plan is binding u/s 31, contravenes any terms of Resolution plan	During Moratorium	1 lakh To 1 crore	1 – 5 years
8	Insolvency and Resolution Process for Corporates	75	Punishment for false information furnished in application	Any person knowingly furnishes false info or omits material fact in application u/s 7	No time limit	1 lakh To 1 crore	Nil

## Corporate Offence & Penalties

S. NO	Process	Section No.	Process	Provision	When	Fine (Not Less than)	Imprisonment
9	Insolvency and Resolution Process for Corporates	76	Punishment for non-disclosure of dispute or repayment of debt by OC	<p>–OC wilfully conceals the fact in appl u/s 9 that CD had notified him of dispute w.r.t unpaid operational debt or full payment thereof</p> <p>– any person wilfully authorise/permit above concealment</p>	No time limit	1 lakh to 1 crore	1 – 5 years
10	Insolvency and Resolution Process for Corporates	77	Punishment for providing false information in application made by CD	<p>–CD knowingly furnishes false info or omits material fact in application u/s 10</p> <p>–any person wilfully authorise/permit above offence</p>	No time limit	1 lakh to 1 crore	3 – 5 years



# Thank You

**CA. R K GUPTA**

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# Insolvency & Bankruptcy Code, 1<sup>st</sup> December, 2016

Exam:- 28<sup>th</sup> May

[www.IBBI.gov.in](http://www.IBBI.gov.in)

Examination:- Limited Insolvency Exam, National Insolvency Exam

Syllabus:- Makes Break Up

Code: 40 Marks

Case Law & Case Study: 26 Marks

Allied Laws: 34 Marks

MCQ:-

78-1=78

11-2=22

Total=100

Exam Center List

# Who Can Appeal

- ▶ CA
- ▶ CWA
- ▶ CS
- ▶ Advocate
- ▶ MBA

Alternative Rule:-

GIP

Rules:

IP

Consultant

Liquidator

Administrator

And this are with COP

# Judiciary

Apex Court–HC–NCLAT–NCLT

DRAT–NCLAT

DRT

Transactions:–

Extortionate

Undervalued

Professional

Applicants:–

FC–OC–Corporate Debtor



# Re..... Mechanism

Amount-1 Lakh- 1 Crore

Time: 180+90 Days= 330 Days

Initiation Date:-

Insolvency Commencement Date

14 Days- NCLT

10 Days- IBBI

%-51%-66%

Process:-

Application Before NCLT

Advocate

Moratorium/BOD Suspended

COC- All in all

Public .....

COC

Meeting of COC

In the first meeting itself the COC may decide to liquidate.

In..... Memorandum

Evaluation Matrix

Resolution Plan..... MSME

Waterfall Mechanism

Challenges:-

Resistance from existing management.

Pressure of

Managing Team

Travelling/Finances/Expectations