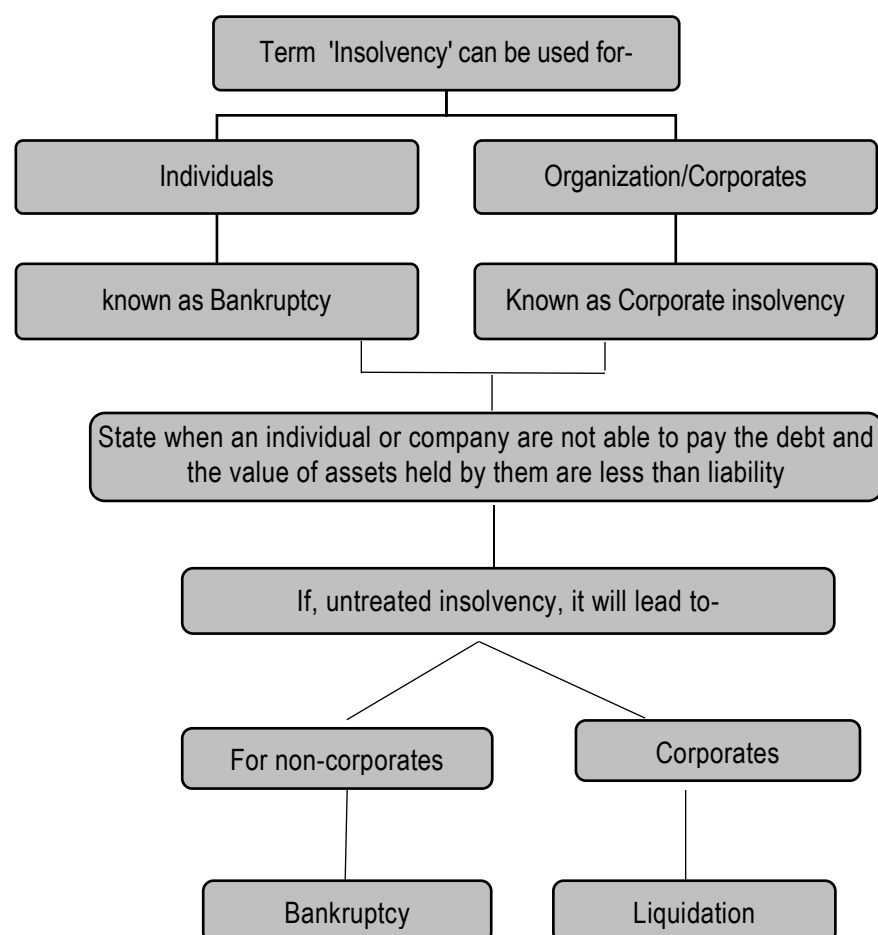


Insolvency and Bankruptcy Code, 2016

1. Introduction

Concept of Insolvency and Bankruptcy

- The term insolvency is used for both individuals and organizations. For individuals, it is known as bankruptcy and for corporate it is called corporate insolvency. Both refer to a situation when an individual or company are not able to pay the debt in present or near future and the value of assets held by them are less than liability.
- Insolvency in this Code is regarded as a “state” where assets are insufficient to meet the liabilities. Untreated insolvency will lead to bankruptcy for non-corporates and liquidation of corporates.



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- While insolvency is a situation which arises due to inability to pay off the debts due to insufficient assets, bankruptcy is a situation wherein application is made to an authority declaring insolvency and seeking to be declared as bankrupt, which will continue until discharge.
- From the above it is evident that insolvency is a state and bankruptcy is a conclusion. A bankrupt would be a conclusive insolvent whereas all insolvencies will not lead to bankruptcies. Typically insolvency situations have two options – resolution and recovery or liquidation

Relationship between Bankruptcy, Insolvency & Liquidation

Bankruptcy is a legal proceeding involving a person or business that is unable to repay outstanding debts. The bankruptcy process begins with a petition filed by the debtor, or by the creditors. All of the debtor's assets are measured and evaluated, and the assets may be used to repay a portion of outstanding debt.

In lucid language, if any person or entity is unable to pay off the debts, it owes, to their creditor, on time or as and when they became due and payable, then such person or entity is regarded as “insolvent”.

Liquidation is the winding up of a corporation or incorporated entity. There are many entities that can initiate proceedings to cause the Liquidation, those being:-

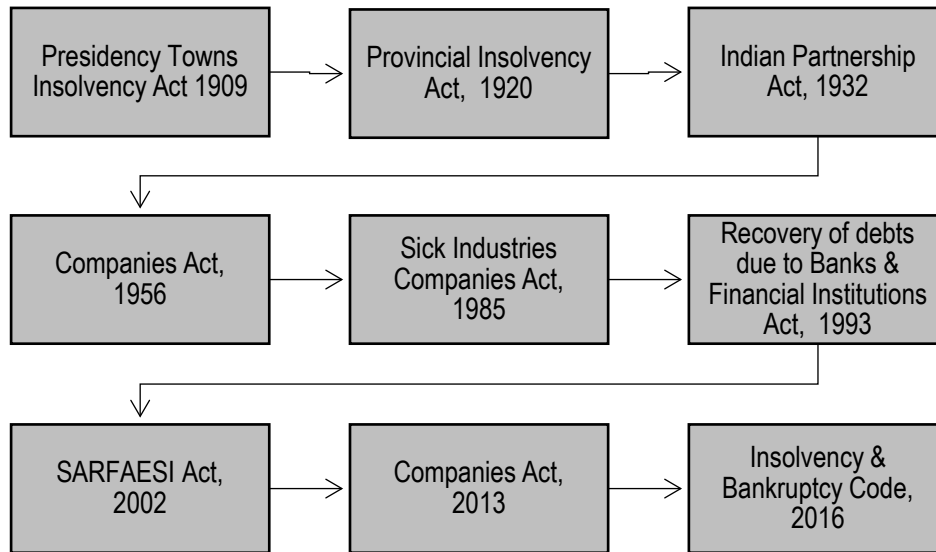
- The Regulatory Bodies;
- The Directors of a Company;
- The Shareholders of a Company; and
- An Unpaid Creditor of a Company

In nut shell, **insolvency** is common to both bankruptcy and liquidation. Not being able to pay debts as and when they became due and payable are the leading cause of Liquidations and is the only way that can cause a natural person to become a bankrupt.

Need for a New Law

As per the Ease of Doing Business Report of the World Bank, it takes an average of four to five years in insolvency resolution in India. The main reason behind such delay in the legal process is the existence of overlapping legislations and adjudicating authorities dealing with insolvency of companies and individuals in India.

The Government of India then formulated a plan to refurbish the prevailing bankruptcy laws and replace them with one that will facilitate hassle-free and time-bound for revival and closure of businesses.



The existing framework of law has failed to resolve insolvency situations.

- **Financial failure** – a persistent mismatch between payments by the enterprise and receivables into the enterprise, even though the business model is generating revenues.
- **Business failure** – which is a breakdown in the business model of the enterprise, and it is unable to generate sufficient revenues to meet payments.
- **Malfeasance and mismanagement by promoters**

Since, the existing laws were not aligned with the market realities and had several problems and were inadequate. There was no single window resolution available and the resolution and jurisdiction was with the multiple agencies with overlapping powers that was leading to delays and complexities in the process. The Companies Act deals with the corporate insolvency law and the individual insolvency laws were being dealt by a century old two Acts, i.e., The Provincial Towns Insolvency Act and the Presidency Towns Insolvency Act.

- Multiple laws governing Debt resolution and multiple forums
- Parallel proceedings by different parties on the same debtor in different forums and Conflicts between laws and over jurisdictions.
- Asymmetry of information

Objectives: A sound legal framework of bankruptcy law is required for achieving the following objectives:-

- **Improved handling of conflicts between creditors and the debtor:** It can provide procedural certainty about the process of negotiation, in such a way as to reduce problems of common property and reduce information asymmetry for all economic participants.
- **Avoid destruction of value:** It can also provide flexibility for parties to arrive at the most efficient solution to maximise value during negotiations. The bankruptcy law will create a

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platform for negotiation between creditors and external financiers which can create the possibility of such rearrangements.

- **Drawing the line between malfeasance and business failure:** Under a weak insolvency regime, the stereotype of “rich promoters of defaulting entities” generates two strands of thinking:
 - (a) the idea that all default involves malfeasance and
 - (b) the idea that promoters should be held personally financially responsible for defaults of the firms that they control.
- **Clearly allocate losses in macroeconomic downturns:** With a sound bankruptcy framework, these losses are clearly allocated to some people. Loss allocation could take place through taxes, inflation, currency depreciation, expropriation, or wage or consumption suppression. These could fall upon foreign creditors, small business owners, savers, workers, owners of financial and non-financial assets, importers, exporters.

The following **benefits are expected from the new Law:-**

- Asset stripping by promoters is controlled after and before default.
- The promoters can make a proposal that involves buying back the company for a certain price, alongside a certain debt restructuring
- Others in the economy can make proposals to buy the company at a certain price, alongside a certain debt restructuring
- All parties know that if no deal is struck within the stipulated period, the company will go into liquidation. This will help avoid delaying tactics.
- The inability of promoters to steal from the company, owing to the supervision of the IP (Insolvency Professional), also helps reduce the incentive to have a slow lingering death.

The Code seeks to provide an effective legal framework for timely resolution of insolvency and bankruptcy which would support development of credit markets and encourage entrepreneurship, and facilitate more investments leading to higher economic growth and development.

Structure of the Code

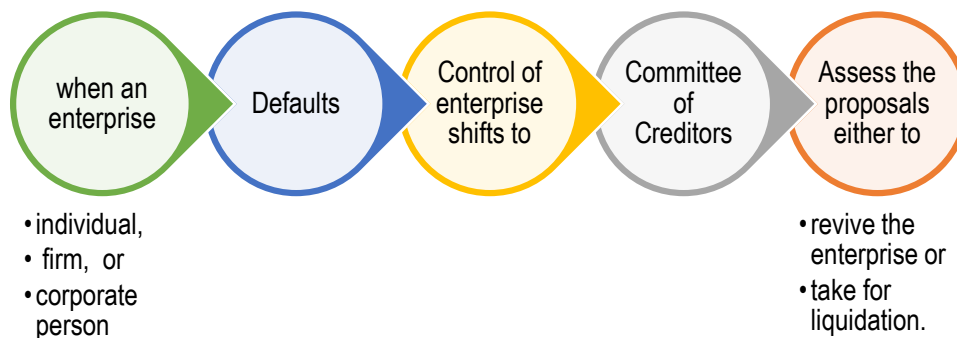
The Code is structured into 5 parts comprising of 255 sections and 11 Schedules. Each part deals with a distinct aspect of the insolvency resolution process.

Part	Part Content	Chapters and Sections	Chapter / Contents
I	Preliminary	(1-3)	1. Short title, extent & Commencement 2. Application 3. Definitions
II	Insolvency	I–VII	1. Preliminary (Application & Definitions)

	Resolutions and Liquidation for Corporate Persons	(4-77)	<ol style="list-style-type: none"> 2. Corporate Insolvency Resolution Process 3. Liquidation Process 4. Fast Track Corporate Insolvency Resolution Process 5. Voluntary Liquidation of Corporate Persons 6. Adjudicating Authority for Corporate Persons 7. Offences & Penalties
III	Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms	I – VII (78-187)	<ol style="list-style-type: none"> 1. Preliminary (Application & Definitions) 2. Fresh Start Process 3. Insolvency Resolution Process 4. Bankruptcy Order for Individuals & Partnership Firms 5. Administration & Distribution of the Estate of the Bankrupt 6. Adjudicating Authority 7. Offences & Penalties
IV	Regulation of Insolvency Professionals, Agencies and Information Utilities	I – VII (188-223)	<ol style="list-style-type: none"> 1. The Insolvency and Bankruptcy Board of India 2. Powers & Functions of the Board 3. Insolvency Professional Agencies 4. Insolvency Professionals 5. Information Utilities 6. Inspection & Investigation 7. Finance, Accounts & Audit
V	Miscellaneous	(224 – 255)	Miscellaneous

An **Insolvency and Bankruptcy Board of India (IBBI)** is established to administer the work of insolvency and bankruptcy of corporate persons, firms and individuals.

Foundation of Code:



Decisions are required to be taken in a time bound manner so that there are greater chances that the enterprise is saved as a going concern and productive resources of economy can be put to best use.

Insolvency of corporate persons - Part II of the Code, deals with insolvency resolution and liquidation for corporate persons.

At first instance, **corporate insolvency process will be initiated.**

Insolvency professional will form a committee of creditors and with their consensus, efforts will be made to develop finalise plan to revive the corporate person.

This process will last for 180 days, extendable by further maximum 90 days.

'**Resolution plan**' will be drafted to restore the corporate.

A Fast Track Corporate Insolvency Resolution will be available to small corporate persons.

If the efforts fails to rehabilitate the enterprise, the corporate person will be liquidated in time bound manner.

NCLT will be Adjudicating Authority and NCLAT will be appellate authority for corporate persons.

Provisions relating to Corporate Insolvency Resolution Process (section 4 to section 32 of Insolvency Code) will be applicable.

Provisions relating to Liquidation Process of Corporates (section 33 to section 59 of Insolvency Code) will be effective in case where the enterprise is taken for liquidation.

Winding up of companies - In most of the cases, winding up of companies will be through the Insolvency Resolution Process only. Direct winding up process under Companies Act, 2013 will be used very rarely.

Bankruptcy of individuals and firms - Part III of Insolvency Code 2016 deals with insolvency resolution and liquidation for individuals and firms. For individuals and firms, there are two distinct processes - fresh start and insolvency resolution. These are followed by bankruptcy order. Debt Recovery Tribunal (DRT) will be adjudicating authority and DRAT will be appellate authority for individuals and firms. These provisions are not yet effective as not notified [as on 30th April, 2018].

In case of other individuals and firms, the process is similar to that applicable to corporate persons.

Flow of insolvency process-

- The process will be managed by 'resolution professional' under direction of 'Adjudicating Authority'.
- Insolvency Resolution Process will be initiated.
- Finalise 'repayment plan' with concurrence of debtor and committee of creditors.
- On consensus on repayment plan.

- the individual or firm will get a discharge order.
- On failure to finalize the repayment plan, the person will be declared 'bankrupt'.
- The resolution professional will take over estate of the bankrupt. He will sell or dispose it off and satisfy repayments of creditors to the extent possible.
- After that, the bankrupt will get a 'discharge order'.
- The discharge order will be registered with Board (IBBI) in a register maintained under section 196 of Insolvency Code, 2016.

Provisions of this Code to override other laws: Section 238 of the Code, 2016 states that the Code shall have overriding effect over other laws.

For example, sections 53 and 178 of Insolvency Code, 2016 provide that distribution from sale of assets will be as specified in that section, notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force.

However, many tax laws (including GST) provide for first charge on assets of the taxable person. This is also an overriding provision.

Extent and Commencement of the Code:

As per section 1 of the Insolvency and Bankruptcy Code, it extends to the whole of India except Part III (Insolvency Resolution and Bankruptcy for Individuals and Partnership Firm) which excludes the state of Jammu and Kashmir.

This Code came into an enforcement on 28th May 2016, however, the Central Government appointed different dates for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

Applicability of the Code

The provisions of the Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:-

- (a) Any company incorporated under the Companies Act, 2013 or under any previous law.
- (b) Any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such Special Act.
- (c) Any Limited Liability Partnership under the LLP Act 2008.
- (d) Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf.

¹[(e) personal guarantors to corporate debtors;

¹ Clauses (e), (f) and (g) substituted for clause (e) by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. **23-11-2017**. Prior to its substitution, clause (e) read as under: "(e) Partnership firms and individuals".

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- (f) partnership firms and proprietorship firms; and
- (g) individuals, other than persons referred to in clause (e)]

Features of the Insolvency and Bankruptcy Code:

The Insolvency and Bankruptcy Code, 2016 has following distinguishing features:-

- (i) **Comprehensive Law:** Insolvency Code is a comprehensive law which envisages and regulates the process of insolvency and bankruptcy of all persons including corporates, partnerships, LLP's and individuals.
- (ii) **No Multiplicity of Laws:** The Code has withered away the multiple laws covering the recovery of debts and insolvency and liquidation process and presents singular platform for all the reliefs relating to recovery of debts and insolvency.
- (iii) **Low Time Resolution:** The Code provides a low time resolution and defines fixed time frames for insolvency resolution of companies and individuals. The process is mandated to be completed within 180 days, extendable to maximum of 90 days. Further, for a speedier process there is provision for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.
- (iv) **One Window Clearance:** It has been drafted to provide one window clearance to the applicant whereby he gets the appropriate relief at the same authority unlike the earlier position of law where in case the company is not able to revive the procedure for winding up and liquidation has to be initiated under separate laws governed by separate authorities.
- (v) **One Chain of Authority:** There is one chain of authority under the Code. It does not even allow the civil courts to interfere with the application pending before the adjudicating authority, thereby reducing the multiplicity of litigations. The National Company Law Tribunal (NCLT) will adjudicate insolvency resolution for companies. The Debt Recovery Tribunal (DRT) will adjudicate insolvency resolution for individuals.
- (vi) **Priority to the interests of workman and employees:** The Code also protects the interests of workman and employees. It excludes dues payable to workmen under provident fund, pension fund and gratuity fund from the debtor's assets during liquidation.
- (vii) **New Regulatory Authority:** It provides for constitution of a new regulatory authority 'Insolvency and Bankruptcy Board of India' to regulate professionals, agencies and information utilities engaged in resolution of insolvencies of companies, partnership firms and individuals. The Board has already been established and started functioning.

Key Objectives of the Code

The Insolvency and Bankruptcy Code, 2016 is intended to strike the right balance of interests of all stakeholders of the business enterprise so that the corporates and other business entities enjoy availability of credit and at the same time the creditor do not have to bear the losses on account of default. The purpose of enactment of the Insolvency and Bankruptcy Code, 2016 is

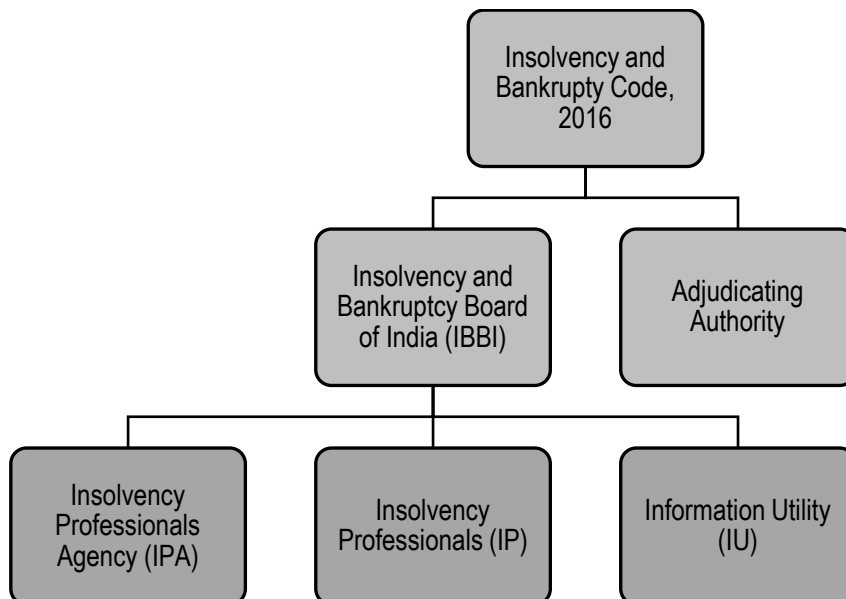
as follows:

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

Regulatory Mechanism

The Insolvency and Bankruptcy Code, 2016 provides a new regulatory mechanism with an institutional set-up comprising of five pillars:-

- Insolvency and Bankruptcy Board of India
- Insolvency Professional Agencies
- Insolvency Professionals
- Information Utilities
- Adjudicating Authority



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- 1. Insolvency and Bankruptcy Board of India**-The Code provides for establishment of a Regulator who will oversee these entities and to perform legislative, executive and quasi-judicial functions with respect to the Insolvency Professionals, Insolvency Professional Agencies and Information Utilities. The Insolvency and Bankruptcy Board of India was established on October 1, 2016. The head office of the Board is located at New Delhi.

The Board is a body corporate, having perpetual succession and a common seal, with power, subject to the provisions of this Code, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

Composition of the Board

- (a) a Chairperson;
 - (b) three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, ex-officio;
 - (c) one member to be nominated by the Reserve Bank of India, ex officio ;
 - (d) five other members to be nominated by the Central Government, of whom at least three shall be the whole-time members
- 2. Insolvency Professional Agencies**-The Code provides for establishment of insolvency professionals agencies to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code 2016 and read with regulations.

Principles governing registration of Insolvency Professional Agency

to promote the professional development of and regulation of insolvency professionals

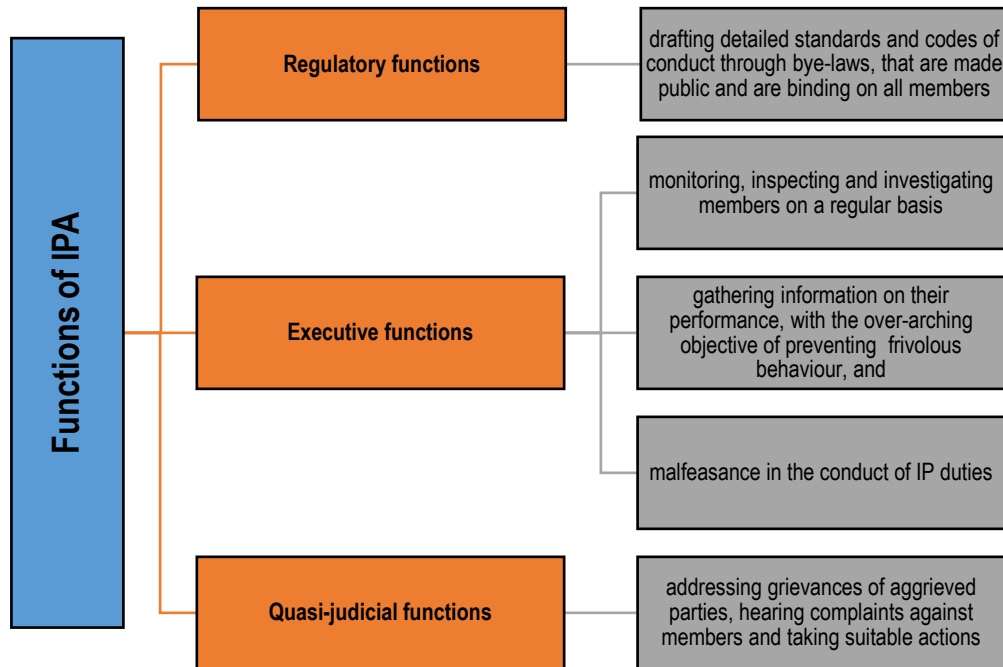
to promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified

to promote good professional and ethical conduct amongst insolvency professionals

to protect the interests of debtors, creditors and such other persons as may be specified

to promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code

Functions of Insolvency professional agencies (IPA): It will perform three key functions:



- 3. Insolvency Professionals:** The Code provides for insolvency professionals as intermediaries who would play a key role in the efficient working of the bankruptcy process. The role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. He shall have the power and responsibility to monitor and manage the operations and assets of the enterprise.

In the resolution process, the insolvency professional verifies the claims of the creditors, constitutes a creditors committee, runs the debtor's business during the moratorium period and helps the creditors in reaching a consensus for a revival plan. In liquidation, the insolvency professional acts as a liquidator and bankruptcy trustee.

An Insolvency Professional if appointed as a Resolution Professional shall act as a neutral trustee of the assets of the organization.

Every insolvency professional shall abide by the following code of conduct:—

- to take reasonable care and diligence while performing his duties;
- to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;
- to allow the insolvency professional agency to inspect his records;
- to submit a copy of the records of every proceeding before the Adjudicating Authority

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to the Board as well as to the insolvency professional agency of which he is a member; and

- to perform his functions in such manner and subject to such conditions as may be specified.

4. Information Utilities – The Code envisages creation of information utility to collect, collate, authenticate and disseminate financial information of debtors in centralized electronic databases, at all times.

The Code requires creditors to provide financial information of debtors to multiple utilities on an ongoing basis. Such information would be available to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings. The purpose of this is to remove information asymmetry and dependency on the debtor's management for critical information that is needed to swiftly resolve insolvency.

Obligations of Information Utility:

An information utility shall provide such services as may be specified including core services to any person if such person complies with the terms and conditions as may be specified by regulations.

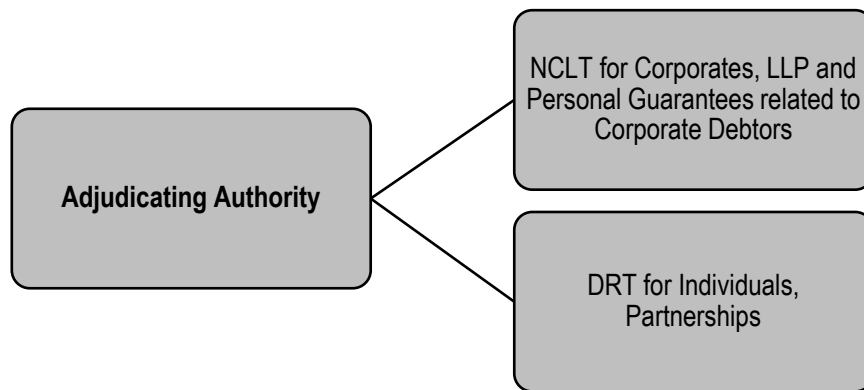
For the purposes of providing core services to any person, every information utility shall—

- (a) create and store financial information in a universally accessible format;
 - (b) accept electronic submissions of financial information from persons who are under obligations to submit financial information
 - (c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;
 - (d) meet such minimum service quality standards as may be specified by regulations;
 - (e) get the information received from various persons authenticated by all concerned parties before storing such information;
 - (f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;
 - (g) publish such statistical information as may be specified by regulations;
 - (h) have inter-operability with other information utilities.
- ### 5. Adjudicating Authority-
- The Adjudicating Authority for corporate insolvency and liquidation is the National Company Law Tribunal (NCLT). Appeals against NCLT orders shall lie with National Company Law Appellate Tribunal (NCLAT) and thereafter to the Supreme Court of India.

The Code has created one chain of authority for adjudication under the Code. Civil Courts

have been prohibited to interfere in the matters related with application pending before the Adjudicating Authority. No injunction shall be granted by any Court, Tribunal or Authority in respect of any action taken by the NCLT.

For individuals and other persons, the Adjudicating Authority is the Debt Recovery Tribunal (DRT), appeals lie to the Debt Recovery Appellate Tribunal (DRAT) and thereafter to the Supreme Court.



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

Answer: No, as per the Code, individual & firms in relation to Insolvency matters shall apply to the DRT not to NCLT. Here there is violation of jurisdiction in relation to adjudicating authority.

2. Important Definitions [Sections 3 and 5]

- (1) **Board** means the Insolvency and Bankruptcy Board of India established under section 188(1) [Section 3(1)]
- (2) **Charge** means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage; [Section 3(4)]
- (3) **Claim** means a right to payment or right to remedy for breach of contract if such breach gives rise to a right to payment whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. [Section 3(6)]
- (4) **Corporate Person** means
 - (a) a company as defined under section 2(20) of the Companies Act, 2013;
 - (b) a Limited Liability Partnership as defined in 2(1)(n) of Limited Liability Act, 2008; or,

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- (c) any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider. [Section 3(7)]
- (5) **Corporate Debtor** means a corporate person who owes a debt to any person. [Section 3(8)]
- (6) **Core services** means services rendered by an information utility for—
- accepting electronic submission of financial information
 - safe and accurate recording of financial information;
 - authenticating and verifying the financial information submitted by a person; and
 - providing access to information stored with the information utility to persons [Section 3(9)]
- (7) **Creditor** means any person to whom a debt is owed and includes –
- a financial creditor,
 - an operational creditor,
 - a secured creditor,
 - an unsecured creditor, and
 - a decree holder. [Section 3(10)]
- (8) **Debt** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. [Section 3(11)]
- (9) **Default** means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be. [Section 3(12)]
- (10) **Financial information**, in relation to a person, means one or more of the following categories of information, namely:—
- records of the debt of the person;
 - records of liabilities when the person is solvent;
 - records of assets of person over which security interest has been created;
 - records, if any, of instances of default by the person against any debt;
 - records of the balance sheet and cash-flow statements of the person; and
 - such other information as may be specified. [Section 3(13)]
- (11) **Financial Product** means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts

to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument. [Section 3(15)]

(12) Financial service includes any of the following services, namely:—

- (a) accepting of deposits;
- (b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
- (c) effecting contracts of insurance;
- (d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
- (e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—
 - (i) buying, selling, or subscribing to, a financial product;
 - (ii) availing a financial service; or
 - (iii) exercising any right associated with a financial product or financial service;
- (f) establishing or operating an investment scheme;
- (g) maintaining or transferring records of ownership of a financial product;
- (h) underwriting the issuance or subscription of a financial product; or
- (i) selling, providing, or issuing stored value or payment instruments or providing payment services; [Section 3(16)]

(13) Financial Service Provider means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator e.g. banks, financial institutions, insurance companies, mutual funds etc. [Section 3(17)].

(14) Financial Sector Regulator means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes-

- the Reserve Bank of India,
- the Securities and Exchange Board of India,
- the Insurance Regulatory and Development Authority of India,
- the Pension Fund Regulatory Authority, and
- such other regulatory authorities as may be notified by the Central Government; [Section 3(18)]

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- (15) **Insolvency professional** means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207; [Section 3(19)]
- (16) **"Insolvency professional agency"** means any person registered with the Board under section 201 as an insolvency professional agency; [Section 3(20)]
- (17) **"Information utility"** means a person who is registered with the Board as an information utility under section 210; [Section 3(21)]
- (18) A **person** includes:-
- an individual
 - a Hindu Undivided Family
 - a company
 - a trust
 - a partnership
 - A limited liability partnership, and
 - any other entity established under a Statute.
- And includes a person resident outside India [Section 3(23)]
- (19) **Property** includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property; [Section 3(27)]
- (20) **Secured creditor** means a creditor in favour of whom security interest is created; [Section 3(30)]
- (22) **Security Interest** means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person. [Section 3(31)]
- (23) A **transaction** includes an agreement or arrangement in writing for transfer of assets, or funds, goods or services, from or to the corporate debtor. [Section 3(33)]
- (24) **Transfer** includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. In case of property- transfer of property means transfer of any property. [Section 3(34)]
- (25) **Transfer of property** means transfer of any property and includes a transfer of any interest in the property and creation of any charge upon such property; [Section 3(35)]
- (26) **Adjudicating Authority**, for the purposes of this Part II (Insolvency Resolution and

Liquidation for corporate persons), means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013. [Section 5(1)]

(27) "Constitutional document", in relation to a corporate person, includes articles of association, memorandum of association of a company and incorporation document of a Limited Liability Partnership; [Section 5(4)]

(28) Corporate applicant means—

- (a) corporate debtor; or
- (b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or
- (c) an individual who is in charge of managing the operations and resources of the corporate debtor; or
- (d) a person who has the control and supervision over the financial affairs of the corporate debtor; [Section 5(5)]

²**(29) "corporate guarantor"** means a corporate person who is the surety in a contract of guarantee to a corporate debtor; **[Section 5(5A)]**

(30) Dispute includes a suit or arbitration proceedings relating to—

- (a) the existence of the amount of debt;
- (b) the quality of goods or service; or
- (c) the breach of a representation or warranty; [Section 5(6)]

(31) Financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to; [section 5(7)]

(32) Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes:-

- a) Any money borrowed against the payment of interest.
- b) Any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent.
- c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument.
- d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards.

² Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. Since notified after 30th April, 2018, so this definition is not applicable for November 2018 examination.

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- e) Any receivables sold or discounted other than any receivables sold on non-recourse basis.
- f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.

³Explanation.—For the purposes of this sub-clause,—

- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
 - (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 .
- g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account.
 - h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution.
 - i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in above clauses. [Section 5(8)].
- (33) Financial position**, in relation to any person, means the financial information of a person as on a certain date; [Section 5(9)]
- (34) Information memorandum** means a memorandum prepared by resolution professional under sub-section (1) of section 29; [Section 5(10)]
- (35) Initiation date** means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process; [Section 5(11)]
- (36) Insolvency commencement date** means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be; [Section 5(12)]
- (37) Insolvency resolution process period** means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day; [Section 5(14)]
- (38) "Interim finance"** means any financial debt raised by the resolution professional during the insolvency resolution process period; [Section 5(15)]
- (39) "Liquidation cost"** means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board; [Section 5(16)]

³ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This explanation is not applicable for November 2018 examination.

- (40) **Liquidation commencement date** means the date on which proceedings for liquidation commence in accordance with section 33 (Initiation of Liquidation) or section 59 (Voluntary Liquidation of corporate persons), as the case may be; [Section 5(17)]
- (41) **Liquidator** means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be; [Section 5(18)]
- (42) **Operational creditor** means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred; [Section 5(20)]
- (43) **"Operational debt"** means a claim in respect of the provision of goods or services including employment or a debt in respect of the ⁴repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority; [Section 5(21)]
- (44) **"Personal guarantor"** means an individual who is the surety in a contract of guarantee to a corporate debtor; [Section 5(22)]
- (45) **"Personnel"** includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor; [Section 5(23)]
- (46) **Related party**, in relation to a corporate debtor, means—
- (a) **a director or partner or a relative** of a director or partner of the corporate debtor
 - (b) **a key managerial personnel or a relative** of a key managerial personnel of the corporate debtor;
 - (c) **a limited liability partnership or a partnership firm** in which a director, partner, or manager of the corporate debtor or his relative is a partner;
 - (d) **a private company** in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;
 - (e) **a public company** in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
 - (f) **any body corporate** whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
 - (g) **any limited liability partnership or a partnership firm** whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
 - (h) **any person** on whose advice, directions or instructions, a director, partner or

⁴ The word "repayment" is substituted by the word "payment" vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

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manager of the corporate debtor is accustomed to act;

- (i) **a body corporate which is a holding, subsidiary or an associate company** of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;
 - (j) **any person who controls** more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;
 - (k) **any person in whom the corporate debtor controls** more than twenty per cent. of voting rights on account of ownership or a voting agreement;
 - (l) **any person who can control the composition** of the board of directors or corresponding governing body of the corporate debtor;
 - (m) **any person who is associated with the corporate debtor** on account of—
 - (i) participation in policy making processes of the corporate debtor; or
 - (ii) having more than two directors in common between the corporate debtor and such person; or
 - (iii) interchange of managerial personnel between the corporate debtor and such person;
 - (iv) provision of essential technical information to, or from, the corporate debtor; [Section 5(24)]
- (47) ⁵["Related party", in relation to an individual, means—**
- (a) a person who is a relative of the individual or a relative of the spouse of the individual;
 - (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;
 - (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
 - (d) a private company in which the individual is a director and holds along with his relatives, more than two per cent of its share capital;
 - (e) a public company in which the individual is a director and holds along with relatives, more than two per cent of its paid-up share capital;
 - (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

⁵ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. **6-6-2018**. This new insertion is not applicable for November 2018 examination.

- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
- (h) a person on whose advice, directions or instructions, the individual is accustomed to act;
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

- (a) "Relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—
 - (i) members of a Hindu Undivided Family,
 - (ii) husband,
 - (iii) wife,
 - (iv) father,
 - (v) mother,
 - (vi) son,
 - (vii) daughter,
 - (viii) son's daughter and son,
 - (ix) daughter's daughter and son,
 - (x) grandson's daughter and son,
 - (xi) granddaughter's daughter and son,
 - (xii) brother,
 - (xiii) sister,
 - (xiv) brother's son and daughter,
 - (xv) sister's son and daughter,
 - (xvi) father's father and mother,
 - (xvii) mother's father and mother,
 - (xviii) father's brother and sister,
 - (xix) mother's brother and sister; and
- (b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included; **[Section 5(24A)]**

- (48) ⁶["**Resolution applicant**"] means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25;] [Section 5(25)]
- (49) **Resolution plan** means a plan proposed by ⁷resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II; [Section 5(26)]
- (50) **Resolution professional**, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional; [Section 5(27)]
- (51) **Voting share** means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor. [Section 5(28)]

3. Corporate Insolvency Resolution Process [Sections 4, 6-32]

Provisions related to Insolvency Resolution and Liquidation process for Corporate Persons are covered in Part II of the Code. This part comprises of seven chapters with section 4 to 77 of the Code. Each chapter deals with different issues relating to Insolvency Resolution and liquidation of corporate persons. The term corporate person has been defined in section 3(7) of the Code. Insolvency resolution and Liquidation of financial service providers is excluded from the scope of the Code.

Corporate Insolvency Resolution is a process during which financial creditors assess whether the debtor's business is viable to continue and the options for its rescue and revival, if any. If the insolvency resolution process fails or financial creditors decide that the business of debtor cannot be carried on in a profitable manner and it should be wound up, the debtor will undergo liquidation process and the assets of the debtor shall be realized and distributed by the liquidator.

The Insolvency Resolution Process provides a collective mechanism to lenders to deal with the overall distressed position of a corporate debtor. This is a significant departure from the existing legal framework under which the primary onus to initiate a re-organization process lies with the debtor, and lenders may pursue distinct actions for recovery, security enforcement and debt restructuring.

The Code creates time-bound processes for insolvency resolution of companies and individuals. These processes will be completed within 180 days, extendable by 90 days. It also

⁶ Substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. **23-11-2017**. Prior to its substitution, clause (25) read as under: '(25) "resolution applicant" means any person who submits a resolution plan to the resolution professional;'

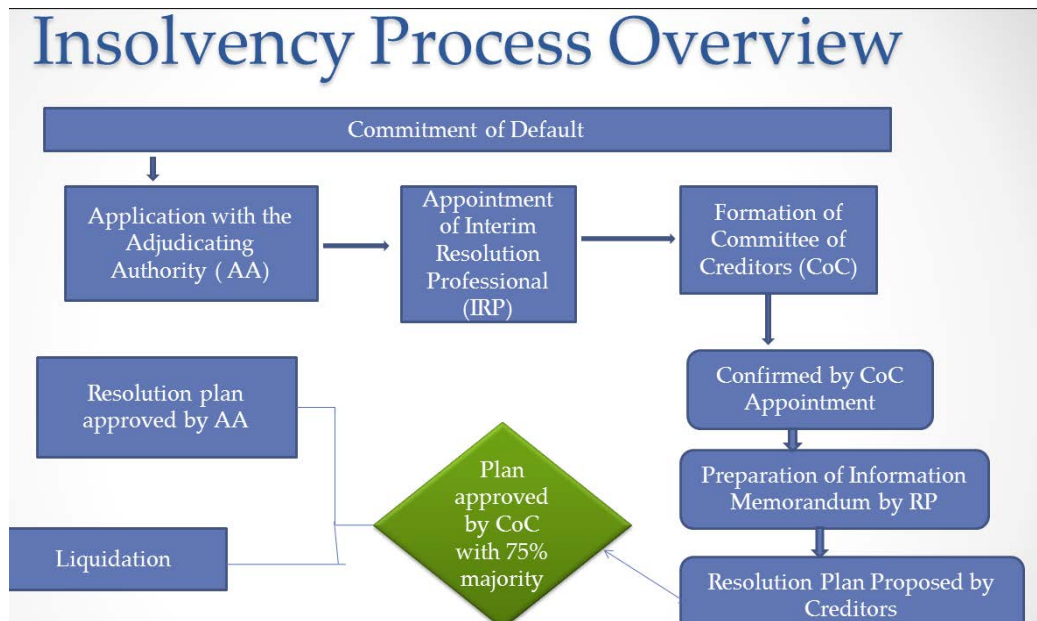
⁷ Substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017.

provides for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.

Process Flow

A comprehensive process that covers the gamut of insolvency resolution framework for Corporates and includes processes relating to:-

- Filing of application before NCLT
- Adjudication: Admission or Rejection of application
- Moratorium and Public Announcement
- Appointment of Interim Resolution Professional
- Formation of the Committee of Creditors
- Preparation and approval of the Resolution Plan
- Consequences of non-submission of the Resolution Plan



(I) Application to National Company Law Tribunal

The process of insolvency is triggered by occurrence of default. As per Section 3(12) of the Code, default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor.

The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, the Central Government may, by notification, specify the minimum amount of default of higher value which

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shall not be more than one crore rupees. [Section 4]

Filing of application before NCLT

The corporate insolvency process may be initiated against any defaulting corporate debtor by making an application for corporate insolvency resolution before NCLT.

Who can initiate insolvency resolution process?

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter (Chapter II of part II) [Section 6].

The application may be made by:-

Financial creditor any person to whom a financial debt is owed &

- Includes a person to whom such debt is legally assigned or transferred

Operational creditor any person to whom a operational debt is owed &

- Includes a person to whom such debt is legally assigned or transferred

Corporate debtor A corporate person who owes a debt to any person

(A) Initiation of corporate insolvency resolution process by financial creditor

- (i) **Filing of application before adjudicating authority:** A financial creditor either by itself or jointly ⁸with other financial creditors, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

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

- (ii) **Furnishing of information:** The financial creditor shall, along with the application furnish—
- (a) **record of the default** recorded with the information utility or such other record or evidence of default as may be specified;
 - (b) **the name of the resolution professional** proposed to act as an interim resolution professional; and

⁸ The word "other financial creditors" is replaced with "the *other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government*" vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

- (c) **any other information** as may be specified by the Board.
- (iii) **Time period for determination of default:** The Adjudicating Authority shall, within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.
- (iv) **Order:** Where the Adjudicating Authority is satisfied, either—

May admit application when -	May reject application when-5
<ul style="list-style-type: none"> • a default has occurred and, • and the application is complete • no disciplinary proceedings pending against the proposed resolution professional 	<ul style="list-style-type: none"> • default has not occurred or • the application is incomplete • any disciplinary proceeding is pending against the proposed resolution professional

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

- (v) **Commencement of corporate insolvency resolution process:** The corporate insolvency resolution process shall commence from the date of admission of the application.
- (vi) **Communication of Order:** The Adjudicating Authority shall communicate order of admission or rejection of such application within seven days, as the case may be —
- (1) in case of admission, to the financial creditor and the corporate debtor;
 - (2) In case of rejection, to the financial creditor [Section 7]

(B) Insolvency resolution by operational creditor

Serving of demand Notice: On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice demanding payment of the amount involved in the default to the corporate debtor.

"Demand notice" means a notice served by an operational creditor to the corporate debtor demanding ⁹repayment of the operational debt in respect of which the default has occurred.

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

⁹ Word "repayment" is substituted with the word "payment" vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable to November 2018 examination.

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- (1) ¹⁰**existence of a dispute**, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
- (2) **the repayment of unpaid operational debt**— (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor. [Section 8]

Application for initiation of corporate insolvency resolution process by operational creditor:

- (i) **Filing of application by operational creditor:** After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.
- (ii) **Providing of documents/ information:** The operational creditor shall, along with the application furnish the following documents—
 - (a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
 - (b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
 - (c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt ¹¹by the corporate debtor; and
 - ¹² "(d) such other information as may be specified.
- (iii) **An operational creditor to act as an interim resolution professional during the resolution process:** An operational creditor initiating a corporate insolvency resolution process, may propose a resolution professional to act as an interim resolution professional.

¹⁰ Substituted for "if any, and" by the word "if any, or" through the enforcement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

¹¹ Substituted for "by the corporate debtor; and" with the word "by the corporate debtor, if available" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018 . This amendment is not applicable for November 2018 examination.

¹² clause (d) vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018 is replaced with the following clauses "(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed". This amendment is not applicable for November 2018 examination.

(iv) **Order of an adjudicating authority:** The Adjudicating Authority shall, within fourteen days of the receipt of the application, by an order—

admit the application and communicate such decision to the operational creditor and the corporate debtor if,—	reject the application and communicate such decision to the operational creditor and the corporate debtor, if—
<p>(a) the application made is complete; (b) there is no ¹³repayment of the unpaid operational debt; (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and (e) there is no disciplinary proceeding pending against any resolution professional proposed, if any.</p>	<p>(a) the application made is incomplete; (b) there has been ¹⁴repayment of the unpaid operational debt; (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor; (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or (e) any disciplinary proceeding is pending against any proposed resolution professional:</p> <p>Provided that Adjudicating Authority, shall before rejecting an application which is incomplete, give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.</p>

(v) **Commencement of insolvency resolution process:** The corporate insolvency resolution process shall commence from the date of admission of the application [Section 9]

(C) Initiation of corporate insolvency resolution process by corporate applicant.

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

¹³ Substituted for "repayment" by the word "payment" through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

¹⁴ Substituted for word "repayment" by the word "payment" through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

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- (ii) **¹⁵Furnishing of information:** The corporate applicant shall, along with the application furnish the information relating to—
- (a) its books of account and such other documents relating to such period as may be specified; and
 - (b) the resolution professional proposed to be appointed as an interim resolution professional."
- (iii) **Admission/rejection of application:** The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—
- (a) admit the application, if it is complete ¹⁶[and no disciplinary proceeding is pending against the proposed resolution professional]; or
 - (b) reject the application, if it is incomplete ¹⁷[or any disciplinary proceeding is pending against the proposed resolution professional]:

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

- (iv) **Commencement of insolvency resolution process:** The corporate insolvency resolution process shall commence from the date of admission of the application. [Section 10]

Persons not entitled to initiate insolvency process

Following persons shall not be entitled to initiate the corporate insolvency process:-

- (a) A corporate debtor already undergoing an insolvency resolution process; or
- (b) A corporate debtor having completed corporate insolvency resolution process 12 (twelve) months preceding the date of making of the application; or

¹⁵ Substituted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018 with the following—"the corporate applicant shall, along with the application, furnish—

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

This amendment is not applicable for November 2018 examination.

¹⁶ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This insertion is not applicable for November 2018 examination.

¹⁷ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This insertion is not applicable for November 2018 examination.

- (c) A corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 (twelve) months before the date of making of an application;
- (d) A corporate debtor in respect of whom a liquidation order has been made.

In this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor. [Section 11]

Example: Suppose a ABC Pvt. Ltd. has committed a default, and is undergoing a corporate insolvency resolution process. Mr. X and Mr. Y, are partners of the ABC Pvt. Ltd. However, Mr. X under the constitutional document of the Company, is being authorized to make an application for the corporate insolvency resolution process. Being a partner of ABC Pvt. Ltd. Mr. Y filed an application on behalf of Mr. X for initiation of corporate insolvency process. State the validity of the act of Mr. Y for initiating corporate insolvency resolution process with the Adjudicating Authority?

Answer: According to section 11, a corporate debtor includes a corporate applicant in respect of such corporate debtor. Whereas as Corporate applicant means as per the definition given in section 5(15) corporate applicant can also be a member or partner of the corporate debtor who is authorized to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor. Since in the given case, Mr. X is the authorized person not Mr. Y, so his act is invalid as to filing of an application to Adjudicating authority to initiate corporate insolvency resolution process.

(II) Adjudication: Admission or Rejection of Application

The Adjudicating Authority may either accept or reject the application within fourteen days of receipt of application. However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

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

Time-limit for completion of insolvency resolution process

- (1) **Period for completion of insolvency process:** The corporate insolvency resolution process shall be completed within a period of **one hundred and eighty days** from the date of admission of the application to initiate such process.
- (2) **Filing of application for extension of period:** The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of ¹⁸seventy-five per cent. of the voting shares.
- (3) **Period of extension:** On receipt of an application, if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process

¹⁸ Substituted by "sixty- six" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

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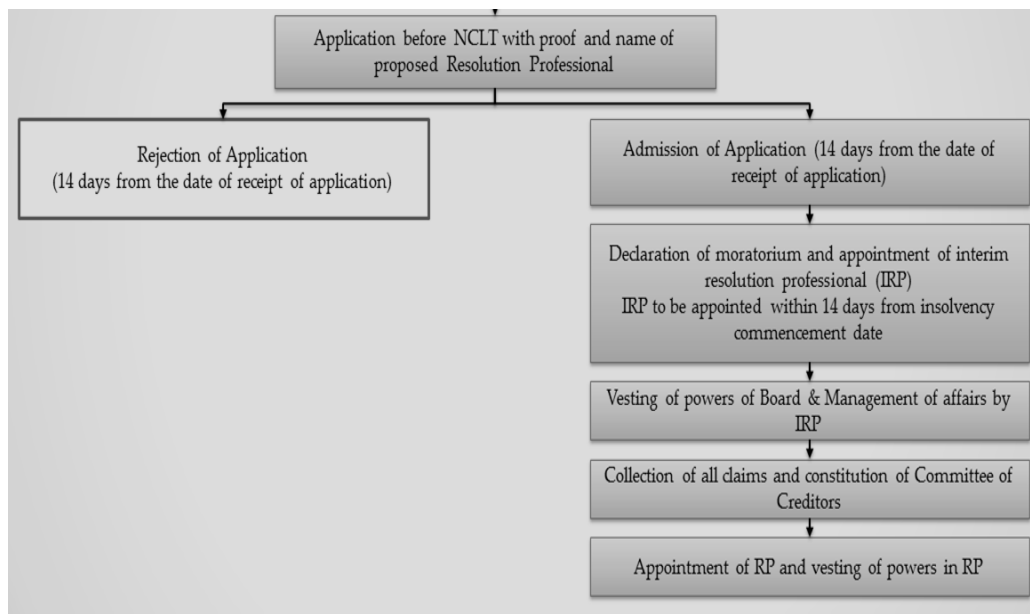
cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, **but not exceeding ninety days**: Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once. [Section 12]

¹⁹Withdrawal of application admitted under section 7, 9 or 10

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be prescribed. [Section 12A]

Process flow for insolvency resolution process

The chart below explains the process flow for insolvency resolution process:



(III) Declaration of moratorium and public announcement:

The Adjudicating Authority, after admission of the application, shall, by an order—

- (a) declare a moratorium;
- (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims, and
- (c) appoint an interim resolution professional in the manner as laid down in section 16.

¹⁹ This is a newly inserted provision by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. **6-6-2018**. This amendment is not applicable for November 2018 examination.

The public announcement as referred above, shall be made immediately after the appointment of the interim resolution professional. **[Section 13]**

Moratorium:

After the commencement of corporate insolvency resolution a calm period for 180 days is declared, during which all suits and legal proceedings etc. against the Corporate Debtor are held in abeyance to give time to the entity to resolve its status. It is called the Moratorium Period.

- (1) **Declaration of moratorium period:** According to the section 14 of the Code, on the insolvency commencement date, the Adjudicating Authority shall by order, declare moratorium prohibiting all of the following, acts—
 - (a) **the institution of suits or continuation of pending suits or proceedings** against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) **transferring, encumbering, alienating or disposing** of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (c) **any action to foreclose, recover or enforce any security interest** created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - (d) **the recovery of any property** by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (2) **The supply of essential goods or services:** to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) ²⁰**Prohibited Acts:** Acts prohibited during Moratorium period, shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) **Effect of the order of moratorium:** The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

When Moratorium period shall cease to have effect: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan or passes an order for liquidation of corporate debtor, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be. **[Section 14]**

²⁰ The said provision is substituted with the following given provision vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. [(3) The provisions of sub-section (1) shall not apply to—

- (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
- (b) a surety in a contract of guarantee to a corporate debtor.]

This amendment is not applicable for November 2018 examination.

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Example: After commencement of Corporate Insolvency Resolution, NCLT declared Moratorium against the corporate debtor. Within a month of declaration, corporate debtor disposed of his property. State validity of the act of corporate debtor.

Answer: As per section 14 of the Code, any transaction/disposal/ of any assets of Corporate Debtor during the moratorium period which is 180 days from date of commencement of corporate insolvency resolution, is prohibited. So such an act of corporate debtor is not valid.

Public Announcement

Interim Resolution Professional shall make the Public Announcement immediately after his appointment. "Immediately" refers to not more than three days from the date of appointment of the Interim Resolution Professional.

As per **Section 15** of the Code, public announcement shall include the following:-

- a) Name & Address of Corporate Debtor under the Corporate Insolvency Resolution Process.
- b) Name of the authority with which the corporate debtor is incorporated or registered.
- c) Details of interim resolution Professional who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims.
- d) Penalties for false or misleading Claims.
- e) The last date for the submission of the ²¹claims.
- f) The date on which the Corporate Insolvency Resolution Process ends.

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

(IV) Appointment, Tenure and Powers of Interim Resolution Professional (IRP)

Appointment of IRP: Adjudicating authority shall appoint an Interim Resolution Professional within 14 days from the commencement date. Section 16 of the Code lays down the procedure for appointment of an Interim Resolution Professional.

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

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

- (a) **No proposal for an interim resolution professional is made.** The Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional.

²¹ Substituted "claims" with the following "*claims, as may be specified*" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

- (b) **A proposal for an interim resolution professional is made** the proposed resolution professional shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

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

Period of appointment of IRP: The term of Interim Resolution Professional ²²shall not exceed 30 days from the date of appointment. [**Section 16**]

The key roles/ Duties to be performed by the Interim Resolution Professional are:-

- (a) Issuance of public notice of the Corporate Insolvency Resolution process
- (b) Collation of claims received
- (c) Constitution of the Committee of Creditors
- (d) Conduct of the first meeting of the Committee of Creditors
- (e) File information collected with the information utility
- (f) Control on assets over which corporate debtor has ownership rights
- (g) Perform other duties as specified by the Board [**Section 18**]

For the purposes of this ²³sub-section, the term "assets" shall not include the following, namely:—

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

Powers of IRP: As per Section 17 of the Code, the interim resolution professional shall have following powers:-

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

The interim resolution professional vested with the management of the corporate debtor shall—

²² This period of term is substituted with the following amendment "shall continue till the date of appointment of the resolution professional under section 22" made vide the by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

²³ Substituted by word "section" vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 Examination.

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- (i) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;
 - (ii) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;
 - (iii) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;
 - (iv) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as ²⁴may be specified.
 - ²⁵(v) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.
- (b) **Exercise of Power of BoD/ partners:** The powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional.
- (c) **Reporting of officers/managers:** The officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional.
- (d) **Instructions to financial institutions:** The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

Personnel to extend cooperation to interim resolution professional.

- (1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.
- (2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.
- (3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution

²⁴ This amendment shall be replaced by "*may be specified; and*" vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

²⁵ This is a newly inserted clause vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

professional and to cooperate with him in collection of information and management of the corporate debtor. [Section 19]

Management of operations of corporate debtor as going concern.

- (1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.
- (2) For the purposes of sub-section (1), the interim resolution professional shall have the authority—
 - (a) to appoint accountants, legal or other professionals as may be necessary;
 - (b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;
 - (c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.
 - (d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and
 - (e) to take all such actions as are necessary to keep the corporate debtor as a going concern. [Section 20]

(V) Resolution Professional (RP)

Appointment: As per Section 22 of the Code the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

The Committee of Creditors in the first meeting by majority vote of not less than ²⁶75% of the Voting Share of the Financial Creditors either-

- resolve to appoint the interim resolution professional as a Resolution Professional, or
- to replace the interim resolution professional by another Resolution Professional.

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

If the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority

²⁶ Substituted by "sixty six" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendments not applicable for November 2018 examination.

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shall direct the interim resolution professional to continue as the resolution professional until such time as the Board confirms the Appointment of the proposed resolution professional.

Role and Duties of RP: The primary role and duty of RP is to conduct corporate insolvency resolution process and to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

- (1) RP shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

²⁷**[Provided** that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31.]

- (2) RP shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.
- (3) In case of any appointment of a resolution professional, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional. **[Section 23]**

Duties: The resolution professional shall undertake the following actions to protect the assets of the corporate debtor, namely:—

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

²⁷ Newly inserted proviso vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

²⁸ Substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017. Prior to its substitution, clause (h) read as under : (h) Invite prospective lenders, Investors, and any other persons to put forward resolution plans.

- (i) present all resolution plans at the meetings of the committee of creditors;
- (j) file application for avoidance of transactions in accordance with Chapter III, if any; and
- (k) such other actions as may be specified by the Board. **[Section 25]**

Application for avoidance of transactions not to affect proceedings

The filing of an avoidance application under clause (j) of sub-section (2) of section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process. [Section 26]

Fees of Resolution Professional: As per Section 5(13) of the Code, the fees payable to any person acting as a resolution professional and any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern shall be included in the insolvency resolution process costs. It shall have priority over other costs in the event of winding up of the corporate debtor.

Replacement of Resolution Professional: As per the Section 27 of the Code, RP shall be replaced in the following manner:

- If a debtor or a creditor is of the opinion that the resolution professional appointed is required to be replaced, he may apply to the Adjudicating Authority for replacement of such professional.
- The Adjudicating Authority within seven days of receipt of the application may make reference to the Board for Replacement of Resolution Professional.
- ²⁹As per Section 27 of the Code, the Committee of Creditors may replace the insolvency Resolution Professional with another resolution professional by passing a resolution for the same to be approved by a vote of seventy five per cent of voting shares of the creditors.
- The Committee of Creditors shall forward the name of the new proposed Insolvency Professional to the Adjudicating Authority, and
- After the confirmation of the proposed insolvency resolution professional by the Board he shall be appointed in the same manner as laid down in Section 16 which deals with the Appointment of IRP.
- Where any disciplinary proceedings are pending against the proposed resolution professional, the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

²⁹ This provision is substituted with the following amendment “The committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.” made vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

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Example: Mr. Z was continuing as Interim resolution professional (IRP) in XY Company. The committee of creditors by majority vote of financial creditors proposed to appoint Mr. Final as Resolution professional (RP) of the XY Company. The said proposal was confirmed by the Board after the 10 days. State whether Mr. Final is appointed as Resolution professional.

Answer: No, as per the Code, if Board does not confirm the proposed name as RP within 10 days of receipt of proposal, the Adjudicating authority shall direct IRP to continue as RP for such time as the Board would have confirmed for the appointment of Proposed RP.

Preparation of information memorandum: (1) The resolution professional shall prepare an information memorandum containing such relevant information as may be specified by the Board for formulating a resolution plan.

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

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

"Relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified. [Section 29]

(VI) Committee of Creditors

After the collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, the interim resolution professional shall constitute a committee of creditors. The provisions related to the committee of creditors are being dealt under the sections 21 & 24 of the Code.

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

Comprising of CoC: The committee of creditors shall comprise all financial creditors of the corporate debtor:

³⁰**Exception:** Provided that a related party to whom a corporate debtor owes a financial debt, shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

³⁰ For word "related party to whom a corporate debtor owes a financial debt" is replaced with the "financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor" by the

³¹Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Financial creditor to be part of the Committee of Creditors: ³²Where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

Where creditor is both financial and operational: Where any person is a financial creditor as well as an operational creditor,—

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

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

Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility ³³or issued as securities provide for a single trustee or agent to act for all financial creditors, each financial creditor may—

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

Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable.

³¹ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

³² "Subject to sub-sections (6) and (6A), where" is substituted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

³³ Words "or issued as securities" omitted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

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³⁴(6A) Where a financial debt—

- (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;
- (b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;
- (c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6B) The remuneration payable to the authorised representative—

- (i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and
- (ii) under clause (b) of sub-section (6A) shall be as specified which shall be jointly borne by the financial creditors.]

³⁵(7) **Determination of voting share:** The Board may specify the manner of determining the voting share in respect of financial debts issued as securities under sub-section (6).

(8) **Decision based on majority of voting share:** All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five per cent of voting share of the financial creditors:

³⁴ Sub-sections (6A) and (6B) inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

³⁵ Sub-section (7) & (8) have been replaced with the following provisions: “(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified” vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

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

(9) **Requisition to require resolution professional:** The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.

(10) **Resolution professional to furnish financial information:** The resolution professional shall make available any financial information so required by the committee of creditors within a period of seven days of such requisition. [Section 21]

Meeting of Committee of Creditors: The members of the committee of creditors may meet in person or by such electronic means as may be specified.

Conduct of meeting of CoC: All meetings of the committee of creditors shall be conducted by the resolution professional.

Notice: The resolution professional shall give notice of each meeting of the committee of creditors to—

- (a) members of ³⁶Committee of creditors,
- (b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
- (c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.

Attending of meeting: The directors, partners and one representative of operational creditors, as referred above, may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:

Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

Appointment of Insolvency Professional: ³⁸Any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

³⁶ Substituted the word "Committee of creditors" with the "Committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

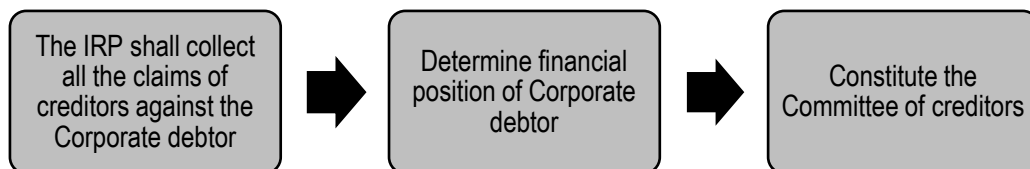
³⁸ Substituted for "Any creditor" by the "Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor" through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

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Voting: Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

Determination of voting share: The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

The meetings of the committee of creditors shall be conducted in such manner as may be specified. [Section 24]



Quorum for the Meeting

- A meeting of committee of creditors shall quorate if members of the **committee of creditors representing at least thirty three percent of the voting rights are present** either in person or by video/audio means.
- If the **requisite quorum for committee of creditors is not fulfilled** the meeting cannot be held and the meeting shall automatically stand adjourned at the same time and place on the next day.
- The adjourned meeting shall quorate with the members of the committee attending the meeting.

Example: Committee of creditors approved the resolution plan with respect to the management of affairs of the company by more than 50% of voting share of the financial creditors. State whether decision given on the resolution plan is binding on the corporate debtors and all its creditors?

Answer: No, as per the Code, the resolution plan shall be approved by the committee of creditors by vote of not less than 75% of voting share of the financial creditors. Resolution plan was not passed by majority.

Approval of committee of creditors for certain actions:

- (1) According to section 28 of the Code, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely:—
- (a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
 - (b) create any security interest over the assets of the corporate debtor;
 - (c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;

- (d) record any change in the ownership interest of the corporate debtor;
 - (e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
 - (f) undertake any related party transaction;
 - (g) amend any constitutional documents of the corporate debtor;
 - (h) delegate its authority to any other person;
 - (i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
 - (j) make any change in the management of the corporate debtor or its subsidiary;
 - (k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
 - (l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
 - (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.
- (2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the above actions.
- (3) No action shall be approved by the committee of creditors unless approved by a vote of seventy five per cent of the voting shares.
- (4) Where any action is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.
- (5) The committee of creditors may report the actions of the resolution professional to the Board for taking necessary actions against him under this Code.

³⁹Rights and duties of authorised representative of financial creditors.

- (1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.
- (2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.
- (3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

³⁹ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This inserted provision is not applicable for November 2018 examination.

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Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Explanation.—For the purposes of this section, the "electronic means" shall be such as may be specified. [Section 25A].

⁴⁰Persons not eligible to be resolution applicant.

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

- (a) is an undischarged insolvent;
- (b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
- (c) ⁴¹has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 ⁴²[or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:

⁴³Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

⁴⁰ Inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017.

⁴¹ Word "has an account" has been replaced with the "at the time of submission of the resolution plan has an account" Vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

⁴² Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

⁴³ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

Explanation I.—For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.—For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;]

⁴⁴(d) has been convicted for any offence punishable with imprisonment for two years or more;

(e) is disqualified to act as a director under the Companies Act, 2013

⁴⁹Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

⁵⁰**Provided** that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise

⁴⁴ This provision is amended with the following amendments made vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018.

has been convicted for any offence punishable with imprisonment—

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I; This amendment is not applicable for November 2018 examination.

⁴⁹ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination

⁵⁰ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

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contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

- (h) has executed ⁵¹an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code ⁵²and such guarantee has been invoked by the creditor and remains unpaid in full or part ;
- (i) ⁵³has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- (j) has a connected person not eligible under clauses (a) to (i).

⁵⁴Explanation— For the purposes of this clause, the expression "connected person" means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)

⁵⁵Provided that nothing in clause (iii) of this *Explanation* shall apply to—

- (A) a scheduled bank; or
- (B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

⁵¹ Word "a guarantee" substituted is for "an enforceable guarantee" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination

⁵² Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

⁵³ Word "has been " substituted with "is" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

⁵⁴ Explanation renumbered as Explanation I by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018.

⁵⁵ This proviso has been replaced with the following vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018.

"Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;" This amendment is not applicable for November 2018 examination.

Interest Act, 2002; or

(C) an Alternate Investment Fund registered with the Securities and Exchange Board of India."

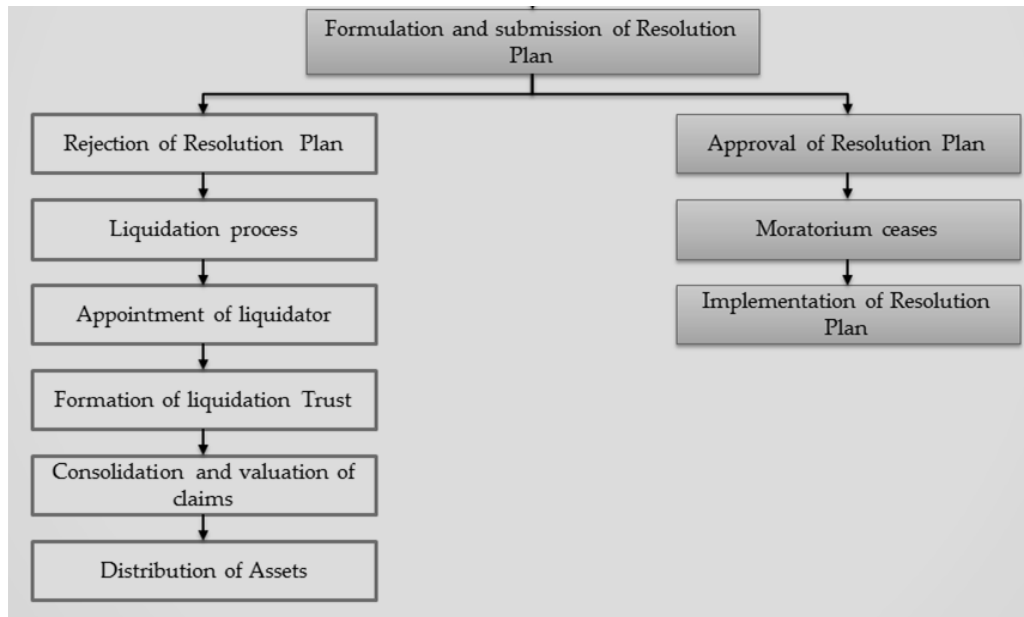
⁵⁶[Explanation II.—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999;
- (d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.]

(VII) Resolution Plan

A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency. Provision given in sections 30 and 31 of the Code deals with resolution plan. Resolution professional shall prepare an Information Memorandum which shall contain information for preparing resolution plan.

⁵⁶ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.



Submission of Resolution Plan by Resolution applicant to resolution professional

A resolution applicant may submit a resolution plan ⁵⁷[along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

Formulation of Resolution Plan

- The Resolution Professional shall prepare an Information Memorandum which shall contain information for preparing resolution plan.
 - Resolution Professional shall provide access of the following to a Resolution applicant in order to prepare the Resolution Plan:
 - Financial position of corporate debtor
 - Information required by applicant for resolution plan
 - Other matters pertaining to corporate debtor
 - Resolution Professional shall examine the Resolution Plan confirming the following and submit the same to Committee of Creditors for its approval.
- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ⁵⁸repayment of other debts of the corporate debtor;

⁵⁷ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.

⁵⁸ Substituted for "repayment" with "payment" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.

- (b) provides for the ⁵⁹repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;
- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- (d) the implementation and supervision of the resolution plan;
- (e) does not contravene any of the provisions of the law for the time being in force.
- (f) conforms to such other requirements as may be specified by the Board.

⁶⁰Explanation.—For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

Submission of Resolution Plan

- The resolution plan shall be approved by the Committee of Creditors by a vote of not less than seventy five percent of voting share of the financial creditors.
- ⁶¹The committee of creditors may approve a resolution plan by a vote of not less than
- ⁶²75% per cent of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.

⁵⁹ Substituted for "repayment" with "payment" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.

⁶⁰ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.

⁶¹ Substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017

⁶² With with 66% by the by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This not applicable for November 2018 examination.

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⁶³Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018]

- The creditors committee considers proposals for the revival of the debtor and must decide whether to proceed with a revival plan or liquidation within a period of 180 days (subject to a one-time extension by 90 days). Anyone can submit a revival proposal, but it must necessarily provide for payment of operational debts to the extent of the liquidation waterfall.

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

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

- Subsequently, the Resolution Professional shall submit the Resolution Plan as approved by Committee of Creditors to the Adjudicating Authority. [Section 30]

Approval of resolution plan: If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements as per section 30(2), it shall by order approve the resolution plan which shall be binding on the following:

- corporate debtor and its employees,
- members, creditors, guarantors, and
- other stakeholders involved in the resolution plan.

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

After the order of approval,—

- (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and
- (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database. [Section 31]

Appeal against Approval of Resolution Plan: 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.

As per Section 61(3) of the Code, an appeal against an order of Adjudicating Authority for approving the resolution plan may be filed on the following grounds:-

- (a) The approved resolution plan is in contravention of the provisions of any law for the time

⁶³ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.

being in force.

- (b) There has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period.
- (c) The debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board.
- (d) The insolvency resolution process costs have not been provided for repayment in priority to all other debts.
- (e) The resolution plan does not comply with any other criteria specified by the Board.

Consequences of non-submission of a Resolution Plan: When the Resolution Plan is not filed within 180 days of the Commencement date or such other extended period the Adjudicating Authority may pass orders for the liquidation of the corporate debtor.



4. Liquidation Process

The Code concerns itself only with those corporate debtors which have defaulted in payment of debts. The corporate debtor, at the first stage, is put into resolution mode. The process is called the corporate insolvency resolution process. However, if attempts to resolve the insolvency of the corporate debtor fail, then only the liquidation provisions of the Code are triggered.

Where no plan is presented or where the plan presented is not approved by the Adjudicating Authority it shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Act.

Section 33 to 54 of the Code provides the law related to the liquidation process.

(I) Initiation of liquidation:

Section 33 of the Code deals with the initiation of liquidation process. Provisions states that where the Adjudicating Authority, —

- (a) **Not received a Resolution plan:** Before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process or the fast track corporate insolvency resolution process, as the case may be, does not receive a resolution plan; or
- (b) **rejects the resolution plan** for the non-compliance of the requirements specified therein, it shall—



Intimation of the decision of the committee of creditors to liquidate to Adjudicating authority: Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors ⁶⁴[approved by not less than sixty-six per cent of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order.

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

Determination of contravention of the provisions of the resolution plan: On receipt of an application, if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order.

Bar to filing to suits and legal proceedings: Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor. A suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

Exception: Restrictions on filing of suits and legal proceedings shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

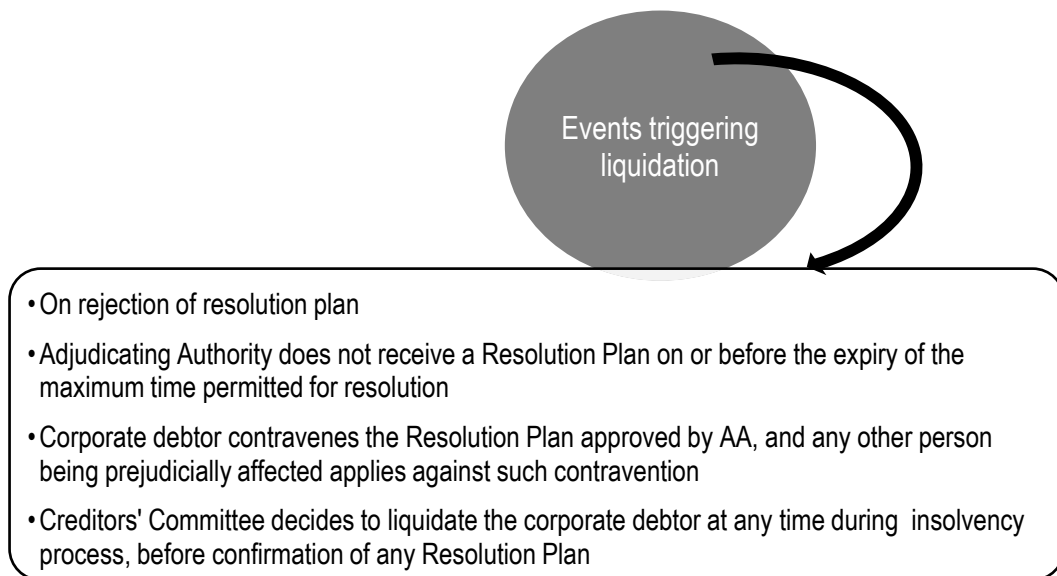
Order to be deemed to be notice of discharge: The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

So, from above it can be concluded that under the Code, a corporate debtor may be put into liquidation in the following scenarios:

⁶⁴ inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

- (i) A ⁶⁵75% majority of the creditor's committee resolves to liquidate the corporate debtor at any time during the insolvency resolution process;
- (ii) The creditor's committee does not approve a resolution plan within 180 days (or within the extended 90 days);
- (iii) The NCLT rejects the resolution plan submitted to it on technical grounds; or
- (iv) The debtor contravenes the agreed resolution plan and an affected person makes an application to the NCLT to liquidate the corporate debtor.

Once the NCLT passes an order of liquidation, a moratorium is imposed on the pending legal proceedings against the corporate debtor, and the assets of the debtor (including the proceeds of liquidation) vest in the liquidation estate.



(II) Appointment of liquidator: Section 34 of the Code provides of appointment of liquidator.

Resolution professional to act as liquidator: It states that where the Adjudicating Authority passes an order for liquidation of the corporate debtor, the resolution professional appointed for the corporate insolvency resolution process, shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.

Powers of BoD/ KMP vested in liquidator: On the appointment of a liquidator, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

⁶⁵ Replaced by 66% vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.

Personnel to extend cooperation to liquidator: The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.

⁶⁶Order to replace the resolution professional: The Adjudicating Authority shall by order replace the resolution professional, if—

Ground for replacement of RP

- the resolution plan submitted by the resolution professional **was rejected for failure to meet the requirements**; or
- the **Board recommends the replacement of a resolution professional** to the Adjudicating Authority for reasons to be recorded in writing, or
- the resolution professional fails to submit written consent

On rejection of resolution plan due to failure to meet the requirements, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

The Board shall propose the name of another insolvency professional ⁶⁷[along with written consent from the insolvency professional in the specified form,] within ten days of the direction issued by the Adjudicating Authority.

Adjudicating Authority to appoint insolvency professional as the liquidator: The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

Charge of fees for conduct of liquidation proceedings: An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

Payment of fees: The fees for the conduct of the liquidation proceedings shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

(III) Powers and duties of liquidator: Section 35 of the Code specifies the following power and duties of liquidator-

- (a) to **verify claims** of the creditors;

⁶⁶ Third ground for replacement of Resolution Professional has been inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This not applicable for November 2018 examination.

⁶⁷ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This not applicable for November 2018 examination.

- (b) to **take into his custody or control** all the assets, property, effects and actionable claims of the corporate debtor;
- (c) to **evaluate the assets and property** of the corporate debtor as may be specified by the Board and **prepare a report**;
- (d) to take **measures to protect and preserve the assets and properties** of the corporate debtor;
- (e) to **carry on the business** of the corporate debtor for its beneficial liquidation;
- (f) to **sell the immovable and movable property and actionable claims** of the corporate debtor in liquidation by –
 - public auction or private contract,
 - with power to transfer such property to any person or body corporate, or
 - to sell the same in parcels in such manner as may be specified;

⁶⁸[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant]

- (g) to **draw, accept, make and endorse any negotiable instruments** in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;
- (h) to **take out, in his official name, letter of administration to any deceased contributory** and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor.

And in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

- (i) to **obtain any professional assistance** from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
- (j) to **invite and settle claims** of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
- (k) to **institute or defend any suit, prosecution or other legal proceedings**, civil or criminal, in the name of or on behalf of the corporate debtor;
- (l) to **investigate the financial affairs** of the corporate debtor to determine undervalued or preferential transactions;

⁶⁸ Inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017

- (m) **to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument** and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;
- (n) **to apply to the Adjudicating Authority for such orders or directions** as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and
- (o) **to perform such other functions** as may be specified by the Board.

The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds. Any such consultation shall not be binding on the liquidator. Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

Powers of liquidator to access information:

The liquidator shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor. The creditors may require the liquidator to provide them any financial information relating to the corporate debtor. The liquidator shall provide information to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information [Section 37].

(IV) Liquidation estate:

According to section 36 of the code, for the purposes of liquidation, the liquidator shall form an estate of the assets, which will be called the liquidation estate in relation to the corporate debtor.

The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

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

- (a) **any assets over which the corporate debtor has ownership rights**, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
- (b) **assets that may or may not be in possession of the corporate debtor** including but not limited to encumbered assets;
- (c) **tangible assets**, whether movable or immovable;
- (d) **intangible assets** including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

- (e) assets subject to the **determination of ownership by the court or authority**;
- (f) any **assets or their value recovered through proceedings** for avoidance of transactions in accordance with this Chapter;
- (g) **any asset of the corporate debtor** in respect of which a secured creditor has relinquished security interest;
- (h) **any other property** belonging to or vested in the corporate debtor at the insolvency commencement date; and
- (i) **all proceeds of liquidation** as and when they are realised.

Exceptions to the assets from inclusion in the liquidation estate assets: The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

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

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Inclusions [Section 36(3)]



- any assets over which the corporate debtor has ownership rights;
- encumbered assets;
- tangible and intangible assets;
- ownership of assets determined by the court/authority
- assets or their value recovered through proceedings
- assets issued as collateral over which creditors have relinquished rights;
- property belonging to or vested in the corporate debtor at the insolvency commencement date
- all proceeds of liquidation as and when they are realized

Exclusions [Section 36(4)]



- assets owned by a third party which are in possession of the corporate debtor;
- assets in security collateral held by financial services providers
- personal assets of any shareholder /partner of a corporate debtor, are not held on account of avoidance transactions;
- assets of any Indian or foreign subsidiary of the corporate debtor
- any other assets as may be specified by the Board

(V) Consolidation of claims:

Section 38 of the Code deals with provisions related to the consolidation of claims. Accordingly-

- (1) **Collection of claims by liquidator:** The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.
- (2) **Submission of claims:** A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility. Where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor.
- (3) **Supportive documents:** An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.
- (4) **Extent of claims to be submitted:** A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt and to the extent of his operational debt.

- (5) **Alteration in claim:** A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

Verification of claims: The liquidator shall verify the claims submitted within such time as specified by the Board. The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim [Section 39]

Admission or rejection of claims: The liquidator may, after verification of claims, either admit or reject the claim, in whole or in part. Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims [Section 40]

Determination of valuation of claims: The liquidator shall determine the value of claims admitted in such manner as may be specified by the Board. [Section 41]

Appeal against the decision of liquidator: A creditor may appeal to the Adjudicating Authority against the decision of the liquidator ⁶⁹[accepting or] rejecting the claims within fourteen days of the receipt of such decision. [Section 42]

(VI) Preferential transactions & Extortionate Credit Transactions

According to section 43 of the Code, where the liquidator or the resolution professional (RP), is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions to any of the following persons:

- (a) A related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date.
- (b) A person other than a related party during the period of one year preceding the insolvency commencement date. [Sub-section (4)]

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

circumstances under which transactions will be referred to as preferential transactions	circumstances under which transactions will not be referred to as preferential transactions
<p>A corporate debtor shall be deemed to have given a preference in the following circumstances:-</p> <p>a) If there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial</p>	<p>Following transfers shall not be referred to as a preference transaction:-</p> <p>a) The transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee.</p>

⁶⁹ Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

<p>debt or operational debt or other liabilities owed by the corporate debtor.</p> <p>b) If the transfer has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with Section 53 of the Code.</p>	<p>b) Any transfer creating a security interest in property acquired by the corporate debtor to the extent that-</p> <p>(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and</p> <p>(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property.</p> <p>Further, any transfer made in pursuance of the order of a Court shall not preclude such transfer to be deemed as giving of preference by the corporate debtor.</p>
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The term “**new value**” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

Orders in case of preferential transactions

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

- (a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
- (b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;
- (d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;
- (e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;

- (f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and
- (g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not—

- (a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;
- (b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional. [Section 44]

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

A transaction shall be considered undervalued where the corporate debtor —

- (a) makes a gift to a person; or
- (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,

and such transaction has not taken place in the ordinary course of business of the corporate debtor. [Section 45]

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

- (a) That the transaction was entered within the period of one year preceding the insolvency commencement date; or
- (b) That the transaction was made with a related party within a period of two years preceding the insolvency commencement date. [Section 46]

In case where liquidator or RP has not reported to the adjudicating authority of the undervalued transaction: Section 47 of the Code states that where an undervalued transaction has taken place and the liquidator or the resolution professional has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect.

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Where the Adjudicating Authority, after examination of the application made under sub-section (1), is satisfied that—

- (a) undervalued transactions had occurred; and
- (b) liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority,

it shall pass an order—

- (a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48;
- (b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

Order in cases of undervalued transactions.

According to section 48 of the Code states that the order of the Adjudicating Authority under sub-section (1) of section 45 may provide for the following:—

- (a) require any property transferred as part of the transaction, to be vested in the corporate debtor;
- (b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;
- (c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or
- (d) require the payment of such consideration for the transaction as may be determined by an independent expert.

Transactions defrauding creditors: As per section 49 of the Code, where the corporate debtor has entered into an undervalued transaction under section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—

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

However, an order passed under this section—

- (1) **shall not affect any interest in property which was acquired from a person other than the corporate debtor** and was acquired in good faith, for value and without

notice of the relevant circumstances, or affect any interest deriving from such an interest, and

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

Extortionate credit transactions:

(1) According to section 50 of the Code, where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

(2) The Board may specify the circumstances in which the said transactions shall be considered as an extortionate credit transaction as given under the above provision.

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

Order of Adjudicating authority: As per Section 51 of the Code, if an Adjudicating Authority after examining the application is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order:-

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

(VII) Secured creditor in liquidation proceedings

- (1) **Rights of secured creditor:** A secured creditor in the liquidation proceedings may—
- (a) **relinquish its security interest to the liquidation estate** and receive proceeds from the sale of assets by the liquidator, or
 - (b) **realise its security interest** in the manner specified in this section.
- (2) **To inform the liquidator of realise security interest:** Where the secured creditor realises security interest under clause (b) above, he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

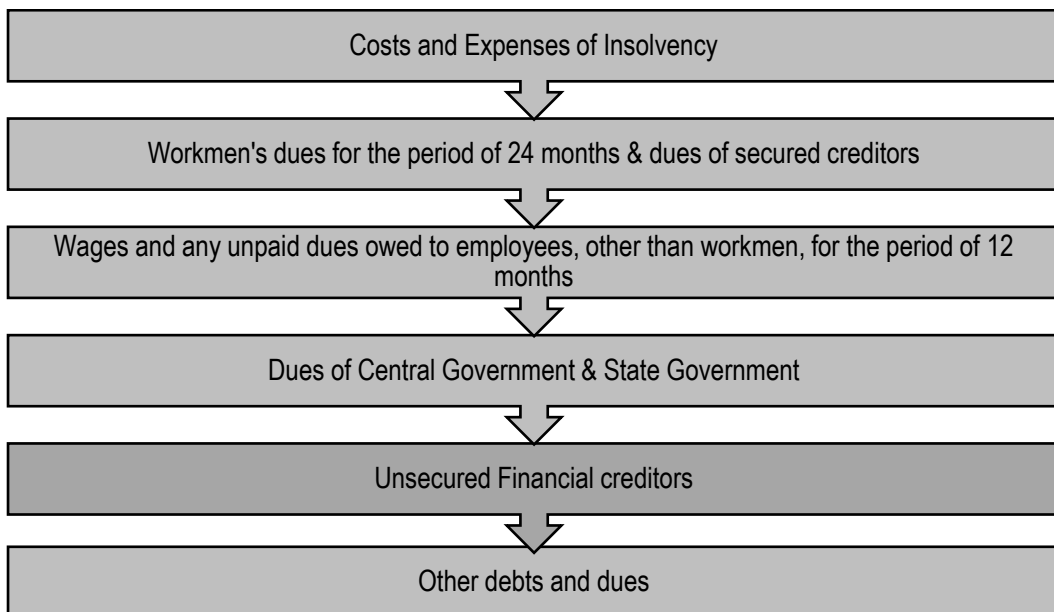
- (3) **Verification by liquidator of security interest:** Before any security interest is realised by the secured creditor, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either—
- (a) by the records of such security interest maintained by an information utility; or
 - (b) by such other means as may be specified by the Board.
- (4) **Rights of secured creditor related to secured assets:** A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.
- (5) **Restriction in realising of a secured asset:** If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.
- (6) **Passing of order by Adjudicating Authority:** The Adjudicating Authority, on the receipt of an application from a secured creditor may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.
- (7) **Yield of surplus:** Where the enforcement of the security interest yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall—
- (a) account to the liquidator for such surplus; and
 - (b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.
- (8) **Amount of insolvency resolution process to be included in the liquidation estate:** The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.
- (9) **Unpaid debts to be paid by liquidator:** Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator [Section 52]

(VIII) Distribution of assets

Section 53 of the Code lays the provisions related to distribution of assets or the proceeds from the sale of the liquidation assets.

- (1) **Distribution of proceeds from the sale of the liquidation assets:** The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority —

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



Priority of Claims

(2) **Disregard of order of priority:** Any contractual arrangements between recipients with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator.

(3) **Fees to liquidator:** The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients, and the proceeds to the relevant recipient shall be distributed after such deduction.

At each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013[Section 53]

(IX) Dissolution of corporate debtor

Application by liquidator dissolution: Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

Date of dissolution: The Adjudicating Authority shall on application filed by the liquidator order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

Submission of order copy: A copy of an order shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered. [Section 54]

5. Fast Track Insolvency Resolution for Corporate Persons

A fast track insolvency resolution, as the name suggests, is a process wherein the insolvency resolution process shall be completed in an expeditious manner i.e., with 90 (ninety) days from the insolvency commencement date. The provisions of the *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016* shall, *mutatis mutandis*, apply to the conduct of a fast track corporate insolvency resolution process. The provisions related to the fast track insolvency resolution are being covered under sections 55 to 58 of the Code.

Who may apply?

An application under this category can be made by any corporate debtor falling under any of the below mentioned category:-

- (a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or
- (b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or
- (c) such other category of corporate persons as may be notified by the Central Government.[Section 55]

Time period for completion of fast track corporate insolvency resolution process

The fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.

"Fast track commencement date" means the date of admission of an application by the Adjudicating Authority for initiating the fast track process under Chapter IV of Part II of the Code;

Extension: The Adjudicating Authority may extend time period for fast track corporate insolvency resolution process.

The resolution 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 seventy five percent of the voting share.

And if Adjudicating Authority is satisfied that the fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order; extend the duration of such process to a further period which shall not be exceeding forty-five days.

The extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once. [Section 56]

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. Manner of initiating fast track corporate insolvency resolution process. [Section 57]

Applicability of Chapter II to his chapter: The process for conducting a corporate insolvency resolution process under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require. [Section 58]

6. Voluntary Liquidation of Corporate Persons [Section 59]

- (1) **Person who may initiate voluntary liquidation proceeding:** A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter V of Part II of the Code.
- (2) **Requirements for voluntary liquidation to be specified by the Board:** The voluntary liquidation of a corporate person shall meet such conditions and procedural requirements as may be specified by the Board.
- (3) **Conditions of initiation of voluntary liquidation proceedings:** Voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:—
 - (a) a declaration from majority of the directors of the company verified by an affidavit stating that—
 - (i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to

- pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
- (ii) the company is not being liquidated to defraud any person;
- (b) the declaration given above shall be accompanied with the following documents, namely:—
 - (i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
 - (ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;
- (c) within four weeks of a declaration, there shall be—
 - (i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or
 - (ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles, or
 - (iii) on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

Provided that the company owes any debt to any person, creditors representing two thirds in value of the debt of the company shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

- (4) **Notification to Registrar of company and the Board:** The Company shall notify the Registrar of Companies and the Board about the resolution to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.
- (5) **Commencement of liquidation proceeding:** The voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution.
- (6) **Application of provisions of this Code:** The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.
- (7) **Application to adjudicating authority on complete wound up of the corporate person:** Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.
- (8) **Passing of an order of dissolution:** The Adjudicating Authority shall on an application filed by the liquidator, pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.
- (9) **Forward of copy of order:** A copy of an order shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.

The Prevention of Money Laundering Act, 2002

1. Introduction

Money Laundering

It is a highly sophisticated act to cover up or camouflage the identity/origin of illegally obtained earnings so that they appear to have derived from lawful sources.

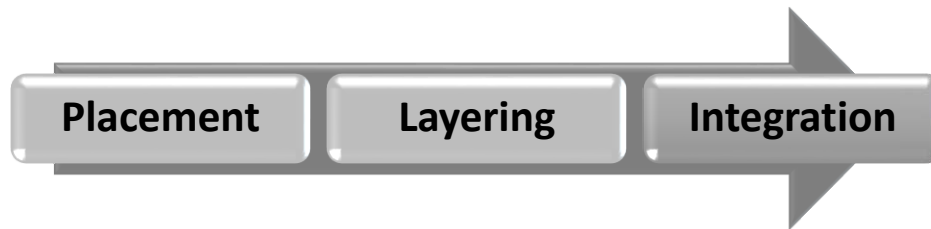
It is the process by which illegal funds and assets are converted into legitimate funds and assets. In other words it is basically the process of converting illegal/ black money of a person in a legal or white money. It is the process used by criminals' to wash their "tainted" money to make it "clean."



The **Prevention of Money Laundering Act, 2002** is known to have been legislated basically to sub-serve twin purpose firstly, is to prevent money laundering and secondly to provide for confiscation of property derived from, or involved in money laundering, and to ensure of the curbing of the tendency of committing scheduled offences.

Money laundering is a single process however; its cycle can be broken down into three distinct stages

1. **Placement:** It is the first and the initial stage when the crime money is injected into the formal financial System.
2. **Layering:** Then under the second stage, money injected into the system is layered and moved or spread over various transactions in different accounts and different countries. Thus, it will become difficult to detect the origin of the money.
3. **Integration:** Under the third and final stage, money enters the financial system in such a way that original association with the crime is sought to be obliterated so that the money can then be used by the offender or person receiving as clean money.



There are multiple methods through which money can be laundered and huge profit is being made, some of them are:

- Cash Smuggling: Moving cash from one location to another or depositing the cash in Swiss Bank Account;
- Structuring: Cash is broken down into formal receipts to buy money orders etc., smaller amounts are hard to detect;
- Laundering via Real Estate: Buying a land for money and then selling it making the profits legal.
- Stock Markets scams
- By creating bogus companies.
- Drug Trafficking;
- Bribery and Corruption;
- Kidnapping and Extortion.

If left unchecked, money laundering can erode a nation's economy by changing the demand for cash, making interest and exchange rates more volatile, and by causing high inflation in countries where criminal elements are operating. The draining of huge amounts of money a year from normal economic growth poses a real danger for the financial health of every country which in turn adversely affects the global market.

In view of an urgent need for the enactment of a comprehensive legislation for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money laundering etc., the Prevention of Money Laundering Bill 1998 was introduced in the Parliament on 4th August, 1998. The Bill received the assent of the President and became the Prevention of Money Laundering Act, 2002 on 17th January 2003. The Act has come into force with effect from 1st July 2005. It has been amended in 2005, 2009 and then in 2012.

The objective of the Act is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected.

Understanding Money Laundering

Let us understand Money Laundering with the example of Hawala.

How Hawala Works: Hawala system works with a network of operators called Hawaladars or Hawala agents. For a Hawala transaction a customer contacts a Hawala agent at the source

location. The Hawala agent at that end collects money from the person who wishes to make a transfer. The agent then calls up his counterpart in the country where the transfer has to be made.

This counterpart then hands over the cash to the recipient after deducting a commission. The source agent promises to settle the debt to the destination agent through an informal settlement.

For example, a person in country 'A' who wants to transfer some money to someone in country 'B' gives the money to the Hawala broker in country 'A'. The agent accepts it and calls up his colleague in country 'B'. His colleague gives the money in country 'B's' currency to the person in country 'B' to whom it has to be transferred. An identification code is requested, ensuring the authenticity of the receiver.

In a Hawala transfer, the money enters the hawala system in local currency and leaves as foreign currency. The currency exchange happens at a rate set by the agents and not the official rates. This way they make an addition profit than the commission.

Then, if anybody does the act which is in contravention to above, or in contravention to the provision of the Act will be liable for the punishment under section 4 of the Act.

2. Definitions

To understand the meaning of money – laundering it is essential to define proceeds of crime, property and scheduled offence. In fact, all the above definitions have to be read together.

- I. Clause (p) of sub section (1) of section 2 provides that "**money-laundering**" has the meaning assigned to it in section 3. Moving to section 3, it is observed that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering.
 - Whosoever (directly or indirectly)
 - attempts to
 - indulge or
 - knowingly assists or
 - knowingly is a party or
 - is actually involved
 - in any process or activity
 - connected with the proceeds of crime
 - including its concealment,
 - possession,
 - acquisition or use
 - and projecting or claiming it as **untainted property** shall be guilty of offence of money laundering

25.4 Corporate and Allied Laws

- II. Section 2(1)(u) defines "**proceeds of crime**" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;
- III. Section 2(1)(v) explain the term "**property**" which means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located. The term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;
- IV. In terms of clause (rb) of sub – section (1) of section 2 "**payment system**" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.
It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;
- V. The term "**scheduled offence**" has been defined in clause (y) of sub-section (1) of section 2. It means –
 - (i) the offences specified under Part A of the Schedule; or
 - (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
 - (iii) The offences specified under Part C of the Schedule.

The Schedule to the Act gives a list of all the above offences. The Schedule is divided into three parts. Part A, Part B, and Part C which are as follows:

PART A
PARAGRAPH 1
OFFENCES UNDER THE INDIAN PENAL CODE (45 OF 1860)

<i>Section</i>	<i>Description of offence</i>
120B	Criminal conspiracy.
121	Waging or attempting to wage war or abetting waging of war, against the Government of India.
121A	Conspiracy to commit offences punishable by section 121 against the State.
255	Counterfeiting Government stamp.
257	Making or selling instrument for counterfeiting Government stamp.
258	Sale of counterfeit Government stamp.
259	Having possession of counterfeit Government stamp.
260	Using as genuine a Government stamp known to be counterfeit.
302	Murder.
304	Punishment for culpable homicide not amounting to murder.
307	Attempt to murder.
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or to constrain to an illegal act.
329	Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
411	Dishonestly receiving stolen property.
412	Dishonestly receiving property stolen in the commission of a dacoity.
413	Habitually dealing in stolen property.
414	Assisting in concealment of stolen property.
417	Punishment for cheating.
418	Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

25.6 Corporate and Allied Laws

419	Punishment for cheating by personation.
420	Cheating and dishonestly inducing delivery of property.
421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
422	Dishonestly or fraudulently preventing debt being available for creditors.
423	Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
424	Dishonest or fraudulent removal or concealment of property.
467	Forgery of valuable security, will, etc.
471	Using as genuine a forged document or electronic record.
472 and 473	Making or possessing counterfeit seal, etc., with intent to commit forgery.
475 and 476	Counterfeiting device or mark.
481	Using a false property mark.
482	Punishment for using a false property mark.
483	Counterfeiting a property mark used by another.
484	Counterfeiting a mark used by a public servant.
485	Making or possession of any instrument for counterfeiting a property mark.
486	Selling goods marked with a counterfeit property mark.
487	Making a false mark upon any receptacle containing goods.
488	Punishment for making use of any such false mark.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.
PARAGRAPH 2 OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 (61 OF 1985)	
<i>Section</i>	<i>Description of offence</i>
15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.

18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.
20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy.
PARAGRAPH 3 OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908 (6 OF 1908)	
<i>Section</i>	<i>Description of offence</i>
3	Causing explosion likely to endanger life or property.
4	Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
5	Making or possessing explosives under suspicious circumstances.
PARAGRAPH 4 OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 (37 OF 1967)	
<i>Section</i>	<i>Description of offence</i>
10 read with section 3	Penalty for being member of an unlawful association, etc.
11 read with section 3	Penalty for dealing with funds of an unlawful association.
13 read with section 3	Punishment for unlawful activities.
16 read with section 15	Punishment for terrorist act.

25.8 Corporate and Allied Laws

16A	Punishment for making demands of radioactive substances, nuclear devices, etc.
17	Punishment for raising fund for terrorist act.
18	Punishment for conspiracy, etc.
18A	Punishment for organising of terrorist camps.
18B	Punishment for recruiting of any person or persons for terrorist act.
19	Punishment for harbouring, etc.
20	Punishment for being member of terrorist gang or organisation.
21	Punishment for holding proceeds of terrorism.
38	Offence relating to membership of a terrorist organisation.
39	Offence relating to support given to a terrorist organisation.
40	Offence of raising fund for a terrorist organisation.
PARAGRAPH 5 OFFENCES UNDER THE ARMS ACT, 1959 (54 OF 1959)	
<i>Section</i>	<i>Description of offence</i>
25	<p>To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition to contravention of section 5 of the Arms Act, 1959.</p> <p>To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.</p> <p>Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.</p> <p>Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.</p> <p>Other offences specified in section 25.</p>
26	<p>To do any act in contravention of any provisions of section 3, 4, 10 or section 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.</p> <p>To do any act in contravention of any provisions of section 5, 6, 7 or section 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.</p> <p>Other offences specified in section 26.</p>

27	Use of arms or ammunition in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.
28	Use and possession of fire arms or imitation fire arms in certain cases.
29	Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.
30	Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.
PARAGRAPH 6 OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972 (53 OF 1972)	
<i>Section</i>	<i>Description of offence</i>
51 read with section 9	Hunting of wild animals.
51 read with section 17A	Contravention of provisions of section 17A relating to prohibition of picking, uprooting, etc., of specified plants.
51 read with section 39	Contravention of provisions of section 39 relating to wild animals, etc., to be Government property.
51 read with section 44	Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited.
51 read with section 48	Contravention of provisions of section 48 relating to purchase of animal, etc., by licensee.
51 read with section 49B	Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animals articles, etc., derived from scheduled animals.
PARAGRAPH 7 OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956 (104 OF 1956)	
<i>Section</i>	<i>Description of offence</i>
5	Procuring, inducing or taking person for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.
8	Seducing or soliciting for purpose of prostitution.
9	Seduction of a person in custody.

PARAGRAPH 8 OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988 (49 OF 1988)	
<i>Section</i>	<i>Description of offence</i>
7	Public servant taking gratification other than legal remuneration in respect of an official act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
13	Criminal misconduct by a public servant.
PARAGRAPH 9 OFFENCES UNDER THE EXPLOSIVES ACT, 1884 (4 OF 1884)	
<i>Section</i>	<i>Description of offence</i>
9B	Punishment for certain offences.
9C	Offences by companies.
PARAGRAPH 10 OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972 (52 OF 1972)	
<i>Section</i>	<i>Description of offence</i>
25 read with section 3	Contravention of export trade in antiquities and art treasures.
28	Offences by companies.
PARAGRAPH 11 OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 (15 OF 1992)	
<i>Section</i>	<i>Description of offence</i>
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial.
24	Acquisition of securities or control.
PARAGRAPH 12 OFFENCES UNDER THE CUSTOMS ACT, 1962 (52 OF 1962)	
<i>Section</i>	<i>Description of offence</i>
135	Evasion of duty or prohibitions.

PARAGRAPH 13 OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976 (19 OF 1976)	
<i>Section</i>	<i>Description of offence</i>
16 18 20	Punishment for enforcement of bonded labour. Punishment for extracting bonded labour under the bonded labour system. Abetment to be an offence.
PARAGRAPH 14 OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986 (61 OF 1986)	
<i>Section</i>	<i>Description of offence</i>
14	Punishment for employment of any child to work in contravention of the provisions of section 3.
PARAGRAPH 15 OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994 (42 OF 1994)	
<i>Section</i>	<i>Description of offence</i>
18 19 20	Punishment for removal of human organ without authority. Punishment for commercial dealings in human organs. Punishment for contravention of any other provisions of this Act.
PARAGRAPH 16 OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 (56 OF 2000)	
<i>Section</i>	<i>Description of offence</i>
23 24 25 26	Punishment for cruelty to juvenile or child. Employment of juvenile or child for begging. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child. Exploitation of juvenile or child employee.
PARAGRAPH 17 OFFENCES UNDER THE EMIGRATION ACT, 1983 (31 OF 1983)	
<i>Section</i>	<i>Description of offence</i>
24	Offences and penalties.

25.12 Corporate and Allied Laws

PARAGRAPH 18 OFFENCES UNDER THE PASSPORTS ACT, 1967 (15 OF 1967)	
<i>Section</i>	<i>Description of offence</i>
12	Offences and penalties.
PARAGRAPH 19 OFFENCES UNDER THE FOREIGNERS ACT, 1946 (31 OF 1946)	
<i>Section</i>	<i>Description of offence</i>
14	Penalty for contravention of provisions of the Act, etc.
14B	Penalty for using forged passport.
14C	Penalty for abetment.
PARAGRAPH 20 OFFENCES UNDER THE COPYRIGHT ACT, 1957 (14 OF 1957)	
<i>Section</i>	<i>Description of offence</i>
63	Offence of infringement of copyright or other rights conferred by this Act.
63A	Enhanced penalty on second and subsequent convictions.
63B	Knowing use of infringing copy of computer programme.
68A	Penalty for contravention of section 52A.
PARAGRAPH 21 OFFENCES UNDER THE TRADE MARKS ACT, 1999 (47 OF 1999)	
<i>Section</i>	<i>Description of offence</i>
103	Penalty for applying false trade marks, trade descriptions, etc.
104	Penalty for selling goods or providing services to which false trade mark or false trade description is applied.
105	Enhanced penalty on second or subsequent conviction.
107	Penalty for falsely representing a trade mark as registered.
120	Punishment of abetment in India of acts done out of India.
PARAGRAPH 22 OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000 (21 OF 2000)	
<i>Section</i>	<i>Description of offence</i>
72	Penalty for breach of confidentiality and privacy.

75	Act to apply for offence or contravention committed outside India. PARAGRAPH 23 OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002 (18 OF 2003)
<i>Section</i>	<i>Description of offence</i>
55 read with section 6	Penalties for contravention of section 6, etc. PARAGRAPH 24 OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001 (53 OF 2001)
<i>Section</i>	<i>Description of offence</i>
70 read with section 68 71 read with section 68 72 read with section 68 73 read with section 68	Penalty for applying false denomination, etc. Penalty for selling varieties to which false denomination is applied. Penalty for falsely representing a variety as registered. Penalty for subsequent offence. PARAGRAPH 25 OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986 (29 OF 1986)
<i>Section</i>	<i>Description of offence</i>
15 read with section 7 15 read with section 8	Penalty for discharging environmental pollutants, etc., in excess of prescribed standards. Penalty for handling hazardous substances without complying with procedural safeguards. PARAGRAPH 26 OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 (6 OF 1974)
<i>Section</i>	<i>Description of offence</i>
41(2) 43	Penalty for pollution of stream or well. Penalty for contravention of provisions of section 24. PARAGRAPH 27

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 (14 OF 1981)	
<i>Section</i>	<i>Description of offence</i>
37	Failure to comply with the provisions for operating industrial plant. PARAGRAPH 28 OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002 (69 OF 2002)
<i>Section</i>	<i>Description of offence</i>
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.] PARAGRAPH 29 OFFENCE UNDER THE COMPANIES ACT, 2013 [18 OF 2013]
<i>Section</i>	<i>Description of offence</i>
447	Punishment for fraud. PART B OFFENCE UNDER THE CUSTOMS ACT, 1962
<i>Section</i>	<i>Description of offence</i>
132	False declaration, false documents, etc.

PART C

An offence which is the offence of cross border implications and is specified in,—

- (1) Part A; or
- (2) the offences against property under Chapter XVII of the Indian Penal Code.
- (3) The offence of wilful attempt to evade any tax, penalty or interest referred to in section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. See More

VI. **“Transfer”** includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

Other Definitions

“Banking company” means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies and includes any bank or banking institution referred to in section 51 of that Act.

“Beneficial owner” means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person

“Client” means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting.

“Financial institution” means a financial institution as defined in clause (c) of section 45 I of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India.

“Intermediary” means,

- (i) a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or
- (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or
- (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or
- (iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956.

“Investigation” includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence.

“Records” include the records maintained in the form of books or stored in a computer or such other form as may be prescribed.

“Reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

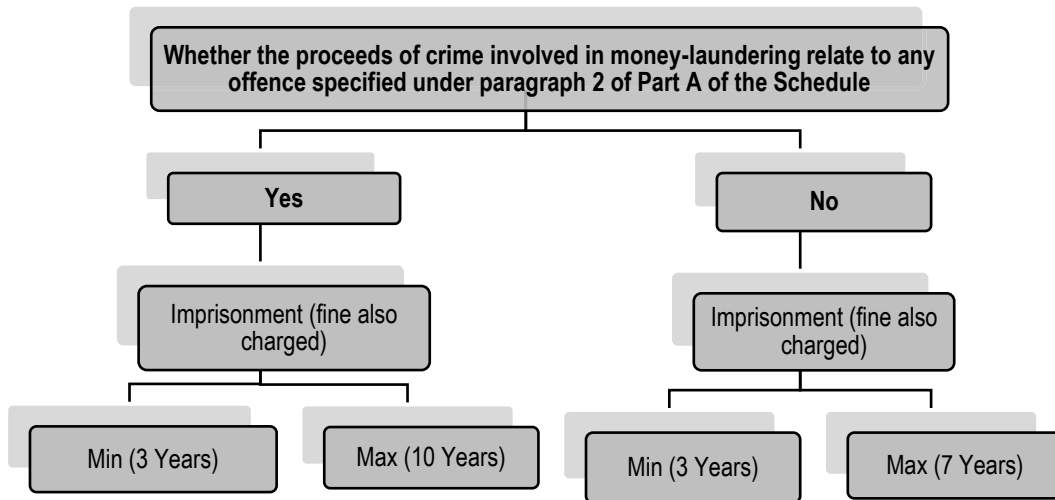
3. Punishment for the Offence of Money Laundering [Section 3 and 4]

Section 3 deals with the offence of money laundering which has been discussed in the definition part above.

Section 4 provides for the Punishment for Money-Laundering- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule (i.e. Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985)¹, the maximum punishment may extend to ten years instead of seven years.

¹ Paragraph 2 of Part A deals with Offences under the Narcotics Drugs and Psychotropic Substances Act, 1985, which mainly consist of contravention in relation to poppy straw, opium, cannabis plant, cannabis, psychotropic substances, manufactured drugs.

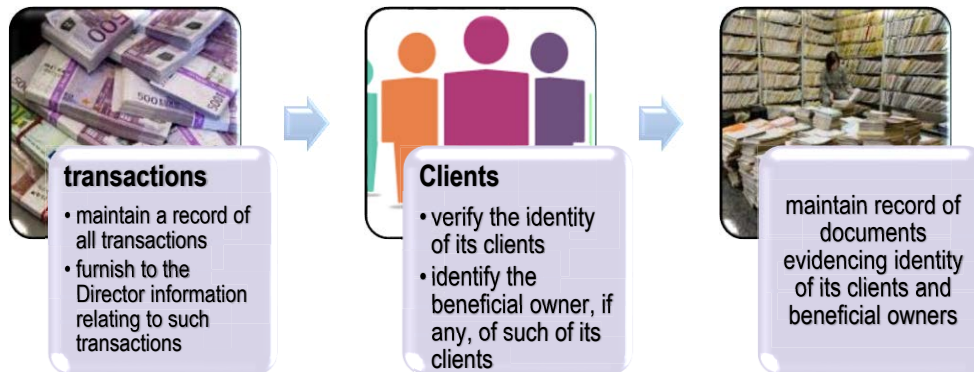


4. Obligation of Banking Companies, Financial Institutions and Intermediaries

Reporting entity to maintain records

Section 12 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries.

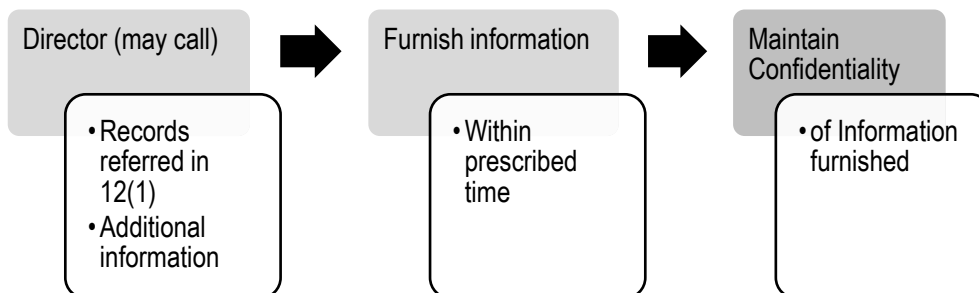
1. **Maintenance of records:** According to sub-section (1), every reporting entity shall –
 - (a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
 - (b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
 - (c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;
 - (d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;
 - (e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.



- Confidentiality:** Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force shall be kept confidential.
- Maintenance of records (for clause a):** The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.
- Maintenance of records (for clause e):** The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.
- Exemption by the Central Government:** The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this chapter.

Access to information [Section 12A]

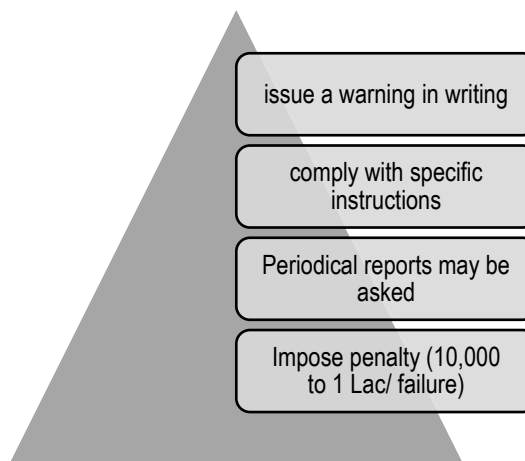
- The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.
- Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.
- Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential.



Power of director to impose fine [Section 13]

The section deals with the powers of the Director.

1. **Initiation of Inquiry :** The Director may, either of his own motion or on an application made by any authority, officer or person, may make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this chapter.
2. **Direct for audit of records:** If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.
3. **Expenses for the above process:** The expenses of, and incidental to, any audit specified above shall be borne by the Central Government.
4. **Order of the director:** If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may-
 - (a) issue a warning in writing; or
 - (b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or
 - (c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
 - (d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.



5. **Forwarding of copy of order:** The Director shall forward a copy of the order passed to every banking company, financial institution, intermediary, or person who is a party to the proceedings under that sub-section.

For the purpose of this section, "accountant" shall mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949.

No civil or criminal proceedings against reporting entity, its directors and employees in certain cases [Section 14]

Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under section 12(1)(b).

Procedure and manner of furnishing information by reporting entities [Section 15]

This section provides for prescribing the procedure and manner of furnishing information by reporting entities. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under section 12(1) for the purpose of implementing the provisions of this Act.

5. Attachment, Adjudication and Confiscation

"Attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act.

"Adjudicating Authority" means an Adjudicating Authority appointed under sub-section (1) of section 6.

The Prevention of Money Laundering Act gives extremely wide powers to the authorities to attach properties suspected to be involved in Money Laundering.

Attachment of property involved in money-laundering [Section 5]

1. **Authority competent to attach property:** Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

- (a) any person is in possession of any proceeds of crime; and
- (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed.

When no order of attachment shall be made: Provided that no such order of attachment shall be made unless, in relation to the scheduled offence-

- (i) a report has been forwarded to a Magistrate under section 173 of the Code of Criminal

25.20 Corporate and Allied Laws

Procedure, 1973, or

- (ii) a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country.

Provided further that, notwithstanding anything contained in first proviso (given in above para), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date or order of vacation of such stay order shall be counted.

2. **Forwarding of copy of order to the Adjudicating authority:** The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1) (i.e. point 1 above), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.
3. **Validity period of order:** Every order of attachment made under sub-section (1) (i.e. point 1 above) , shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under section 8(3), whichever is earlier.
4. Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation- For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

5. The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Adjudicating Authorities, composition, powers, etc. [Section 6]

1. The Central Government shall, by notification, appoint an Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under this Act. (Sub-section 1)
2. An Adjudicating Authority shall consist of a Chairperson and two other Members. One Member each shall be a person having experience in the field of law, administration, finance or accountancy. (Sub-section 2)

3. The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure. (Sub-section 15)

Adjudication [Section 8]

- (1) **Serving of notice by adjudicating Authority:** On receipt of a complaint under section 5(5), or applications made under section 17(4) or under section 18(10), if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than 30 days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under section 5(1), or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government.

Where a notice under this sub-section specifies **any property as being held by a person on behalf of any other person**, a copy of such notice shall also be served upon such other person:

Where such property is held jointly by more than one person, such notice shall be served to all persons holding such property. [Sub-section 1]

- (2) **Power of Adjudicating Authority:** The Adjudicating Authority shall, after—
 - (a) considering the reply, if any, to the notice issued under sub-section (1);
 - (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and
 - (c) taking into account all relevant materials placed on record before him,by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering.

If the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering. [Sub-section 2]

- (3) **Order of the adjudicating Authority:** Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—
 - (a) continue during investigation for a period not exceeding ninety days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal

jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court [Sub-section 3]

- (4) **In case of confirmation of provisional order:** Where the provisional order of attachment made under section 5(1) has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of. [Sub-section 4]

- (5) **Powers of special Courts:** Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

Where on conclusion of a trial under this Act, the Special Court finds that the offence of money laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it. [Sub-section (5) &(6)]

- (7) **In case of no conduct of trial under this Act:** Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

- (8) **Restore of confiscated property:** Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed. [Sub-section 8]

Vesting of property in Central Government [Section 9]

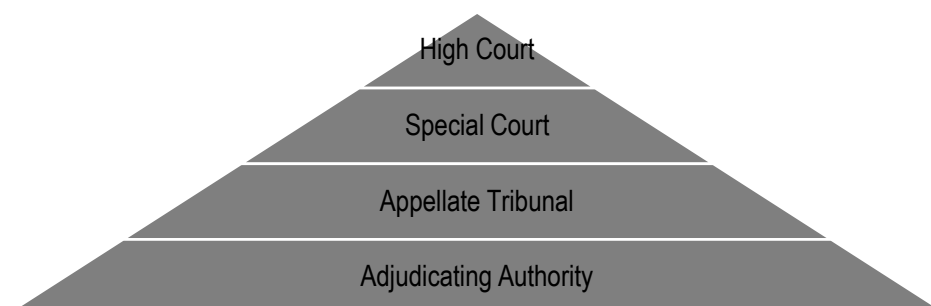
Where an order of confiscation has been made under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances.

However, where the Special Court or the Adjudicating Authority, as the case may be, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized or frozen under Chapter V, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest.

Further, nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

6. Appellate Tribunal

Hierarchy under the Prevention of Money Laundering Act, 2002



Section 48 provides for the following classes of authorities for the purposes of this Act, namely:-

1. Director or Additional Director or Joint Director,
2. Deputy Director,
3. Assistant Director, and
4. such other class of officers as may be appointed for the purposes of this Act.

As per section 2(1) clause (b), **Appellate Tribunal** means the Appellate Tribunal referred to in section 25.

Establishment of Appellate Tribunal [Section 25]

The Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

Appeals to Appellate Tribunal [Section 26]

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal.

1. **Appeal by Director or any other person:** The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act may prefer an appeal to the Appellate Tribunal.

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority is received and it shall be in such form and be accompanied by prescribed fees.

2. **Appeal by reporting entity:** Any reporting entity aggrieved by any order of the Director made under sub-section (2) of section 13 may prefer an appeal to the Appellate Tribunal.

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Director is received and it shall be in such form and be accompanied by prescribed fees.

3. **Condonation of delay:** The Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.
4. **Passing of Order:** On receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
5. **Copy of Order:** The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.
6. **Time frame for disposing off appeal:** The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within 6 months from the date of filing of the appeal.

Power of the Appellate Tribunal [Section 35]

As per section 35(1), the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. According to section 35 (2), the Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any

- office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter, which may be, prescribed by the Central Government.

The Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Distribution of business to the benches with decision to be by majority Where any Benches are constituted, the Chairman may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench. [section 36]

If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by third Member of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it. [Section 38]

Civil court not to have jurisdiction [Section 41]

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to High Court [Section 42]

Time period of filing an appeal to High Court: Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order.

Extension of time period: The High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Jurisdiction of High Court:

Where any person is an aggrieved party	Appeal shall be filed in the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
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where the Central Government is the aggrieved party	Appeal shall be filed in the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.
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7. Special Courts

“Special Court” means a Court of Session designated as Special Court under sub-section (1) of section 43.

Sections 43 – 47 deals with provision relating to Special Courts.

Section 43 empowers the Central Government in consultation with the Chief Justice of the High Court for trial of offence of money laundering (offence punishable under section 4), to designate one or more Courts of Sessions as Special Court or Special Courts for such area or areas or for such cases as may be prescribed in the notification to this effect.



Jurisdiction of special court: Section 44 clearly provides for the offences triable by Special Courts. It overrides the provisions of the Code of Criminal Procedure, 1973 and provides that –

- (i) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed. The Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or
- (ii) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial; or
- (iii) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed; or
- (iv) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.

The provisions of Section 44 shall not be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43.

Nature of offences: Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless-

- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
- (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the special court so directs

Cognizance of offence on complaint: The Special Court cannot take cognizance of any offence under the Act, unless a complaint in writing is made by:-

- (a) The Director or
- (b) Any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

Investigation of offence: Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

The limitation on granting of bail is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

Application of Cr.P.C to the proceedings before a Special Court: Section 46 provides that the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds) shall apply to the proceedings before a Special Court and the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor. However, the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

Appeal and revision: Section 47 empowers the High Court to exercise (so far as applicable) all the powers granted by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure 1973 on Special Court within its jurisdiction, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

8. Reciprocal Arrangement for Assistance in Certain Matters

Definitions

“Corresponding law” means any law of any foreign country corresponding to any of the

provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences

“Offence of cross border implications”, means— (i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person 2 [transfers in any manner] the proceeds of such conduct or part thereof to India; or (ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation.—Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money laundering (Amendment) Act, 2009.

According to **section 55**, unless the context otherwise requires-

“Contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

Contracting State	any country or place outside India
	arrangement is made by CG with the other country
	Through Treaty or otherwise

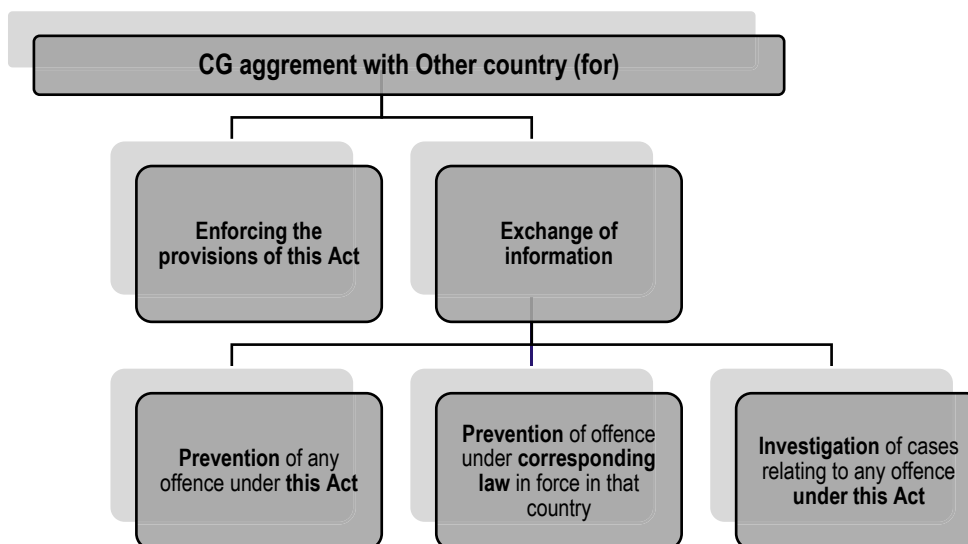
“Identifying” includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3;

“Tracing” means determining the nature, source, disposition, movement, title or ownership of property.

Agreements with foreign countries [Section 56]

1. The Central Government may enter into an agreement with the Government of any country outside India for—
 - (a) enforcing the provisions of this Act;
 - (b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act,and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.
2. The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal

arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.



Letter of request to a contracting State in certain cases [Section 57]

1. **Issue of letter of request:** If, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to-
 - (i) examine facts and circumstances of the case,
 - (ii) take such steps as the Special Court may specify in such letter of request, and
 - (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.
2. **Transmission of letter of request:** The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.
3. **Letter of request to be deemed as an evidence:** Every statement recorded or document or thing received shall be deemed to be the evidence collected during the course of investigation.

Letter of request to contracting state

When: When an application is received by Special court that any evidence is required in respect of investigation

From whom: (i) by the **Investigating Officer** or
(ii) any officer **superior** in rank to the Investigating Office

Opinion of officer: That such evidence may be available with contracting state

Satisfaction of Special Court: is necessary

Letter to whom: to a **court** or an **authority in the contracting State** competent to deal with such request

Assistance to a contracting State in certain cases [Section 58]

Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or, as the case may be, any other law for the time being in force.

Letter of request from Contracting state

Received by: CG

From: Contracting State

For: request for investigation into an offence or proceedings under this Act

Forward to: CG forward the request to: (i) Special Court
(ii) to any authority under the Act as it thinks fit for execution of such request

Letter of request of a contracting State or authority for confiscation or release the property[Section 58B]

Where the trial under the corresponding law of any other country cannot be conducted by-

- reason of the death of the accused, or
- the accused being declared a proclaimed offender, or
- for any other reason, or
- having commenced but could not be concluded,

the Central Government shall on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such

application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering.

Attachment, seizure and confiscation, etc., of property in a contracting State or India[Section 60]

- (1) Where the Director has made an order for attachment of any property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub-section (6) of section 8, and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of section 10, as the case may be, may issue a letter of request to a court or an authority in the contracting State for execution of such order.
- (2) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment, seizure, freezing or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under a corresponding law committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.
- (2A) Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Special Court shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.
- (3) The Director shall, on receipt of a letter of request, direct any authority under this Act to take all steps necessary for tracing and identifying such property.
- (4) The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.
- (5) Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.
- (6) The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in the Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.
- (7) When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government

may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.

Procedure in respect of letter of request [Section 61]

Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

9. Disclosure of Information [Section 66]

- (1) The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—
 - (i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985; or
 - (ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify, by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.
- (2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.

10. Recovery of Fine or penalty

Punishment for vexatious search [Section 62]

Any authority or officer exercising powers under this Act or any rules made thereunder, who, without reasons recorded in writing,-

- (a) searches or causes to be searched any building or place; or
- (b) detains or searches or arrests any person, shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

Punishment for false information or failure to give information, etc. [Section 63]

1. Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.
2. If any person,-
 - (a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or
 - (b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or
 - (c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,
he shall pay, by way of penalty, a sum which shall not be less than 500 rupees but which may extend to 10,000 rupees for each such default or failure.
3. No order under this section shall be passed by an authority referred to in sub-section (2) (i.e. point 2 above) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.
4. Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.

Cognizance of offences [Section 64]

1. No court shall take cognizance of any offence under section 62 or sub-section (1) of section 63 except with the previous sanction of the Central Government.
2. The Central Government shall, by an order, either give sanction or refuse to give sanction within ninety days of the receipt of the request in this behalf.

Code of Criminal Procedure, 1973 to apply [Section 65]

The provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation investigation, prosecution and all other proceedings under this Act.

Recovery of fine or penalty [Section 69]

Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

Offences by companies [Section 70]

1. Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

2. Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation 1- For the purposes of this section,

- (i) "Company" means any body corporate and includes a firm or other association of individuals; and
- (ii) "Director", in relation to a firm, means a partner in the firm.

Explanation 2- For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.

Act to have overriding effect [Section 71]

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Continuation of proceedings in the event of death or insolvency [Section 72]

1. Where-
 - (a) any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred; or
 - (b) any appeal has been preferred to the Appellate Tribunal, and-
 - (i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or
 - (ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official

assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 26 shall, so far as may be, apply, or continue to apply, to such appeal.

2. Where-
 - (a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High court under section 42; or
 - (b) any such appeal has been preferred to the High Court,-
then-
 - (i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or
 - (ii) in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provisions of section 42 shall, so far as may be, apply, or continue to apply, to such appeal.
3. The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be.

11. Conclusion

Does money laundering mean siphoning of fund. No, not just siphoning of fund, it actually refers to a whole process or an entire system by which money is actually generated from serious crimes as listed above, but they are given such shape (by disguising its origin into a series of transactions) that it looks like it has originated from legitimate sources. The point to note is that the volume of money generated by above activities is also very huge. But the fact remains how does it effect us. The answer lies in observing the continuous increase in terrorist or militant or other criminal activities worldwide (wide spreading global network of terrorists and others who deal in above crimes) and we cannot be ignorant to the fact that such activities need huge funding and they generate large volume of money. To curb the criminal activities, one needs to follow and hit at this generation and utilization of revenue. PLMA, 2002 aims to achieve this. So, money laundering is simply giving shape to the financial structure required and generated from serious crimes as listed above. For example, a criminal may deposit all his money into a bank account or purchase a fixed deposit or even buy a property. But sudden appearance of such a transaction, invites the attraction of one and all. Hence he may resort to money laundering by making cash purchases from the market and then selling the goods in the legal manner and at the end create an impression that the money has come from the sales and not from the criminal activities. So the money has been disguised by entering into a series of transactions and its origin now looks legitimate. India has followed the recommendations of Financial Action Task

25.36 Corporate and Allied Laws

Force (FATF) and criminalized money laundering. FATF is an international government body. Financial Intelligence Unit of India (FIU_IND) was also set up at New Delhi with an objective to coordinate and strengthen the collection and sharing of financial intelligence through an effective national, regional and global network to combat money laundering and all the related crimes. The subject is a major issue of concern at the international level and all sectors of business across the globe, like insurance, retail, real-estate, stock –market, entertainment – just to name a few are getting flooded with money and more money and at this stage we can certainly doubt, that it might be a case of money – laundering. Hence the need, significance and scope of operation of Prevention of Money Laundering Act, 2002.

PAPER 4: CORPORATE AND ECONOMIC LAWS

PART – I: RELEVANT AMENDMENTS APPLICABLE FOR MAY, 2019 EXAMINATION

Applicability of Relevant Amendments/ Circulars/ Notifications/Regulations etc.

For May 2019 examinations for Paper 4: Corporate and Economic Laws, the significant amendments made in the respective subject for the period 1st May 2017 to 31st October, 2018 are relevant and applicable for said examinations.

This RTP of May 2019 examination will help the students to know of the significant changes, that are relevant and applicable for May 2019 examination.

Relevant amendments: Here are the given relevant amendments arranged chapter wise.

PART I: CORPORATE LAWS

SECTION A: COMPANY LAW

CHAPTER 1: APPOINTMENT AND QUALIFICATION OF DIRECTORS

1. Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 463(E), dated 5th June 2015. Following are the amendments:

According to the amendment, section 152(6) & (7) shall not apply to –

(a) a Government company, which is not a listed company, in which not less than fifty-one per cent. of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;

(b) a subsidiary of a Government company, referred to in (a) above.

2. Insertion of Paragraph 2A in the principal notification G.S.R. 463(E), dated 5th June 2015 vide Notification G.S.R. 582(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:-

“2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a Government company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.”

3. Exemptions to Companies covered section 8 of the Companies Act, 2013 vide Notification G.S.R. 584(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 466(E), dated 5th June 2015. Following are the amendments:

Section 149(1)(b) & first proviso shall not apply on section 8 companies.

Insertion of Paragraph 2A in the principal notification G.S.R. 466 (E), dated 5th June 2015
Vide Notification G.S.R. 584(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a company covered under section 8 of the said Act which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.

4. Enforcement of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 Vide Notification G.S.R. 839(E) dated 5th July 2017

The Central Government hereby makes the following rules further to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, rule 4 shall be numbered as sub-rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely :-

"(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act."

5. Exemptions given to certain unlisted public companies under the Companies (Appointment and Qualification of Directors) Rules, 2014 from appointment of Independent Directors Vide notification of circular 09/2017 dated 5th September 2017

Vide Notification number G.S.R. 839(E) dated 5th July, 2017 an amendment was issued through the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2017* inter-alia amending rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

The said amended Rule 4 provides that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors.

Through the issue of this circular, it is hereby clarified that a "joint venture", would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.

6. Enforcement of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2018 Vide Notification G.S.R.51(E) dated 22nd January, 2018

The Central Government hereby makes the following rules further to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in rule 9,

(A) for the marginal heading, the following marginal heading shall be substituted, namely:-

“Application for allotment of Director Identification Number before appointment in an existing company”;

(B) for sub-rule (1), the following shall be substituted, namely:-

“(1) Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the Central Government for allotment of a Director Identification Number (DIN) along with such fees as provided under the *Companies (Registration Offices and Fees) Rules, 2014*.

Provided that in case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (SPICe) and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICe);

(C) in sub-rule (3),

(I) In sub-clause (a), after sub-clause (iii), the following sub-clause shall be inserted, namely:-

“(iiiia) board resolution proposing his appointment as director in an existing company”;

(II) for clause (b), the following clause shall be substituted, namely:-

“(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by a company secretary in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company,”

7. *Companies (Removal of Difficulties) Order, 2018 S.O. 768(E) dated 21st February, 2018*

In the *Companies Act, 2013*, in section 169, in sub-section (1), –

(i) before the proviso, the following proviso shall be inserted, namely :-

“Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.”;

(ii) in the existing proviso, for the words “Provided that”, the words “Provided further that” shall be substituted.

8. Enforcement of the *Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018* vide Notification G.S.R. 431(E) dated 7th May 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*,

(a) rule 5 shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rule shall be inserted, namely:-

“(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-

(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or

(ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company,

for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.”

(b) In the principal rules, in rule 16, for the word “shall”, the word “may” shall be substituted.

9. Enforcement of the *Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018* vide Notification G.S.R. 558 (E) dated 12th June 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in the annexure for form DIR-3, a new form shall be substituted.

10. Enforcement of the *Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018* vide Notification G.S.R. 615(E) w.e.f. 10th July, 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In *Companies (Appointment and Qualification of Directors) Rules, 2014*,

(i) The rule 11 shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rules shall be inserted, namely:-

“(2) The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region)

shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.

(3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

(ii) after rule 12, the following shall be inserted, namely:-

“12A Directors KYC:- Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018.”;

(iii) In the Annexure after Form DIR-3 the Form DIR-3-KYC shall be inserted.

11. Enforcement of the *Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018* vide Notification G.S.R. 798 (E) dated 21st August 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*,

(i) in the proviso to rule 12A, for the words and numbers “DIR-3 KYC on or before 31st August, 2018, the words and numbers “DIR-3 KYC on or before 15th September, 2018” shall be substituted.

(ii) in the Annexure, for Form No.DIR-3 KYC, a new Form shall be substituted.

12. Enforcement of the *Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018* vide Notification G.S.R. 904(E) dated 20th September 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in the proviso to rule 12A, for the words and figures “before 15th September, 2018,” the words and figures “before 5th October, 2018 ” shall be substituted.

13. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 149	<p>In section 149 of the principal Act,—</p> <p>(i) for sub-section (3), the following sub-section shall be substituted, namely:— "(3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year: Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.";</p> <p>(ii) in sub-section (6),—</p> <p>(a) in clause (c), for the words "pecuniary relationship", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," shall be substituted;</p> <p>(b) for clause (d), the following clause shall be substituted, namely:— "(d) none of whose relatives—</p> <p>(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;</p> <p>(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;</p> <p>(iii) has given a guarantee or provided any security in connection with the indebtedness of any third</p>

	<p>person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or</p> <p>(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);";</p> <p>(c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:— "Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years."</p>
Amendment of section 152	<p>In section 152 of the principal Act,—</p> <p>(a) in sub-section (3), after the word and figures "section 154", the words and figures "or any other number as may be prescribed under section 153" shall be inserted;</p> <p>(b) in sub-section (4), after the word "Number", the words and figures "or such other number as may be prescribed under section 153" shall be inserted.</p>
Amendment of section 153	<p>In section 153 of the principal Act, the following proviso shall be inserted, namely:— "Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."</p>
Amendment of Section 157	<p>In section 157 of the principal Act,—</p> <p>(i) in sub-section (1), the words and figures, "within the time specified under section 403" shall be omitted;</p> <p>(ii) in sub-section (2), the words and figures, "before the expiry of the period specified under section 403 with additional fee", shall be omitted.</p>

Amendment of section 160.	<p>In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—</p> <p>“Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.”</p>
Amendment of section 161.	<p>In section 161 of the principal Act,—</p> <p>(i) in sub-section (2), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted;</p> <p>(ii) in sub-section (4),—</p> <p>(a) the words "In the case of a public company," shall be omitted;</p> <p>(b) after the words "meeting of the Board", the words "which shall be subsequently approved by members in the immediate next general meeting" shall be inserted.</p>
Amendment of section 164	<p>In section 164 of the principal Act,—</p> <p>(i) in sub-section (2), the following proviso shall be inserted, namely:—</p> <p>"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.";</p> <p>(ii) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—</p> <p>"Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."</p>
Amendment of section 165.	<p>In section 165 of the principal Act, in sub-section (1), the Explanation shall be renumbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be inserted, namely:—</p> <p>"Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall</p>

	not be included."
Amendment of section 167.	In section 167 of the principal Act, in sub-section (1),— (i) in clause (a), the following proviso shall be inserted, namely:— "Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section."; (ii) in clause (f), for the proviso the following proviso shall be substituted, namely,— "Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)— (i) for thirty days from the date of conviction or order of disqualification; (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."
Amendment of Section 168	In section 168 of the principal Act, in sub-section (1), in the proviso, for the words, "director shall also forward", the words "director may also forward" shall be substituted.

CHAPTER 2: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

1. Enforcement of the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* vide Notification G.S.R. G.S.R 875(E) dated 12th September 2018

The Central Government makes the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* to amend the *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*.

In *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*,

- (i) in rule 6,
 - (a) for the heading 'application to the Central Government' the heading 'Parameters for consideration of remuneration' shall be substituted.
 - (b) the words 'Central Government' shall be omitted.

- (ii) in rule 7, sub-rule (2) shall be omitted
- (iii) for form no.MR-2, a new form MR-2 shall be substituted.

2. Amendment in Schedule V to the Companies Act, 2013

The Central Government vide Notification No. S.O. 4822(E) dated 12th September 2018 has amended the Schedule V to the Companies Act, 2013.

3. Amendments through the Companies (Amendment) Act, 2017

Relevant Sections	Amendment
Amendment in Section 2(51)	<p>in clause (51),—</p> <p>(a) in sub-clause (iv), the word "and" shall be omitted;</p> <p>(b) for sub-clause (v), the following sub-clauses shall be substituted, namely:—</p> <p style="padding-left: 40px;">"(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and</p> <p style="padding-left: 40px;">(vi) such other officer as may be prescribed;"</p>
Amendment of section 196	<p>In section 196 of the principal Act,—</p> <p>(a) in sub-section (3), in clause (a), after the proviso, the following proviso shall be inserted, namely:—</p> <p style="padding-left: 40px;">"Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.";</p> <p>(b) in sub-section (4), for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.</p>
Amendment of Section 197	<p>In section 197 of the principal Act,—</p> <p>(a) in sub-section (1),—</p> <p style="padding-left: 40px;">(i) in the first proviso, the words "with the approval of the Central Government," shall be omitted;</p> <p style="padding-left: 40px;">(ii) in the second proviso, after the words "general meeting," the words "by a special resolution," shall be inserted;</p>

	<p>(iii) after the second proviso, the following proviso shall be inserted, namely:— "Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.";</p> <p>(b) in sub-section (3), the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted;</p> <p>(c) for sub-section (9), the following sub-section shall be substituted, namely:— "(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.";</p> <p>(d) in sub-section (10),—</p> <p>(i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted;</p> <p>(ii) the following proviso shall be inserted, namely:— "Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";</p>
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	<p>(e) in sub-section (11), the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted;</p> <p>(f) after sub-section (15), the following sub-sections shall be inserted, namely:—</p> <p>"(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.</p> <p>(17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."</p>
Amendment of Section 198	<p>In section 198 of the principal Act,—</p> <p>(i) in sub-section (3),—</p> <p>(a) in clause (a), after the words "sold by the company", the words, letter, brackets and figures "unless the company is an investment company as referred to in clause (a) of the Explanation to section 186" shall be inserted;</p> <p>(b) after clause (e), the following clause shall be inserted, namely:—</p> <p>"(f) any amount representing unrealised gains, notional gains or revaluation of assets.";</p> <p>(ii) in sub-section (4), in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.</p>
Amendment of section 200.	In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.
Amendment of section 201.	In section 201 of the principal Act,—

	<p>(a) in sub-section (1), for the words "this Chapter", the word and figures "section 196" shall be substituted;</p> <p>(b) in sub-section (2), in clause (a), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.</p>
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CHAPTER 3: MEETING OF BOARD AND ITS POWERS

1. Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 464(E), dated 5th June 2015. Following are the amendments:

(i) With respect to Section 173(5), the following sub- section shall be substituted:

(5) A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this subsection and in section 174 shall apply to One person Company in which there is only one director on its Board of Directors.

(ii) With respect to section 174(3)-

It shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.

2. Insertion of Paragraph 2A in the principal notification G.S.R. 464(E), dated 5th June 2015 Vide Notification G.S.R. 583(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar."

3. Exemptions to Companies covered section 8 of the Companies Act, 2013 Vide Notification G.S.R. 584(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 466(E), dated 5th June 2015. Following are the amendments:

In section 186(7)- following proviso shall be inserted-

Provided that nothing contained in this sub-section shall apply to a company in which twenty-six per cent. or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance objects as stated in its memorandum of association."

4. Insertion of Paragraph 2A in the principal notification G.S.R. 466 (E), dated 5th June 2015 Vide Notification G.S.R. 584(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a company covered under section 8 of the said Act which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar."

5. Enforcement of the *Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017* vide Notification G.S.R. 880(E) Dated 13th July 2017

The Central Government hereby makes the following rules further to *amend the Companies (Meetings of Board and its Powers) Rules, 2014*.

Following are the amendments:

- (1) In rule 3 for clause (e), the following shall be substituted, -

"(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year: Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person."

- (2) In the principal rules, for rule 6, the following rule shall be substituted, namely:-

"6. Committees of the Board. - The Board of directors of every listed company and a company covered under rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014* shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'.

6. Enforcement of the *Companies (Restriction on number of layers) Rules, 2017* in exercise of the powers conferred under proviso to clause (87) of section 2 Vide notification G.S.R. 1176(E), dated 20th September 2017

Restriction on number of layers for certain classes of holding companies-

- (1) On and from the date of commencement of these rules, no company, other than a company belonging to a class specified in sub-rule (2) , shall have more than two layers of subsidiaries:

Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country:

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

- (2) **The provisions of this rule shall not apply to the following classes of companies, namely:—**
- (a) a banking company as defined in the Banking Regulation Act, 1949
 - (b) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;
 - (c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory Development Authority Act, 1999
 - (d) a Government company referred to in clause (45) of section 2 of the Companies Act.
- (3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.
- (4) Every company, other than a company referred to in sub-rule (2), existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) –
- (i) shall file, with the Registrar a return disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the Official Gazette;
 - (ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and (iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub rule (1), whichever is more.
- (5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

7. Enforcement of the *Companies (Meetings of Board and its Powers) Amendment Rules, 2018* vide Notification G.S.R. 429 (E) dated 7th May, 2018

The Central Government makes the *Companies (Meetings of Board and its Powers) Amendment Rules, 2018* to amend the *Companies (Meetings of Board and its Powers) Rules, 2014*.

In *Companies (Meetings of Board and its Powers) Rules, 2014*,

- (i) in rule 4, the following proviso shall be inserted, namely:-
 "Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means."
- (ii) In the principal rules, in rule 6, for the words "every listed company", the words "every listed public company" shall be substituted.
- (iii) In the principal rules, for rule 13, the following rule shall be substituted, namely:-
 "13. Special Resolution- A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition:
 Provided that the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186."

8. Amendments through the *Companies (Amendment) Act, 2017*

Relevant sections	Amendment
Amendment of section 173	In section 173 of the principal Act, in sub-section (2), after the first proviso, the following proviso shall be inserted, namely:- "Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."
Amendment of section 177.	In section 177 of the principal Act,— (i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted; (ii) in sub-section (4), in clause (iv), after the proviso, the following provisos shall be inserted, namely:— "Provided further that in case of transaction, other than transactions referred to in section 188, and

	<p>where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:</p> <p>Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:</p> <p>Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."</p>
Amendment of Section 178	<p>In section 178 of the principal Act,—</p> <p>(i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;</p> <p>(ii) in sub-section (2), for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted;</p> <p>(iii) in sub-section (4), in clause (c), for the proviso, the following proviso shall be substituted, namely:— "Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.";</p> <p>(iv) in sub-section (8), in the proviso, for the words "non-consideration of resolution of any grievance",</p>

	the words "inability to resolve or consider any grievance" shall be substituted.
Amendment of Section 180	In section 180 of the principal Act, in sub-section (1), in clause (c), for the words "paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted.
Amendment of Section 184	In section 184 of the principal Act,— (i) in sub-section (4), the words "shall not be less than fifty thousand rupees but which" shall be omitted; (ii) in sub-section (5), for clause (b), the following clause shall be substituted, namely:— "(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."
Substitution of new section for section 185. Loan to Directors	For section 185 of the principal Act, the following section shall be substituted, namely:— '185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,— (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or (b) any firm in which any such director or relative is a partner. (2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that— (a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or

	<p>guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and</p> <p>(b) the loans are utilised by the borrowing company for its principal business activities.</p> <p><i>Explanation.</i>—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—</p> <p>(a) any private company of which any such director is a director or member;</p> <p>(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or</p> <p>(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.</p> <p>(3) Nothing contained in sub-sections (1) and (2) shall apply to—</p> <p>(a) the giving of any loan to a managing or whole-time director—</p> <p>(i) as a part of the conditions of service extended by the company to all its employees; or</p> <p>(ii) pursuant to any scheme approved by the members by a special resolution; or</p> <p>(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or</p> <p>(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in</p>
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	<p>respect of any loan made to its wholly owned subsidiary company; or</p> <p>(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company: Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.</p> <p>(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—</p> <p>(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;</p> <p>(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and</p> <p>(iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'</p>
Amendment of section 186.	<p>In section 186 of the principal Act,—</p> <p>(i) in sub-section (2), the following Explanation shall be inserted, namely:— 'Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.';</p> <p>(ii) for sub-section (3), the following sub-section shall be substituted, namely:— '(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security</p>

	<p>proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:</p> <p>Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply.</p> <p>Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).”.</p> <p>(iii) for sub-section (11), the following sub-section shall be substituted, namely:—</p> <p>“(11) Nothing contained in this section, except sub-section (1), shall apply—</p> <p>(a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;</p> <p>(b) to any investment—</p> <p>(i) made by an investment company;</p> <p>(ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of</p>
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	<p>rights issues made by a body corporate;</p> <p>(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.";</p> <p>(iv) in the <i>Explanation</i>, in clause (a), after the words "other securities" the following shall be inserted, namely:— "and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income."</p>
Amendment of section 188.	<p>In section 188 of the principal Act,—</p> <p>(i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:— "Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:"</p> <p>(ii) in sub-section (3), for the words "shall be voidable at the option of the Board", the words "shall be voidable at the option of the Board or, as the case may be, of the shareholders" shall be substituted.</p>
Omission of section 194	Section 194 of the principal Act shall be omitted.
Omission of section 195	Section 195 of the principal Act shall be omitted.

CHAPTER 4: INSPECTION, INQUIRY AND INVESTIGATION

1. Enforcement of Section 212(8), (9), & (10) vide Notification S.O. 2751(E) dated 24th of August, 2017

The Central Government notified the provisions of sub-sections (8), (9) and sub-section (10) of section 212 of the Companies Act, 2013 with effect from 24th day of August, 2017.

2. **Enforcement of the *Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017* Vide Notification G.S.R. 1062(E) dated 24th of August 2017**

In exercise of the powers conferred under sub-section (1) of section 469 read with section 212 of the Companies Act, 2013, Central Government enforced the *Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017*.

According to the Rule where any person has been guilty of any offence punishable under section 212 of the Act, he may be arrested as per the respective rules.

The *Companies (Arrests in Connection with Investigation by Serious Fraud Investigation Office) Rules, 2017*

- a. **In case of other than government companies/foreign companies:** Where the Director, Additional Director or Assistant Director of the Serious Fraud Investigation Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person; Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.
- b. **Competent authority:** The Director SFIO shall be the competent authority for all decisions pertaining to arrest.
- c. **In case of Government Company /foreign company:** Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government. Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of the Government Company, to the Secretary of the administrative ministry concerned, by the arresting officer.
- d. **Serving of Arrest order to arrestee:** The Director, Additional Director or Assistant Director, while exercising powers under sub-section (8) of section 212 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.
- e. **Forwarding of copy of arrest order and other documents:** The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty four hours through the quickest possible means.

- f. **Maintenance of arrest order:** An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.
- g. **Entry in arrest register:** The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.
- h. **Preservation of copy of arrest order:** The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years a) from the date of judgment or final order of the Trial Court, in cases where the said judgment has not been impugned in the appellate court; or b) from the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later.
- i. **Applicability of provision of Cr.P.C:** The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.

3. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 223.	In section 223 of the principal Act, in sub-section (3), after the words "may be obtained", the words "by members, creditors or any other person whose interest is likely to be affected" shall be inserted.

CHAPTER 5: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

1. Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 463(E), dated 5th June 2015. Following are the amendments:

The word "Tribunal" wherever it occurs in sections 230 to 232, the words "Central Government" shall be substituted.

2. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 236.	In section 236 of the principal Act, in sub-sections (4), (5) and (6), for the words, "transferor company", wherever they occur, the words "company whose shares are being transferred" shall be substituted.

CHAPTER 9: COMPANIES INCORPORATED OUTSIDE INDIA**Amendments through the Companies (Amendment) Act, 2017**

Relevant sections	Amendment
Amendment of section 379.	Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:— “(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies: Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament.”
Amendment of section 384.	In section 384 of the principal Act, in sub-section (2), after the word and figures "section 92", the words and figures "and section 135" shall be inserted.
Amendment of section 391.	In section 391 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— “(2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply <i>mutatis mutandis</i> for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.”

CHAPTER 10: MISCELLANEOUS PROVISIONS**1. Notification of Section 247 vide Notification S.O. 3393(E) dated 18th October 2017**

The Central Government hereby appoints the 18th October, 2017 as the date on which the provisions of section 247 of the said Act shall come into force.

Section 247: Valuation by Registered Valuers

- (1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by ¹a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be

¹ Substituted by the Companies (Removal of Difficulties) Second Order 2017

prescribed] and appointed by the audit committee or in its absence by the Board of Directors of that company.

- (2) The valuer appointed under sub-section (1) shall,—
- (a) make an impartial, true and fair valuation of any assets which may be required to be valued;
 - (b) exercise due diligence while performing the functions as valuer;
 - (c) make the valuation in accordance with such rules as may be prescribed; and
 - (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time ²[during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.]
- (3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
- However if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
- (4) Where a valuer has been convicted under sub-section (3), he shall be liable to—
- (i) refund the remuneration received by him to the company; and
 - (ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

2. Notification of the *Companies (Registered Valuers and Valuation) Rules, 2017* vide Notification G.S.R 1316(E) dated 18th October, 2017

In exercise of the powers conferred by section 247, the Central Government hereby enforced the *Companies (Registered Valuers and Valuation) Rules, 2017*.

COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

2. Definitions

- (1) In these rules, unless the context otherwise requires -
- "authority" means an authority specified by the Central Government under section 458 of the Companies Act, 2013 to perform the functions under these rules;

² Amended through the Companies (Amendment) Act, 2017 on 9th February, 2018

"asset class" means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation;

"certificate of recognition" means the certificate of recognition granted to a registered valuers organisation under sub-rule (5) of rule 13 and the term "recognition" shall be construed accordingly;

"certificate of registration" means the certificate of registration granted to a valuer under sub-rule (6) of rule 6 and the term "registration" shall be construed accordingly;

"registered valuers organisation" means a registered valuers organization recognised under sub-rule (5) of rule 13;

"valuer" means a person registered with the authority in accordance with these rules and the term "registered valuer" shall be construed accordingly.

3. Eligibility for registered valuers

- (1) A person shall be eligible to be a registered valuer if he-
- (a) Is a valuer member of a registered valuers organisation;
Explanation.- For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;
 - (b) Is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;
 - (c) Has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;
 - (d) Possesses the qualifications and experience as specified in rule 4;
 - (e) Is not a minor;
 - (f) Has not been declared to be of unsound mind;
 - (g) Is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;
 - (h) Is a person resident in India;
Explanation.- For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;
 - (i) Has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

- (j) Has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and

- (k) Is a fit and proper person:

Explanation.- For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

- (i) Integrity, reputation and character,
- (ii) Absence of convictions and restraint orders, and
- (iii) Competence and financial solvency.

- (2) No partnership entity or company shall be eligible to be a registered valuer if-
- (a) It has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;
 - (b) It is undergoing an insolvency resolution or is an undischarged bankrupt;
 - (c) All the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (g), (h), (i), (j) and (k) of sub-rule (1);
 - (d) Three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or
 - (e) None of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

4. Qualifications and experience

An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

- (a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or
- (b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or

- (c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership and having qualification mentioned at clause (a) or (b).

Explanation-I- For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

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

6. Application for certificate of registration

- (1) An individual eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-A of Annexure-II along with a non-refundable application fee of five thousand rupees in favour of the authority.
- (2) A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-B of Annexure-II along with a non-refundable application fee of ten thousand rupees in favour of the authority.
- (3) The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.
- (4) The authority may require the applicant to submit additional documents or clarification within twenty- one days.
- (5) The authority may require the applicant to appear, within twenty one days, before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.
- (6) If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in Form-C of the Annexure-II within sixty days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
- (7) If, after considering an application made under this rule, the authority is of the prima facie opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.

- (8) The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication under sub-rule (7), to enable the authority to form a final opinion.
- (9) After considering the explanation, if any, given by the applicant under sub-rule (8), the authority shall either -
 - (a) accept the application and grant the certificate of registration; or
 - (b) reject the application by an order, giving reasons thereof.
- (10) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.

7. Conditions of Registration

The registration granted under rule 6 shall be subject to the conditions that the valuer shall -

- (a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;
- (b) at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;
- (c) in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;
- (d) take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;
- (e) take adequate steps for redressal of grievances;
- (f) maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;
- (g) comply with the Code of Conduct of the registered valuers organisation of which he is a member;
- (h) in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;
- (i) in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;

- (j) in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;
- (k) in case a company is the registered valuer, be liable along with director who signs and acts in respect of a valuation assignment on behalf of the company;
- (l) in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and
- (m) comply with such other conditions as may be imposed by the authority.

8. Conduct of Valuation

- (1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:
Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-
 - (a) internationally accepted valuation standards;
 - (b) valuation standards adopted by any registered valuers organisation.
- (2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.
- (3) The valuer shall, in his report, state the following:-
 - (a) background information of the asset being valued;
 - (b) purpose of valuation and appointing authority;
 - (c) identity of the valuer and any other experts involved in the valuation;
 - (d) disclosure of valuer interest or conflict, if any;
 - (e) date of appointment, valuation date and date of report;
 - (f) inspections and/or investigations undertaken;
 - (g) nature and sources of the information used or relied upon;
 - (h) procedures adopted in carrying out the valuation and valuation standards followed;
 - (i) restrictions on use of the report, if any;
 - (j) major factors that were taken into account during the valuation;

- (k) conclusion; and
- (l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

9. Temporary surrender

- (1) A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.
- (2) A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.
- (3) Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

10. Functions of a Valuer

A valuer shall conduct valuation required under the Act as per these rules and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.

12. Eligibility for registered valuers organisations

- (1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if -
 - (i) it has been registered under section 25 of the Companies Act, 1956 (1 of 1956) or section 8 of the Companies Act, 2013 (18 of 2013) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in **Annexure-III**;
 - (ii) a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

Provided that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:-

- (a) an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;
- (b) an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).

- (2) The organisation referred to in sub-rule (1) shall be recognised if it –
- (a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;
 - (b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation ;
 - (c) conducts training for the individual members before a certificate of practice is issued to them;
 - (d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in **Annexure-I**;
 - (e) provides for continuing education of individuals who are its members;
 - (f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and
 - (g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.
- (3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013, and include in its bye laws the requirements specified in **Annexure-III**, within one year from the date of commencement of these rules.

14. Conditions of Recognition

The recognition granted under rule 13 shall be subject to the conditions that the registered valuers organisation shall-

- (a) at all times continue to satisfy the eligibility requirements specified under rule 12;
- (b) maintain a register of members who are registered valuers, which shall be publicly available;
- (c) admits only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 and as specified in its recognition certificate, as members;
- (d) make such reports to the authority as may be required by it;
- (e) comply with any directions, including with regard to course to be conducted by valuation organisation under clause (a) of sub-rule (2) of rule 12, issued by the authority;

- (f) be converted or registered as company under section 8 of the Act, with governance structure and bye laws specified in **Annexure-III**, within a period of one year from the date of commencement of these rules if it is an organisation referred to in proviso to sub-rule (1) of rule 12;
- (g) shall have the governance structure and incorporate in its bye laws the requirements specified in **Annexure-III** within one year of commencement of these rules if it is an organisation referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement of these rules;
- (h) display on its website, the status and specified details of every registered valuer being its valuer members including action under rule 17 being taken against him; and
- (i) comply with such other conditions as may be specified by authority.

15. Cancellation or suspension of certificate of registration or recognition

The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner specified in rule 17.

16. Complaint against a registered valuer or registered valuers organisation

A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

18. Valuation Standards

The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under rule 19.

20. Punishment for contravention

Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

21. Punishment for false statement

If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.

3. Enforcement of the *Companies (Registered Valuers and Valuation) Amendment Rules, 2018* vide Notification No. G.S.R. 155 (E) dated 9th February, 2018

In exercise of the powers conferred by section 247 read with section 469 of the Companies Act, 2013, the Central Government makes the *Companies (Registered Valuers and Valuation) Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*, namely:-

In the *Companies (Registered Valuers and Valuation) Rules, 2017*, in rule 11, for the figures, letters and word "31st March, 2018", occurring at both the places, the figures, letters and word "30th September, 2018" shall be substituted.

4. Enforcement of the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* vide Notification G.S.R. 559(E) dated 13th June, 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*.

In *Companies (Registered Valuers and Valuation) Rules, 2017*, in rule 19, in sub-rule 2, after clause (g), the following clause shall be inserted, namely:-

"(h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members."

5. Enforcement of the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* vide Notification G.S.R. G.S.R. 925(E) dated 25th September, 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*.

In the *Companies (Registered Valuers and Valuation) Rules, 2017*,

- (i) in rule 11, for the figures, letters and word "30th September, 2018" occurring at both the places, the figures, letters and word "31st January, 2019" shall be substituted.
- (ii) In the said rules, in rule 14, in clause (f), for the words "one year", the words "two years" shall be substituted.

6. Amendments through the *Companies (Amendment) Act, 2017*

Relevant sections	Amendment
Amendment of Section 247	In section 247 of the principal Act, in sub-section (2), in clause (d), for the words "during or after the valuation of assets", the

		words "during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him" shall be substituted.
Amendment section 366.	of	In section 366 of the principal Act, in sub-section (2),— (i) for the words "seven or more members", the words "two or more members" shall be substituted; (ii) in the proviso, after clause (vi), the following clause shall be inserted, namely:— "(vi) a company with less than seven members shall register as a private company."
Amendment section 374.	of	In section 374 of the principal Act, after clause (d), the following proviso shall be inserted, namely:— "Provided that upon registration as a company under this Part a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 shall be deemed to have been dissolved under that Act without any further act or deed."
Amendment section 403.	of	In section 403 of the principal Act,— (i) in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:— "Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies: (ii) for sub-section (2), the following sub-section shall be substituted, namely:— "(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional

		fee, be liable for the penalty or punishment provided under this Act for such failure or default."
Amendment of section 447.	of	In section 447 of the principal Act,— (i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower" shall be inserted; (ii) after the proviso, the following proviso shall be inserted, namely:— "Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both."
Amendment of section 458	of	In section 458 of the principal Act, in sub-section (1), the proviso shall be omitted.

CHAPTER 11: COMPOUNDING OF OFFENCES, ADJUDICATION, SPECIAL COURTS

Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 435. Establishment of Special Courts	For section 435 of the principal Act, the following shall be substituted, namely:— 435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (2) A Special Court shall consist of— (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working."
Amendment of section 438.	In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of

		Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.
Amendment of section 439.	of	In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted.
Amendment of section 440.	of	In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.
Amendment of section 441.	of	In section 441 of the principal Act, in sub-section (1), for the words "with fine only", the words "not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine" shall be substituted.
Insertion of new section 446A. Factors for determining level of punishment.		After section 446 of the principal Act, the following sections shall be inserted, namely:— "446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:— (a) size of the company; (b) nature of business carried on by the company; (c) injury to public interest; (d) nature of the default; and (e) repetition of the default.
Lesser penalties for One Person Companies or small companies.		446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."

CHAPTER 12: NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

1. Enforcement of the Companies (Removal of Difficulties) Orders, 2017 Vide Order S.O. 2042(E) dated 29th June, 2017

In the Companies Act, 2013, in section 434, in sub-section (1), in clause (c),-

- (a) in the third proviso, for "Provided further that-", the following shall be substituted, namely:- "Provided also that-";

(b) after the third proviso, the following proviso shall be inserted, namely:-

“Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.”

2. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 409	In section 409 of the principal Act, in sub-section (3),— (i) in clause (a), for the words "out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service", the words "and has been holding the rank of Secretary or Additional Secretary to the Government of India" shall be substituted; (ii) for clause (e), the following clause shall be substituted, namely:— "(e) is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."
Amendment of section 410	In section 410 of the principal Act, for the words "orders of the Tribunal", the words "orders of the Tribunal or of the National Financial Reporting Authority" shall be substituted.
Amendment of section 411.	In section 411 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— "(3) A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."
Amendment of section 412	In section 412 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:— "(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed

	<p>on the recommendation of a Selection Committee consisting of—</p> <p>(a) Chief Justice of India or his nominee— Chairperson;</p> <p>(b) a senior Judge of the Supreme Court or Chief Justice of High Court— Member;</p> <p>(c) Secretary in the Ministry of Corporate Affairs— Member; and</p> <p>(d) Secretary in the Ministry of Law and Justice— Member.</p> <p>(2A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote."</p>
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SECTION B: SECURITIES LAWS

CHAPTER 2: The Securities Exchange Board of India Act, 1992, SEBI (ICDR) REGULATIONS, 2009 & SEBI (LODR) REGULATIONS, 2015

1. SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018 w.e.f. 12.02.2018

Vide this amendment regulation, Clause (c) of the Regulation 82 which dealt with the conditions for qualified institutions placement has been omitted. Following was the clause prior to the omission.

"(c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;"

PART II: ECONOMIC LAWS

CHAPTER 1: The Foreign Exchange and Management Act, 1999

1. Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018

As per the Notification dated 26th of March, 2018, the Reserve Bank of India makes the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 with the enforcement from the date of their publication in the Official Gazette i.e., 26th of March, 2018.

2. Relevant Definitions:- In these Regulations, unless the context otherwise requires- 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India;

'Overseas Citizen of India (OCI)' means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955;

'Repatriation outside India' means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency;

3. Acquisition and Transfer of Property in India by a Non-Resident Indian or an Overseas Citizen of India:-

An NRI or an OCI may-

- (a) acquire immovable property in India other than agricultural land/ farm house/ plantation property:

Provided that the consideration, if any, for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any nonresident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder.

Provided further that no payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause.

- (b) acquire any immovable property in India other than agricultural land/ farm house/ plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in section 2(77) of the Companies Act, 2013;
- (c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property (a) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or (b) from a person resident in India;
- (d) transfer any immovable property in India to a person resident in India;
- (e) transfer any immovable property other than agricultural land/ farm house/ plantation property to an NRI or an OCI.

4. Acquisition of Immovable Property for carrying on a permitted activity:-

A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as amended from time to time, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may -

- (a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity;

Provided that

- i all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and
 - ii the person files with the Reserve Bank a declaration in the form IPI as prescribed by Reserve Bank from time to time, not later than ninety days from the date of such acquisition.
- (b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a).

Provided no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, without prior approval of the Reserve Bank.

5. Purchase/ sale of Immovable Property by Foreign Embassies/ Diplomats/ Consulate Generals:-

A Foreign Embassy/ Diplomat/ Consulate General may purchase/ sell immovable property in India other than agricultural land/ plantation property/ farm house provided (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase/ sale, and (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.

6. Joint acquisition by the spouse of an NRI or an OCI:-

A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse.

Provided that

- (i) The consideration for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank;
- (ii) No payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;
- (iii) Provided that the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property;

- (iv) Provided further that the non-resident spouse is not otherwise prohibited from such acquisition.

7. Acquisition by a Long-Term Visa holder:-

A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment subject to the following conditions:

- (a) the property should not be located in and around restricted/ protected areas so notified by the Central Government and cantonment areas;
- (b) the person submits a declaration to the Revenue Authority of the district where the property is located, specifying the source of funds and that he/ she is residing in India on LTV;
- (c) the registration documents of the property should mention the nationality and the fact that such person is on LTV;
- (d) the property of such person may be attached/ confiscated in the event of his/ her indulgence in anti-India activities;
- (e) a copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division);
- (f) such person shall be eligible to sell the property only after acquiring Indian citizenship. However, transfer of the property before acquiring Indian citizenship shall require prior approval of DCP/FRO/FRRO concerned.

8. Repatriation of sale proceeds:-

- (a) A person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section;
- (b) In the event of sale of immovable property other than agricultural land/ farm house/ plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:
 - (i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of his acquisition or the provisions of these Regulations;

- (ii) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non-Resident External account;
 - (iii) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.
- (c) In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.

9. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries:-

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

Provided this prohibition shall not apply to an OCI.

Explanation: For the purpose of this regulation the term "citizen" shall include natural persons and legal entities.

10. Prohibition on transfer of immovable property in India:-

Save as otherwise provided in the Act or Regulations, no person resident outside India shall transfer any immovable property in India:-

Provided that

- (i) The Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.
- (ii) A bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to create charge on his immovable property in India in favour of an overseas lender or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time.
- (iii) An Authorized Dealer in India being the Indian correspondent of an overseas lender may, subject to the directions issued by the Reserve Bank in this regard, create a mortgage on

an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company from the said overseas lender.

Provided

- (a) the funds shall be used by the borrowing company only for its core business purposes overseas;
 - (b) in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.
- (iv) A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided that the resident is not otherwise prohibited from such acquisition.

11. Miscellaneous:-

Any transaction involving acquisition or transfer of immovable property under these regulations shall be undertaken:

- (a) through banking channels in India;
- (b) subject to payment of applicable taxes and other duties/levies in India.

12. Saving:-

Any existing holding of immovable property in India by a person resident outside India made in accordance with the policy in existence at the time of such acquisition would not require any modifications to conform to these regulations.

CHAPTER 3: PREVENTION OF MONEY LAUNDERING ACT, 2002

Amendments to the prevention of Money-Laundering Act, 2002 through the Finance Act, 2018 w.e.f. 19.04.2018

In the Prevention of Money-laundering Act, 2002,—

- (a) in section 2, in sub-section (1), in clause (u), after the words “within the country”, the words “or abroad” shall be inserted;
- (b) in section 5,—
 - (i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:— “Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.”;
 - (ii) in sub-section (3), for the word, brackets and figure “sub-section (2)”, the word, brackets and figure “sub-section (3)” shall be substituted;

- (c) in section 8,—
- (i) in sub-section (3), in clause (a), after the words “continue during”, the words “investigation for a period not exceeding ninety days or” shall be inserted;
 - (ii) in sub-section (8), after the proviso, the following proviso shall be inserted, namely:—
“Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”;
- (d) in section 19, in sub-section (3),— (i) after the words “be taken to a”, the words “Special Court or” shall be inserted; (ii) in the proviso, after the words “from the place of arrest to the”, the words “Special Court or” shall be inserted;
- (e) in section 45, in sub-section (1), —
- (i) for the words “punishable for a term of imprisonment of more than three years under Part A of the Schedule”, the words “under this Act” shall be substituted;
 - (ii) in the proviso, after the words “sick and infirm,”, the words “or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees” shall be inserted;
- (f) in section 50, in sub-section (5), in the proviso, in clause (b), for the word “Director”, the words “Joint Director” shall be substituted;
- (g) section 66 shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—
“(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.”;

In “Paragraph 29 -Offence Under the Companies Act, 2013

Section 447 i.e., punishment for fraud has been inserted.

CHAPTER 6: INSOLVENCY AND BANKRUPTCY CODE, 2016

(1) Enforcement of clause (a) to clause (d) of section 2 of the Code Vide notification S.O. 1570(E) , dated 15th May , 2017

The Central Government hereby appoints the 1st April, 2017 as the date on which the provisions of clause (a) to clause (d) of section 2 of the Code relating to voluntary liquidation or bankruptcy shall come into force.

(2) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process Vide Notification S.O. 1910(E) dated 14th June 2017

The Central Government hereby appoints the 14th day of June, 2017 as the date on which the provisions of section 55 to section 58 (both inclusive) of the said Code shall come into force.

(3) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process u/s 55(2) of the Code vide Notification S.O.1911(E) dated 14th June 2017

In exercise of the powers conferred by section 55(2) of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby notifies that an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely :-

- (a) a small company as defined under clause (85) of section 2 of Companies Act, 2013, or
- (b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017, or
- (c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.

(4) Issue of clarification regarding approval of resolution plans under section 30 and 31 of Insolvency and Bankruptcy Code, 2016 vide general circular IBC/01/ 2017 dated 25th October 2017

Ministry of Corporate Affairs issued a clarification in view of the requirement under section 30(2)(e) of the Code for the resolution professional to confirm that each resolution plan received by him does not contravene any of the provisions of the law for the time being in force.

Accordingly clarification was sought whether approval of shareholders/ members of the corporate debtor/ company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under section 30 & 31 of the Insolvency and Bankruptcy Code and after approval during its implementation, for any actions contained in the resolution plan which would normally require specific approval of shareholders/ members under provisions of Companies Act, 2013 or any other law.

Through the issue of this circular, it has been clarified that the approval of shareholders / members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority.

(5) Insolvency and Bankruptcy Code (Amendment) Act, 2018

Ministry of Law and Justice, amended the Insolvency and Bankruptcy Code, 2016 (Principal Act) through the enforcement of the Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018. This Act came into enforcement on 23rd day of November 2017.

Significant relevant changes are as follows:

(i) Amendment in section 2 of the Principal Act

- a. in clause (d), the word "and" shall be omitted;
- b. for clause (e), the following clauses shall be substituted, namely:—
 "(e) personal guarantors to corporate debtors;
- c. partnership firms and proprietorship firms; and
- d. individuals, other than persons referred to in clause (e),".

(ii) Amendment in section 5 of the Principal Act

in clause (26), for the words "any person", the words "resolution applicant" shall be substituted.

(iii) In section 30 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code Ord. 7 of (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under 2017. section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section."

(2) The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

Vide Notification dated 17th August, 2018, Ministry of Law and Justice here by amended the Insolvency and Bankruptcy Code, 2016 through the enforcement of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018. With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 have been repealed. This amendment Act is effective from **6th June, 2018.**

Following are the relevant amendments:

- (1) In **section 3(12)**, in the Insolvency and Bankruptcy Code, 2016(Principal Act), for the word "repaid", the word "paid" shall be substituted.
- (2) In **section 5** of the principal Act,
- (i) after clause (5) i.e., after the definition of Corporate applicant, the following clause shall be inserted, namely:—
'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;'
- (ii) in clause (8) prescribing the term "Financial Debt" in the Code, in sub-clause (f), the following Explanation shall be inserted, namely:—
'Explanation.—For the purposes of this sub-clause,—
- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
- (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;
- (iii) in clause (12) i.e., as to the "Insolvency commencement date", the following proviso shall be inserted, namely:—
"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;"
- (iv) **after clause (24)**, the following clause shall be inserted, namely:—
'(24A) "related party", in relation to an individual, means—
- (a) a person who is a relative of the individual or a relative of the spouse of the individual;
- (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;
- (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
- (d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;
- (e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

- (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
- (h) a person on whose advice, directions or instructions, the individual is accustomed to act;
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

- (a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—
 - (i) members of a Hindu Undivided Family,
 - (ii) husband,
 - (iii) wife,
 - (iv) father,
 - (v) mother,
 - (vi) son,
 - (vii) daughter,
 - (viii) son's daughter and son,
 - (ix) daughter's daughter and son,
 - (x) grandson's daughter and son,
 - (xi) granddaughter's daughter and son,
 - (xii) brother,
 - (xiii) sister,
 - (xiv) brother's son and daughter,
 - (xv) sister's son and daughter,
 - (xvi) father's father and mother,
 - (xvii) mother's father and mother,
 - (xviii) father's brother and sister,
 - (xix) mother's brother and sister, and

- (b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'
- (3) In **section 7(1)** of the principal Act which deals with the initiation of CIRP by financial creditor, for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.
- (4) In **section 8(2)** of the principal Act which deals with the Insolvency resolution by operational creditor, following are the amendments—
- (i) in clause (a), for the words "if any, and", the words "if any, or" shall be substituted;
 - (ii) in clause (b), for the word "repayment", the word "payment" shall be substituted;
- In the Explanation, for the word "repayment", the word "payment" shall be substituted.
- (5) In **section 9(3)** of the principal Act, which states of the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor—
- (i) in clause (c), for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;
 - (ii) for clause (d), the following clauses shall be substituted, namely:—
 - "(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
 - (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";
- (6) in **section 9(5)** of the principle Code which deals with the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor —
- (a) in clause (i), in sub-clause (b), for the word "repayment", the word "payment" shall be substituted;
 - (b) in clause (ii), in sub-clause (b), for the word "repayment", the word "payment" shall be substituted.
- (7) **Section 10 (3)** of the principal Act, deals with the initiation of corporate insolvency resolution process by corporate applicant, shall be substituted with the following-
- "(3) The corporate applicant shall, along with the application, furnish—
- (a) the information relating to its books of account and such other documents for such period as may be specified;
 - (b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

- (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";
- (8) In **Section 10 (4)** related to the initiation of corporate insolvency resolution process by corporate applicant, following amendments have been made—
- (i) in **clause (a)**, after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;
 - (ii) in **clause (b)**, after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.
- (9) In **section 12(2)** of the principal Act, related to the time limit for completion of corporate insolvency resolution process, for the word "seventy-five", the word "sixty-six" shall be substituted.
- (10) **After section 12** of the principal Act, the section 12A shall be inserted-
- "12A. Withdrawal of application admitted under section 7, 9, or 10:** The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."
- (11) **Section 14(3)** of the principal Act which deals with the moratorium, shall be substituted, with the following—
- "(3) The provisions of sub-section (1) shall not apply to—
- (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
 - (b) **a surety in a contract of guarantee to a corporate debtor."**
- (12) In **section 15(1)(c)** of the principal Act which deals with the provisions related to the public announcement, for the word "claims", the words "claims, as may be specified" shall be substituted.
- (13) In **section 16(5)** of the principal Act which is related to the appointment and tenure of interim resolution professional, for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.
- (14) In **section 17(2)(d)** of the principal Act which deals with the management of affairs of corporate debtor by IRP, for the words "may be specified.", the words "may be specified; and" shall be substituted;
- (15) **After section 17(2)(d)** which deals with the management of affairs of corporate debtor by IRP, the following **section 17(2)(e)**, shall be inserted,

"(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor."

(16) In **section 21** of the principal Act, which deals with the committee of creditors, following are the relevant amendments —

(i) **in sub-section (2), — in the proviso**, for the words "related party to whom a corporate debtor owes a financial debt", the words, brackets, figures and letter "financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor," shall be substituted;

(ii) after this proviso under sub-section (2), the following **proviso is inserted-**

"Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.";

(iii) **Insertion of new sub-section 6(A) & 6(B) after sub-section (6)-**

"(6A) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as maybe specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6B) The remuneration payable to the authorised representative—

(i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (b) of sub-section (6A) shall be as specified which shall form part of the insolvency resolution process costs.";

(iii) (iv) for sub-sections (7) and (8), the following sub-sections shall be substituted, namely:—

"(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:

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

(17) In **section 22(2)** of the principal Act, for the word, "seventy-five", the word "sixty-six" shall be substituted;

(18) In **section 23(1)** of the principal Act, the following proviso shall be inserted-

"Provided that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."

(19) In **section 24(3)** of the principal Act, in clause (a), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)" shall be substituted;

(20) **Insertion of new section 25A** which deals with the Rights and duties of authorised representative of financial creditors.

25A. (1) Right to participate and Vote on behalf of FC: The authorised representative (AR) under section 21(6) & 21(6A) or section 24(5) shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor (FC) he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(2) **Duty of AR to circulate agenda & minutes to FC:** It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) **AR to act on instruction of FC:** The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

- (4) **To ensure recording of instruction by IRP/RP:** The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.
- (21) **Amendment in section 27(2)** of the principal Act which deals with the Replacement of Resolution Professional (RP) by Committee of creditors (CoC): This sub-section is substituted with the following provision-
- "The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form."
- (22) Amendment in section 28(3) of the principal Act which deals with the approval of committee of creditors for certain actions, for the word, "seventy-five", the word "sixty-six" shall be substituted.
- (23) **Amendment in Section 29 A**, dealt with the persons not eligible to be resolution applicant came into enforcement on 23rd day of November 2017 through the enforcement of Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018.
- (i) **in clause (c),—**
- (a) for the words "has an account," the words "at the time of submission of the resolution plan has an account," shall be substituted;
- (b) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;
- (c) after the proviso, the following shall be inserted, namely:—'Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

The expression "**related party**" here shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;";

(ii) for clause (d), the following clause shall be substituted, namely:—

"(d) has been convicted for any offence punishable with imprisonment—

- (i) for two years or more under any Act specified under the Twelfth Schedule; or
- (ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"

(iii) in clause (e), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"

(iv) in clause (g), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;"

(v) in clause (h),—

- (a) for the words "an enforceable guarantee", the words "a guarantee" shall be substituted;
- (b) after the words "under this Code", the words "and such guarantee has been invoked by the creditor and remains unpaid in full or part" shall be inserted;

(vi) in clause (i), for the words "has been", the word "is" shall be substituted;

(vii) the Explanation occurring after clause (j) shall be numbered as *Explanation I*, and in *Explanation I* as so numbered, for the proviso, the following provisos shall be substituted, namely:—

'Provided that nothing in clause (iii) of *Explanation I* shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;'

(viii) after *Explanation I* as so numbered, the following *Explanation* shall be inserted, namely:—

'*Explanation II*—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999.
- (d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.'

(24) **Amendment in section 30:** The said section deals with the submission of resolution plan. Following are the amendments-

- (i) in **sub-section (1)**, after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;
- (ii) in **sub-section (2)**,—
 - (a) in clauses (a) and (b), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;

(b) after clause (f), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.";

(iii) in **sub-section (4)**,—

(a) for the word "seventy-five", the word "sixty-six" shall be substituted;

(b) after the third proviso, the following proviso shall be inserted, namely:—

"Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."

(25) Amendment in section 31 of the principal Act, which deals with the approval of resolution plan—

(a) in **sub-section (1)**, the following proviso shall be inserted, namely:—

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

(b) after **sub-section (3)**, the following sub-section shall be inserted namely:—

"(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

(26) Amendment made in section 33(2) of the principal Act. This section deals with the initiation of liquidation process. Amendments made is that after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.

(27) In **section 34** of the principal Act, which states of appointment of liquidator and fee to be paid, following amendments are made—

- a. in **sub-section (1)**, for the words and figures "Chapter II shall", the words and figures "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;
 - b. in **sub-section (4)**,—
 - i. in clause (b), for the words "in writing", the words "in writing; or" shall be substituted;
 - ii. after clause (b), the following clause shall be inserted, namely:—

"(c) the resolution professional fails to submit written consent under sub-section (1).";
 - c. in **sub-section (5)**, for the word, brackets and letter "clause (a)", the words, brackets and letters "clauses (a) and (c)" shall be substituted;
 - d. in **sub-section (6)**, after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.
- (28) In section 42 of the principal Act, which deals with the provisions related to the appeal against the decision of liquidator, after the words "of the liquidator", the words "accepting or" shall be inserted.
- (29) In **section 45(1)** of the principal Act, which deals with the Avoidance of undervalued transactions, the words and figures "of section 43" shall be omitted.

PART II – QUESTION AND ANSWERS

Multiple Choice Questions

1. All the three directors of Cygnus Wires Limited generally remain out of India for developing connections and securing business opportunities on behalf of the company. However, the company must strictly follow the legal requirement that at least one of its directors must stay for the specified statutory period in India. To reckon as 'resident director' for the financial year 2018-19, advise the company as to which period spent in India shall count towards statutory period.
 - (a) Period spent in India during the previous financial year 2017-18.
 - (b) Total of fifty percent each of the period spent in India during the financial year 2016-17 and 2017-18.
 - (c) Period spent in India during the financial year 2018-19.
 - (d) Total of fifty percent each of the period spent in India during the financial year 2017-18 and 2018-19.

2. Mr. Roop was appointed as an Additional Director of XYZ Limited in July, 2018. Immediately after his appointment, on behalf of the Company he entered into an agreement with NY Private Limited for supplies of raw material. In the ensuing meeting, he was regularized as a Director. He signed Contract with Laxmi vendors. At the end of the December 2018, management came to know that his appointment was not valid as he was disqualified to act as a Director of any Company. He signed one more agreement in January 2019 with Saraswati vendors. In such scenario, what will be the status of contract/agreements he signed on behalf of XYZ Limited?
 - (a) All agreement/ contracts will become invalid;
 - (b) All agreement/ contracts will be valid;
 - (c) All agreement/ contracts before December 2018 will be valid;
 - (d) All agreement/ contracts before December 2018 will be invalid.
3. Mr. Nagar a director, decided to resign from MGT Private Limited due to preoccupation. He sent his resignation letter dated 12th June, 2018 to the Company stating that he will resign w.e.f. 15th June, 2018. Due to non receipt of any communication from the Company he dropped a mail on 17th June, 2018, to confirm whether Company has received his letter. Finally Company received his letter on 25th June, 2018. In this case, from which date his resignation will be effective?
 - (a) 12th June, 2018
 - (b) 15th June, 2018
 - (c) 17th June, 2018
 - (d) 25th June, 2018
4. Mr. Raman, is appointed as valuer in April, 2018 in ABC Ltd. He undertook the valuation of the assets of the company in 2018. In case, Mr. Raman becomes interested in any property, stock etc. of the company, he may not be eligible to undertake valuation in such property of the company till:
 - (a) 2019
 - (b) 2020
 - (c) 2021
 - (d) He will never be appointed as Registered Valuer of the company.
5. Under the IBC, The resolution plan shall be approved by the Committee of Creditors by a vote of not less than-----percent of voting share of the financial creditors.
 - (a) 51%
 - (b) 66%
 - (c) 75%

- (d) 95%
6. Who is empowered to designate court of session as special courts for trial of offence of money laundering?
- (a) Central government in consultation with the Chief Justice of Supreme Court
- (b) High court in consultation with the Chief Justice of Supreme Court
- (c) Central government in consultation with the Chief Justice of Session Court
- (d) Central government in consultation with the Chief Justice of High Court

Descriptive Questions

Part I: Corporate Laws

7. Mr. X, a Director of Sunrise Limited, was appointed on 1st April, 2016, one of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule V. The company suffered heavy losses during the financial year ended 31st March, 2018. The company was not in a position to pay any remuneration, but he was paid ₹ 50 Lakhs for the year, as paid to other directors. The effective capital of the company is ₹ 150 crores. Referring to provisions of the Companies Act, 2013, examine the validity of the above payment of remuneration to Mr. X.
8. Rudraksh Ltd., a public company, was incorporated for supply of solar panels for the emerging project of government for construction of highways. However, the said project did not turn up for two years due to some legal implications. During the said period, no any significant accounting transaction was made and so the company did not file financial statements and annual returns during the last two financial years. In the meantime, the Board proposed for Mr. Ram & Mr. Rahim to be appointed as an Independent Directors for their independent and expertise knowledge and experience for better working and improvement of financial position of the company.
- Evaluate in the light of the given facts, the following legal position:
- (i) Comment upon the accountability for non-filing of financial statements and annual returns for last two financial years of the Rudraksh Ltd.
- (ii) Nature of the proposal for an appointment of Mr. Ram & Mr. Rahim in the Rudraksh Ltd. for improvement of the company.
9. The Board of Directors of IBC Consultants Limited, registered in Maharashtra, proposes to hold the next board meeting in the month of May, 2019. They seek your advice in respect of the following matters:
- (i) Can the board meeting be held in Delhi through video conferencing, when all the directors of the company reside at Maharashtra.
- (ii) Is it necessary that the notice of the board meeting should specify the nature of

business to be transacted?

10. The Board of Directors of APCO Limited a listed company for carrying out the valuation of the immovable properties standing in the name of the company as required under the provisions of the Companies Act, 2013 proposes to appoint Mr. Mehta, an individual as the valuer. Referring to the provisions of the *Companies Act, 2013 read with the Companies (Registered Valuers and Valuation) Rules, 2017*, the Audit Committee is of the opinion that the Board of Directors does not have the right to appoint the valuer. Decide.
11. Decide the liability of the person for commission of the act during the course of inspection, inquiry or investigation under the Companies Act, 2013:
 - (i) A person who is required to make statement during the course of investigation pending against its company, is a party to the manipulation of documents related to the transfer of securities and naming of holders in the register of members by the company.
 - (ii) An employee of the company publicized among his social networking of sound financial position of his organization in order to incite them to purchase the shares of its company. In actuality, the company was running in loss.
12. Board of Directors of the ABC Ltd., a listed company, in their meeting passed the resolution for an appointment of Company Secretary and the Compliance Officer for the guidance to the Board with regards to their duties, responsibilities and powers and the conduct of the affairs of the company. Draft the Resolution for an appointment of Mr. Nirman as Company Secretary and Compliance Officer of the company.
13. (i) Mr. RG is a practicing Chartered Accountant and having 15 years of professional experience. Can he be appointed as Technical Member of National Company Law Appellate Tribunal as per section 411 of the Companies Act, 2013? Will your answer be different, if he is appointed as Technical Member of National Company Law Tribunal?
 - (ii) IJK Limited was wound up with effect from 15th March 2018 by an order of the Court. Mr. A, who ceased to be a member of the company from 1st June 2017, has received a notice from the liquidator that he should deposit a sum of ₹ 5000 as his contribution towards the liability on the shares previously held by him. In this context explain whether Mr. A can be called as a contributory, whether he can be made liable and whether there is any limitation on his liability.
14. M/s DJ Limited, a listed company, as per the audited financial statements as on 31st March, 2018 is having issued and paid-up equity share capital comprising of 10 lakhs shares of ₹ 10 each and issued and paid up preference share capital of 5 Lakhs shares of ₹ 10 each respectively. The members of the company after complying with the provisions of section 169 of the Companies Act, 2013 removed one Mr. Satish from the directorship of the

company on 1st August 2018 before the completion of his term of office. Mr. Satish is also one of the members of the company holding 110000 fully paid-up equity shares. Mr. Satish has alleged oppression on his removal and has moved the jurisdictional Honourable National Company Law Tribunal (NCLT) under section 241 read with section 244 of the Companies Act, 2013. The Board of Directors of the company is of the opinion that the application is not maintainable as per the provisions of Section 244 of the Companies Act, 2013. Decide.

Also, state if any other recourse that is available with Mr. Satish under the provisions of the Companies Act, 2013.

15. DEJY Company Limited incorporated in Singapore desires to establish a place of business at Mumbai. You being a practising Chartered Accountant have been appointed by the company as a liaison officer, for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, state the documents you are required to furnish on behalf of the company, on the establishment of a place of business at Mumbai.
16. (i) Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry.
(ii) Upon complaints been received by SEBI, regarding the listed securities of Blue Rock Limited at the Guwahati Stock Exchange, SEBI has passed an order to delist the securities of the company from the said stock exchange. Blue Rock Limited is aggrieved by the order of the SEBI. Advise the company on the further step that the company can take against the order of SEBI to delist the securities.

Part II: Economic Laws

17. The financial creditor, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' payable on maturity, was issued by the M/s Asset Ltd. (corporate debtor). The zero interest OCD bonds amounted to 2 crore matured in 2016. The liability to redeem the debentures on maturity along with a redemption premium lay on the debtor, which was not made. Mr. Raman filed the Corporate Insolvency resolution process before the NCLT. Advise in the light of the given facts, the following situations:
 - (i) State whether Mr. Raman is eligible for filing of application for initiation of CIRP?
 - (ii) Do the redemption of debenture payable on the maturity date amounts to debt?
18. Answer the following with reference to the provisions of the FEMA, 1999-
 - (i) Mr. Bharat, a person resident in India can remit amount to his son Arjun residing in USA, to buy immovable property there.

- (ii) Mr. Raghav, a resident of India went to Australia for a business deal. He realised foreign exchange for bearing expenses while staying there for the business purpose. After maturing the deal, he returned back to India. Mr. Raghav was left with certain unused foreign exchange. He retained the foreign exchange with him for future use.
19. (i) On what grounds the Reserve Bank of India can cancel a certificate of registration granted to an Asset Reconstruction Company?
- (ii) X is an association having registration to transfer the Foreign Contribution received by it to another organization? Is the valid act of X? If yes, then what is the process to do so? Is there any restriction on transfer of funds to other organisations?
20. (i) The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Advise explaining the relevant provisions of the Prevention of Money Laundering Act, 2002.
- (ii) In 2016, Company Amar, food processor manufacturing unit entered into a joint venture agreement with Company USHA, the largest manufacturer of Food processors for supply of parts of mixer & grinder for manufacturing its latest model. Both the companies are registered under the Companies Act 2013. Agreement carries the term that all disputes shall be arbitrated in Mumbai. State the type of arbitration agreement made between them.

SUGGESTED ANSWERS/HINTS

Answers MCQs

1. (c)
2. (c)
3. (d)
4. (c)
5. (b)
6. (d)

Descriptive answers

7. Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to managerial personnel is linked to the effective capital of the company. According to section 197(3) of the Companies Act, 2013, where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are

inadequate, it may, pay remuneration to the managerial person not exceeding ₹ 120 Lakh in the year in case the effective capital of the company is between ₹100 crore to ₹ 250 crore. The limit will be doubled if approved by the members by special resolution and further if the appointment is for a part of the financial year the remuneration will be pro-rated.

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of ₹ 50 Lakh in the year as remuneration to Mr. X is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of ₹ 120 Lakh in the year and his terms of appointment provide for payment of the remuneration as per schedule V.

8. (i) As per the stated facts, Rudraksh Ltd. is an inactive company as per the provision given under the Companies Act, 2013. According to the section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company (which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;) may make an application to the Registrar for obtaining the status of a dormant company. Since in the given case, Rudraksh Ltd. has not filed financial statements or annual returns for 2 financial years consecutively, the Registrar shall issue a notice to that effect and enter the name in the register maintained for dormant companies.
- (ii) As per section 149(6) read with Rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, the public companies of prescribed class shall require to appoint minimum 2 Independent directors. However, vide Notification number G.S.R. 839(E) dated 5th July, 2017, an amendment was issued through the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2017* inter-alia amending rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*. It is provided that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors. So, the proposal for appointment of Independent Director (Mr. Ram & Mr. Rahim) is not necessitated.
9. (i) There is no provision in the Companies Act, 2013 under which the board meetings must be held at any particular place. Therefore, there is no difficulty in holding the board meeting at Delhi even if all the directors of the company reside at Maharashtra and the registered office is situated at Maharashtra provided that the requirements regarding the holding of a valid board meeting and the other provisions relating to the signing of register of contracts, taking roll calls, etc. are complied with.
- (ii) Section 173 (3) of the Companies Act, 2013 provides for the giving of notice of every board meeting of not less than seven days to every director of the company. There is no provision in the Act laying down the contents of the notice. Hence, it may be

construed that notice may be interpreted as intimation of the meeting and does not necessarily include the sending of the Agenda of the meeting. However, considering the importance of Board Meetings and the responsibilities placed on the directors for decisions taken at the meetings, it is inevitable for them to be properly prepared and informed about the items to be discussed at the Board Meetings.

The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period as a matter of good secretarial practice.

The articles of association of the company may make it mandatory to do so in almost all cases.

- 10. Valuation by Registered Valuers (Section 247):** According to the provisions of section 247 of the Companies Act, 2013 read with the *Companies (Registered Valuers and Valuation) Rules, 2017*, where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

Hence, in the given instance, proposal for appointment of Mr. Mehta as the valuer by the Board of directors of APCO Ltd. is against the said provision. In fact, valuer shall be appointed by the audit committee or in its absence by the Board of Directors of that company.

In view of above, the opinion of the Audit Committee is correct.

- 11.** Section 229 of the Companies Act, 2013 states that where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—
- (a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;
 - (b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or
 - (c) provides an explanation which is false or which he knows to be false,
- he shall be punishable for fraud in the manner as provided in section 447.

As per the above provisions:

- (i) With respect to this part of the question, the person shall be liable for fraud. Since, in the given case, he is a party in the manipulation of documents relating to the transfer of securities and in the register of members of the company which is under investigation.
 - (ii) Employee shall not be liable here, as the said company in which he is an employee, is not undergoing investigation. Secondly, the person purchasing the shares can act with due diligence before purchasing shares rather fully relying on the publicity made on social networking.
12. To consider the appointment of Mr. Nirman as Company Secretary and Compliance Officer of ABC Ltd.:

“RESOLVED THAT pursuant to the provisions of section 203 of the Companies Act, 2013 read with Rule 8 of the *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*, approval of the Board be and is hereby given to appoint Mr. Nirman as Whole Time Company Secretary of ABC listed company, with effect from 11th January 2019, to perform the duties which shall be performed by a Company Secretary under the Companies Act, 2013 and other duties as assigned to him by the Board from time to time.

“RESOLVED FURTHER that Mr. Nirman be and is hereby appointed as Compliance Officer of the company as per the Regulation 6 of the *SEBI (LODR) Regulations, 2015* with effect from 11th January 2019.

13. (i) **Qualifications of Chairperson and members of Appellate Tribunal [Section 411]**

Section 411 of the Companies Act, 2013 prescribes the qualifications of the chairperson and the members of the Appellate Tribunal.

According to section 411(3), a technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."

Here, in the given case, Mr. RG is having professional experience of 15 years. Hence, Mr. RG cannot be appointed as technical member of NCLAT.

However, as per section 409, Mr. RG is eligible to be appointed as technical member of NCLT as he is meeting up the requirement by being into practice as a Chartered Accountant, for fifteen years.

- (ii) **Contributory:** According to section 285 of the Companies Act, 2013, as soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall settle a list of contributories.

While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs,

charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

Liability of the contributory: a person who has been a member shall not be liable to contribute if he has ceased to be a member for the preceding one year or more before the commencement of the winding up.

In the given case, M/s, IJK Ltd. was wound up on 15th March 2018. Whereas Mr. A ceased to be a member of the company from 1st June, 2017. So, according to the above provision, Mr. A will be a contributory and be liable to contribute as the time period of one year from the commencement of winding up has not elapsed. So Mr. A is liable to deposit ₹ 5000 (if any unpaid on the shares in respect of which he is liable as member [Section 285 (3) (d)]) as his contribution towards the liability on the shares previously held by him.

14. According to section 244(1) (a) of the Companies Act, 2013, the following members of a company shall have the right to apply under section 241, namely:—

-in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

However, the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified above so as to enable the members to apply under section 241.

In the instant case, the equity share capital of the company is ₹ 1 crore (10 lakh shares of ₹ 10 each) and preference share capital is ₹ 50 Lakh (5 lakh shares of ₹ 10 each). The total issued and paid up share capital is ₹ 1.50 crore comprising of 15 lakh shares.

Mr. Satish is holding 110000 fully paid up equity shares. His holding is less than one-tenth of the issued share capital of the company [1/10th of 15 Lakh i.e. 150000 shares].

Hence, his application is not maintainable as per provisions of section 244 of the Companies Act, 2013 and therefore the opinion of Board of directors is correct.

However, as per proviso to section 244(1), Mr. Satish may make an application to the Tribunal in this behalf for the waiver of the above condition so that he may apply under section 241.

15. Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration of the following documents:

- (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;

- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

In relation to the nature of particulars to be provided as above, the *Companies (Registration of Foreign Companies) Rules, 2014*, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

- (1) personal name and surname in full;
 - (2) any former name or names and surname or surnames in full;
 - (3) father's name or mother's name and spouse's name;
 - (4) date of birth;
 - (5) residential address;
 - (6) nationality;
 - (7) if the present nationality is not the nationality of origin, his nationality of origin;
 - (8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
 - (9) income-tax permanent account number (PAN), if applicable;
 - (10) occupation, if any;
 - (11) whether directorship in any other Indian company, (Director Identification Number(DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
 - (12) other directorship or directorships held by him;
 - (13) Membership Number (for Secretary only); and
 - (14) e-mail ID.
- (d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
 - (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
 - (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
 - (g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

- (h) any other information as may be prescribed.
16. (i) As per section 11 (4) of the Securities and Exchange Board of India Act, 1992, the Board may, by an order, for reasons to be recorded in writing, in the interest of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—
1. suspend the trading of any security in a recognised stock exchange;
 2. restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
 3. suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
 4. impound and retain the proceeds or securities in respect of any transaction which is under investigation;
 5. attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

However only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;
 6. direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.
- (ii) As per the facts of the case given in the question above, the aggrieved company, i.e. Blue Rock Limited may appeal to the Securities Appellate Tribunal ('SAT') against the decision of SEBI within 45 days of date from which the order has been passed, unless further extension has been granted by SAT on reasonable grounds.

As per Section 23L, the Tribunal shall give an opportunity of being heard to the respondent and may pass the order confirming, modifying or setting aside the decision of SEBI.

SAT shall also send a copy of its order to every party to appeal and to the concerned adjudicating officer. Also, the company, Blue Rock Limited should be assured that a speedy decision shall be taken, since the Tribunal is required to dispose of in every 6 months from the date of receipt of appeal.

17. As per Section 5(7) of the Insolvency and Bankruptcy Code, 2016, financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Whereas the term Financial debt defined under Section 5(8) means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised pursuant to the issue of bonds, notes, debentures, loan stock or any similar instrument.

As per the facts, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' issued by the Asset Ltd. With the debenture payable, as on the maturity date with interest, it was disbursed against consideration for the time value of the money. Thus, it can be said that debentures on maturity will come under that purview of Section 5(8)(c). Since Mr. Raman is a person to whom a financial debt is owed, he will come within the definition of Financial creditor. Being a debenture-holder and shareholder of the company, he, being a creditor is entitled to claim debt amount. Therefore, as per section 7, Mr. Raman is entitled to file an application to initiate CIRP against the M/s Asset Ltd.

18. (i) According to Regulations on Acquisition and Transfer of Immovable Property outside India, a person resident in India may acquire immovable property outside India, jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

In the instant case, Mr. Bharat wants to remit money to meet his obligation of 50% in the immovable property in USA under joint ownership with his son Arjun. Hence, as per the regulations, Mr. Bharat cannot remit amount to buy immovable property in USA.

- (ii) **Period for surrender of received/ realised/ unspent/ unused foreign exchange by Resident individuals [Regulation 5 of Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000]:** A Person being an individual resident in India shall surrender the received/realised/unspent/ unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be. Retention of unused foreign exchange by Mr. Raghav is against the Law.

19. (i) **Cancellation of certificate of registration (Section 4)**

The Reserve Bank may cancel a certificate of registration granted to an ARC, if such company-

- (i) ceases to carry on the business of securitisation or asset reconstruction; or
- (ii) ceases to receive or hold any investment from a qualified buyer; or

- (iii) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
- (iv) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
- (v) fails to-
 - (a) comply with any direction issued by the Reserve Bank under the provisions of this Act; or
 - (b) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
 - (c) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
 - (d) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3.

Before cancelling a certificate of registration on the ground that the ARC has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the ARC, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

- (ii) Yes, X can transfer the Foreign Contribution received by it to another organization as section 7 of FCRA, 2010. According to the provision no person who –
 - a. is registered and granted a certificate or has obtained prior permission under this Act; and
 - b. receives any foreign contribution,

shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:

Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government.”

Restrictions on transfer: *Rule 24 of FCRR, 2011*, prescribes the procedure for transferring foreign contribution to any unregistered person as under:

- (1) A person who has been granted a certificate of registration or prior permission under section 11 and intends to transfer part of the foreign contribution received by him to a person who has not been granted a certificate of registration or prior permission under the Act, may transfer such foreign contribution to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in the prescribed Form.
- (2) Every application made under sub-rule (1) shall be accompanied by a declaration to the effect that- (a) the amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution received by him during the financial year; (b) the transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.
- (3) A person who has been granted a certificate of registration or prior permission under section 11 shall not be required to seek the prior approval of the Central Government for transferring the foreign contribution received by him to another person who has been granted a certificate of registration or prior permission under the Act provided that the recipient has not been proceeded against under any of the provisions of the Act.
- (4) Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form to be submitted by both the transferor and the recipient.

20. (i) Establishment of Appellate Tribunal

According to section 25 of the Prevention of Money Laundering Act, 2002, the Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

Appeals to Appellate Tribunal

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act may prefer an appeal to the Appellate Tribunal.

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority is received and it shall be in such form and be accompanied by prescribed fees. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

Appeals to High Court

The Act also provides further appeal. According to Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

- (ii) There are two basic types of arbitration agreement are:
- (a) **Arbitration clause** - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.
 - (b) **Submission agreement** - an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In this case, the agreement already carries the term that all disputes shall be arbitrated in Mumbai at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.