

J.K. SHAH[®]
CLASSES
CAFC → INTER CA → FINAL CA 7

FINAL CA
MAY '19
REVISION NOTES
Corporate, Allied (Old)
& Economics (New) Laws

Part - VIII

  /officialjksc  [Jkshahclasses.com/revision](https://www.jkshahclasses.com/revision)

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

SCOPE

On September 2, 2015, SEBI notified the Listing Obligations and Disclosure Requirements Regulations, 2015 to be called as the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 with objectives:-

To align clauses of the listing agreement with Companies Act and secondly, to consolidate the conditions under different securities' listing agreements in one single regulation. The 2015 Regulations are applicable to any entity (whether a company or not) accessing the stock exchange, for listing equity shares (on main board, SME exchange, institutional trading platforms), debt securities, preference shares, depository receipts, securitized debt instruments, mutual fund units, and other securities as may be specified by SEBI.

INTRODUCTION

Securities and Exchange Board of India (SEBI), on September 2, 2015, issued SEBI (Listing and Disclosure) Regulations, 2015 on listing of different segments of the capital market and disclosure norms in relation thereto.

These regulations have been structured into single document with the aim to consolidate and streamline the provision of existing listing agreements for different segments of capital markets, such as equity shares (including convertibles), non-convertible debt securities, etc. for ensuring better enforceability.

The latest set of norms provides broad principles for periodic disclosures by listed entities, apart from incorporating corporate governance principles. These regulations shall apply to the listed entity who has listed any of the following designated securities on recognized stock exchange(s):

- Specified securities listed on main board or SME Exchange or Institutional trading platform;
- Non-convertible debt securities, non-convertible redeemable preference Shares, perpetual debt instrument, perpetual non-cumulative preference Shares;
- Indian depository receipts;
- Securitized debt instruments;
- Units issued by mutual funds;
- Any other securities as may be specified by the Board.

There are some of the broad features of the SEBI (LODR) Regulations, 2015 are as follow:

1. Time Limit to comply with other provisions of the regulations has been given for 90 Days i.e. it became effective from **01st December, 2015**
2. The regulations have provided broad principles for **periodic disclosures by the listed entities** and also have incorporated the principles for **corporate governance** they have been formed on the lined with OECD.
3. The Regulations have been structured and designed in such a way so that they are aligned with Companies Act, 2013.
4. In order to avoid any sort of confusion or overlapping, pre-listing as well as post listing requirements have been incorporated in the Listing Regulations.
5. Obligations which are applicable to specific types of securities have been incorporated in separate chapters.

Further, the Listing Regulations have been sub-divided into two parts viz.:

- (a) **Substantive** provisions incorporated in the main body of Regulations,
- (b) **Procedural** requirements in the form of schedules to the Regulations

COMMON OBLIGATIONS OF LISTED ENTITIES

This part deals with the obligations and responsibilities upon all the listed entities. A responsibility has been cast upon Key Managerial Personnel (KMP'S), Directors, and Promoters that they shall comply with responsibilities or obligations assigned to them under the regulations.

The following are the common obligations on Listed entities:-

1. Regulation 6: Compliance Officer And his Obligations

A listed entity shall appoint a qualified Company Secretary as the Compliance Officer. The Compliance officer so appointed shall be responsible for ensuring conformity with regulatory compliance, co-ordination and reporting to the Board, ensuring that correct procedures have been followed that would result in correctness of information filed by listed entity under the regulations and monitoring email address of grievance redressal division.

2. Regulation 7: Share Transfer Agent

The listed entity shall appoint a share transfer agent or manage the share transfer facility in house.

REGULATION 24: CORPORATE GOVERNANCE REQUIREMENTS WITH RESPECT TO SUBSIDIARY OF LISTED ENTITY.

The Board: Atleast one Independent Director on Board shall be a Director on Board of Unlisted Material Subsidiary. The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than 50 % or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.

Selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.

QUARTERLY COMPLIANCES – Listed Entity**A. Regulation 13(3):- Grievance Redressal Mechanism**

The listed entity shall file with the recognized stock exchange(s) on a quarterly basis, within **21 days** from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

B. Regulation 27(2):- Other Corporate Governance Requirements

A listed entity shall submit quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchange(s), Within **15 days** from close of quarter.

C. Regulation 31(1): Holding of Specified Securities and Shareholding Pattern.

A listed entity shall submit a statement showing holding of securities and shareholding pattern separately for each class of securities:-

- (a) **One day** prior to listing of its securities on the stock exchange(s);
- (b) On a quarterly basis, **within 21 days** from the end of each quarter; and,
- (c) Within 10days of any capital restructuring of the listed entity resulting in a change exceeding **2 % per cent** of the total paid-up share capital.

D. Regulation 33(3): Financial Results

The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within 45 days of end of each quarter, other than the last quarter.

E. Regulation 32(1): Statement of Deviation(S) Or Variation(S)

A listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc. ,-

- (a) Indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;
- (b) Indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilization of funds.

PRIOR INTIMATION OF BOARD MEETING**A. Regulation 29(1): Financial Results**

At least 5 days in advance (excluding date of meeting and date of intimation).

B. Other Matters Regulation 29(2)

For following purposes Intimation shall be required to be made at least 2 working days in advance, excluding the date of the intimation and date of the meeting:-

- Proposal for Voluntary Delisting by the listed entity from the stock exchange(s);
- Fund raising by way of further public offer, rights issue, American Depository Receipts/Global Depository Receipts/Foreign Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue or any other method and for determination of issue price.
- Declaration/recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend
- The proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers;
- Proposal for Buyback of Securities.

C. Regulation 29(3): Prior Intimation

The listed entity shall give intimation to the stock exchange(s) at least 11 working days before any of the following proposal is placed before the board of directors –

- Any alteration in the form or nature of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof.
- Any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.

D. Regulation 42(2): Record Date or Date of Closure of Transfer Books

A listed entity shall give notice in to stock exchange(s) of record date specifying the purpose of the record date, at least 7 working days (excluding the date of intimation and the record date).

E. Regulation 42(3): Dividend

A listed entity shall recommend or declare all dividend and/or cash bonuses At least 5 working days (excluding the date of intimation and the record date) before the record date.

F. Regulation 46(3):- Website

A listed entity shall update any change in the content of its website Within 2 working days from the date of such change in content

ANNUAL / YEARLY COMPLIANCES

The annual/yearly compliances that have to be followed are as follows:

A. Regulation 33(3): Financial Results

Listed entity shall submit audited standalone financial results for the financial year, along with the audit report and either Form A (for audit report with unmodified opinion) or Form B (for audit report with modified opinion) within 60 days from end of Financial Year.

B. Regulation 34: Annual Report

A listed entity shall submit the annual report to the stock exchange within 21 working days of it being approved and adopted in the Annual General Meeting as per the provisions of the Companies Act, 2013.

C. Regulation 36(2): Documents & Information to Shareholders:

A listed entity shall send annual report to the holders of securities not less than 21 days before the Annual General Meeting.

ROLE OF COMPLIANCE OFFICER**The role of a Compliance Officer is as follows:**

- Listed Company shall ensure KMP, Directors, Promoters complies with obligations
- Compliance Officer ensures listed Company confirms with regulatory provisions in letter and spirit.
- Co-ordination with – Board and Stock Exchange
- Report to – Board and Stock Exchange.
- Ensure – Correct, Authentic, Comprehensive info is filed.
- Monitor email id for grievance redressal.
- Determining materiality of information to be reported to stock exchange.
- Report to Board about compliance.
- Ensure compliance with SS 1(Board Meeting) and SS 2(General Meeting)
 - To provide guidance to director about their Duties.
 - To assist board in conduct of affairs of the Company.
 - Assist and Advice board in complying with CG and best practices.
 - Facilitate meeting / represent company etc...

CORPORATE GOVERNANCE

- Approval for related party transactions through a resolution [As per Clause 49 of Listing Agreement, it was Special Resolution]
- All existing material related party contracts / arrangements, prior to the date of notification of these Regulations, and which may continue beyond, to be placed for approval of the shareholders in first General Meeting subsequent to notification of these Regulations.

Compliance Report on Corporate Governance

The following reports are submitted to Stock Exchange:-

- **Quarterly Compliance Report** – to be submitted within **15 days** from end of quarter
- **Compliance Report** to be submitted within 6 months from the end of financial year – may be submitted along with second quarter report.
- **Annual Compliance Report**

TYPES OF COMMITTEES UNDER LODR REGULATIONS**A. Audit Committee:**

Every listed entity shall constitute a qualified and independent audit committee which shall have:

- (a) The audit committee shall have minimum **three** directors as members.
- (b) **Two-thirds** of the members of audit committee shall be independent directors.
- (c) **All** members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- (d) The chairperson of the audit committee shall be an **Independent Director** and he shall be present at Annual general meeting to answer shareholder queries.
- (e) The Company Secretary shall act as the secretary to the audit committee.
- (f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee.

Meetings of Audit Committee:

- (a) The audit committee shall meet at least four times in a year and not more than **120** days shall elapse between two meetings.
- (b) The Quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least 2 Independent directors.
- (c) The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

B. Nomination and Remuneration Committee:

The Board of directors shall constitute the nomination and remuneration committee as follows:

- The committee shall comprise of at least **3** directors;
- All directors of the committee shall be **Non-Executive Directors**; and
- At least **50 percent** of the directors shall be independent directors.

The Chairperson of the nomination and remuneration committee shall be an independent director: Provided that the chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.

C. Stakeholders Relationship Committee:

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.

- The Chairperson of this committee shall be a **Non-Executive** director.
- The Board of Directors shall decide other **members** of this committee.

D. Risk Management Committee

- The Board of directors shall constitute a Risk Management Committee.
- The majority of members of Risk Management Committee shall consist of members of the board of directors.
- The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- The Board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.
- The provisions of this regulation regarding risk management committee shall be applicable to **top 100 listed entities**, determined on the basis of market capitalization, as at the end of the immediate previous financial year.

JKSSC

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Overview

Definition

- Section 3 : restriction in dealing with and its exception
- Section 4 : restriction of transfer / acquire / hold immovable property outside India foreign security or foreign currency and its exception
- Capital account transaction
- Schedule I,II,III
- Current account transaction
- Schedule I,II,III
- Export
- Adjudicating authority
- Authorized person
- Penalty
- Compounding of offence
- Setting up branch in India

1. Currency – that can be used to created financial liability

Currency notes	cheques	bills of exchange
Postal notes	drafts	promissory notes
Postal orders	traveller’s cheques	debits cards
Money orders	letters of credit	ATM cards

2. Foreign currency – any currency other than Indian currency

3. Foreign exchange → foreign currency

- | | | |
|--|---|---|
| - Deposits | - Drafts | - Bills of exchange |
| - Credits and balances payable in foreign currency | - Traveler’s cheques drawn in indian currency but payable in foreign currency | - Letters of credit drawn by banks , institutions or person outside India but payable indian currency |

4. Foreign security – (any security)

- | | |
|--|--|
| <ul style="list-style-type: none"> - Shares - Stocks - Bonds - Debentures - Any other Instruments | Denominated or expressed in foreign currency |
| | But |
| | Redemption or any return (int. / div.) |
| | ↓ |
| | Payable in indian currency |

5. "Person" includes:

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and;
- (vii) any agency, office or branch owned or controlled by such person;

6. "Person resident in India" means:

- (i) a person residing in India for more than 182 days during the course of the preceding financial year but does not include—
 - (A) a person who has gone out of India or who stays outside India, in either case—
 - (a) for or on taking up employment outside India, or
 - (b) for carrying on outside India a business or vocation outside India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - (B) a person who has come to or stays in India, in either case, otherwise than:
 - (a) for or on taking up employment in India, or
 - (b) for carrying on in India a business or vocation in India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India;

7. "Person Resident Outside India" means a person who is not resident in India;

Section 3 : Restriction in Dealing in Forex and Its Exception

3(a)	3(b)	3(c)	3(d)
Not permitted to deal with any person except Authorized Dealer	Restricted to make payment on behalf of person resident outside India	Restricted to receive any payment on behalf of person resident outside India	Entering into financial transaction in India due to which assets / liabilities outside India get alter
Exception : Purchase of postal order / money order from post office	Exception : (INR) 1. 2. Travel / lodging / boarding for friend / relative / family member / business associates / non-resident directors 3. Purchase of gold or silver 4. Transaction with person of Nepal or Bhutan 5. Reimbursement of expenses by resident debtor to non-resident guarantor, for payment made by non-resident guarantor to resident creditor	Exception : 1. Amount supported GY forward Inward Remittance Certificate 2. Postal order, money order from post office	

Section 4 : Restriction On Transfer / Acquiring / Holding Immovable Property Outside India/ Foreign Security And Foreign Currency And Its Exceptions

<u>Immovable property</u>	<u>Foreign security</u>	<u>Foreign currency</u>
Exception : 1. Acquired when person was non-resident 2. Acquired by way of gift or inheritance 3. Acquired out of RFC A/c (Resident Foreign Currency A/c) 4. Acquired on lease basis upto 5 years	Exception : 1. Acquired when person was non-resident 2. Acquired by way of gift or inheritance 3. Acquired out of RFC A/c.	Exception : 1. Acquired on or before 8.7.1947 2. RFC A/c / EEFC A/c (EEFC Exchange Earner's Foreign Currency) 3. Authorized person can hold any amount permitted by RBI 4. Upto US \$2000 Gift - Inheritance - Honorarium - Service rendered outside India - Unspent amount on foreign travels 5. Foreign coins 6. Any other receipts specified by RBI

Capital Account Transaction

Any transaction by person resident in India which alter assets and liabilities including contingent liabilities outside India.

Any transaction by person resident outside India which alter assets and liabilities in India.

Current Account Transaction

Any transaction other than capital account transaction will be treated as current account transaction

I. SCHEDULE I**1. Transactions for which drawal of foreign exchange is prohibited:**

- (i) Remittance out of lottery winnings.
- (ii) Remittance of income from racing/riding, etc., or any other hobby.
- (iii) Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
- (iv) Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
- (v) Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
- (vi) Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
- (vii) Payment related to "Call Back Services" of telephones.
- (viii) Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.

II. SCHEDULE II**2. Transactions, which require prior approval of the Government of India for drawal of foreign exchange:**

Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
Cultural Tours	Ministry of Human Resources Development (Department of Education and Culture)
Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US\$ 10,000) by a State Government and its Public Sector Undertakings.	Ministry of Finance, Department of Economic Affairs
Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport (Chartering Wing)
Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis (i.e., other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport (Chartering Wing)
Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
Remittance of hiring charges of transponders by (a) TV Channels (b) Internet service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology.
Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
Remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State Level sports bodies, if the amount involved exceeds US \$ 100,000	Ministry of Human Resource Development (Department of Youth Affairs and Sports)
Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)

3. Transactions which require RBI's prior approval for drawal of foreign exchange:

With respect to the requirement of Prior approval of Reserve Bank— every drawl of foreign exchange for transactions included in Schedule III shall be governed as provided therein:

Provided that this rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.”;

SCHEDULE III

1. Facilities for individuals—Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India.

- (i) Private visits to any country (except Nepal and Bhutan)
- (ii) Gift or donation.
- (iii) Going abroad for employment
- (iv) Emigration
- (v) Maintenance of close relatives abroad
- (vi) Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
- (vii) Expenses in connection with medical treatment abroad
- (viii) Studies abroad
- (ix) Any other current account transaction

However, for the purposes mentioned at item numbers (iv), (vii) and (viii), the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme as provided in regulation 4 to FEMA Notification 1/2000-RB, dated the 3rd May, 2000 (here in after referred to as the said Liberalised Remittance Scheme) if it is so required by a country of emigration, medical institute offering treatment or the university, respectively:

Further, if an individual remits any amount under the said Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 (US Dollars Two Hundred and Fifty Thousand Only) by the amount so remitted:

Further, that for a person who is resident but not permanently resident in India and-

- (a) Is a citizen of a foreign State other than Pakistan; or
- (b) Is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident:

Further, a person other than an individual may also avail of foreign exchange facility, mutatis mutandis, within the limit prescribed under the said Liberalised Remittance Scheme for the purposes mentioned herein above.

- 2. Facilities for persons other than individual**—The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India.
- (i) Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for-
 - a. creation of Chairs in reputed educational institutes,
 - b. contribution to funds (not being an investment fund) promoted by educational institutes; and
 - c. contribution to a technical institution or body or association in the field of activity of the donor Company.
 - (ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
 - (iii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.
- Explanation:** For the purposes of this sub-paragraph, the expression “infrastructure’ shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated the May 3, 2000.
- (iv) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

- 3. Procedure**—The procedure for drawal or remit of any foreign exchange under this schedule shall be the same as applicable for remitting any amount under the said Liberalised Remittance Scheme.

As per the Notification no. RBI/2014-15/620 A.P. (DIR Series) Circular No. 106, dated 1st June 2015, Authorised Dealer banks may now allow remittances by a resident individual up to USD 250,000 per financial year for any permitted current or capital account transaction or a combination of both. If an individual has already remitted any amount under the Liberalised Remittance Scheme, then the applicable limit for such an individual would be reduced from the present limit of USD 250,000 for the financial year by the amount already remitted.

Capital Account Transactions Schedules			
Schedule I	Schedule II	Transactions freely permitted (without RBI approval)	Schedule III
(with RBI approval) list of for person resident in with PR	(with RBI approval) of transaction permitted for person resident outside India		<u>Prohibited transactions</u> (Person resident outside India)
1. Foreign securities } 2. Foreign derivatives } 3. Foreign currency loan }	In India + outside India non resident	1. Amortization of loan (repayment) 2. Depreciation in direct investment	1. Chit fund 2. Nidhi Company 3. Real estate 4. Agricultural or plantation activities 5. Trading in TDR (transferable)

4. Foreign currency account		Resident	development right)
5. Guarantee (favour)	outside India	5. Deposit (given / taken) to resident	
6. Loan/(given / taken)	}	6. Currency (export / import/ hold)	
7. Immovable property		7. Foreign currency account maintained in India	
8. Commodity derivative			
9. Capital asset			
10. Currency notes (hold / Export / Import)			
11. Insurance			

Section 7 : Export

Commercial Export	Non-Commercial Export
↓	↓
Import export code required	Import export code required
<p>Sale and Other sale (hire warehousing and sale purchase, lease abroad and sale sale, joint venture sale, sale on approval etc.) Prior approval of RBI required</p>	<p>Declaration :</p> <ol style="list-style-type: none"> 1. Nature of goods 2. Value of goods

1. Declaration

- Price is the sale consideration
 - All rules, provisions complied
- } file with authorized person

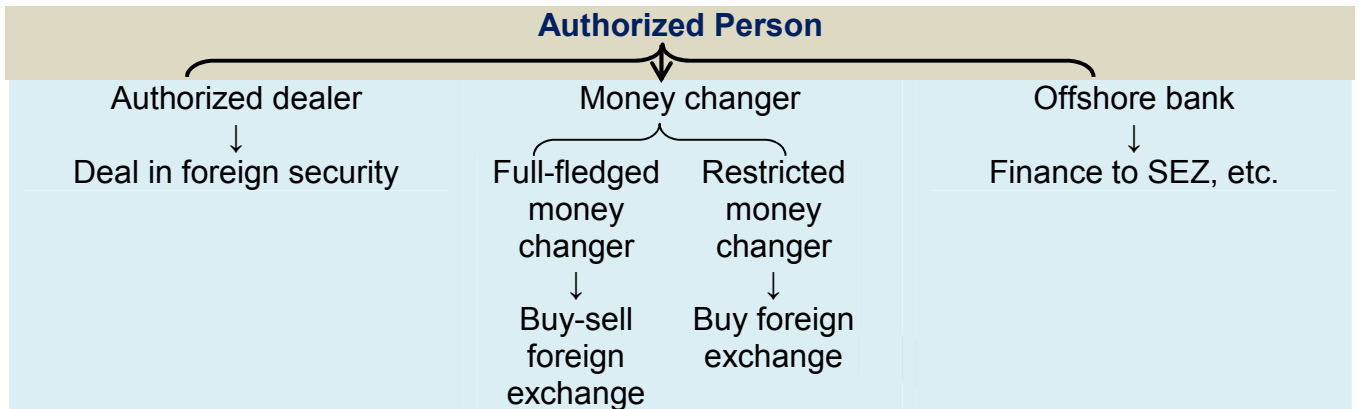
2. Invoice

Exemption

1. Free samples whether
2. Personal effect (accompanied or unaccompanied)
3. Transshipment cargo, ship stores Goods supplied
 - Cg Military Naval Air Force
4. Gift in kind upto Rs.5 lakhs
5. Aircraft for overhauling upto 6 months
6. Goods imported for purpose of re-export
7. Goods send for testing for re-import (I-phone user)
8. Free trade zone,
9. Replacement of goods
10. Goods brought in India for testing and re-exported
11. Exports permitted by RBI

Authorized person Section 10

Any person may apply to RBI for issue of licence to work as authorized person



RBI shall give approval only if it is satisfied that

1. It is in public interest
2. Interest of foreign exchange reserve
3. AP shall comply with Ad. Rules and regulations
4. AP shall comply with directions of RBI

After satisfying the above conditions RBI shall give an order following subject to terms and conditions:

1. Area of operation
2. Volume of operation
3. Records and returns
4. Compliance with Act, Rules, Regulations and directions given by RI

RBI may revoke the licence by giving an opportunity of being heard if it is in public **interest.**

OR

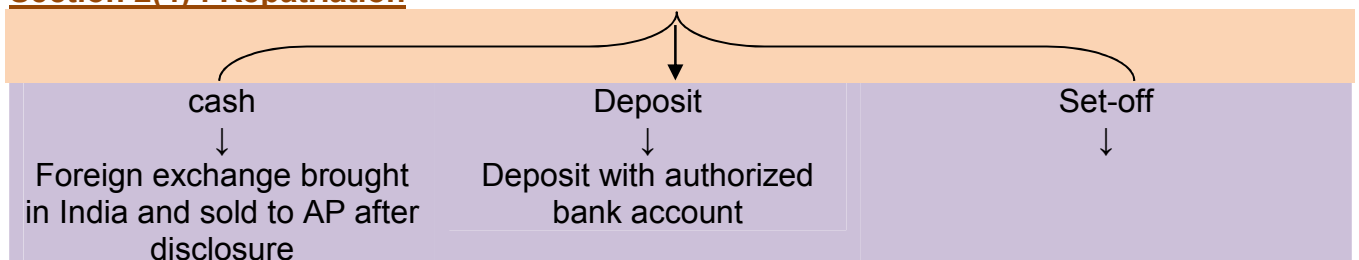
AP fails to comply with conditions, rules, regulations and directions

AP should ensure that foreign exchange is bought in India within time limit

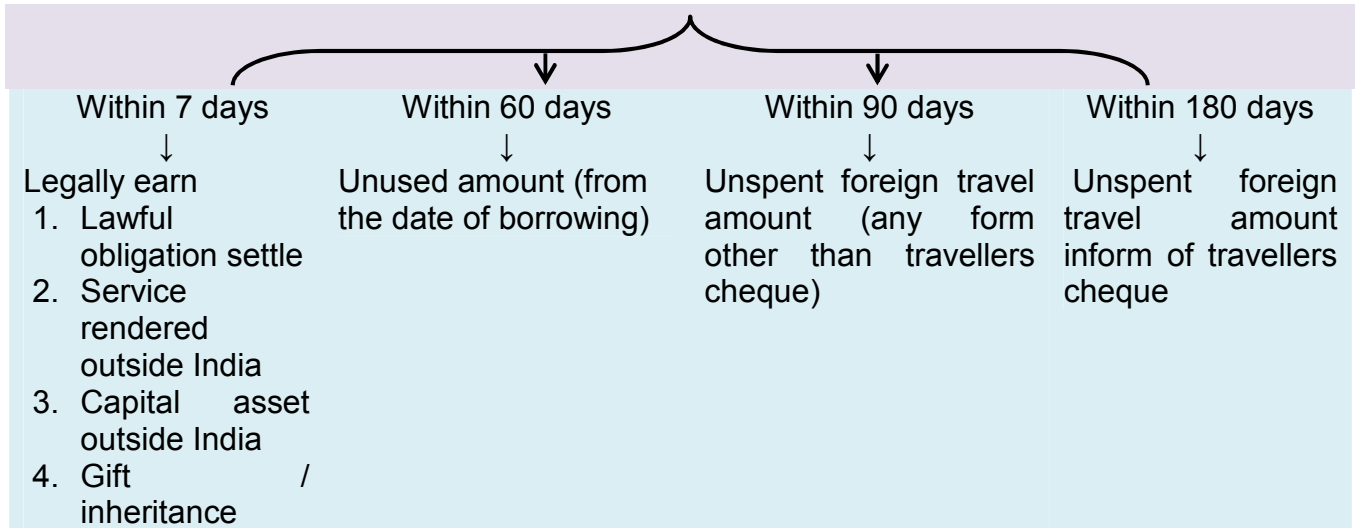
Section 8 : Repatriation

Foreign currency brought in India

Section 2(4) : Repatriation



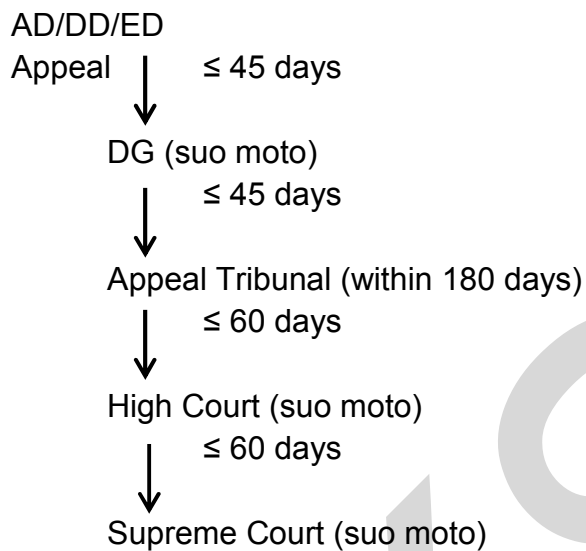
Time Limit for Repatriation



Note : upto US\$ 2000 it can be held for any period in some cases we have already discussed (Sec.4)

Penalty – for resident individual time limit is 180 days

Section 11	Authorized person fails to comply with Act, Rules, Regulations or directions from RBI	Upto Rs.10,000 + Rs.2000 per day
Section 13	Failure to comply with Act, Rules, Regulations or directions by any person	<p style="text-align: center;">Amount</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>Quantifiable upto 3 times of amount involved</p> </div> <div style="text-align: center;"> <p>Not quantifiable ↓ Upto ₹ 20,00,000 + ₹ 5000 per day</p> </div> </div>
Section 14	Penalty not paid within 90 days	<p style="text-align: center;">Imprisonment</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>Amount more than 1 crore ↓ Upto 3 years</p> </div> <div style="text-align: center;"> <p>Other case ↓ Upto 6 months</p> </div> </div>
Section 12	RBI can inspect books of accounts of authorized person	

Adjudicating Authority

Adjudicating → follow, principles authority of natural justice
- Dispose of complaint within 1 year from receipt of complaint
Order → confiscation of currency, security, money, property

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

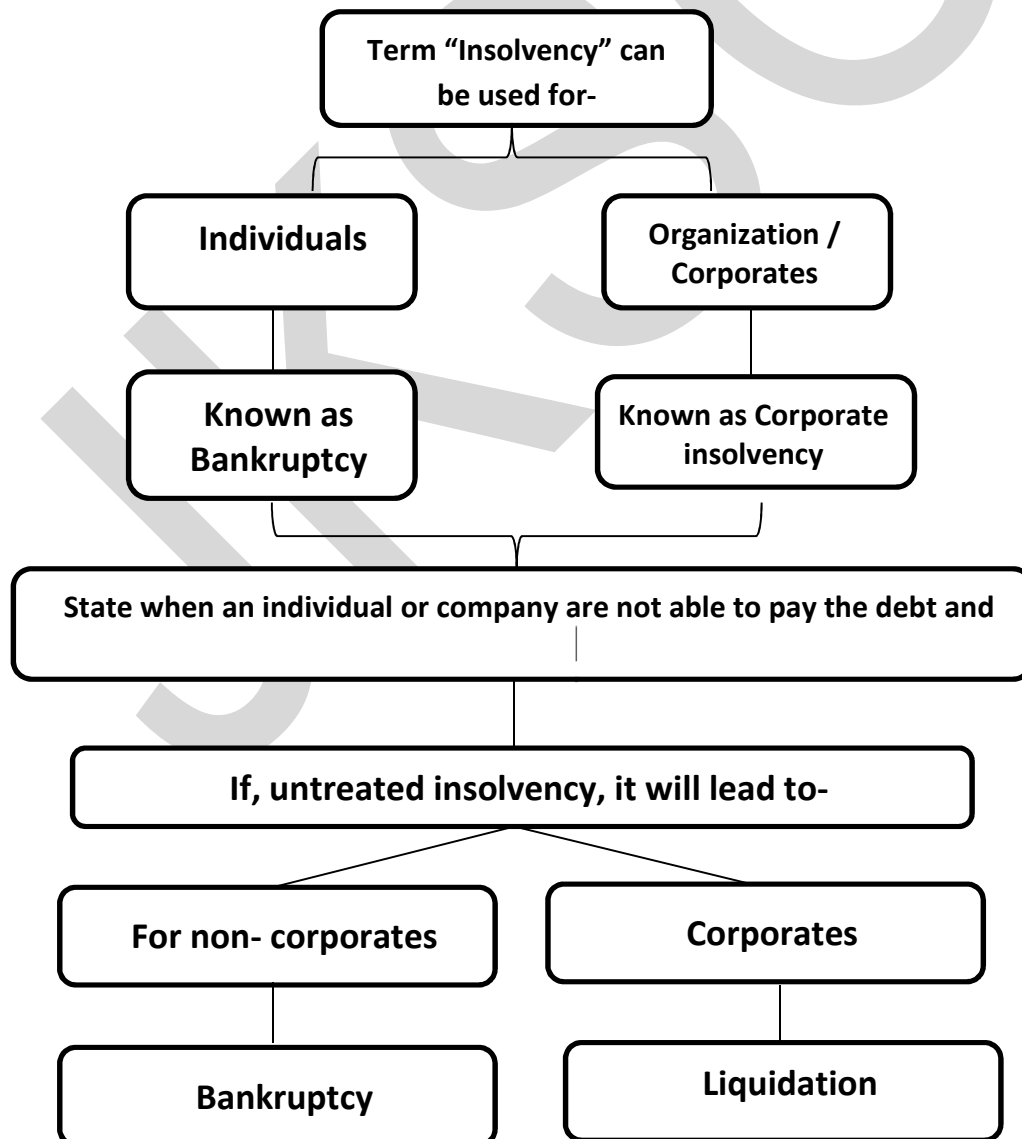
1. INTRODUCTION

The Insolvency and Bankruptcy Code, 2015 was introduced in the Lok Sabha on 21st December, 2015 and referred to the Joint Committee on the Insolvency and Bankruptcy Code, 2016. The Committee had presented its recommendations and a modified Bill based on its suggestions.

Further, the Insolvency and Bankruptcy Code, 2016 was passed by both the Houses of Parliament and notified in May 2016. Being one of the major economic reforms it paves the way focussing on creditor driven insolvency resolution.

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. If untreated insolvency will lead to bankruptcy for non-corporates and liquidation of corporates.**



- 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.

- ❖ Presidency Towns
- ❖ Provincial Insolvency
- ❖ Indian Partnership
- ❖ Companies Act, 1956
- ❖ Sick Industries Companies Act, 1985
- ❖ Recovery of debts due to Banks & Financial institutions Act, 1993
- ❖ SARFASI Act, 2002
- ❖ Companies Act, 2013
- ❖ Insolvency & Bankruptcy Code, 2016

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 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, 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 II, Chapters I and II are of particular significance for the students and are discussed in detail hereunder:

Part	Part Content	Chapters and Sections	Chapter / Contents
I	Preliminary	(1-3)	1. Short title, extent & Commencement 2. Application 3. Definitions
II	Insolvency Resolutions and Liquidation for Corporate Persons	I-VII (4-77)	1. Preliminary (Application & Definitions) 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)	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)	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

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.
- (e) **Personal guarantors to corporate debtors**
- (f) **Partnership firms and proprietorship firms and**
- (g) **Individuals, other than persons referred to in clause (e)**

Exceptions: There is an exception to the applicability of the Code that it shall not apply to corporate persons who are regulated financial service providers like Banks, Financial Institutions and Insurance companies.

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:

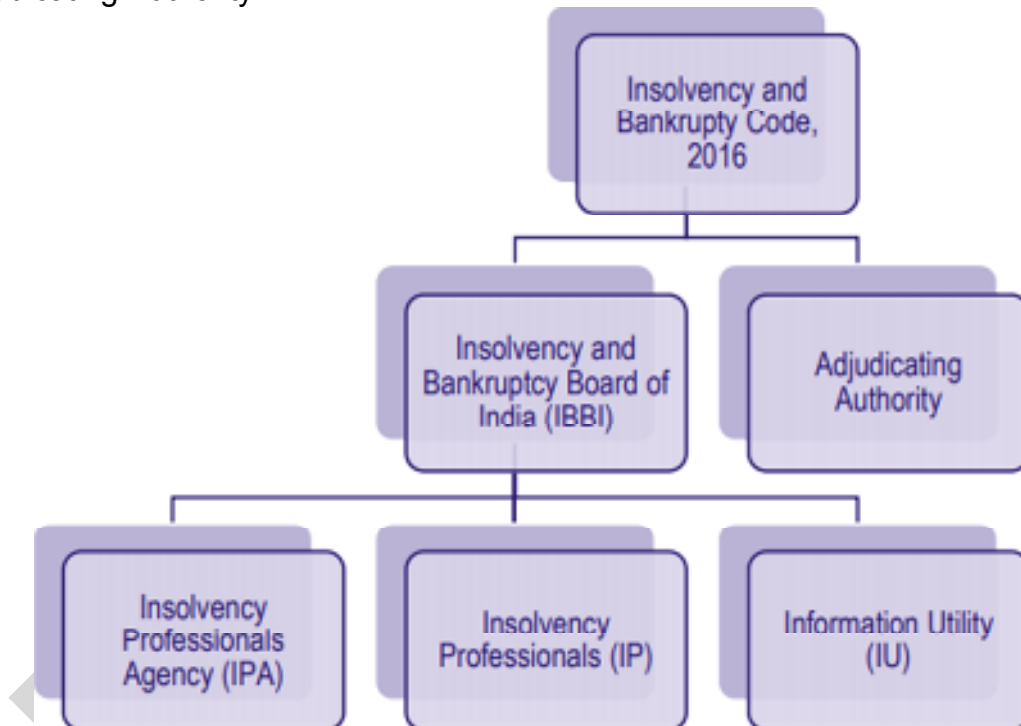
- (a) To consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals.
- (b) To fix time periods for execution of the law in a time bound manner.
- (c) To maximize the value of assets of interested persons.
- (d) To promote 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



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 professional development of and regulation of insolvency professionals
- 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:

Functions of IPA**Regulatory functions**

- drafting detailed standards and codes of conduct through bye-laws, that are made public and are binding on all members

Executive functions

- monitoring, inspecting and investigating members on a regular basis
- gathering information on their performance, with the over-arching objective of preventing frivolous behaviour, and
- malfeasance in the conduct of IP duties

Quasi-judicial functions

- addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions

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 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.

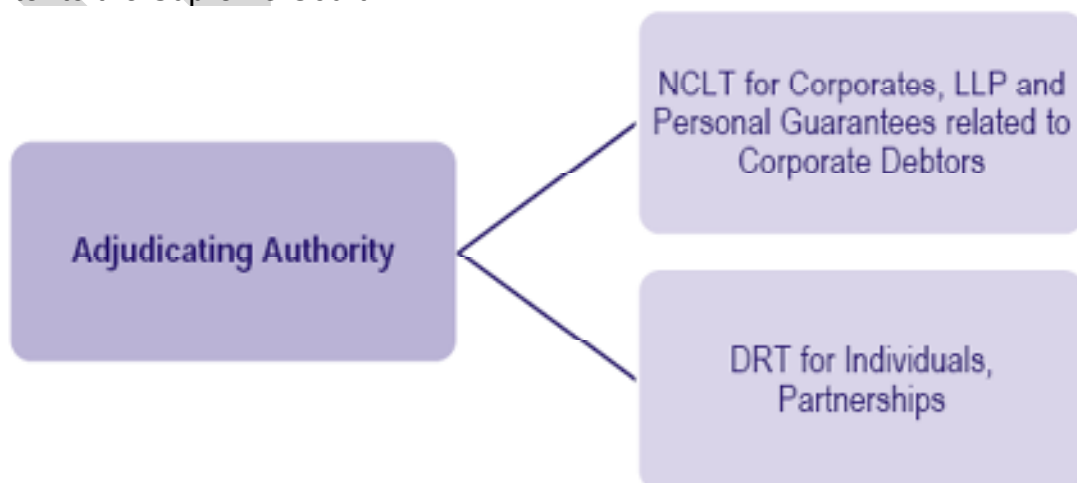
For the purposes of providing core services to any person, every information utility shall—

- (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) 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)]
- (2) Corporate Person means
 - (a) A company as defined under section 2(20) of the Companies Act, 2013;
 - (b) A Limited Liability Partnership as defined in 2(1)(n) of Limited Liability Act, 2008; or,
 - (c) Any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider. [Section 3(7)]
- (3) Corporate Debtor means a corporate person who owes a debt to any person. [Section 3(8)]
- (4) 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)]
- (5) 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)]
- (6) 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)]
- (7) Financial information, in relation to a person, means one or more of the following categories of information, namely:—
 - (a) Records of the debt of the person;
 - (b) Records of liabilities when the person is solvent;
 - (c) Records of assets of person over which security interest has been created;
 - (d) Records, if any, of instances of default by the person against any debt;
 - (e) Records of the balance sheet and cash-flow statements of the person; and
 - (f) Such other information as may be specified. [Section 3(13)]
- (8) 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)]
- (9) Secured creditor means a creditor in favour of whom security interest is created; [Section 3(30)]
- (10) 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)]
- (11) 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)]
- (12) 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)]

- (13) 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)].
- (14) 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)]
- (15) 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)]
- (16) 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)]
- (17) 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)]
- (18) Financial position, in relation to any person, means the financial information of a person as on a certain date; [Section 5(9)]
- (19) 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)]
- (20) 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)]
- (21) 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)]
- (22) Liquidation commencement date means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be; [Section 5(17)]
- (23) 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)]
- (24) Related party, in relation to a corporate debtor, means—
- (a) a director or partner or a relative of a director or partner of the corporate debtor
 - (b) a key managerial personnel or a relative of a key managerial personnel of the corporate debtor;
 - (c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;
 - (d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

- (e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
 - (f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
 - (g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
 - (h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;
 - (i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;
 - (j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;
 - (k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;
 - (l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;
 - (m) any person who is associated with the corporate debtor on account of—
 - (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; [Section 5(24)]
- (25) Resolution plan means a plan proposed by **resolution applicant** for insolvency resolution of the corporate debtor as a going concern in accordance with Part II; [Section 5(26)]
- (26) 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)]
- (27) 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.

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-

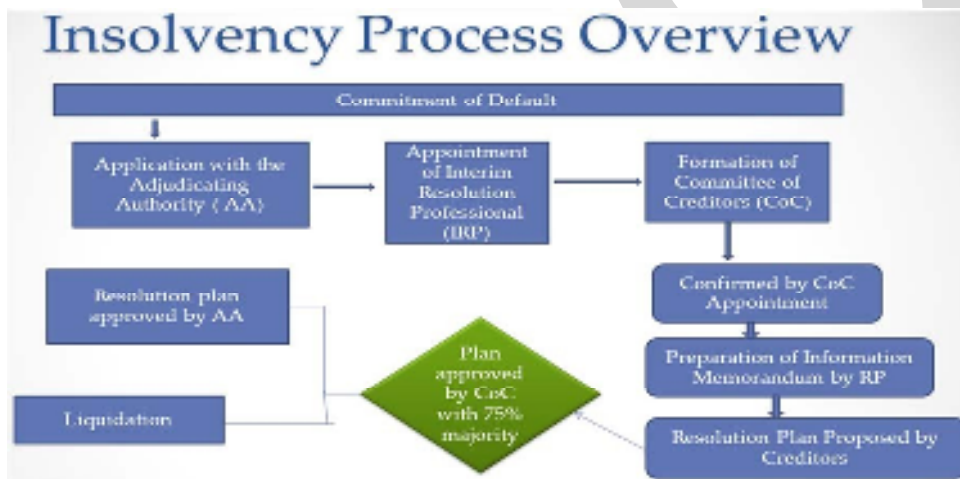
organization process lies with the debtor, and lenders may pursue distinct actions for recovery, security enforcement and debt restructuring.

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 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.

i. 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



ii. Application to National Company Law Tribunal Commitment of Default

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 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. The application may be made by:-

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

Who can make the Application?

- Any person to whom a financial debt is owed &
- Includes a person to whom such debt legally assigned or transferred

Financial
Creditor

- A person to whom an operational debt is owed &
- Includes any person to whom such debt legally assigned or transferred

Operational
Creditor

- A corporate person who owes a debt to any person

Corporate
Debtor

- Filing of an application by a financial creditor: A financial creditor either itself or along with other financial creditors may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of its dues.
- Evidence in support of default and name of the Interim resolution professional by financial creditor: The Financial Creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also give the name of the Interim Resolution Professional.
- Filing of an application by an operational creditor: An operational creditor shall on the occurrence of default, shall :
 - o first send a demand notice and a copy of invoice to the corporate debtor.
 - o The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings.
 - o He shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.
 - o After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.
- Filing of an application by corporate applicant: Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority. The corporate applicant shall furnish the information relating to books of account and other documents and name of a resolution professional proposed to be appointed as interim resolution professional.
- Persons not entitled to initiate insolvency process: As per Section 11 of the Code the 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
 - (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: State the circumstances when persons are not entitled to make an application to initiate corporate insolvency resolution process.

Suppose a corporate debtor has committed a default and is undergoing a corporate insolvency resolution process. A corporate applicant Mr. X thereof files an application for initiating corporate insolvency resolution process with the Adjudicating Authority, State whether he is entitled to make an application to initiate corporate insolvency resolution process?

Answer: The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process -

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

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

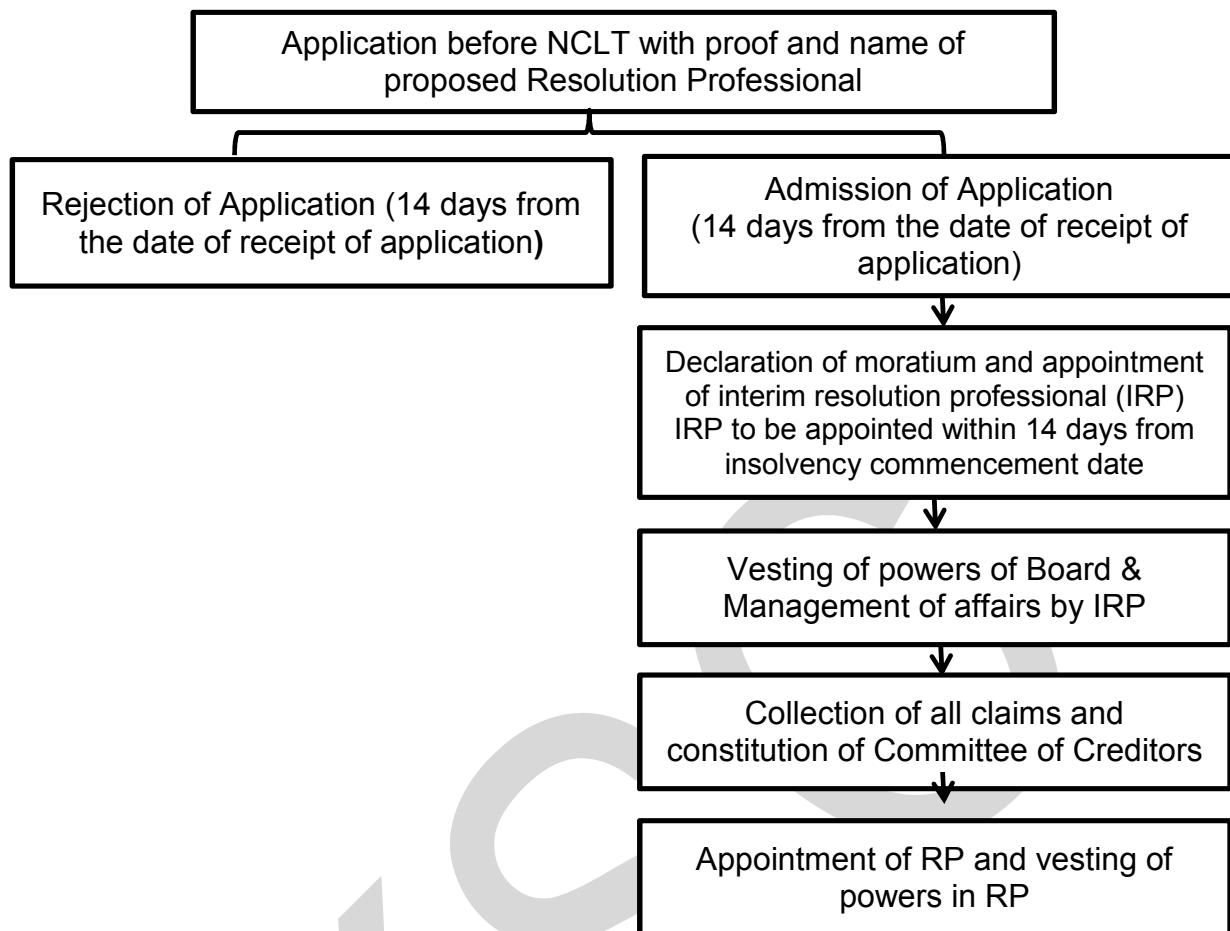
As per the facts, corporate applicant Mr. X is a corporate debtor who is undergoing a corporate insolvency resolution process, he shall not be entitled to make application to initiate corporate insolvency resolution process.

iii. **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.

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



iv. 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. [Section 14]

Section 14 of the Code provides that the following acts shall be prohibited during the moratorium period:-

- The institution of suits or continuation of any pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002
- The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. [Section 14]

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.

v. Appointment, Term 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.
- (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 shall not exceed 30 days from the date of appointment.

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.
- (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.

The key roles 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

vi. Appointment of Resolution Professional (RP)

The Committee of Creditors in the first meeting by majority vote of not less than 66% of the Voting Share of the Financial Creditors either-

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

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 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 of a Resolution Professional

The Resolution Professional's primary function is to take over the management of the corporate borrower and operate its business as a going concern under the broad directions of a committee of creditors.

The thrust of the Code is to allow a shift of control from the defaulting debtor's management to its creditors, where the creditors drive the business of the debtor with the Resolution Professional acting as their agent. The following are the key tasks to be performed by a resolution professional:-

- (a) Obtaining Valuation of the entity
- (b) Preparation of Information Memorandum
- (c) Preparation of Resolution plan
- (d) Obtaining consent of the Committee of Creditors for the Resolution plan Periodic reporting to the Board

Eligibility of an insolvency Professional to be appointed as a Resolution Professional

As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution) Regulation, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor:-

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

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

- 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.
- As 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 66% 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.

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 & Co. 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.

vii. Public Announcement

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

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 claims.
- (f) The date on which the Corporate Insolvency Resolution Process ends.

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

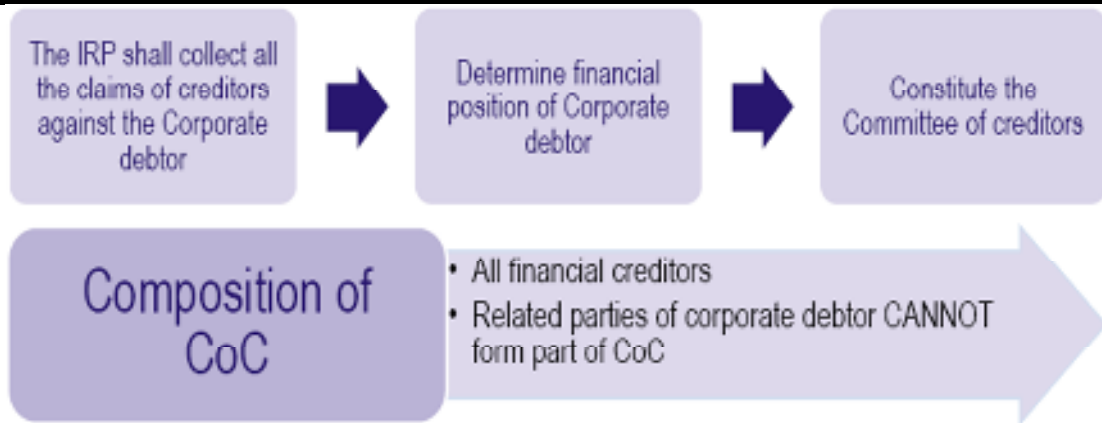
viii. Committee of Creditors

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 composition of the committee shall be as follows:-

- 1. Where Financial Creditors exist:** The Committee of creditors shall comprise of all financial creditors of a corporate debtor. The Resolution Professional shall identify the financial creditors and constitutes a creditors committee. The resolution professional shall conduct all the meetings of the Committee of Creditors. After the constitution of committee of creditors, the interim resolution professional is required to file a report certifying the constitution of the committee to the Adjudicating Authority. The report shall be filed on or before the expiry of thirty days from the date of appointment of the interim resolution professional.
- 2. Where Financial Creditors don't exist:** As per Regulation 16 of the Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016, where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be formed comprising of following members:-
 - (a) 18 largest operational creditors by value.
 - (b) 1 representative elected by all workmen
 - (c) 1 representative elected by all employees.

Where the number of operational creditors is less than 18, the committee shall include all such operational creditors.



Voting in the Meeting

All the decisions of the committee of creditors shall be taken by vote of minimum seventy five percent of the voting share of the financial creditors. The voting share is determined based on the value of the debt of the creditor in proportion to the total debt.

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.

First Meeting of Creditors

- 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 may by a majority vote of not less than 66% per cent. Of the voting share of the financial creditors, either resolves to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

Notice of the Meeting

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

- Members of Committee of creditors;
- Members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
- Operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

The Operational Creditors do not have right to vote in the meeting of Committee of Creditors, however, they may attend the meetings of Committee of Creditors.

Further, as defined in section 5(24) of the Code, 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.

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.

ix. Resolution Plan (Section 22- 31)

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.

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:
 - o Financial position of corporate debtor
 - o Information required by applicant for resolution plan
 - o Other matters pertaining to corporate debtor
- Resolution Professional shall examine the Resolution Plan and submit the same to Committee of Creditors for its approval.

Submission of Resolution Plan

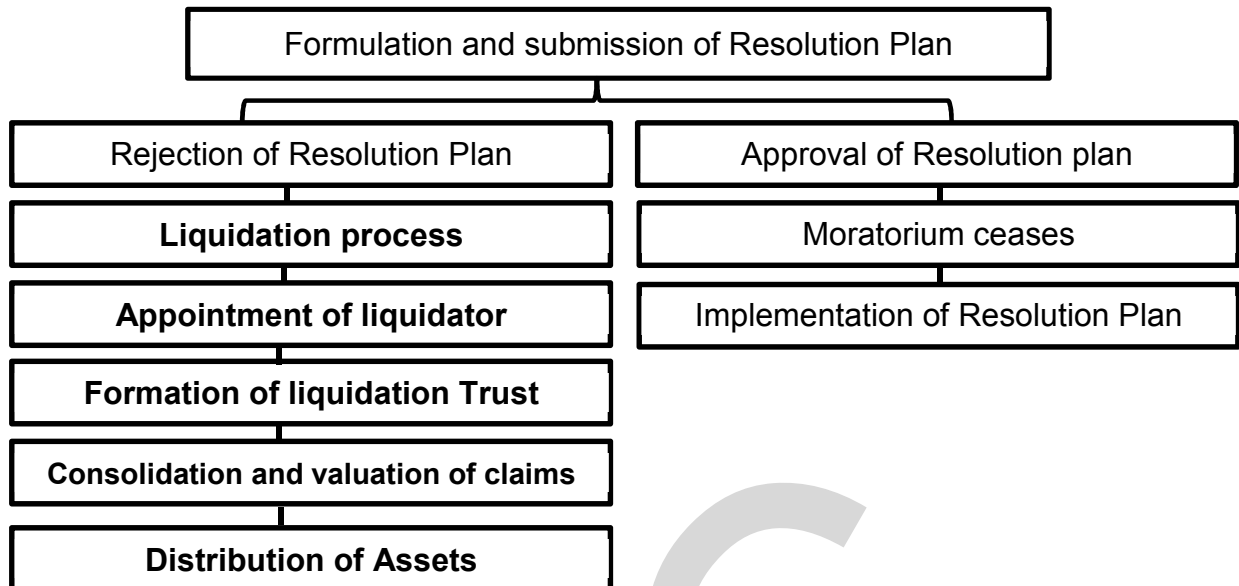
- **The committee of creditors may approve a resolution plan by a vote of not less than 66% per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:**

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code Ord. 7of (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.”

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



Appeal against Approval of Resolution Plan

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 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.

x. 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.



xi. Order of Liquidation

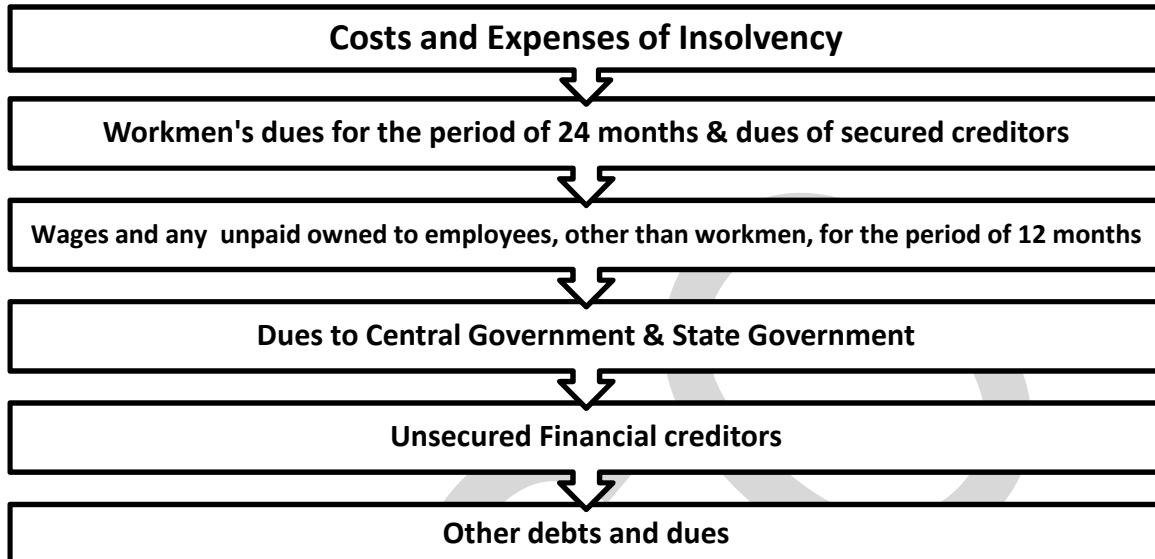
As per Section 33 of the Code, the Adjudicating Authority may order for liquidation of the Corporate Debtor in the following cases:-

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

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

xii. Priority of Claims

The Code has significantly changed the priority waterfall for distribution of liquidation proceeds. It may be as follows:



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

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

4. 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.

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.

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.

Extension: The Adjudicating Authority may extend time period for fast track corporate insolvency resolution process. The aggrieved may make an application to the Adjudicating Authority and it 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.

5. 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) 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 INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2017**1. In section 25 of the principal Act, in sub-section (2), for clause (h), the following clause shall be substituted, namely: —**

"(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."

2. After section 29 of the principal Act, the following section shall be inserted, namely: —

"29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

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

Explanation. — 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):

Provided 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 Interest Act, 2002; or
- (C) an Alternate Investment Fund registered with the Securities and Exchange Board of India."

3. In section 35 of the principal Act, in sub-section (1), in clause (f), the following proviso shall be inserted, namely: —

"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."

4. After section 235 of the principal Act, the following section shall be inserted, namely: —

"235A. If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees."

JKSSC