

FREQUENTLY ASKED QUESTIONS ON THE INSOLVENCY AND BANKRUPTCY CODE, 2016



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

**Frequently Asked Questions
on
The Insolvency and Bankruptcy
Code 2016**



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

© The Institute of Chartered Accountants of India

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means electronic, mechanical, photocopying, recording or otherwise without prior permission in writing from the publisher.

First Edition : April 2017

Committee/Department : Corporate Laws & Corporate Governance Committee

E-mail : clcg@icai.in

Website : www.icai.org

Price : 100/-

ISBN No. : 978-81-8441- 865-1

Published by : The Publication Department on behalf of the Institute of Chartered Accountants of India. ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi – 110 002, India.

Printed by : Sahitya Bhawan Publications, Hospital Road, Agra 282 003
April/2017/500

Foreword

The Insolvency and Bankruptcy Code, 2016 was enacted with a purpose to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals and align Indian law at par with the best practices being followed Internationally.

The intention is 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 Code is now in the implementation phase.

With a view to improve *Ease of doing Business in India*, the Code provides for a time bound process for speedy disposal and also the manner for maximization of value of assets. It will create a win-win situation not only for the creditor and debtor companies, but it will also benefit the overall economy.

The Hon'ble Finance Minister in his Union Budget Speech in February, 2017 also acknowledged the importance of enactment of Insolvency and Bankruptcy Code by mentioning it one of the major reforms taken place last year.

As per the Code, the insolvency resolution processes are to be conducted by the Insolvency Professionals, who are required to be members of an Insolvency Professional Agency which in turn is to be registered with the Insolvency and Bankruptcy Board of India.

Taking this Government's initiative ahead, the Institute of Chartered Accountants of India formed Indian Institute of Insolvency professionals of ICAI (IIPI) to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy code 2016 and read with regulations in November, 2016.

I congratulate the Corporate Laws & Corporate Governance Committee of the Institute of Chartered Accountants of India (ICAI) to take this initiative in bringing out a comprehensive and a handy book on Frequently Asked Questions (FAQs) on the Insolvency and Bankruptcy Code, 2016 to provide guidance to the members of the profession and other stakeholders for clear interpretation and understanding of the new law.

I extend my sincere appreciation to CA. Sanjay Kumar Agarwal and CA. Debashis Mitra, the Chairman and Vice-Chairman of the Corporate Laws &

Corporate Governance Committee (CL&CGC) respectively, CA. Dhinal Shah, Central Council Member, ICAI to conceptualize this project and CA. K. Sripriya, Convenor of the Insolvency and Bankruptcy Laws Group of CL&CGC, CA. Ranjeet Kumar Agarwal, Dy-Convenor of the Insolvency and Bankruptcy Laws Group of CL&CGC, my Council Colleagues, other members of the Committee to conceptualize and bring out this important publication.

My appreciation to the Secretariat of the Committee comprising of CA. Sarika Singhal, Ms. S. Rita, CA. Ashita Jain and Ms Nidhi Bansal for their efforts in preparation and bringing out this publication.

I am confident that this publication would be of great help to the members especially to insolvency professionals and other stakeholders.

New Delhi
7th April, 2017

CA. Nilesh S. Vikamsey
President, ICAI

Preface

The Insolvency and Bankruptcy Code, 2016 is one of the major economic reform Code initiated by the Government in the year 2015. There were multiple overlapping laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India.

Also, the existing laws were not aligned with the market realities and had several problems and were inadequate. As per that legal framework, provisions relating to insolvency and bankruptcy for companies could be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. Resolution and jurisdiction being with the multiple agencies with overlapping powers were leading to delays and complexities in the process.

To facilitate easy and time bound closure of business in India and to overcome these challenges, a strong bankruptcy law was required.

To study the corporate bankruptcy legal framework in India and to suggest the Government for reforming the system, the Government of India had formed the Bankruptcy Law Reforms Committee. The Committee suggested that there was a need for creation of a uniform framework for the matters of insolvency and bankruptcy of all legal entities and individuals. It evaluated the working of present arrangements in India, and the difficulties faced with these present arrangements.

As stated by Mr T. K. Viswanathan, Chairman, Banking Law Reforms Committee that “It was a mission to usher in sweeping changes to the country's bankruptcy law and the New Bankruptcy Law was Necessary for Reviving Economy”.

Accordingly, the Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha in December, 2015 and referred to the Joint Parliamentary Committee. After due consultation process, the Joint Committee submitted its Report to the Hon'ble Parliament which was subsequently passed by both the Houses of Parliament in May 2016 as the Insolvency and Bankruptcy Code, 2016 which got assent of the President of India on 28th May, 2016.

The Code offers a uniform, comprehensive insolvency legislation encompassing all companies, partnerships and individuals (other than financial firms). There is a clear and explicit process to be followed by all

stakeholders. Also, there is shift of control from shareholders and promoters to creditors.

The IBC provides an institutional set-up comprising of five pillars, i.e., Insolvency Professionals Agency, Insolvency Professionals, Information Utilities, Insolvency and Bankruptcy Board of India and Adjudicating Authority.

The Implementation of any system does not only depend on the law, but also on the institutions involved in administration and execution of the same. It depends on the effective functioning of all the institutions but the Insolvency Professionals have a vital role to play in the insolvency and bankruptcy resolution process.

The pace with which this Code is being implemented will also help India in improving its 'Ease of Doing Business' rankings and enhancing India's ranking as resolving insolvency is a key criteria in the World Bank's survey.

At this backdrop, to facilitate the understanding of the provisions of the Insolvency and Bankruptcy Code, 2016 and its Regulations, the Corporate Laws & Corporate Governance Committee decided to bring out a publication on the Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016.

The publication has been designed in a question and answer format to assist our members and other stakeholders to enable them to have clarity on the provisions of the Insolvency and Bankruptcy Code, 2016 and its Regulation released upto 31st January, 2017.

In this connection I take this opportunity in thanking the President of ICAI, CA. Nilesh S. Vikamsey and Vice President CA. Naveen N. D. Gupta for their moral support and encouragement in bringing out the publication. I place on record my appreciation to CA. Dhinal Shah for conceptualizing this publication, CA. Debashis Mitra, Vice Chairman, CL&CGC, CA. K. Sripriya, Convenor of the Insolvency and Bankruptcy Laws Group of CL&CGC, CA. Ranjeet Kumar Agarwal, Dy- Convenor of the Insolvency and Bankruptcy Laws Group of CL&CGC and the other committee members for their help and guidance in framing and bringing out this publication comprising of the Frequently Asked Questions on the provisions of the Insolvency and Bankruptcy Code, 2016.

I would like to thank CA. Sarika Singhal, Ms. S. Rita, CA. Ashita Jain and Ms Nidhi Bansal who were involved in preparing and putting together the FAQs.

I sincerely believe that the members of the profession, industries and other stakeholders will find the publication immensely useful.

New Delhi
7th April, 2017

CA. Sanjay Kumar Agarwal
Chairman
Corporate Laws & Corporate Governance Committee, ICAI

Index

S. No.	Topic	Page No.
1.	Introduction	1
2.	Insolvency Resolution and Liquidation of Corporate Persons	5
3.	Insolvency Resolution and Bankruptcy for Individuals and Firms	37
4.	Regulation of Insolvency Professionals, Agencies and Information Utilities	57
5.	Miscellaneous	67
	Annexure A: Table of Amendments from Section 245 to 255 of Insolvency and Bankruptcy Code, 2016	70
	Annexure B: List of Sections of The Insolvency and Bankruptcy Code, 2016 notified till 1st April, 2017	85
	Annexure C: List of Sections of the Insolvency and Bankruptcy Code, 2016 not yet notified till 1st April 2017	98

Glossary

IBC Code	Insolvency and Bankruptcy Code 2016
IP	Insolvency Professional
IPR	Insolvency Professional Resolution
IPA	Insolvency Professional Agency
IU	Information Utility
AA	Adjudicating Authority
NCLT	National Company Law Tribunal
SARFAESI	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Introduction

Q.1. What is the purpose of enactment of the Insolvency and Bankruptcy Code, 2016?

- A.1 As per Preamble to the Code, the purpose of this Act is as follows:-
- (a) To consolidate and amend the laws relating to reorganisation 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.

Q.2. To whom shall the provisions of the Code apply?

- A.2 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) Partnership firms and individuals.

FAQs on The Insolvency and Bankruptcy Code 2016

Exception: The Code shall not apply to Financial Service Providers like Banks, Financial Institutions and Insurance companies.

Q.3. Who shall be termed as Corporate Debtor?

A.3 As per Section 3(8) of the Code, Corporate Debtor means a corporate person who owes a debt to any person.

Q.4. Who is a Corporate Person?

A.4 Corporate Person means

- a) a company as defined under section 2(20) of the Companies Act, 2013;
- b) a Limited Liability Partnership as defined in 2(1)(n) of Limited Liability Act, 2008; or,
- 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.

Q.5. Who shall be covered in the definition of a Financial Service Provider?

A.5 As per Section 3(17) of the Code, a Financial Service Provider means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator e.g. banks, financial institutions, insurance companies, mutual funds etc.

Q.6. What shall be included in Financial Information?

A.6 Financial Information includes the following:-

- a) Records of debt of the person
- b) Records of liabilities when the person is insolvent
- c) Records of assets of assets of the 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

Q.7. What shall be treated as Debt under the Code?

Introduction

A.7 As per Section 3(11) of the Code, 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.

Q.8. What shall be considered as Claim under the Code?

A.8 As per Section 3(6) of the Code, 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.

Q.9. Who are covered in the definition of person?

A.9 As per Section 3(23) of the Code, a person means and includes the following:-

- a) an individual
- b) a Hindu Undivided Family
- c) a company
- d) a trust
- e) a partnership
- f) A limited liability partnership and any other entity established under a Statute.

and includes a person resident outside India

Q.10. What do you understand by the term Security Interest?

A.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.

Q.11. What is termed as a transaction under the Code?

A.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.

Q.12. What shall be included in Transfer as per the Code?

A.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

FAQs on The Insolvency and Bankruptcy Code 2016

and includes a transfer of any interest in the property and creation of any charge upon such property.

Q.13. What is a "Charge" under the Code?

A.13 A Charge means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage.

Q.14. Who shall be termed as creditor under the Code?

A.14 A 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.

Q.15. What is a Financial Product?

A.15 A financial product means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument.

Q.16. What is the definition of property under the Code?

A.16 As per Section 3(27) of the Code, property includes:-

- a) Money, goods, actionable claims, land and every description of property, whether situated in India or outside India and
- b) Every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property.

Insolvency Resolution and Liquidation for Corporate Persons

Q.17. When will the provisions of insolvency and liquidation of corporate persons be applicable on a corporate person?

A.17 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.

Q.18. Who is the Adjudicating Authority for corporate persons?

A.18 The National Company Law Tribunal shall be Adjudicating Authority for the insolvency resolution and liquidation process of a corporate person.

Q.19. What is the date of enforcement of Insolvency and Bankruptcy (application to Adjudicating Authority) Rules, 2016?

A.19 The Insolvency and Bankruptcy (application to Adjudicating Authority) Rules, 2016 have been enforced w.e.f. 1st day of December, 2016.

Q.20. What is included in the Financial Debt?

A.20 As per Section 5(8) of the Code, Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes:-

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

FAQs on The Insolvency and Bankruptcy Code 2016

- e) Any receivables sold or discounted other than any receivables sold on non-recourse basis.
- f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.
- g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account.
- h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution.
- i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in above clauses.

Q.21. What is included in Operational Debt?

A.21 As per Section 5(21) of the Code, Operational Debt means a claim in respect of

- a) Provision of goods or
- b) Provision of services including employment
- c) Or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

Q.22. Who may initiate corporate insolvency process against a corporate person?

A.22 The corporate insolvency process may be initiated against any defaulting corporate debtor by

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

Q.23. What is the Insolvency Resolution Process for financial creditors?

Insolvency Resolution and Liquidation for Corporate Persons

- A.23 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.

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.

Where the Adjudicating Authority is satisfied that a default has occurred and the application by the financial creditor is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may admit such application made by the financial creditor. Otherwise, the application may be rejected. However, the applicant may rectify the defect within seven days of receipt of notice of rejection from the Adjudicating Authority.

Q.24. Can a financial creditor in respect of whom there is no default file an application of resolution?

- A.24 Yes, a financial creditor for whom there is no default can still file an application against a corporate debtor provided, the corporate debtor has a default against some other financial creditor. However, in that case, he can only file joint application with the financial creditor for whom there is default.

Q.25. What is the Insolvency Resolution Process for operational creditors?

- A.25 On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.

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. He shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.

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.

FAQs on The Insolvency and Bankruptcy Code 2016

The Adjudicating Authority shall within fourteen days of receipt of the application, admit or reject the application. However, before rejecting the application, an opportunity shall be given to the applicant to rectify the defect within seven days of receipt of rejection.

Q.26. Can a Demand Notice by an operational creditor be issued in any form?

A.26 No, the Demand Notice has to be issued in Form No. 3 as provided in the Application to Adjudicating Authority Rules.

Q.27. What shall be the mode of service of demand notice?

A.27 The demand notice may be delivered to the corporate debtor in any of the following modes:

- By hand, registered post or speed post with the acknowledgment due delivered at the registered office of the corporate debtor.
- By electronic mail service to a whole time director or designated partner or key managerial personnel of the corporate debtor.

Q.28. What are the forms to be used for Application to be filed before National Company Law Tribunal (NCLT) by Financial Creditor, Operational Creditor and Financial Debtor?

A.28 The form in which the application is to be preferred is provided in the Application to Adjudicating Authority Rules as follows:

- Financial Creditor – Form 1
- Operational Creditor – Form 5
- Corporate Debtor – Form 6

Q.29. What is a Financial Contract?

A.29 Financial contract is a contract between a corporate debtor and a financial creditor which lays down the terms of the financial debt like the tenure of the debt, interest payable and date of repayment etc.

Q.30. Can an assignee of a financial contract make an application under corporate insolvency resolution process?

A.30 Yes, as per Regulation 4 of Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016 where an applicant of corporate insolvency resolution is an assignee or transferee of a financial contract the application shall be accompanied with a copy of the assignment or

Insolvency Resolution and Liquidation for Corporate Persons

transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

Q.31. Can an applicant withdraw its application for insolvency process?

A.31 Yes, as per Regulation 8 of Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016 an applicant may withdraw application for insolvency process by making a request to the Adjudicating Authority. However, such a withdrawal may not be made after the application has been admitted by the adjudicating authority.

Q.32. Does an applicant need any declaration from the proposed interim resolution professional?

A.32 Yes, as per Regulation 9 of Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016 an applicant is required to obtain a written communication from the proposed interim resolution professional. The communication shall be obtained in Form 2 of the regulations.

Q.33. Is there any provision for relaxation in submission of relevant supporting documents to an application for insolvency resolution where the supporting documents are very bulky?

A.33 Yes, the proviso to Regulation 10 of Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016 makes provision for submission of accompanying documents in electronic form, when such documents are bulky in nature. The documents should be scanned and be submitted in legible portable format in a data storage device such as compact disc or a USB flash drive which is acceptable to the Adjudicating Authority.

Q.34. What are the eligibility criteria for appointment of an Insolvency Professional as a Resolution Professional for a corporate insolvency resolution process?

A.34 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 resolution 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 i.e.,

- a) He is eligible to be appointed as an independent director on the board of the corporate debtor u/s 149 of the Companies Act, 2013, where the corporate debtor is a company.

FAQs on The Insolvency and Bankruptcy Code 2016

- 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.

Q.35. What is meant by a Demand Notice?

- A.35 Demand Notice means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

As per Rule 5(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the demand notice or a copy of invoice shall be sent to corporate debtor by post, by hand or email and the copy of demand notice shall be forwarded to information utility. Demand notice shall be given in Form 3.

Q.36. What will be the consequence if demand is disputed?

- A.36 If demand is disputed and such dispute has been raised before the issuance of the notice, application shall not be admitted as the Adjudicating Authority is not empowered to go into the dispute. Thus, application can be admitted only if the demand of debt is undisputed.

Q.37. What is the procedure of Insolvency Resolution Process for a Corporate Applicant?

- A.37 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 a resolution professional shall be appointed as interim resolution professional.

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.

Q.38. When will the insolvency resolution process commence?

Insolvency Resolution and Liquidation for Corporate Persons

A.38 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.

Q.39. What is the Corporate Insolvency Process initiation date?

A.39 The date of filing of the application before the National Company Law Tribunal (NCLT) is referred to as the Initiation date.

Q.40. Can an application for insolvency process be withdrawn?

A.40 As per Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, application for insolvency process may be withdrawn any time before admission of application, with the permission of Adjudicating Authority.

Q.41. Who is not entitled to make application to initiate a corporate insolvency process?

A.41 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.

Q.42. Is there any time limit for completion of the Insolvency Resolution Process?

A.42 Section 12 of the Code states that any Insolvency Resolution Process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate the process.

However the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a vote of 75% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

FAQs on The Insolvency and Bankruptcy Code 2016

Q.43. What is the significance of the Corporate Insolvency Resolution Commencement Date?

A.43 The commencement date of the corporate insolvency resolution is the beginning of moratorium or a calm period for 180 days 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.

Q.44. What is the effect of order of moratorium?

A.44 Moratorium has been explained in Section 14 of the Code, during the moratorium period the following acts shall be prohibited:

- a) 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;
- b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Q.45. What shall be included in the Public Announcement made by an Adjudicating Authority?

A.45 As per Section 15 of the Code, the 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.

Insolvency Resolution and Liquidation for Corporate Persons

- e) The last date for the submission of the claims.
- f) The date on which the Corporate Insolvency Resolution Process ends.

Q.46. Who shall bear the expenses of public announcement?

- A.46 As per Regulation 6 of the Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016 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.

Q.47. What is the remedy if a Creditor fails to submit proof of claim within the time stipulated in the public announcement?

- A.47 As per Regulation 12 of the Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016 a Creditor who failed to submit proof of claim within stipulated time may submit such proof to Interim Resolution Professional before the is approved by the Committee of Creditors.

Q.48. Is there any time limit for verification of claims by the resolution professional?

- A.48 Yes, as per Regulation 13 of the Insolvency and Bankruptcy (Insolvency Resolution) Regulations all the claims must be verified by the resolution professional within seven days from the last date of receipt of claims.

Q.49. Can list of creditors prepared by resolution professional be inspected?

- A.49 Yes, as per Regulation 13 of the Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016 the list of creditors shall be available for inspection by the persons who submitted proofs of claims and also by the members, partners, directors and guarantors of the corporate debtors.

Further, the list shall also be displayed on the website of the corporate debtor.

Q.50. Who cannot participate in the Meeting of the Committee of Creditors?

- A.50 As defined u/s 5(24) of the Code, a Related Party to whom a Corporate Debtor owes a financial debt shall not have any right of

FAQs on The Insolvency and Bankruptcy Code 2016

Representation, Participation or Voting in a meeting of the Committee of Creditors.

Q.51. Who will conduct the meeting of creditors?

A.51 The resolution professional shall conduct all the meetings of the Committee of Creditors.

Q.52. How is the voting share of a creditor in the committee of creditors determined?

A.52 The voting share is determined based on the value of the debt of the creditor in proportion to the total debt.

Q.53. What is the compliance with Adjudicating Authority post constitution of committee of creditors?

A.53 After the constitution of committee of creditors, the interim resolution professional is required to file a report certifying the constitution of the committee of creditors 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.

Q.54. What is the quorum required for convening of the meeting of committee of creditors?

A.54 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.

Q.55. Can a member attend the meeting of committee of creditors by video conferencing?

A.55 Yes, as per Regulation 22 of the Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016 a member of committee of creditors may attend the meeting by video conferencing or other audio and visual means.

Q.56. What shall be the consequence if the quorum is not fulfilled?

A.56 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.

Q.57. If there is no financial creditor, how will the committee of creditors be constituted?

Insolvency Resolution and Liquidation for Corporate Persons

A.57 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.

Q.58. Do Operational Creditors have right to vote in the meeting of Committee of Creditors?

A.58 No, the Operational Creditors do not have right to vote in the meeting of Committee of Creditors, however, the directors, partners and one representative of operational creditors may attend the meetings of Committee of Creditors.

Q.59. What is the tenure of an interim resolution professional?

A.59 The tenure of the Interim resolution professional is 30 days from the date of his / her appointment.

Q.60. Where the Resolution professional is proposed by the Board, is it mandatory on the board to confirm the Appointment of Resolution Professional proposed by Adjudicating Authority?

A.60 No, as per Section 22(3) of the Code, 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.

Q.61. What are the key roles of an Interim Resolution Professional?

A.61 The key roles of an 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

FAQs on The Insolvency and Bankruptcy Code 2016

d) Conduct of the first meeting of the Committee of Creditors

Q.62. Can an interim resolution professional have access to the books of the corporate debtor?

A.62 Yes, the interim resolution professional may access the books of accounts, records and other relevant documents and information so far as it is necessary for discharging his duties under the Code.

Q.63. What is the protocol for issuance of public notice?

A.63 The public notice shall be published in following:-

- One English newspaper
- One vernacular newspaper
- Website of the Company
- Website of the Insolvency and Bankruptcy Board of India

Q.64. What will be the effect of filing of an avoidance application on insolvency resolution process?

A.64 The filing of an avoidance application under clause (j) of sub-section (2) of Section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.

Q.65. What is the procedure for replacement of insolvency resolution professional

A.65 As per Section 27 of the Code, the Committee of Creditors may at a meeting, by a vote of 75% of voting shares propose to replace the insolvency resolution professional with another resolution professional.

The Committee of Creditors shall forward the name of the insolvency professional proposed by them 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.

Where any disciplinary proceedings are pending against the proposed resolution professional then the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

Q.66. What are the key tasks to be performed by a Resolution Professional?

Insolvency Resolution and Liquidation for Corporate Persons

A.66 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
- e) Periodic reporting to the Board

Q.67. Does resolution professional require approval of Committee of Creditors for performance of his duties?

A.67 As per Section 28 of the Code, the resolution professional shall require prior approval of the Committee of Creditors by a vote of seventy five per cent for following actions:-

- a) To raise any interim finance in excess of the amount as may be decided by the Committee of Creditors in their meeting.
- b) To create any security interest over the assets of the corporate debtor.
- c) To change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company.
- d) To record any change in the ownership interest of the corporate debtor.
- e) To give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the Committee of Creditors in their meeting.
- f) To undertake any related party transaction.
- g) To amend any constitutional documents of the corporate debtor.
- h) To delegate its authority to any other person.
- i) To dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties.

FAQs on The Insolvency and Bankruptcy Code 2016

- j) To make any change in the management of the corporate debtor or its subsidiary.
- k) To transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business.
- l) To make changes in the Appointment or terms of contract of such personnel as specified by the Committee of Creditors.
- m) To make changes in the Appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

Q.68. What is a Resolution plan?

A.68 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.

As per Section 30, the Insolvency Resolution Professional (IRP) within the prescribed time i.e. 180 days or in case of extension 270 days, where Fast Track Resolution within 90 days or in case of extension 135 days, is required to submit the Resolution Plan to Adjudicating Authority (NCLT) prepared by resolution applicant on the basis of information memorandum.

The Resolution Plan should provide for:

- (i) payment of insolvency resolution costs;
- (ii) repayment of the debts to operational creditors;
- (iii) management of affairs of the Company after approval of the resolution plan;
- (iv) implementation and supervision of the resolution plan;
- (v) does not contravene provisions of the law for the time being in force; and
- (vi) conforms to such other requirement as may be specified by the Board.

Q.69. Is the resolution professional required to provide access to information of the information memorandum to the resolution applicant?

A.69 As per Section 29 of the Code, the resolution professional shall provide all the access of the information memorandum to the

Insolvency Resolution and Liquidation for Corporate Persons

resolution applicant and furnish all the relevant information in physical and electronic form. However, the resolution professional will be required to obtain the following undertaking:-

- a) They will comply with the provisions of the law for the time being in force relating to the confidentiality and Insider Trading;
- b) They will protect any Intellectual property of the corporate debtor it may have access; and
- c) They will not to share the relevant information to the third party.

Q.70. When shall the resolution plan be considered as approved by Committee of Creditors?

A.70 The resolution plan shall be approved by the Committee of Creditors by a vote of not less than seventy five percent of voting share of the financial creditors.

Q.71. What remedy is available to a Resolution Professional with whom the Corporate debtor personnel do not cooperate?

A.71 The Resolution Professional may apply to the Board seeking support to resolve the situation and for orders thereof.

Where any personnel of the corporate debtor, its promoter or any other person, required to, assist or co-operate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

Q.72. Does the National Company Law Tribunal (NCLT) have powers to reject Resolution plans?

A.72 Yes, the National Company Law Tribunal (NCLT) has powers to reject Resolution plans proposed by the Committee of Creditors.

Q.73. What happens when the Resolution Plan is not filed within 180 days of the Commencement date or such other extended period?

FAQs on The Insolvency and Bankruptcy Code 2016

A.73 National Company Law Tribunal (NCLT) may pass orders for the liquidation of the Corporate debtor if the Resolution Plan is not filed within 180 days of the Commencement date or such other extended period.

The NCLT shall do the following

- (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
- (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
- (iii) require such order to be sent to the authority with which the corporate debtor is registered.

Q.74. What are Insolvency Resolution Process Costs? What is the significance of these costs?

A.74 As per Section 5(13) of the Code, "Insolvency Resolution Process Costs" means the following costs:-

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

These costs have priority over other costs in the event of winding up of the corporate debtor.

Q.75. In which cases the Adjudicating Authority can order for the liquidation of the Corporate Debtor?

A.75 As per Section 33 of the Code, the Adjudicating Authority may order for the 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 Insolvency Resolution, if the Adjudicating Authority does not receive the Resolution Plan.

Insolvency Resolution and Liquidation for Corporate Persons

- b) If the Committee of Creditors before the expiry of the resolution process intimates the Adjudicating Authority, of the decision of the Committee of Creditors that they have passed an order for the liquidation of Corporate Debtor.
- c) Where the Resolution Plan is in contravention with the interest of any person, whose interest is prejudicially affected by the contravention, may make an application to the Adjudicating Authority to pass the liquidation order.

Q.76. What shall be the contents of order of liquidation?

A.76 The order of liquidator shall contain the following:-

- a) An order requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III Part II of the Code.
- b) An order for issuing a Public Announcement stating that the corporate debtor is in liquidation.
- c) It shall also require such order to be sent to the authority with which the corporate debtor is registered.

Q.77. What will be the effect of order of liquidation?

A.77 As per Section 33 of the Code, the following shall be the effect of passing of an order of liquidation by the Adjudicating Authority:-

- a) No suit or other legal proceeding shall be instituted by or against the corporate debtor. However, the liquidator may institute a suit or other legal proceeding on behalf of the corporate debtor with the prior approval of the Adjudicating Authority.
- b) The legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator shall not be affected.
- c) The order for liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except in the case where the business of the corporate debtor is continued during the liquidation process by the liquidator.

Q.78. What shall be the fees that liquidator may charge for conducting liquidation proceeding?

A.78 The liquidator shall charge fee for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate

FAQs on The Insolvency and Bankruptcy Code 2016

assets, as may be specified by the Board under Section 34(8) of the Code.

Q.79. Under what circumstances transactions will be referred to as preferential transactions?

A.79 A corporate debtor shall be deemed to have given a preference in the following circumstances:-

- a) If there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor.
- b) If the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with Section 53 of the Code.

Q.80. Under what circumstances transactions will not be referred to as preferential transactions?

A.80 As per Section 43(3) of the Code, following transfers shall not be referred to as a preference transaction:-

- a) The transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee.
- b) Any transfer creating a security interest in property acquired by the corporate debtor to the extent that
 - (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and
 - (ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property.

Further, any transfer made in pursuance of the order of a Court shall not preclude such transfer to be deemed as giving of preference by the corporate debtor.

Insolvency Resolution and Liquidation for Corporate Persons

Q.81. When shall a transaction entered by any corporate debtor be deemed as Undervalued?

A.81 As per Section 45 of the Code, a transaction shall be considered undervalued where the corporate debtor:-

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

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

Q.82. When can a liquidator apply for avoidance of preferential transaction?

A.82 Where the liquidator is of the opinion that the corporate debtor has at a relevant time given a preference in transactions to any of the following persons:-

- a) A related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date.
- b) A person other than a related party during the period of one year preceding the insolvency commencement date.
- c) The liquidator shall apply to Adjudicating Authority for avoidance of such preferential transactions.

Q.83. What is the relevant period for avoiding any undervalued transaction?

A.83 As per Section 46 of the Code, if in an application, the liquidator or resolution professional demonstrates

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

Q.84. Can a creditor make an application to the Adjudicating Authority for avoidance of any undervalued transactions in case of a corporate debtor?

FAQs on The Insolvency and Bankruptcy Code 2016

A.84 Yes, as empowered by Section 47 of the Code, where an undervalued transaction has taken place and the liquidator or the resolution professional has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect.

Q.85. What is the procedure for enforcement of security interest by secured creditor?

A.85 As per Section 52(4) of the Code, the secured creditor may enforce, realize, settle, compromise or deal with the secured assets after completion of verification by liquidator in accordance with such law as applicable to the security interest and apply the proceeds to recover the debts due to it.

The secured creditor may apply to Adjudicating Authority under Section 52(5) of the Code to facilitate the secured creditor to realize such security interest.

Q.86. Can the liquidator consult stakeholders? Is such consultation binding on the liquidator?

A.86 Yes, as per Section 53 of the Code, a liquidator has the power to consult any of the stakeholders entitled to distribution of proceeds under Section 53 of the Code. However, such consultation shall not be binding on the liquidator.

Q.87. Which assets shall not be used for recovery in liquidation?

A.87 The following assets shall not be used for recovery in the liquidation:—

Any assets owned by a third party, which are in possession of a corporate debtor, and which include-

- a) Assets held in trust for any third party;
- b) Bailment contracts;
- c) All sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
- d) Other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
- e) Such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

Insolvency Resolution and Liquidation for Corporate Persons

- f) Assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- g) Personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
- h) Assets of any Indian or foreign subsidiary of the corporate debtor; or
- i) Any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

Q.88. Is a liquidator bound to provide information to creditors?

A.88 The creditors may require the liquidator to provide them any financial information relating to the corporate debtor. The liquidator shall provide information to the creditors who have requested for such information within a period of seven days from the date of such request or he may provide reasons for not providing such information.

Q.89. Is there any time limit for receipt of claim of creditors?

A.89 Yes, the liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.

Q.90. Can a creditor withdraw or vary his claim?

A.90 Yes, a creditor may withdraw or vary his claim within fourteen days of its submission.

Q.91. How does the liquidator verify his claim?

A.91 The liquidator shall verify the claims submitted to him within such time as be specified by the Board. Further, he may require any creditor or the corporate debtor or any other person to produce documents or evidences which he thinks necessary for the purpose of verification of whole or any part of the claim.

Q.92. What is the remedy available to the creditors if the liquidator rejects his claims?

FAQs on The Insolvency and Bankruptcy Code 2016

A.92 A creditor, within fourteen days of the receipt of decision wherein his claim has been rejected may appeal to the Adjudicating Authority against the decision of the liquidator.

Q.93. Can an application be filed to avoid extortionate credit transactions in case of a corporate debtor?

A.93 Yes, as per Section 50 of the Code, where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date in that case the liquidator or the resolution professional as may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

Q.94. What are the powers of an Adjudicating Authority where a corporate debtor enters into exorbitant transactions?

A.94 As per Section 51 of the Code, if an Adjudicating Authority after examining the application is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order:-

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

Q.95. In what order shall a liquidator distribute the assets?

A.95 As per Section 53 of the Code, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority:

- a) Any insolvency resolution process costs and the liquidation costs to be paid in full.

Insolvency Resolution and Liquidation for Corporate Persons

- b) Debts which shall rank equally between and among the following -:

Any workmen dues outstanding for a period of twenty-four months preceding the liquidation commencement date.

- (i) Debts which are owed to a secured creditor where such secured creditor has relinquished security.
- c) Wages and any unpaid dues owed to employees other than the workmen for a period of twelve months preceding the liquidation commencement date.
- d) Financial debts owed to unsecured creditors.
- e) Also the following dues shall rank equally between and among the following:—
 - (i) Any amount which is due to the Central Government and the State Government including any 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) All 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
- h) Equity shareholders or partners

Any contractual arrangements if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

Q.96. How shall the fees payable to liquidator be paid?

- A.96 The fees for the conduct of the liquidation proceedings shall be paid to the liquidator from the proceeds of the liquidation estate under Section 53 of the Code. The fees payable to liquidator shall have priority over other payments during liquidation.

Q.97. What is fast track insolvency resolution process?

- A.97 A fast track insolvency resolution, as the name suggests, is a process wherein the insolvency resolution process shall be completed with 90(ninety) days from the insolvency commencement date.

FAQs on The Insolvency and Bankruptcy Code 2016

An application under this category can be made by 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.

Q.98. Can the time period for fast track corporate insolvency resolution process be extended?

A.98 Yes, 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.

Q.99. When can a corporate person initiate voluntary liquidation process?

A.99 Section 59 of the Code empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:-

- a) A declaration from majority of the directors of the company verified by an affidavit stating
 - i. That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts 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. That the company is not being liquidated to defraud any person.

Insolvency Resolution and Liquidation for Corporate Persons

- b) The declaration shall be accompanied with the following documents, namely:
 - i. Audited financial statements and a 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) After making the declaration the corporate debtor shall within four weeks
 - i. Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.
 - ii. Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

Q.100. When does a corporate person require approval of creditors for voluntary liquidation process?

- A.100 As per the proviso to Section 53(3) of the Code, if the company owes any debt to any person, then creditors representing two-thirds in value of the debt to the company shall approve the resolution to be passed at the general meeting, within seven days of such resolution.

Q.101. Can a liquidator make application for dissolution of the company?

- A.101 Yes, after the affairs of the corporate person have been completely wound up and its assets are completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of the company.

Q.102. Who shall be the Adjudicating Authority for a corporate person?

- A.102 In case of a corporate person including corporate debtors and personal guarantors the Adjudicating Authority shall be National

FAQs on The Insolvency and Bankruptcy Code 2016

Company Law Tribunal (NCLT) having territorial jurisdiction over the place where the registered office of the corporate person is situated.

Q.103. What are the jurisdictional powers of Adjudicating Authority?

A.103 As per Section 60 of the Code, the Adjudicating Authority i.e., National Company Law Tribunal shall have jurisdiction to entertain or dispose of the following:-

- a) Any application or proceedings by or against the Corporate Debtor / Corporate person.
- b) Any Claim made against the Corporate Debtor/ Corporate Person including the subsidiaries situated in India.
- c) Any question of priority, question of law or fact under this Code.

Q.104. Is the period of moratorium excluded for the purpose of limitation?

A.104 Yes, as per Section 60(6) of the Code, the period during which moratorium is in place shall be excluded in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made.

Q.105. Whether an appeal can be filed against the order of the National Company Law Tribunal?

A.105 Yes, as per Section 61 of the Code, any person aggrieved by the order of the National Company Law Tribunal may prefer an appeal to National Company Law Appellate Tribunal within thirty (30) days from the date of order of the National Company Law Tribunal (NCLT).

Q.106. On what grounds can an appellant appeal against an order of National Company Law Tribunal for approving the resolution plan?

A.106 As per Section 61(3) of the Code, an appeal against an order of National Company Law Tribunal (NCLT) 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.

Insolvency Resolution and Liquidation for Corporate Persons

- 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.

Q.107. Does an appeal lie from the order of National Company Law Appellate Tribunal?

- A.107 Yes, as per Section 62 of the Code, any person aggrieved by the order of National Company Law Appellate Tribunal may file an appeal to the Supreme Court within 45 days from the date of receipt of the order. However, appeal shall lie only on the Question of law arising out of this Code.

Q.108. Does Civil Court have jurisdiction in matters relating to insolvency of corporate persons?

- A.108 No, Civil Court shall not have jurisdiction to entertain any suit or proceedings or grant injunction or any other relief in respect of any matter relating to insolvency of corporate persons on which the National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code.

Q.109. Is there any provision for extension of the time specified in the Code where an application is not disposed off or an order has not been passed?

- A.109 Yes, the President of National Company Law Tribunal (NCLT) or the Chairperson of National Company Law Appellate Tribunal (NCLAT) may extend the time specified in the Act for not more than ten (10) days, where an application is not disposed off or an order is not passed within the period specified in the Code.

Q.110. What is the punishment for fraudulently or maliciously initiating the insolvency resolution process or liquidation?

- A.110 According to Section 65 of the Code, any person who fraudulently or with malicious intent initiates the insolvency resolution process or liquidation process shall be punishable with a minimum penalty of one lakh rupees which may extend to one crore rupees.

Further, any person who initiates voluntary liquidation proceedings with the intent to defraud any person shall be punishable with a

FAQs on The Insolvency and Bankruptcy Code 2016

minimum penalty of one lakh rupees which may extend to one crore rupees.

Q.111. What is the punishment for concealment of property by the officers of the corporate debtor?

A.111 Where any officer of the Corporate Debtor, within twelve months immediately preceding the insolvency commencement date,

- (i) wilfully concealed any property or part of such property of the value of Rs 10,000/- or more,
- (ii) fraudulently removed any part of the property of the value of Rs 10,000/- or more,
- (iii) wilfully concealed, destroyed or mutilated or falsified any book or paper
- (iv) wilfully made any false entry in any book or paper affecting or related to the property,
- (v) fraudulently parted with, altered or made any omission in any document affecting or relating to property,
- (vi) wilfully created any security interest over, transferred or disposed of any property unless it was in the ordinary course of business,
- (vii) wilfully concealed the knowledge of the doing by other of any acts mentioned above;

he shall be punishable with imprisonment for a term which shall not be less than three years and may extend to five years or with a fine shall not be less than one lakh rupees but which can extend to one crore rupees or both.

Q.112. What is the punishment for entering in transactions for defrauding creditors?

A.112 Where on or after the insolvency commencement date, an officer of the corporate debtor or the corporate debtor

- (i) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against or where the property of the corporate debtor
- (ii) has concealed or removed any part of the property of the corporate debtor within two months before the date of any

Insolvency Resolution and Liquidation for Corporate Persons

unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor

he shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

Q.113. What shall be treated as misconduct in the course of corporate insolvency resolution process?

A.113 The following acts of an officer of the corporate debtor on or after the commencement of insolvency date will be treated as misconduct:-

- a) When he does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information required by the resolution professional.
- b) When he does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver.
- c) When he does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver.
- d) When he fails to inform their resolution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process.
- e) When he prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor.
- f) When he accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date.

Q.114. What is the punishment for misconduct in the course of corporate insolvency resolution process?

A.114 Where an officer of the corporate debtor is liable for misconduct under Section 70 of the Code he shall be punishable with

FAQs on The Insolvency and Bankruptcy Code 2016

imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees or with both.

Q.115. What is the punishment for contravention of the provisions of the Code by an Insolvency Professional?

A.115 If an insolvency professional deliberately contravenes the provisions of the Code he shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but may extend to five lakhs rupees or with both.

Q.116. What is the punishment for falsification of books of corporate debtor?

A.116 Where on and after the insolvency commencement date any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the corporate debtor with intent to defraud or deceive any person he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees or with both.

Q.117. What is the punishment for willful and material omissions from statements relating to affairs of corporate debtor?

A.117 Where an officer of the corporate debtor makes any material and willful omission in any statement relating to the affairs of the corporate debtor he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees or with both.

Q.118. What is the punishment for making false representations to creditors?

A.118 Where any officer of the corporate debtor makes false representations to the creditors on or after the insolvency commencement date or has made any false representation, or committed any fraud prior to the commencement of insolvency he shall be punishable with imprisonment for a term which shall not be less than three years but may extend to five years or with fine which

Insolvency Resolution and Liquidation for Corporate Persons

shall not be less than one lakh rupees but may extend to one crore rupees or with both.

Q.119. What is the punishment for contravention of moratorium or resolution plan?

A.119 If the *corporate debtor or any of its officer violates the provisions of Section 14 (Moratorium)*, any such officer who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable with imprisonment for a term which shall not be less than three years but may extend to five years or with fine which shall not be less than one lakh rupees but may extend to three lakh rupees, or with both.

If *any creditor violates the provisions of Section 14 (Moratorium)*, any person who knowingly and wilfully authorised or permitted such contravention by a creditor shall be punishable with imprisonment for a term which shall not be less than one year but may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees, or with both.

If *the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under Section 31*, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

Q.120. What is the punishment for furnishing false information in application for initiating insolvency process under Section 7 of the Code?

A.120 Any person who knowingly furnishes information in the application made under Section 7 (Initiation of corporate insolvency resolution process by financial creditor) which is false in material particulars or omits any material fact, such person shall be punishable with fine which shall not be less than one lakh rupees but may extend to one crore rupees.

Q.121. What is the punishment for non-disclosure of dispute or repayment of debt by operational creditor?

A.121 If an operational creditor has wilfully or knowingly concealed in an application under Section 9 the fact that the corporate debtor had

FAQs on The Insolvency and Bankruptcy Code 2016

notified him of a dispute in respect of the unpaid operational debt or the full and final repayment of the unpaid operational debt or has knowingly and wilfully authorised or permitted such concealment, such operational creditor or person shall be punishable with imprisonment for a term which shall not be less than one year but may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees, or with both.

Q.122. What is the punishment for providing false information in application made by corporate debtor?

A.122 If a corporate debtor knowingly provides information in the application under Section 10 which is false in material particulars or omits any material fact or any person who knowingly and wilfully authorised or permitted the furnishing of such information, such corporate debtor or person shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than one lakh rupees but which may extend to one crore rupees, or with both.

Insolvency Resolution and Bankruptcy for Individuals and Firms

Q.123. What is a qualifying debt?

- A.123 As per Section 79(19) of the Code, qualifying debt means amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time and does not include
- (i) an excluded debt,
 - (ii) a debt to the extent it is secured and
 - (iii) any debt which has been incurred three months prior to the date of the application for fresh start process.

Q.124. What shall be treated as excluded debt?

- A.124 As per Section 79(15) of the Code, excluded debt shall mean any -
- (i) liability to pay fine imposed by a Court or Tribunal,
 - (ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation,
 - (iii) liability to pay maintenance to any person under any law for the time being in force,
 - (iv) liability in relation to a student loan and
 - (v) any other debt as may be prescribed.

Q.125. Who shall be referred as an undischarged bankrupt?

- A.125 As per Section 79(22) of the Code, undischarged bankrupt refers to a bankrupt who has not received a discharge order under Section 138.

Q.126. On what grounds can an aggrieved debtor or creditor make an application to the Adjudicating Authority against the action taken by the Resolution Professional under the Fresh Start Process?

FAQs on The Insolvency and Bankruptcy Code 2016

A.126 Section 87 of the Code empowers an aggrieved debtor or creditor to make an application to the Adjudicating Authority against the action taken by the Resolution Professional under the Fresh Start Process on any of the following grounds:-

- a) The resolution professional has not given an opportunity to debtor or creditor to make a representation.
- b) The resolution professional colluded with the other party in arriving at the decision.
- c) The resolution professional has not complied with the requirements laid down in Section 86 of the Code stating objection by creditor.

Q.127. Is there any time limit for which moratorium shall be in force?

A.127 Yes, if the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

Q.128. What is the effect of commencement of moratorium period?

A.128 After the commencement of moratorium period any pending legal action or legal proceeding in respect of any debt shall be deemed to have been stayed and the creditors shall not initiate any legal action or proceedings in respect of any debt.

Q.129. What are the restrictions imposed on a debtor during moratorium period?

A.129 The following restrictions are imposed on debtor during moratorium period u/s 85(3):-

- a) He shall not act as a director of any company, or directly or indirectly take part in or be concerned in promotion, formation or management of the company.
- b) He shall not dispose off or alienate any of the assets.
- c) He shall inform his business partners that he is undergoing a fresh start process.
- d) He shall be required to inform prior to entering into any financial or commercial transaction of such value as maybe

Insolvency Resolution and Bankruptcy for Individuals and Firms

notified by the Central Government, either individually or jointly, that he is undergoing a fresh start process.

- e) He shall disclose the name under which he enters into business transactions, if it is a different name then the one under the application.
- f) He shall not travel outside India except with the permission of the Adjudicating Authority.

Q.130. When can an order passed by the Adjudicating Authority be revoked?

A.130 As per Section 91 of the Code a resolution professional may submit an application to the Adjudicating Authority seeking revocation of an order on the following grounds:-

- a) When due to any change in financial circumstances of the debtor, the debtor is ineligible for a fresh start process.
- b) When the debtor fails to comply with the requirements stated u/s 85(3) during the moratorium period.
- c) When the debtor has acted in a mala fide manner and has wilfully failed to comply with the provisions of the Code.

Q.131. Can a partner of a firm file an application to the Adjudicating Authority as a debtor on behalf of the firm?

A.131 Section 94(2) of the Code states that where a debtor is a partner of a firm, such debtor shall not apply to the Adjudicating Authority in respect of the firm unless all or a majority of partners of the firm file the application jointly.

Q.132. Under what circumstances debtor is not entitled to make an application to the Adjudicating Authority?

A.132 A debtor shall not be entitled to make an application to the Adjudicating Authority in following cases:-

- a) If he is an undischarged bankrupt.
- b) If he is undergoing a fresh start process.
- c) If he is undergoing an insolvency resolution process.
- d) If he is undergoing a bankruptcy process.

Q.133. What are the requirements for making an application by a creditor for initiating an insolvency resolution process?

FAQs on The Insolvency and Bankruptcy Code 2016

A.133 As per Section 95 of the Code a creditor can file an application either himself or jointly with other creditors or through an insolvency professional to the Adjudicating Authority for initiating an insolvency resolution process by submitting an application. This application shall be accompanied with the following details and documents relating to:-

- a) The debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application.
- b) The failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of the demand.
- c) Relevant evidence of such default or non- repayment of debt.

Q.134. Can a resolution professional be replaced?

A.134 Yes, 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.

Q.135. How can a debtor prove that the debt claimed as unpaid by the creditor has already been settled and paid?

A.135 The debtor may prove the repayment of debt claimed as unpaid by a creditor by furnishing:-

- a) Evidence of electronic transfer of the unpaid amount from the bank account of the debtor.
- b) Evidence of encashment of a cheque issued by the debtor.
- c) A signed acknowledgement by the creditor accepting receipt of dues.

However, where the debt for which an application has filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.

Q.136. What is a repayment plan and what details shall it include?

A.136 A Repayment plan means a plan prepared by the debtor in consultation with resolution professional containing a proposal to the committee of creditors for restructuring of his debt or affairs.

Insolvency Resolution and Bankruptcy for Individuals and Firms

A repayment plan shall include the following:-

- a) A justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan.
- b) A provision for payment of fee to the resolution professional and any such other matters as may be specified.

Q.137. How will a repayment plan be approved?

A.137 A repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.

Q.138. When does a repayment plan end prematurely?

A.138 A repayment plan shall be deemed to have come to an end prematurely if it has not been fully implemented in respect of all persons bound by it within the period as mentioned in the repayment plan.

Q.139. Who can file an application for bankruptcy of a debtor?

A.139 An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor.

Q.140. When can one make an application for bankruptcy?

A.140 An application for bankruptcy of a debtor may be made in the following circumstances:-

- a) Where an order has been passed by an Adjudicating Authority under Section 100(4) of the Code, rejecting an application for insolvency resolution process.
- b) Where an order has been passed by an Adjudicating Authority under Section 115(4) of the Code, rejecting the repayment plan.
- c) Where an order has been passed by an Adjudicating Authority under Section 118(3) of the Code, where the repayment plan has not been completely implemented.

Q.141. Is there any time limit for making application for bankruptcy?

A.141 Yes, the application for bankruptcy of a debtor shall be made within a period of three months of the date of the order passed by the Adjudicating Authority.

FAQs on The Insolvency and Bankruptcy Code 2016

Q.142. How will an application for bankruptcy be made?

A.142 The application for bankruptcy shall be made in the following manner and shall be accompanied with following:-

- a) The records of insolvency resolution process.
- b) A copy of the order passed by the Adjudicating Authority granting permission to apply for bankruptcy.
- c) The statement of affairs of the debtor or the details of the debts owed by the debtor to the creditor as on the date of the application for bankruptcy, as the case may be.

Further, in case of application made by the secured creditor it shall also be accompanied with:-

- a) A statement by the creditor having the right to enforce the security that he shall, in the event of an Order of Bankruptcy being made, give up his security for the benefit of all the creditors of the bankrupt.
- b) A statement by the creditor stating that the application for bankruptcy is only in respect of the unsecured part of the debt and an estimated value of the unsecured part of the debt.

Q.143. Can application of bankruptcy be withdrawn?

A.143 An application for bankruptcy by the debtor may be withdrawn with the leave of the Adjudicating Authority and by the creditor with the permission of the Adjudicating Authority.

Q.144. What will be the effect of application of bankruptcy?

A.144 When an application of bankruptcy is filed an interim-moratorium shall commence on the date of the making of the application on all actions against the properties of the debtor in respect of his debts and such moratorium shall cease to have effect on the bankruptcy commencement date.

Q.145. What is the effect of beginning of an interim moratorium?

A.145 After commencement of interim moratorium following shall be the effect:-

- a) Any pending legal action or legal proceeding against any property of the debtor in respect of any of his debts shall be deemed to have been stayed.

Insolvency Resolution and Bankruptcy for Individuals and Firms

- b) The creditors of the debtor shall not be entitled to initiate any legal action or legal proceedings against any property of the debtor in respect of any of his debts.

Q.146. What is the process of Appointment of a Bankruptcy Trustee?

A.146 The Bankruptcy Trustee shall be appointed by the Adjudicating Authority in following manner:-

- a) Where an insolvency professional is proposed as the Bankruptcy Trustee in the application for bankruptcy the Adjudicating Authority shall direct the Board within seven days of receiving the application for bankruptcy to confirm that there are no disciplinary proceedings pending against such professional.

The Board shall confirm or reject the proposed Appointment within ten days of the receipt of the direction.

- b) In other cases, the Adjudicating Authority shall direct the Board within seven days of receiving the application to nominate a Bankruptcy Trustee for the bankruptcy process.

The Board shall nominate a Bankruptcy Trustee within ten days of receiving the direction of the Adjudicating Authority.

Q.147. Is there any time limit for passing an Order of Bankruptcy by the Adjudicating Authority?

A.147 Yes, the Adjudicating Authority shall pass an Order of Bankruptcy within fourteen days of receiving the confirmation or nomination of the Bankruptcy Trustee.

Q.148. What shall be the validity of Order of Bankruptcy?

A.148 The Order of Bankruptcy passed by the Adjudicating Authority shall continue to have effect till the debtor is discharged.

Q.149. What will be the effect of passing of Order of Bankruptcy?

A.149 The following shall be the effect of the passing of the Order of Bankruptcy:-

- a) The estate of the bankrupt shall vest in the Bankruptcy Trustee
- b) The estate of the bankrupt shall be divided among his creditors

FAQs on The Insolvency and Bankruptcy Code 2016

- c) A creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt shall not be permitted to initiate any action against the property of the bankrupt in respect of such debt or commence any suit or other legal proceedings except with the leave of the Adjudicating Authority.

However, the Order of Bankruptcy shall not affect the right of any secured creditor to realise or otherwise deal with his security interest.

Q.150. How are claims invited from creditors by the Adjudicating Authority?

- A.150 The Adjudicating Authority invites the claims from creditors by issuing notices to the creditors, within ten days of the bankruptcy commencement date and also by issuing a public notice inviting claims from creditors.

Q.151. What is the mode of publication of public notice?

- A.151 The notice shall be published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides. It shall also be affixed in the premises of the Adjudicating Authority and shall also be placed on the website of the Adjudicating Authority.

Q.152. What is the time limit for registration of claims by the creditors?

- A.152 The creditors shall register claims with the Bankruptcy Trustee by sending details of the claims to the Bankruptcy Trustee within seven days of the publication of the public notice.

Q.153. How shall a workman or employee of the corporate debtor submit his claim?

- A.153 Workman or employee of the corporate debtor shall submit proof of claim to the interim resolution professional in person or by post or by electronic means in Form D of the Schedule to Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016.

Q.154. How can workmen or employees prove their claims against the corporate debtor?

- A.154 The workmen or employees may prove the existence of dues against the corporate debtor on the basis of:-
- Records available with an information utility

Insolvency Resolution and Bankruptcy for Individuals and Firms

- Proof of employment such as contract of employment for the period for which the dues are claimed
- Evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made
- An order of Court or Tribunal that has adjudicated upon non payment of dues

Q.155. Is there any time limit for submission of repayment plan?

A.155 Yes, the resolution professional shall submit the repayment plan alongwith his report on such plan to the Adjudication Authority within 21 days from the last date of submission of claims by creditors.

Q.156. Who will convene the meeting of creditors in bankruptcy?

A.156 The Bankruptcy Trustee shall be the convener of the meeting of the creditors and will summon the meeting of creditors by issuing a notice for calling a meeting of the creditors within twenty-one days from the date of bankruptcy commencement.

Q.157. What is the process of passing of Discharge Order by the Adjudicating Authority?

A.157 The Bankruptcy Trustee shall apply to the Adjudicating Authority for passing of a Discharge Order on the expiry of one year from the bankruptcy commencement date or within seven (7) days of the approval of the Committee of Creditors of the completion of administration of the estates of the bankrupt.

Q.158. What is the effect of Discharge Order?

A.158 The Discharge Order shall release the bankrupt from all the bankruptcy debt. However, it shall not affect the following:-

- a) It shall not affect the functions of the Bankruptcy Trustee.
- b) It shall not affect the operation of the provisions of Chapters IV and V of Part III.
- c) It shall not release the bankrupt from any debt incurred by means of fraud or breach of trust to which he was a party.
- d) It shall not discharge the bankrupt from any excluded debt.

Q.159. What are the restrictions imposed on a Bankrupt?

A.159 The following restrictions shall be imposed on a Bankrupt:-

FAQs on The Insolvency and Bankruptcy Code 2016

- a) He shall not act as a director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company.
- b) He shall be prohibited from creating any charge on his estate or taking any further debt, except with the previous sanction of the Bankruptcy Trustee.
- c) He shall be required to inform his business partners that he is undergoing a bankruptcy process.
- d) He shall inform all the parties involved in transaction with him that he is undergoing a bankruptcy process.
- e) He shall be incompetent to maintain any legal action or proceedings in relation to the bankruptcy debts, except with the previous sanction of the Adjudicating Authority.
- f) He shall not be permitted to travel overseas without the permission of the Adjudicating Authority.

Q.160. Can restriction imposed on a bankrupt cease to have effect?

A.160 Yes, any restriction imposed on a bankrupt shall cease to have effect if the Order of Bankruptcy against him is modified or recalled under Section 142 or when he is discharged under Section 138.

Q.161. Can the Order of Bankruptcy be modified or recalled by the authority?

A.161 Yes, the Adjudicating Authority may modify or recall an Order of Bankruptcy in following circumstances:-

- a) There exists an error apparent on the face of such order.
- b) The bankruptcy debts and the expenses of the bankruptcy have either been paid for or secured to the satisfaction of the Adjudicating Authority after the making of the Order of Bankruptcy.

Q.162. What will be the effect of modification or recall of order by the authority?

A.162 Where the Adjudicating Authority modifies or recalls the Order of Bankruptcy any sale or other disposition of property, payment made or other things duly done by the Bankruptcy Trustee shall be valid and the property of the bankrupt shall vest in such person as the Adjudicating Authority may appoint or, in default of any such

Insolvency Resolution and Bankruptcy for Individuals and Firms

Appointment, revert to the bankrupt on such terms as the Adjudicating Authority may direct.

Q.163. Can a Bankruptcy Trustee be replaced?

A.163 Yes, a Bankruptcy Trustee can be replaced in the following manner:-

- a) The Committee of Creditors may replace the Bankruptcy Trustee at a meeting, by a vote of seventy-five per cent of voting share and propose to replace the Bankruptcy Trustee appointed with another Bankruptcy Trustee and it may further apply to the Adjudicating Authority for the replacement of the Bankruptcy Trustee.
- b) The Adjudicating Authority shall within Seven (7) days of the receipt of the application direct the Board to recommend for replacement of Bankruptcy Trustee which shall further recommend a Bankruptcy Trustee for replacement against whom no disciplinary proceedings are pending within ten days of the direction of the Adjudicating Authority.
- c) The Adjudicating Authority shall order Appointment of the Bankruptcy Trustee as recommended by the Board within Fourteen (14) days of receiving such recommendation.

Q.164. Under what can a Bankruptcy Trustee resign?

A.164 A Bankruptcy Trustee may resign in following circumstances:-

- a) When he intends to cease practicing as insolvency professional.
- b) When there is conflict of interest or change of personal circumstances which preclude the further discharge of his duties as a Bankruptcy Trustee.

In case of resignation by Bankruptcy Trustee the Adjudicating Authority shall direct the Board for his replacement within seven (7) days of the acceptance of the resignation of the Bankruptcy Trustee.

Q.165. What is the role of the Bankruptcy Trustee?

A.165 The Bankruptcy Trustee shall investigate the affairs of the bankrupt and take necessary steps for realizing the estate of the bankrupt and distribute the estate of the bankrupt.

Q.166. What are the duties of Bankrupt towards the Bankruptcy Trustee?

FAQs on The Insolvency and Bankruptcy Code 2016

A.166 The bankrupt shall assist the Bankruptcy Trustee in carrying out his functions and shall-

- a) give the information of his affairs to the Bankruptcy Trustee.
- b) attend the Bankruptcy Trustee at such times as may be required
- c) give notice to the Bankruptcy Trustee of acquisition or devolution of any property upon the bankrupt and any increase in the income of the bankrupt.

Also, as per Section 156 of the Code, the bankrupt, his banker or agent or any other person having possession of any property, books, papers or other records shall deliver the said property and documents to the Bankruptcy Trustee. Any failure to give possession of such property or documents shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five lakh rupees, or with both.

Q.167. What are the rights of Bankruptcy Trustee?

A.167 As per Section 151 of the Code, the Bankruptcy Trustee has right to hold property, make contracts, sue and be sued, enter into engagements in respect of the estate of the bankrupt, employ persons to assist him, execute any power of attorney, deed or other instrument and do any other act which is necessary or expedient for the purposes of or in connection with the exercise of his rights.

Q.168. Does the Bankruptcy Trustee have any rights towards estate of the bankrupt?

A.168 The Bankruptcy Trustee has right to sell any part of the estate of the bankrupt, exercise the right of redemption in respect of any property which is pledged or hypothecated, exercise the right to transfer the property to the same extent as the bankrupt might have exercised it, if he had not become bankrupt and deal with any property comprised in the estate of the bankrupt to which the bankrupt is beneficially entitled in the same manner as he might have dealt with it.

Q.169. Which are the acts that require approval from creditors prior to being conducted by the Bankruptcy Trustee?

A.169 The Bankruptcy Trustee shall require approval of the Committee of Creditors for the following acts:-

- a) To carry on any business of the bankrupt as far as may be necessary for winding it up beneficially.

Insolvency Resolution and Bankruptcy for Individuals and Firms

- b) To bring, institute or defend any legal action or proceedings relating to the property comprised in the estate of the bankrupt.
- c) To accept as consideration for the sale of any property a sum of money due at a future time subject to certain stipulations such as security.
- d) To mortgage or pledge any property for the purpose of raising money for the payment of the debts of the bankrupt.
- e) Where any right, option or other power forms part of the estate of the bankrupt, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of such right, option or power.
- f) To refer to arbitration or compromise on such terms as may be agreed, any debts subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.
- g) To make compromise or other arrangement as may be considered expedient, with the creditors.
- h) To make compromise or other arrangement as he may deem expedient with respect to any claim arising out of or incidental to the bankrupt's estate.
- i) To appoint the bankrupt to supervise the management of the estate of the bankrupt, carry on his business for the benefit of his creditors and to assist the Bankruptcy Trustee in administering the estate of the bankrupt.

Q.170. What shall be included in the estate of the Bankrupt?

A.170 As per Section 155 of the Code, the estate of the bankrupt shall include all property belonging to or vested in the bankrupt at the bankruptcy commencement date or by virtue of any of the provisions of this Chapter is comprised in the estate.

The estate of the bankrupt shall not include-

- a) Excluded assets
- b) Property held by the bankrupt on trust for any other person.
- c) All sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund.

FAQs on The Insolvency and Bankruptcy Code 2016

Q.171. What will be the effect of any disposition of property by the debtor?

A.171 Any disposition of property made by the debtor during the period between the date of filing of the application for bankruptcy and the bankruptcy commencement date shall be void.

Q.172. Can the Bankruptcy Trustee claim the after acquired property of bankrupt?

A.172 The Bankruptcy Trustee shall be entitled to claim after-acquired property of the bankrupt by giving due notice to the bankrupt. However, such right shall not be exercised in case of excluded assets or any property which is acquired by or devolves upon the bankrupt after a Discharge Order is passed under Section 138.

Q.173. What is onerous property?

A.173 An onerous property means and includes any unprofitable contract and any other which is unsaleable or not readily saleable, or is such that it may give rise to a claim.

Q.174. Can a Bankruptcy Trustee disclaim any onerous property?

A.174 Yes, the Bankruptcy Trustee may disclaim any onerous property forming part of the estate of the bankrupt by giving notice to the bankrupt or any person interested in the onerous property. However, such notice shall not be necessary in the following cases:-

- a) If a person interested in the onerous property has applied in writing to the Bankruptcy Trustee or his predecessor requiring him to decide whether the onerous property should be disclaimed or not.
- b) If a decision under clause (a) has not been taken by the Bankruptcy Trustee within seven days of receipt of the notice.

Q.175. Who can make an application to challenge against disclaimed property?

A.175 The following persons may make an application challenging the disclaimer of property:-

- a) Any person who claims an interest in the disclaimed property.
- b) Any person who is under any liability in respect of the disclaimed property.

Insolvency Resolution and Bankruptcy for Individuals and Firms

Where the disclaimed property is a dwelling house, any person who on the date of application for bankruptcy was in occupation of or entitled to occupy that dwelling house.

Q.176. What will amount to undervalued transactions?

A.176 A bankrupt is said to have entered into an undervalued transaction with any person if-

- a) He makes a gift to that person.
- b) No consideration has been received by that person from the bankrupt.
- c) It is in consideration of marriage.
- d) The value of which, in money or money's worth, is significantly less than the value in money or money's worth of the consideration provided by the bankrupt.

Q.177. What will be the consequence of an undervalued transaction entered between a bankrupt and any other person?

A.177 Where an undervalued transaction has been entered between a bankrupt and any other person, during the period of two years ending on the filing of the application for bankruptcy and thereby caused bankruptcy process to be triggered. The Bankruptcy Trustee may apply to the Adjudicating Authority for an order declaring an undervalued transaction void and requiring any property transferred as a part of an undervalued transaction to be vested with the Bankruptcy Trustee as a part of the estate of the bankrupt.

Q.178. What will be the consequence where a bankrupt gives preference to any person in a transaction?

A.178 Where a bankrupt has given a preference to any person in a transaction during the period of two years ending on the filing of the application for bankruptcy and thereby caused bankruptcy process to be triggered. The Bankruptcy Trustee may apply to the Adjudicating Authority for an order declaring the preference transaction void and requiring any property transferred as a part of the preference transaction to be vested with the Bankruptcy Trustee as a part of the estate of the bankrupt.

Q.179. What will be the fate of extortionate credit transactions entered into by a bankrupt?

FAQs on The Insolvency and Bankruptcy Code 2016

A.179 The Adjudicating Authority may make an order in respect of extortionate credit transactions to which the bankrupt is or has been a party. Such transactions should have been entered into by the bankrupt during the period of two years ending on the bankruptcy commencement date. The Bankruptcy Trustee may apply to the Adjudicating Authority for an order to set aside the whole or part of any debt created by the transaction or to vary the terms of the transaction or vary the terms on which any security for the purposes of the transaction is held. It may further require any person who has been paid by the bankrupt under any transaction, to pay a sum to the Bankruptcy Trustee or to surrender to the Bankruptcy Trustee any property of the bankrupt held as security for the purposes of the transaction.

Q.180. What are the rights of a party to a contract entered into with a bankrupt before the bankruptcy commencement date?

A.180 Where a contract has been entered into by the bankrupt with a person before the bankruptcy commencement date party to a contract, other than the bankrupt may apply to the Adjudicating Authority for an order discharging the obligations of the applicant or the bankrupt under the contract and payment of damages by the party or the bankrupt.

Q.181. Will death of a bankrupt affect the proceedings being initiated?

A.181 The death of bankrupt shall not affect the bankruptcy proceedings and the bankruptcy proceedings shall continue as if he were alive.

Q.182. What shall be acceptable as a proof of debt of the creditor?

A.182 The proof of debt shall require the creditor to give full particulars of debt and security if any and also include the date on which the debt was contracted and the value at which that person assesses it. The following may be proof of debt-

- a) In case the creditor is a decree holder against the bankrupt, a copy of the decree shall be a valid proof of debt.
- b) Where a debt bears interest, that interest shall be provable as part of the debt except in so far as it is owed in respect of any period after the bankruptcy commencement date.
- c) Where a secured creditor realizes his security, he may produce proof of the balance due to him.

Insolvency Resolution and Bankruptcy for Individuals and Firms

- d) Where a secured creditor surrenders his security to the Bankruptcy Trustee for the general benefit of the creditors, he may produce proof of his whole claim.

Q.183. Can a Bankruptcy Trustee distribute interim dividend?

- A.183 When the Bankruptcy Trustee has sufficient funds in his hand he may declare and distribute interim dividend among the creditors in respect of the bankruptcy debts which they have respectively proved.

Q.184. Can a Bankruptcy Trustee distribute final dividend?

- A.184 The Bankruptcy Trustee may declare and distribute final dividend among the creditors who have proved their debts, without regard to the claims of any other persons after he has realized the entire estate of the bankrupt or so much of it as could be realized in his opinion.

Q.185. What shall be the consequences if a creditor fails to prove his debt?

- A.185 A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb the distribution of that dividend or any other dividend declared before his debt was proved. However, after he has proved his debt, he shall be entitled to be paid dividend(s) out of any money for the time being available for the payment of any further dividend.

Q.186. What shall be the order of priority of payments?

- A.186 The following debts shall be paid in priority to all other debts-
- a) Firstly, the costs and expenses incurred by the Bankruptcy Trustee for the bankruptcy process shall be paid in full.
 - b) Secondly, the workmen's dues for the period of twenty-four (24) months preceding the bankruptcy commencement date and debts owed to secured creditors shall be paid.
 - c) Thirdly, wages and any unpaid dues owed to employees, other than workmen, of the bankrupt for the period of twelve months preceding the bankruptcy commencement date shall be paid.
 - d) Fourthly, any amount due to the Central Government and the State Government including the amount to be received on account of Consolidated Fund of India and the

FAQs on The Insolvency and Bankruptcy Code 2016

Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date shall be paid.

- e) Lastly, all other debts and dues owed by the bankrupt including unsecured debts shall be paid.

Q.187. Who shall be the Adjudicating Authority for insolvency of individuals and partnership firms?

A.187 The Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the Debt Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily reside or carry on the business or personally work for gain.

Further, the matters of appeal shall be handled by the Debt Recovery Appellate Tribunal.

Q.188. Does Civil Court have jurisdiction in matters relating to insolvency of individuals and partnership firms?

A.188 Civil Court does not have jurisdiction to entertain any suit or proceedings or grant injunction or any other relief in respect of any matter on which the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal has jurisdiction under this Code.

Q.189. Who shall be the appellate authority for insolvency of individuals and partnership firms?

A.189 An appeal from an order of the Debt Recovery Tribunal under this Code shall be filed before the Debt Recovery Appellate Tribunal. The appeal shall be filed within thirty (30) days from the date of impugned order.

Q.190. Can an appeal be filed against the Order of Debt Recovery Appellate Tribunal?

A.190 Yes, the order of the Debt Recovery Appellate Tribunal is appealable before the Supreme Court. It shall lie only on a question of law and shall be filed within 45 days from the date of impugned order.

Q.191. What is the punishment for furnishing false information by debtor or creditor?

A.191 A debtor or creditor who provides information which is false in any material particulars to the resolution professional shall be punishable

Insolvency Resolution and Bankruptcy for Individuals and Firms

with imprisonment for a term which may extend to one year, or with fine which may extend to five lakh rupees, or with both.

Q.192. What shall be the consequence where a creditor dishonestly accepts money for voting in favour of repayment plan?

A.192 Where a creditor dishonestly accepts any money, property or security from the debtor for a promise to vote in favour of the repayment plan, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three times the amount or equivalent to such money, property or security accepted by such creditor, as the case may be, or with both. However, where such amount is not quantifiable, the total amount of fine shall not exceed five lakh rupees.

Q.193. What is the punishment for contraventions by insolvency professional?

A.193 An insolvency professional, who deliberately contravenes the provisions of the Code, shall be punishable with imprisonment for a term which may extend to six months, or with fine, which shall not be less than one lakh rupees, but may extend to five lakhs rupees, or with both.

Q.194. What is the punishment for false information and concealment by the bankrupt?

A.194 A bankrupt who knowingly makes a false representation or wilfully omits or conceals any material information while making an application for bankruptcy under Section 122 or while providing any information during the bankruptcy process shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five lakh rupees, or with both.

Q.195. What is the punishment for withholding or destroying or altering etc. of books of accounts by bankrupt?

A.195 A bankrupt who has fraudulently failed to provide or deliberately withheld the production of, destroyed, falsified or altered, his books of account, financial information and other records under his custody or control shall be punishable with imprisonment which may extend to one year, or with fine, which may extend to five lakh rupees, or with both.

Q.196. What is the punishment for loss of property by the Bankrupt?

FAQs on The Insolvency and Bankruptcy Code 2016

A.196 Where a bankrupt has failed to account for any loss incurred of any substantial part of his property comprised in the estate of the bankrupt from the date which is twelve months before the filing of the bankruptcy application, without any reasonable cause or satisfactory explanation. He shall be punishable with imprisonment for a term which may extend to two years, or with fine, which may extend to three times of the value of the loss, or with both. However, where such loss is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees.

Q.197. What is the punishment for absconding Bankrupt?

A.197 Where a bankrupt has absconded or attempts to absconds or leaves, or attempts to leave the country without delivering the possession of any property which he is required to deliver to the Bankruptcy Trustee under Section 156, after the bankruptcy commencement date, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to five lakh rupees, or with both.

Q.198. What are the punishments for violations of the Code by Bankruptcy Trustee?

A.198 The Bankruptcy Trustee who has fraudulently misapplied, retained or accounted for any money or property comprised in the estate of the bankrupt or has wilfully acted in a manner that the estate of the bankrupt has suffered any loss in consequence of breach of any duty of the Bankruptcy Trustee under Section 149, shall be punishable with imprisonment for a term which may extend to three years, or with fine, which shall not be less than three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention, or with both. However, where the loss incurred is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees.

Regulation of Insolvency Professionals, Agencies and Information Utilities

Q.199. When was the Insolvency and Bankruptcy Board of India established?

A.199 The Insolvency and Bankruptcy Board of India has been established on 1st October, 2016, vide notification no. SO 3110(E) dated 01.10.2016.

Q.200. Where is the Head Office of Insolvency and Bankruptcy Board of India situated?

A.200 The Head Office of Insolvency and Bankruptcy Board of India is situated in the National Capital i.e., New Delhi.

Q.201. What is the composition of the Insolvency and Bankruptcy Board of India?

A.201 The Insolvency and Bankruptcy Board of India is constituted u/s 189 of the Insolvency and Bankruptcy Code, 2016. It shall consist of following members who shall be appointed by the Central Government:-

- (i) Chairperson
- (ii) 3 members from amongst the officers of Central Government one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, ex officio
- (iii) 1 member to be nominated by the Reserve Bank of India, ex officio
- (iv) 5 other members to be nominated by the Central Government, of whom at least three shall be the whole-time members

Q.202. What is the term of office of Chairperson of Insolvency and Bankruptcy Board of India?

FAQs on The Insolvency and Bankruptcy Code 2016

A.202 The term of office of the Chairperson shall be 5 years or till they attain age of 65 years, whichever is earlier.

Q.203. What are the functions of the Insolvency and Bankruptcy Board of India?

A.203 The functions of the Board have been entailed in Section 196 of the Code. The major function of the board is to exercise regulatory measures on insolvency professionals, insolvency professional agencies and information utilities.

Q.204. What are the grounds for removal of a member of Insolvency and Bankruptcy Board of India?

A.204 As per Section 190 of Insolvency and Bankruptcy Code, 2016 the Central Government has the power to remove a member of Insolvency And Bankruptcy Board Of India on following grounds:-

- a) If he is an undischarged bankrupt;
- b) If he has become physically or mentally incapable of acting as a member;
- c) If he has been convicted of an offence, which in the opinion of the Central Government involves moral turpitude;
- d) If he has, so abused his position as to render his continuation in office detrimental to the public interest.

Q.205. Is there any requirement for disclosure of interest by member of the Insolvency and Bankruptcy Board of India?

A.205 Yes, Section 193 of the Insolvency and Bankruptcy Code, 2016 mandates any member of Insolvency and Bankruptcy Board of India, who being a director of a company has any direct or indirect pecuniary interest in any matter under consideration at a meeting of the Board, to disclose the nature of his interest. Further, such member shall not take any part in any deliberation or decision of the Board with respect to that matter.

Q.206. Who shall make the Model Bye-Laws of an Insolvency Professional Agency?

A.206 The Insolvency and Bankruptcy Board of India has the power to make Model Bye-Laws to be adopted by the Insolvency Professional Agencies.

Q.207. Who has the power to condone delay in performance of acts under the Insolvency and Bankruptcy Code, 2016?

Insolvency Resolution and Bankruptcy for Individuals and Firms

A.207 The relevant Adjudicating Authority i.e., National Company Law Tribunal or Debt Recovery Tribunal, as the case may be, has the power to condone any delay in performing an act under the Insolvency and Bankruptcy Code, 2016.

Q.208. Explain the eligibility requirements to register as an Insolvency Professional Agency?

A.208 As per regulation 3 of Insolvency And Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016 following are the eligibility requirements for registration as an insolvency professional agencies:

- a) It shall be registered as a company under Section 8 of the Companies Act, 2013.
- b) Its sole object shall be to carry on the functions of an insolvency professional agency.
- c) It has bye-laws and governance structure in accordance with the Insolvency and Bankruptcy Board of India (Model Bye-laws and Governing Board of Insolvency Professional Agencies), 2016.
- d) It shall have minimum net worth of ten crore rupees.
- e) It shall have a paid up share capital of five crore rupees.
- f) It shall not be under control of person(s) resident outside India
- g) The person's resident outside India does not hold more than 49% of its share capital.
- h) It shall not be subsidiary of a body corporate through more than one layer.
- i) It itself, its promoters, its directors and persons holding more than 10% of its share capital shall be fit and proper persons.

Q.209. What is the procedure for registration as an Insolvency Professional Agency?

A.209 The company eligible for registration shall make an application to the Insolvency and Bankruptcy Board of India in Form A, as prescribed, along with non-refundable application fee of ten lakh rupees.

FAQs on The Insolvency and Bankruptcy Code 2016

Q.210. What is the term of validity of registration as an Insolvency Professional Agency?

A.210 As per Regulation 5(3) of Insolvency And Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016 the registration granted by Insolvency And Bankruptcy Board Of India to Insolvency Professional Agency shall be valid for a period of 5 years.

Q.211. Can an Insolvency Professional Agency apply for renewal of certificate of registration?

A.211 As per Regulation 4(2) of Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016, an insolvency professional agency may apply for renewal of registration six months before the expiry of such registration in Form A, as may be prescribed, along with non-refundable fees of five lakh rupees.

Q.212. What are the consequences if application for renewal is rejected Insolvency and Bankruptcy Board of India?

A.212 As per Regulation 6(4) of Insolvency And Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016 upon rejection of application of renewal the insolvency professional agency shall be required to discharge its pending obligations and shall be allowed to continue its functions till such time so as to enable the enrolment of its members with another insolvency professional agency.

Q.213. Under what circumstances the Board may cancel or suspend the registration of an Insolvency Professional Agency?

A.213 As per Section 201(5) of the Code, the Board may cancel or suspend the registration of an Insolvency Professional Agency in following circumstances:-

- a) When registration is obtained by making a false statement or misrepresentation or by any other unlawful means.
- b) When Agency has failed to comply with the requirements of the regulations made by the Board or bye-laws made by the agency.
- c) When it has contravened any of the provisions of the Act or rules or regulations made thereunder.

Q.214. Can an Insolvency Professional Agency appeal against the order of the Board?

Insolvency Resolution and Bankruptcy for Individuals and Firms

A.214 Yes, as per Section 202 of the Code read with Regulation 9 of Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016, any insolvency professional agency aggrieved by the order of the Board may prefer an appeal to National Company Law Appellate Tribunal within 30 days of receipt of the impugned order.

Q.215. What are the functions of an Insolvency Professional Agency?

A.215 An Insolvency Professional Agency shall perform following functions:

- a) Grant membership to persons who fulfill all requirements set out in its bye-laws on payment of membership fee.
- b) Lay down standards of professional conduct for its members.
- c) Monitor the performance of its members.
- d) Safeguard the rights, privileges and interests of insolvency professionals who are its members.
- e) Suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws.
- f) Redress the grievances of consumers against insolvency professionals who are its members.
- g) Publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations laid down by the Board.

Q.216. What is the process to be followed by Insolvency Professional Agency for enrolment of a Professional Member?

A.216 The following is the process for enrolment of a Professional Member by Insolvency Professional Agency:-

- Application by individual with fees
- Examination of application by the Agency
- Agency may require applicant to submit additional documents
- Agency may reject the application after giving opportunity of being heard to the applicant
- Agency may accept the application and grant certificate of membership

FAQs on The Insolvency and Bankruptcy Code 2016

Q.217. What is the procedure for rejection of application by Insolvency Professional Agency?

A.217 The Agency while rejecting an application shall:-

- Communicate the reasons for such rejection within 30 days of receipt of application.
- It shall give time to the applicant for removing the discrepancies or deficiencies or presenting additional documents or clarifications.

Q.218. What is the remedy for the applicant aggrieved by the decision of Insolvency Professional Agency?

A.218 The applicant aggrieved of a decision of the Agency rejecting his application may prefer an appeal to the Membership Committee within 30 days of receipt of such decision.

Q.219. Which are the Committees to be constituted by Insolvency Professional Agency?

A.219 The Agency may form the following committees:-

- Advisory Committee
- Membership Committee
- Monitoring Committee
- Grievance Redressal Committee
- Disciplinary Committee

Q.220. What is the scope of functions of Advisory Committee?

A.220 The Advisory Committee may advise the Agency on matters pertaining to:-

- Development of profession
- Standards of professional and ethical conduct
- Best practices in respect of insolvency resolution, liquidation and bankruptcy

Q.221. What are the grounds for disciplinary proceedings against the Professional Member?

A.221 The Agency may initiate disciplinary proceedings against Professional Members in following cases:-

Insolvency Resolution and Bankruptcy for Individuals and Firms

- On the basis of reference made by the Grievance Redressal Committee
- On the basis of monitoring of Professional Members
- On the directions given by the Board or any court of law
- The Agency may initiate proceedings *suo moto*, on the basis of any information received by it

Q.222. Who can become an Insolvency Professional?

A.222 As per Section 206 and 207 read with Regulation 5 of Insolvency And Bankruptcy Board of India (Insolvency Professional) Regulations, 2016, an individual can become an insolvency professional by seeking requisite registration with an insolvency professional agency.

Q.223. Who is eligible to register as an Insolvency Professional?

A.223 The Insolvency And Bankruptcy Board of India has prescribed following persons to be eligible for registration as an Insolvency Professional:-

- a) An individual who has passed the National Insolvency Examination.
- b) An individual who has passed the Limited Insolvency Examination, and has 15 years of experience in management, after he received a Bachelor's degree from a university established or recognized by law.
- c) An individual who has passed the Limited Insolvency Examination and has 10 years of experience as a Chartered Accountant, Company Secretary, Cost Accountant or an Advocate.

Q.224. What is the role of Information Utilities?

A.224 The information utilities shall act as a regulated information agency which shall electronically record, maintain and provide access of financial information to the persons as may be specified e.g., creditors, Adjudicating Authority and other persons having interest in the information and provide following services, referred to as core services:

- a) Accept electronic submission of financial information.
- b) Safe and accurate recording of financial information.

FAQs on The Insolvency and Bankruptcy Code 2016

- c) Authenticating and verifying the financial information submitted by a person.
- d) Providing access to information stored with the information utility to persons as may be specified.

Q.225. What are the grounds on which registration of an Information Utility can be cancelled?

A.225 As per Section 210 of the Code, the Board may order for suspension or cancellation of the certificate of registration granted to an information utility on any of the following grounds:-

- a) The Registration was obtained by making a false statement or misrepresentation or any other unlawful means.
- b) The Information utility has failed to comply with the requirements of the regulations made by the Board.
- c) The Information utility has contravened any of the provisions of the Act or the rules or the regulations made thereunder, or any other ground as may be specified by regulations.

Q.226. Can an Information Utility appeal against the order of the Board?

A.226 Yes, any Information Utility which is aggrieved by the order of the Board under Section 210 may prefer an appeal to the National Company Law Appellate Tribunal.

Q.227. Does Information Utility require constituting governing board?

A.227 Yes, the Board requires every information utility to set up a governing board for ensuring that an information utility takes into account the objectives sought to be achieved by the Code.

Q.228. What are the obligations of Information Utility?

A.228 The information Utility shall provide such services as may be specified by the Board including core services and for such purposes it shall perform the following:-

- a) It shall create and store financial information in a universally accessible format.
- b) It shall accept electronic submissions of financial information from persons who are under obligations to submit financial information under sub-section (1) of Section 215.

Insolvency Resolution and Bankruptcy for Individuals and Firms

- c) It shall accept electronic submissions of financial information from persons who intend to submit such information.
- d) It shall meet such minimum service quality standards as may be specified by regulations.
- e) It shall get the information received from various persons authenticated by all concerned parties before storing such information.
- f) It shall provide access to the financial information stored by it to any person who intends to access such information.
- g) It shall publish such statistical information as may be specified by regulations.
- h) It shall have inter-operability with other information utilities.

Q.229. What is the procedure for submission of financial information to Information Utility?

- A.229 Any person may submit financial information to the information utility or access the information from the information utility on payment of requisite fee in such form and manner as may be specified by regulations.

Q.230. Can a person share the financial information submitted to Information Utility?

- A.230 No, any person who submits financial information to an information utility shall not provide such information to any other person except to such extent and under such circumstances as may be specified.

Q.231. Can a person modify the information submitted to Information Utility?

- A.231 Yes, a person may modify or update or rectify error in the financial information submitted to Information Utility by stating reasons in the manner as may be prescribed.

Q.232. What is the procedure to raise complaint against an Insolvency professional agency or its member or an information utility?

- A.232 Any person aggrieved by the functioning of an insolvency professional agency or its member or an information utility may file a complaint to the Board. The complaint shall be subjected to inspection and investigation by an Investigating Authority appointed

FAQs on The Insolvency and Bankruptcy Code 2016

by the Board and upon completion of investigation the Board may issue show cause notice to such person or agency and shall submit the report of the investigating authority to the disciplinary committee which may pass such order as it deems fit.

Q.233. What are the powers of disciplinary committee?

A.233 The disciplinary committee may suspend or cancel the registration of the insolvency professional or, insolvency professional agency or information utility as the case may be. It may further impose penalty which shall be three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention, or three times the amount of the unlawful gain made on account of such contravention, whichever is higher. However, where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed more than one crore rupees.

Q.234. Is there any provision for restitution of loss suffered on account of any activity in contravention of this Code?

A.234 Yes, the Board may direct the person who has made unlawful gain or averted loss by indulging in any activity in contravention of this Code to disgorge an amount equivalent to such unlawful gain or aversion of loss and may further provide restitution to the person who suffered loss on account of any contravention.

However, restitution shall be made only where person who suffered such loss is identifiable and the loss so suffered is directly attributable to such person.

Q.235. How can the funds of the Board be utilized?

A.235 The Fund shall be applied for meeting the salaries, allowances and other remuneration of the members, officers and other employees of the Board, the expenses of the Board in the discharge of its functions under section 196 and such other expenses on objects and for purposes authorised by this Code.

Q.236. Who shall audit the accounts of the Board?

A.236 The accounts of the Board shall be audited by the Comptroller and Auditor-General of India.

Part V

Miscellaneous

Q.237. Can any person contribute to and withdraw from Insolvency and Bankruptcy Fund?

A.237 Yes, a person can contribute to Insolvency and Bankruptcy Fund voluntarily as per the provisions of Section 224(3) of the Code. If insolvency proceedings are initiated against such person, he can withdraw funds not exceeding the amount contributed by him for making payments to workmen, protecting the assets of such person, meeting the incidental costs during the proceedings etc.

Q.238. What are the circumstances under which Central Government may supersede the Board?

A.238 The Central Government may supersede the Board at any time in the following circumstances:-

- a) When the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Code on account of grave emergency.
- b) When the Board has persistently not complied with any direction issued by the Central Government under this Code or in the discharge of the functions and duties imposed on it by or under the provisions of this Code and as a result of such non-compliance the financial position of the Board or the administration of the Board has deteriorated.
- c) In any other circumstances which render it necessary in the public interest to supersede the Board.

Q.239. Is there any time period for which the Central Government may supersede the Board?

A.239 Yes, the Central Government may supersede the Board for a period not exceeding six months.

Q.240. Do Civil Courts have power to grant relief under the Code?

A.240 No, Civil Court shall not have jurisdiction to pass any order in respect of any matter in which the Adjudicating Authority is empowered under this Code shall be granted by any court and further Civil Court shall not grant injunction in respect of any action

FAQs on The Insolvency and Bankruptcy Code 2016

taken or to be taken in pursuance of any order passed by such Adjudicating Authority under this Code.

Q.241. To whom shall the Board place its Annual Report?

A.241 As per Section 229 of the Code, the Board shall prepare in each financial year its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the Central Government. Further, a copy of the report shall be laid, as soon as may be after it is received, before each House of Parliament.

Q.242. Who shall take cognizance of offences under the Code?

A.242 The offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

Q.243. When can the Special Court take cognizance of offence under the Code?

A.243 Special Court shall take cognizance of an offence punishable under this Act only upon receipt of complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

Q.244. Who is the Appellate Authority under the Code?

A.244 The High Court shall be the appellate authority for adjudging on the appeals and deciding the applications for revisions from the decisions of the Special Court under Section 236 of the Code.

Q.245. Who has the power to make rules under the Code?

A.245 The Central government shall have the power to make rules for carrying out the provisions of this Code.

Q.246. Who has the power to make regulations under the Code?

A.246 The Board shall have the power to make regulations to carry out the provisions of this Code and such regulations shall be consistent with this Code and the rules made thereunder.

Q.247. Which law has been repealed by enactment of the Code?

A.247 The Code has repealed the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. Section 243-not yet notified.

Q.248. If Voluntary liquidation of Corporates is regulated by the Insolvency and Bankruptcy Code, what is the status of the provisions of the Companies Act 2013 in relation to this aspect?

Insolvency Resolution and Bankruptcy for Individuals and Firms

A.248 The aspects relating to Revival and Rehabilitation of Sick Companies as well as voluntary winding up have been omitted from the Companies Act and will only be governed by the provisions of the Code.

Q.249. How does the Code affect the proceedings pending under Acts repealed by the Code?

A.249 The proceedings pending under and relating to the Presidency Towns Insolvency Act 1909, and the Provincial Insolvency Act 1920 immediately before the commencement of this Code shall continue to be governed under the aforementioned Acts and be heard and disposed of by the concerned Courts or Tribunals, as if the aforementioned Acts have not been repealed.

Q.250. As the Sick Industrial Companies (Special Provisions) Act 1985 has been repealed, what will be the effect of enforcement of Code on proceedings pending under Sick Industrial Companies (Special Provisions) Repeal Act, 2003?

A.250 As per Section 252 of the Code read with Section 4(b) of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 as made effective on 01.12.2016, any reference pending before Board for Industrial and Financial Reconstruction(BIFR) or appeal made before Appellate Authority stands abated on 01.12.2016.

The Company in respect of which such appeal or reference etc., stands abated may make reference to National Company Law Tribunal (NCLT) under Insolvency and Bankruptcy Code, 2016 within 180 days from commencement of Code.

Annexure A

Table of Amendments from Section 245 to 255 of Insolvency and Bankruptcy Code, 2016

Schedule	Change
First	In section 41, clause (a) shall be omitted Compulsory dissolution.— A firm is dissolved,— (a) by the adjudication of all the partners or of all the partners but one as insolvent, or
Second	In section 11E, for the words, figures and brackets "and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) ", the words, figures and brackets "the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) and the Insolvency and Bankruptcy Code, 2016" shall be substituted.
Third	In sub-section (6) of section 178, after the words "for the time being in force", the words and figures "except the provisions of the Insolvency and Bankruptcy Code, 2016" shall be inserted.
Fourth	In section 142A, for the words and figures "and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002)", the words and figures " the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2016" shall be substituted.
Fifth	1. In the long title, after the words "financial institutions", the words ", insolvency resolution and bankruptcy of individuals and partnership firms" shall be inserted, namely:— 2. In section 1,— (a) in sub-section (1), for the words "Due to Banks and Financial Institutions" the words "and Bankruptcy" shall be substituted;

Annexure-A

	(b) in sub-section (4), for the words " The provision of this Code", the words "Save as otherwise provided, the provisions of this Code", shall be substituted. 3. In section 3, after sub-section (1), the following sub-section shall be inserted, namely:— “(1A) The Central Government shall by notification establish such number of Debts Recovery Tribunals and its benches as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under the Insolvency and Bankruptcy Code, 2016.”. 4. In section 8, after sub-section (1), the following section shall be inserted, namely:— “(1A) The Central Government shall, by notification, establish such number of Debt Recovery Appellate Tribunals to exercise jurisdiction, powers and authority to entertain appeal against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016.”. 5. In section 17,— (i) after sub-section (1), the following sub-section shall be inserted, namely:— "(1A) Without prejudice to sub-section (1),— (a) the Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain and decide applications under Part III of Insolvency and Bankruptcy Code, 2016. (b) the Tribunal shall have circuit sittings in all district headquarters." (ii) after sub-section (2), the following sub-section shall be inserted, namely:— “(2A) Without prejudice to sub-section (2), the Appellate Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016.”. 6. After section 19, the following section shall be inserted, namely:— "19A. The application made to Tribunal for exercising the
--	---

FAQs on The Insolvency and Bankruptcy Code 2016

	powers of the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 shall be dealt with in the manner as provided under that Code." 7. In section 20, in sub-section (4) , after the word, brackets and figure "sub-section (1) ", the words, brackets and figures "or under sub-section (1) of section 181 of the Insolvency and Bankruptcy Code, 2016" shall be inserted.
Sixth	In section 88, for the words and figures "and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002)", the words and figures "the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2016" shall be substituted.
Seventh	In section 13, in sub-section (9), for the words "In the case of", the words and figures "Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of" shall be substituted.
Eight	In section 4, for sub-clause (b), the following sub-clause shall be substituted, namely— "(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies(Special Provisions) Act,1985 (1 of 1986) shall stand abated: Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016: Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry stands abated under this clause."
Ninth	In section 23, in sub-sections (4), (5) and (6), after the words

Annexure-A

	and figures "the Banking Regulation Act, 1949 (10 of 1949)" "the Companies Act, 2013 (18 of 2013)", the words and figures "or the Insolvency and Bankruptcy Code, 2016" shall be inserted. In section 23A, in sub-section (3), after the words and figures "the Companies Act, 2013", the words and figures "or the Insolvency and Bankruptcy Code, 2016" shall be inserted.
Tenth	In section 64, Clause (c) shall be omitted. Circumstances in which limited liability partnership may be wound up by Tribunal .-A limited liability partnership may be wound up by the Tribunal,- e) if the limited liability partnership is unable to pay its debts;
Eleventh	In section 2,— (a) for clause (23), the following clause shall be substituted, namely:— "(23) "Company Liquidator" means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act;" (b) after clause (94) , the following clause shall be inserted, namely:— "(94A) "winding up" means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable." 2. In section 8, in sub-section (9), for the words "the Rehabilitation and Insolvency Fund formed under section 269", the words "Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016" shall be substituted. 3. In section 66, in sub-section (8), for the words, brackets and figures " is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim," the words and figures "commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim," shall be substituted. 4. In sections 77, in sub-section (3), after the words "the liquidator", the words and figures "appointed under this Act or the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted.

FAQs on The Insolvency and Bankruptcy Code 2016

	5. In section 117 in sub-section (3), in clause (f), for the word and figures "section 304", the words and figures "section 59 of the Insolvency and Bankruptcy Code, 2016" shall be substituted. 6. In section 224, in sub-section (2), after the words "wound up under this Act", the words and figures "or under the Insolvency and Bankruptcy Code, 2016" shall be inserted. 6A. In section 230,— (a) in sub-section (1), after the word "liquidator", the words "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted; (b) in sub-section (6), after the word "on the liquidator", the words "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted; 7. In section 249, in sub-section (1), for clause (e), the following clause shall be substituted, namely:— “(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.”. 8. Sections 253 to 269 shall be omitted. 9. For section 270, the following section shall be substituted, namely:— "270. The provisions of Part I shall apply to the winding up of a company by the Tribunal under this Act." 10. For section 271, the following section shall be substituted, namely:— "271. A company may, on a petition under section 272, be wound up by the Tribunal,— (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal; (b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality; (c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a
--	--

Annexure-A

	fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up; (d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or (e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up." 12. For section 272, the following section shall be substituted, namely:— "272. (1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by— (a) the company; (b) any contributory or contributories; (c) all or any of the persons specified in clauses (a) and (b); (d) the Registrar; (e) any person authorised by the Central Government in that behalf; or (f) in a case falling under clause (b) of section 271, by the Central Government or a State Government. (2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder. (3) The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section:
--	---

FAQs on The Insolvency and Bankruptcy Code 2016

	Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition: Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations. (4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed. (5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition." 13. In section 275,— (a) for sub-section (2), the following sub-section shall be substituted, namely:— "(2) The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016;" (b) sub-section (4) shall be omitted. 14. For section 280, the following section shall be substituted, namely:— "280. The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,— (a) any suit or proceeding by or against the company; (b) any claim made by or against the company, including claims by or against any of its branches in India; (c) any application made under section 233; (d) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company, whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has
--	--

Annexure-A

	been submitted, or is submitted, before or after the order for the winding up of the company is made.". 15. Section 289 shall be omitted. 15A. The heading "Part II.—Voluntary winding up" shall be omitted. 16. Sections 304 to 323 shall be omitted. 17. Section 325 shall be omitted. 18. For section 326, the following section shall be substituted, namely:— "326. (1) In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts:— (a) workmen's dues; and (b) where a secured creditor has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security (if payable under the law), whichever is less, <i>pari passu</i> with the workmen's dues: Provided that in case of the winding up of a company, the sums referred to in sub-clauses (i) and (ii) of clause (b) of the <i>Explanation</i>, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed. (2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that sub-section shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions. <i>Explanation.</i>—For the purposes of this section, and section 327— (a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial
--	--

FAQs on The Insolvency and Bankruptcy Code 2016

	Disputes Act, 1947 (14 of 1947); (b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:— (i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947); (ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution; (iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (19 of 1923), rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company; (iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company; (c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors 19. In section 327,— (a) after sub-section (6), the following sub-section shall be inserted, namely:— " (7) Sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy
--	--

Annexure-A

	Code, 2016."; (b) in the <i>Explanation</i>, for clause (c), the following clause shall be substituted, namely:— "(c) the expression "relevant date" means in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date under the Insolvency and Bankruptcy Code, 2016;". 20. For section 329, the following section shall be substituted, namely:— "329. Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal under this Act shall be void against the Company Liquidator.". 21. For section 334, the following section shall be substituted, namely:— "334. In the case of a winding up by the Tribunal, any disposition of the property including actionable claims, of the company and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up shall, unless the Tribunal otherwise orders, be void.". 22. In section 336, in sub-section (1) , in the opening paragraph, for the words "whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up", the words "by the Tribunal under this Act or which is subsequently ordered to be wound up by the Tribunal under this Act" shall be substituted. 23. In section 337, for the words "or which subsequently passes a resolution for voluntary winding up," the words "under this Act", shall be substituted. 24. In section 342, sub-sections (2), (3) and (4) shall be
--	--

FAQs on The Insolvency and Bankruptcy Code 2016

	omitted. 25. In section 343, for sub-section (1) , the following sub-section shall be substituted, namely— "(1) The Company Liquidator may, with the sanction of the Tribunal, when the company is being wound up by the Tribunal,— (i) pay any class of creditors in full; (ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or (iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof." 26. In section 347, for sub-section (1), the following sub-section shall be substituted, namely— "(1) When the affairs of a company have been completely wound up and it is about to be dissolved, the books and papers of such company and those of the Company Liquidator may be disposed of in such manner as the Tribunal directs." 27. In section 348, for sub-section (1), the following sub-section shall be substituted, namely— "(1) If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing, either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up
--	--

Annexure-A

	is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, with the Tribunal: Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply;". 28. For section 357, the following section shall be substituted, namely:— "357. The winding up of a company by the Tribunal under this Act shall be deemed to commence at the time of the presentation of the petition for the winding up." 29. In section 370, in the proviso, after the words "obtained for the winding up the company", the words "in accordance with the provisions of this Act or of the Insolvency and Bankruptcy Code, 2016" shall be inserted. 30. In section 372, after the words "The provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted. 31. In section 419, for sub-section (4), the following sub-section shall be substituted, namely:— "(4) The Central Government shall, by notification, establish such number of benches of the Tribunal, as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under Part II of the Insolvency and Bankruptcy Code, 2016." 32. In section 424,— (i) in sub-section (1), after the words, "other provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016" shall be inserted; (ii) in sub-section (2), after the words, "under this Act", the words "or under the Insolvency and Bankruptcy Code, 2016" shall be inserted. 33. In section 429, for sub-section (1), the following sub-section shall be substituted, namely:— "(1) The Tribunal may, in any proceedings for winding up
--	--

FAQs on The Insolvency and Bankruptcy Code 2016

	of a company under this Act or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,— (a) take possession of such property, books of account or other documents; and (b) cause the same to be entrusted to the Tribunal or other persons authorised by it." 34. For section 434, the following section shall be substituted, namely:— "434. (1) On such date as may be notified by the Central Government in this behalf,— (a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act; (b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order: Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and (c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration,
--	---

Annexure-A

	compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer: Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government. (2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section." 35. In section 468, for sub-section (2), the following sub-section shall be substituted, namely:— " (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:— (i) as to the mode of proceedings to be held for winding up of a company by the Tribunal under this Act; (ii) for the holding of meetings of creditors and members in connection with proceedings under section 230; (iii) for giving effect to the provisions of this Act as to the reduction of the capital; (iv) generally for all applications to be made to the Tribunal under the provisions of this Act; (v) the holding and conducting of meetings to ascertain the wishes of creditors and contributories; (vi) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets; (vii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator; (viii) the making of calls; and (ix) the fixing of a time within which debts and claims shall be proved."
--	---

FAQs on The Insolvency and Bankruptcy Code 2016

	36. In Schedule V, in Part II, in section III, for clause (b), the following clause shall be substituted, namely:— "(b) where the company— (i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or (ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction for a period of five years from the date of sanction of scheme of revival, or (iii) is a company in relation to which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval, it may pay remuneration up to two times the amount permissible under section II."
--	---

List of Sections of The Insolvency and Bankruptcy Code, 2016 notified till 1st April, 2017

Parts & Chapters	Sections Notified
Part I - Preliminary	Section 2- Application clause (a) to (d) (except with regard to voluntary liquidation or Bankruptcy) (Notified on 30th November, 2016) Section 3- Definitions Section 3(1)- Board (Notified on 19th August, 2016) Section 3(2)- Bench (Notified on 1st November, 2016) Section 3(3)-Bye- Laws (Notified on 1st November, 2016) Section 3(4)-Charge (Notified on 1st November, 2016) Section 3(5)- Chairperson (Notified on 19th August, 2016) Section 3(6)- Claim (Notified on 1st November, 2016) Section 3(7)- Corporate Person (Notified on 1st November, 2016) Section 3(8)- Corporate Debtor (Notified on 1st November, 2016) Section 3(9)- Core Services (Notified on 1st November, 2016) Section 3(10)- Creditor (Notified on 1st November, 2016)

FAQs on The Insolvency and Bankruptcy Code 2016

	Section 3(11)- Debt (Notified on 1st November, 2016) Section 3(12)- Default (Notified on 1st November, 2016) Section 3(13)- Financial Information (Notified on 1st November, 2016) Section 3(14)- Financial Institution (Notified on 1st November, 2016) Section 3(15)- Financial Product (Notified on 1st November, 2016) Section 3(16)- Financial Service (Notified on 1st November, 2016) Section 3(17)-Financial Service Provider (Notified on 1st November, 2016) Section 3(18)- Financial Sector Regulator (Notified on 1st November, 2016) Section 3(19)- Insolvency Professional (Notified on 1st November, 2016) Section 3(20)- Insolvency Professional Agency (Notified on 1st November, 2016) Section 3(21)- Information Utility (Notified on 1st November, 2016) Section 3(22)- Notification (Notified on 19th August, 2016) Section 3(23)-Person (Notified on 1st November, 2016) Section 3(24)-Person Resident in India (Notified on 1st November, 2016) Section 3(25)- Person Resident outside India (Notified on 1st November, 2016) Section 3(26)-Prescribed (Notified on 19th August, 2016) Section 3(27)-Property (Notified on 1st November, 2016)
--	---

Annexure-B

	Section 3(28)-Regulations (Notified on 19th August, 2016) Section 3(29)- Schedule (Notified on 1st November, 2016) Section 3(30)- Secured Creditor (Notified on 1st November, 2016) Section 3(31)- Security Interest (Notified on 1st November, 2016) Section 3(32)- Specified (Notified on 1st November, 2016) Section 3(33)- Transaction (Notified on 1st November, 2016) Section 3(34)- Transfer (Notified on 1st November, 2016) Section 3(35)- Transfer of Property (Notified on 1st November, 2016) Section 3(36)- Workman (Notified on 1st November, 2016) Section 3(37)-Words & Expressions (Notified on 19th August, 2016)
Part II- Insolvency Resolution and Liquidation for Corporate Persons	Chapter I- Preliminary Section 4- Application of this Part (Notified on 30th November, 2016) Section 5- Definitions (Notified on 30th November, 2016) Chapter II- Corporate Insolvency Resolution Process Section 6- Persons who may initiate corporate insolvency resolution process (Notified on 30th November, 2016) Section 7- Initiation of corporate insolvency resolution process by financial creditor (Notified on 30th November, 2016)

FAQs on The Insolvency and Bankruptcy Code 2016

	Section 8- Insolvency resolution by operational creditor (Notified on 30th November, 2016) Section 9- Application for initiation of corporate insolvency resolution process by operational creditor (Notified on 30th November, 2016) Section 10- Initiation of corporate insolvency resolution process by corporate applicant (Notified on 30th November, 2016) Section 11- Persons not entitled to make application (Notified on 30th November, 2016) Section 12- Time-limit for completion of insolvency resolution process (Notified on 30th November, 2016) Section 13- Declaration of moratorium and public announcement (Notified on 30th November, 2016) Section 14- Moratorium (Notified on 30th November, 2016) Section 15- Public announcement of corporate insolvency resolution process (Notified on 30th November, 2016) Section 16- Appointment and tenure of interim resolution professional (Notified on 30th November, 2016) Section 17- Management of affairs of corporate debtor by interim resolution professional (Notified on 30th November, 2016) Section 18- Duties of interim resolution professional (Notified on 30th November, 2016) Section 19- Personnel to extend cooperation to interim resolution professional (Notified on 30th November, 2016)
--	--

Annexure-B

	Section 20- Management of operations of corporate debtor as going concern (Notified on 30th November, 2016) Section 21- Committee of creditors (Notified on 30th November, 2016) Section 22- Appointment of resolution professional (Notified on 30th November, 2016) Section 23- Resolution professional to conduct corporate insolvency resolution process (Notified on 30th November, 2016) Section 24- Meeting of committee of creditors (Notified on 30th November, 2016) Section 25- Duties of resolution professional (Notified on 30th November, 2016) Section 26- Application for avoidance of transactions not to affect proceedings (Notified on 30th November, 2016) Section 27- Replacement of resolution professional by committee of creditors (Notified on 30th November, 2016) Section 28- Approval of committee of creditors for certain actions (Notified on 30th November, 2016) Section 29- Preparation of information memorandum (Notified on 30th November, 2016) Section 30- Submission of resolution plan (Notified on 30th November, 2016) Section 31- Approval of resolution plan (Notified on 30th November, 2016) Section 32- Appeal (Notified on 30th November, 2016)
--	---

FAQs on The Insolvency and Bankruptcy Code 2016

	Chapter III- Liquidation Process Section 33- Initiation of Liquidation (Notified on 9th December 2016) Section 34- Appointment of liquidator and fee to be paid (Notified on 9th December 2016) Section 35- Powers and duties of liquidator (Notified on 9th December 2016) Section 36- Liquidation estate (Notified on 9th December 2016) Section 37- Powers of liquidator to access information (Notified on 9th December 2016) Section 38- Consolidation of claims (Notified on 9th December 2016) Section 39- Verification of claims (Notified on 9th December 2016) Section 40- Admission or rejection of claims (Notified on 9th December 2016) Section 41- Determination of Valuation of Claims (Notified on 9th December 2016) Section 42- Appeal against the decision of liquidator (Notified on 9th December 2016) Section 43- Preferential transactions and relevant time (Notified on 9th December 2016) Section 44- Orders in case of preferential transactions (Notified on 9th December 2016) Section 45- Avoidance of undervalued transactions (Notified on 9th December 2016) Section 46- Relevant period for avoidable transactions (Notified on 9th December 2016) Section 47- Application by creditor in cases of undervalued transactions (Notified on 9th December 2016)
--	--

Annexure-B

	Section 48- Order in cases of undervalued transactions (Notified on 9th December 2016) Section 49- Transactions defrauding creditors (Notified on 9th December 2016) Section 50- Extortionate credit transactions (Notified on 9th December 2016) Section 51- Orders of Adjudicating Authority in respect of extortionate credit transactions (Notified on 9th December 2016) Section 52- Secured creditor in liquidation proceedings (Notified on 9th December 2016) Section 53- Distribution of assets (Notified on 9th December 2016) Section 54- Dissolution of corporate debtor (Notified on 9th December 2016) Chapter V- Voluntary Liquidation of Corporate Persons Section 59- Voluntary liquidation of corporate persons (Notified on 1st April, 2017) Chapter VI- Adjudicating Authority for Corporate Persons Section 60- Adjudicating Authority for corporate persons (Notified on 30th November, 2016) Section 61- Appeals and Appellate Authority (Notified on 30th November, 2016) Section 62- Appeal to Supreme Court (Notified on 30th November, 2016) Section 63- Civil court not to have jurisdiction (Notified on 30th November, 2016) Section 64- Expeditious disposal of applications (Notified on 30th November, 2016)
--	---

FAQs on The Insolvency and Bankruptcy Code 2016

	Section 65- Fraudulent or malicious initiation of proceedings (Notified on 30th November, 2016) Section 66- Fraudulent trading or wrongful trading (Notified on 30th November, 2016) Section 67- Proceedings under section 66 (Notified on 30th November, 2016) Section 68- Punishment for concealment of property (Notified on 30th November, 2016) Section 69- Punishment for transactions defrauding creditors (Notified on 30th November, 2016) Section 70- Punishment for misconduct in course of corporate insolvency resolution process (Notified on 30th November, 2016) Section 71- Punishment for falsification of books of corporate debtor (Notified on 30th November, 2016) Section 72- Punishment for willful and material omissions from statements relating to affairs of corporate debtor (Notified on 30th November, 2016) Section 73- Punishment for false representations to creditors (Notified on 30th November, 2016) Section 74- Punishment for contravention of moratorium or the resolution plan (Notified on 30th November, 2016) Section 75- Punishment for false information furnished in application (Notified on 30th November, 2016) Section 76- Punishment for nondisclosure of dispute or repayment of debt by operational creditor (Notified on 30th November, 2016) Section 77- Punishment for providing false information in application made by corporate debtor (Notified on 30th November, 2016)
--	--

Annexure-B

Part IV- Regulation of Insolvency Professionals, Agencies and Utilities	Chapter I- The Insolvency and Bankruptcy Board of India Section 188- Establishment and incorporation of Board (Notified on 5th August, 2016) Section 189- Constitution of Board (Notified on 5th August, 2016, 2016) Section 190- Removal of member from office (Notified on 5th August, 2016) Section 191- Powers of Chairperson (Notified on 5th August, 2016) Section 192- Meetings of Board (Notified on 5th August, 2016) Section 193- Member not to participate in meetings in certain cases (Notified on 5th August, 2016) Section 194- Vacancies, etc., not to invalidate proceedings of Board, Officers and employees of Board. (Notified on 5th August, 2016) Section 196- Powers and Functions of Board (Notified on 1st November, 2016) Section 197- Constitution of advisory committee, executive committee or other committee (Notified on 1st November, 2016) Chapter II- Powers and Functions of the Board Section 198- Condonation of Delay (Notified on 30th November, 2016) Chapter III- Insolvency Professional Agencies Section 199- No person to function as insolvency professional agency without valid certificate of registration (Notified on 15th November, 2016) Section 200- Principles governing registration of insolvency professional agency (Notified on 15th November, 2016)
--	--

FAQs on The Insolvency and Bankruptcy Code 2016

	Section 201- Registration of insolvency professional agency (Notified on 15th November, 2016) Section 202- Appeal to National Company Law Appellate Tribunal (Notified on 15th November, 2016) Section 203- Governing Board of insolvency professional agency (Notified on 15th November, 2016) Section 204- Functions of insolvency professional agencies (Notified on 15th November, 2016) Section 205- Insolvency professional agencies to make bye-laws (Notified on 15th November, 2016) Chapter IV- Insolvency Professionals Section 206- Enrolled and registered persons to act as insolvency professionals (Notified on 15th November, 2016) Section 207- Registration of insolvency professionals (Notified on 15th November, 2016) Section 208- Functions and obligations of insolvency professionals. sub-section (1) i. clause (c); ii. clause (e) sub-section (2) (Notified on 15th November 2016) Chapter V- Information Utilities Section 209- No person to function as information utility without certificate of registration (Notified on 1st April, 2017) Section 210- Registration of information utility (Notified on 1st April, 2017)
--	--

Annexure-B

	Section 211- Appeal to National Company Law Tribunal (Notified on 1st April, 2017) Section 212- Governing Board of Information Utility (Notified on 1st April, 2017) Section 213- Core Services, etc, of information utilities (Notified on 1st April, 2017) Section 214- Obligations of Information utilities (Notified on 1st April, 2017) Section 215- Procedure for submission, etc., of financial information (Notified on 1st April, 2017) Section 216(1)- Rights and Obligations of persons submitting financial information. (Notified on 1st April, 2017) Chapter VI- Inspection and Investigation Section 217- Complaints against insolvency professional agency or its member or information utility (Notified on 15th November, 2016) Section 218- Investigation of insolvency professional agency or its member or information utility (Notified on 15th November, 2016) Section 219- Show cause notice to insolvency professional agency or its member or information utility (Notified on 15th November, 2016) Section 220- Appointment of disciplinary committee (Notified on 15th November, 2016) Chapter VII- Finance, Accounts and Audit Section 221- Grants by Central Government (Notified on 19th August, 2016) Section 222- Board's Fund (Notified on 19th August, 2016) Section 223- Accounts and Audit (Notified on 1st November, 2016)
--	--

FAQs on The Insolvency and Bankruptcy Code 2016

Part V- Miscellaneous	Section 225- Power of Central Government to issue directions (Notified on 19th August, 2016) Section 226- Power of Central Government to supersede Board (Notified on 19th August, 2016) Section 230- Delegation (Notified on 19th August, 2016) Section 231-Bar of Jurisdiction (Notified on 30th November, 2016) Section 232- Members, officers and employees of Board to the public servants (Notified on 19th August, 2016) Section 233- Protection of action taken in good faith (Notified on 19th August, 2016) Section 234- Arrangements with foreign countries (Notified on 1st April, 2017) Section 235- Letter of request to a country outside India in certain cases (Notified on 1st April, 2017) Section 236- Trial of offences by Special Court (Notified on 30th November, 2016) Section 237-Appeal and Revision (Notified on 30th November, 2016) Section 238- Provisions of this Code to override other laws (Notified on 30th November, 2016) Section 239- Power to make rules. sub-section (1) and clause (zd) of sub-section (2) (Notified on 19th August, 2016) Clause (ze) to (zh) and (zl) to (zm) (Notified on 1st November, 2016) sub-section (2) i. clause (a) to (f) (Notified on 30th November, 2016) Section 240- Power to make regulations sub-section (1) and clause (zt) of sub-section (2)
---	--

Annexure-B

	(Notified on 19th August, 2016) Clause (a) to (zm) and (zu) to (zzzc) (Notified on 1st November, 2016) Section 241- Rules and regulations to be laid before Parliament (Notified on 19th August, 2016) Section 242- Power to remove difficulties (Notified on 19th August, 2016) Section 244-Transitional provisions (Notified on 1st November, 2016) Section 246- Amendments of Act 1 of 1944 (Notified on 1st November, 2016) Section 247- Amendments of Act 43 of 1961 (Notified on 1st November, 2016) Section 248- Amendments of Act 52 of 1962 (Notified on 1st November, 2016) Section 250- Amendments of Act 32 of 1994 (Notified on 1st November, 2016) Section 251- Amendments of Act 54 of 2002 (Notified on 15th November, 2016) Section 252- Amendments of Act 1 of 2004 (Notified on 1st November, 2016) Section 253- Amendments of Act 51 of 2007 (Notified on 15th November, 2016) Section 254- Amendments of Act 6 of 2009 (Notified on 15th November, 2016) Section 255- Amendments of Act 18 of 2013 (Notified on 15th November, 2016)
--	---

Annexure C

**List of Sections of the Insolvency
and Bankruptcy Code, 2016 not yet
notified till 1st April 2017**

Sl. No.	Section No.	Particulars
1.	Section 1	Short title, extent and commencement.
2.	Section 55	Fast track corporation insolvency resolution process.
3.	Section 56	Time period for completion of fast track corporate insolvency resolution process.
4.	Section 57	Manner of initiating fast track corporate insolvency resolution process.
5.	Section 58	Applicability of Chapter II to this Chapter.
6.	Section 78	Application.
7.	Section 79	Definitions.
8.	Section 80	Eligibility for making an application.
9.	Section 81	Application for fresh start order.
10.	Section 82	Appointment of resolution professional.
11.	Section 83	Examination of application by resolution professional.
12.	Section 84	Admission or rejection of application by Adjudicating Authority.
13.	Section 85	Effect of admission of application.
14.	Section 86	Objections by creditor and their examination by resolution professional.
15.	Section 87	Application against decision of resolution professional.
16.	Section 88	General duties of debtor.
17.	Section 89	Replacement of resolution professional.
18.	Section 90	Directions for compliances of restrictions, etc.
19.	Section 91	Revocation of order admitting application.
20.	Section 92	Discharge order.
21.	Section 93	Standard of conduct.

Annexure-C

22.	Section 94	Application by debtor to initiate insolvency resolution process.
23.	Section 95	Application by creditor to initiate insolvency resolution process.
24.	Section 96	Interim-moratorium.
25.	Section 97	Appointment of resolution professional.
26.	Section 98	Replacement of resolution professional.
27.	Section 99	Submission of report by resolution professional.
28.	Section 100	Admission or rejection of application.
29.	Section 101	Moratorium.
30.	Section 102	Public notice and claims from creditors.
31.	Section 103	Resistering of claims by creditors.
32.	Section 104	Preparation of list of creditors.
33.	Section 105	Repayment plan.
34.	Section 106	Report of resolution professional on repayment plan.
35.	Section 107	Summoning of meeting of creditors.
36.	Section 108	Conduct of meeting of creditors.
37.	Section 109	Voting rights in meeting of creditors.
38.	Section 110	Rights of secured creditors in relation to repayment plan.
39.	Section 111	Approval of repayment plan by creditors.
40.	Section 112	Report of meeting of creditors on repayment plan.
41.	Section 113	Notice of decisions taken at meeting of creditors.
42.	Section 114	Order of Adjudicating Authority on repayment plan.
43.	Section 115	Effect of order of Adjudicating Authority on repayment plan.
44.	Section 116	Implementation and supervision of repayment plan.
45.	Section 117	Completion of repayment plan.
46.	Section 118	Repayment plan coming to end prematurely.
47.	Section 119	Discharge order.
48.	Section 120	Standard of conduct.
49.	Section 121	Application for bankruptcy.
50.	Section 122	Application by debtor.
51.	Section 123	Application by creditor.
52.	Section 124	Effect of application.

FAQs on The Insolvency and Bankruptcy Code 2016

53.	Section 125	Appointment of insolvency professional as bankruptcy trustee.
54.	Section 126	Bankruptcy order.
55.	Section 127	Validity of bankruptcy order.
56.	Section 128	Effect of bankruptcy order.
57.	Section 129	Statement of financial position.
58.	Section 130	Public notice inviting claims from creditors.
59.	Section 131	Registration of claims.
60.	Section 132	Preparation of list of creditors.
61.	Section 133	Summoning of meeting of creditors.
62.	Section 134	Conduct of meeting of creditors.
63.	Section 135	Voting rights of creditors.
64.	Section 136	Administration and distribution of estate of bankrupt.
65.	Section 137	Completion of administration.
66.	Section 138	Discharge order.
67.	Section 139	Effect of discharge.
68.	Section 140	Disqualification of bankrupt.
69.	Section 141	Restrictions on bankrupt.
70.	Section 142	Modification or recall of bankruptcy order.
71.	Section 143	Standard of conduct.
72.	Section 144	Fees of bankruptcy trustee.
73.	Section 145	Replacement of bankruptcy trustee.
74.	Section 146	Resignation by bankruptcy trustee.
75.	Section 147	Vacancy in office of bankruptcy trustee.
76.	Section 148	Release of bankruptcy trustee.
77.	Section 149	Functions of bankruptcy trustee.
78.	Section 150	Duties of bankrupt towards bankruptcy trustee.
79.	Section 151	Rights of bankruptcy trustee.
80.	Section 152	General powers of bankruptcy trustee.
81.	Section 153	Approval of creditors for certain acts.
82.	Section 154	Vesting of estate of bankrupt in bankruptcy trustee.
83.	Section 155	Estate of bankrupt.
84.	Section 156	Delivery of property and documents to bankruptcy trustee.
85.	Section 157	Acquisition of control by bankruptcy trustee.

Annexure-C

86.	Section 158	Restrictions on disposition of property.
87.	Section 159	After-acquired property of bankrupt.
88.	Section 160	Onerous property of bankrupt.
89.	Section 161	Notice to disclaim onerous property.
90.	Section 162	Disclaimer of leaseholds.
91.	Section 163	Challenge against disclaimed property.
92.	Section 164	Undervalued transactions.
93.	Section 165	Preference transactions.
94.	Section 166	Effect of order.
95.	Section 167	Extortionate credit transactions.
96.	Section 168	Obligations under contracts.
97.	Section 169	Continuance of proceedings on death of bankrupt.
98.	Section 170	Administration of estate of deceased bankrupt.
99.	Section 171	Proof of debt.
100.	Section 172	Proof of debt by secured creditors.
101.	Section 173	Mutual credit and set-off.
102.	Section 174	Distribution of interim dividend.
103.	Section 175	Distribution of property.
104.	Section 176	Final dividend.
105.	Section 177	Claims of creditors.
106.	Section 178	Priority of payment of debts.
107.	Section 179	Adjudicating Authority for individuals and partnership firms.
108.	Section 180	Civil court not to have jurisdiction.
109.	Section 181	Appeal to Debt Recovery Appellate Tribunal.
110.	Section 182	Appeal to Supreme Court.
111.	Section 183	Expeditious disposal of applications.
112.	Section 184	Punishment for false information, etc., by creditor in insolvency resolution process.
113.	Section 185	Punishment for contravention of provisions.
114.	Section 186	Punishment for false information, concealment, etc., by bankrupt.
115.	Section 187	Punishment for certain actions.

FAQs on The Insolvency and Bankruptcy Code 2016

116.	Section 195	Power to designate financial sector regulator.
117.	Section 216	Rights and obligations of persons submitting financial information (sub-section 2)
118.	Section 224	Insolvency and Bankruptcy Fund.
119.	Section 227	Power of Central Government to notify financial service providers, etc.
120.	Section 228	Budget.
121.	Section 229	Annual report.
122.	Section 243	Repeal of certain enactments and savings.
123.	Section 245	Amendments of Act 9 of 1932.
124.	Section 249	Amendments of Act 51 of 1993.

ISBN : 978-81-8441-865-1



www.icaai.org



April/2017/P2090 (New)