भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

Knowledge Partner

The Institute of Chartered Accountants of India

Frequently Asked Questions on The Insolvency and Bankruptcy Code, 2016

(Revised January 2022 Edition)

Committee on Insolvency & Bankruptcy Code
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Message

The insolvency space is extremely fertile, especially in a growing market economy, like India. It acquires richness, depth and maturity with every transaction. The insolvency regime in India is no exception. The Insolvency and Bankruptcy Code, 2016 (Code) has witnessed six legislative interventions since its enactment, to strengthen the processes and further its objectives, in sync with the emerging market realities. There have also been dozens of amendments to the regulatory framework to smoothen the implementation of various processes under the Code. The Adjudicating Authority, the Appellate Authority, High Courts, and the Supreme Court have all delivered numerous landmark orders and judgments explaining several conceptual issues, settling contentious issues and resolving grey areas. The insolvency as a discipline of knowledge is now well established in India.

A key pillar of the insolvency ecosystem is the regulator, namely, the Insolvency and Bankruptcy Board of India (IBBI). The regulator is responsible for professionalizing the insolvency services through regulation and development of a comprehensive ecosystem of service providers, including, insolvency professionals, insolvency professional agencies, information utilities, registered valuers, and registered valuers' organizations. It has been the endeavor of IBBI to ensure that the service providers are fit-and-proper persons, academically qualified and technically competent, and also have the necessary motivation and drive to uphold the highest standards of ethics and professionalism. In pursuance of this responsibility, the IBBI has been undertaking several activities to build the capacity of service providers, and monitoring their conduct and performance closely.

IBBI was set upon 1st October, 2016 with a mandate to commence the corporate insolvency proceedings by 1st December,2016, and in just sixty days, it had to create the entire ecosystem comprising Insolvency Professionals Agencies (IPAs), Insolvency Professionals (IPs), regulations for processes, and so on. IBBI could successfully deliver on this mandate with the active support and cooperation of the Institute of Chartered Accountants of India, which promoted IIIPI to join the insolvency ecosystem, as the first IPA, in November, 2016. IIIPI has achieved a leadership position in terms of membership and number of assignments handled by its members. IIIPI, apart from being a wholly owned subsidiary of ICAI, is the largest IPA with over 60% share of membership across IPAs.

The contribution of ICAI towards building the Indian economy and its steady growth is well established and known to all. In successful implementation of IBC, ICAI has played crucial role.

I congratulate the IBC Committee of the Institute of Chartered Accountants of India for engaging with IBBI for this joint initiative, in bringing out this revised handbook on Frequently Asked Questions (FAQs) on the Insolvency and Bankruptcy Code, 2016, appropriately supplemented with Case Laws. The handbook is expected to provide useful guidance to the members of the profession and other stakeholders for clear interpretation and understanding of the insolvency law. The inclusion of section wise jurisprudence in this revised edition will surely add to the utility of the publication.

I compliment Mr. Nihar Jambusaria, President ICAI; Dr. Debashis Mitra, Vice President, ICAI; CA. Durgesh Kabra, Chairman, Committee on IBC of ICAI; and CA. Prakash Sharma, Vice Chairman, Committee on IBC of ICAI , Ms S. Rita, Secretary, Committee on Insolvency and Bankruptcy Code and the authors who supported ICAI in preparation of this Handbook. My compliments to the team IBBI comprising Mr. Amit Pradhan, ED, Mr. Rajesh Kumar Gupta, CGM and Mr. Raghav Maheshwari, AM for their support in bringing out this publication.

I sincerely believe that the insolvency professionals, prospective insolvency professionals and other stakeholders including researchers and students of insolvency and bankruptcy would find this Handbook useful.

Dr. Navrang Saini
Chairperson
IBBI

Date: 1st February, 2022

Foreword to the Third Edition

The enactment of The Insolvency and Bankruptcy Code, 2016, marked the start of the new legislative framework for providing time bound insolvency and bankruptcy process of corporates, LLPs, partnership firms, and individuals. Over the years, the Code with its effective institutional set-up comprising of Insolvency Professionals (IPs), Insolvency Professional Agencies (IPAs), Information Utilities (IU), and Adjudicating Authority (AA) under the overall supervision and regulation of Insolvency and Bankruptcy Board of India (IBBI) has built a strong and comprehensive insolvency regime in the country.

To address the issues arising from the functioning of the Code and to adapt to the emerging development, various amendments in the Code so far have been brought out. The Regulations under the Code were amended from time to time by the IBBI to take care of the implementation issues. Also, several Judicial Pronouncements were made under the Code, which are important for professionals and other stakeholders to understand the various aspects of the law.

Considering the importance of the new codified legislation, the Institute in the year 2017 brought out the publication- "Frequently Asked Questions on The Insolvency and Bankruptcy Code, 2016" and the publication was revised in the year 2019. Since then, several developments have taken place through Amendment Acts, Amendments in Regulations, Judicial Pronouncements etc.

I am very happy that the Committee on Insolvency & Bankruptcy Code of ICAI in collaboration with IBBI is bringing out this revised, updated and enriched version of the publication- **"Frequently Asked Questions on The Insolvency and Bankruptcy Code, 2016"** supplemented with appropriate case laws to help in understanding the different provisions under the Code and also know the practical implications in day to day professional life.

I would like to sincerely thank Insolvency and Bankruptcy Board of India for being a Knowledge Partner in this initiative of ICAI and provide inputs relating to section- wise case laws which could be incorporated in the publication. I also take this opportunity to thank Dr. Navrang Saini, Chairperson and Shri Sudhaker Shukla, Whole Time Member, Insolvency and Bankruptcy Board of India for their kind support in this endeavour.

I commend the entire Committee and extend my sincere appreciation to CA. Durgesh Kumar Kabra, Chairman, and CA. Prakash Sharma, Vice-Chairman, Committee on Insolvency & Bankruptcy Code in bringing out the revision of this important publication.

I am sure that this revised publication would be of great use to the members, especially to insolvency professionals and other stakeholders.

Date: 31st January, 2022
Place: New Delhi

CA. Nihar N. Jambusaria
President ICAI

Preface to the Third Edition

The Insolvency and Bankruptcy Code, 2016 is considered as one of the major historic reforms being brought in the country's economy, laying the foundation for a market led and time bound insolvency resolution framework. The stakeholders began to appreciate the provisions under the Code and started to opt for the resolution process as envisioned. It created a win- win situation for both the Creditors and the Debtors as one of the main objectives of the Code is balancing the interest of all the stakeholders.

Since the enactment, the Code has been continuously evolving and developments have been taking place regularly for effective implementation of the legislation. The amendments that followed have further strengthened and stabilized the processes. The Regulators are constantly looking for new initiatives to improve the effectiveness of the Code.

To facilitate in clear understanding of the various aspects of the Code, The Institute of Chartered Accountants of India issued the publication - "Frequently Asked Questions on The Insolvency and Bankruptcy Code, 2016" in the year 2017 and revised the publication in the year 2019. Subsequent to that several amendments have taken place in the Code as well as in the Regulations thereunder.

At this backdrop, the Committee on Insolvency & Bankruptcy Code of ICAI in collaboration with Insolvency and Bankruptcy Board of India is bringing out this revised edition of the publication- **"Frequently Asked Questions on The Insolvency and Bankruptcy Code, 2016"** with appropriate case laws included so as to help in understanding the provisions under the Code clearly and also know about the practical aspects.

In this important initiative of ICAI, Insolvency and Bankruptcy Board of India (IBBI), which regulates insolvency profession as well as insolvency processes, has acted as Knowledge Partner and provided inputs relating to section- wise case laws which are suitably added in the publication.

We take this opportunity in thanking the President of ICAI, CA. Nihar N. Jambusaria and Vice President of ICAI, CA. (Dr) Debashis Mitra for their support and encouragement in bringing out this publication.

We express our gratitude to Insolvency and Bankruptcy Board of India for collaborating with ICAI in bringing out this revised publication and in this regard,

we would like to wholeheartedly thank Dr. Navrang Saini, Chairperson, IBBI and Shri Sudhaker Shukla, Whole Time Member, IBBI. We would also like to sincerely thank Shri Amit Pradhan, Executive Director, IBBI, Shri Rajesh Kumar Gupta, Chief General Manager, IBBI and CA. Raghav Maheshwari, Assistant Manager, IBBI for their kind help in this initiative.

We would like to thank all the Committee Members for their guidance in bringing out this publication.

We would like to sincerely appreciate and thank the Members - CA. Prasad Dharap, CA. Sundaresan Nagarajan and CA. Abhishek Garg for helping in the updating of the FAQs and would also like to thank CA. S. Badri Narayanan for reviewing the Draft updated FAQs.

We appreciate the efforts put in by Shri Rakesh Sehgal, Director, Directorate of Corporate and Economic Laws, ICAI, Ms. S. Rita, Secretary, Committee on Insolvency & Bankruptcy Code, ICAI, CA. Sarika Singhal, Deputy Secretary, ICAI and the Committee Secretariat comprising of CA. Abhishek Tarun and Shri Eshaan Kambiri for providing their technical and administrative support in bringing out this revised edition of the publication.

We are sure that the members of the profession, industries and other stakeholders will find the revised publication helpful.

CA. Durgesh Kumar Kabra
Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

CA. Prakash Sharma
Vice- Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

Date: 29th January, 2022

Foreword to the Second Edition

The Institute of Chartered Accountants of India with a view to provide specific focus on an important legislation and major economic reform i.e., the Insolvency and Bankruptcy Code, 2016 has formed a dedicated Committee, "Committee on Insolvency & Bankruptcy Code".

With a view to create awareness and disseminate knowledge, the Institute in the year 2017 itself had issued a publication "Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016". Since the issuance of this publication, a number of developments have taken place through the Insolvency and Bankruptcy Code (Amendment) Act, 2018, Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, amendments in Regulations, Notifications and Clarifications etc. All these developments and regulatory changes necessitated the revision of the publication issued earlier.

It is heartening to note that the Committee on Insolvency & Bankruptcy Code has taken the initiative to revise the publication *"Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016*" for the benefit of the members at large. The publication has been written in an easy to understand language and contains questions and answers on various issues in the Insolvency and Bankruptcy Code, 2016.

I sincerely appreciate the efforts of all the members of the Committee and particularly that of CA. Prakash Sharma, Chairman, Committee on Insolvency & Bankruptcy Code and CA. (Dr.) Debashis Mitra, Vice-Chairman, Committee on Insolvency & Bankruptcy Code for responsibly undertaking this revision and fulfilling this initiative in time.

I am confident that this revised publication will be of great significance and will also provide assistance to our members and other stakeholders on the critical issues arising out of the Code.

Date: 21st June , 2019
Place: New Delhi

CA. Prafulla P. Chhajed
President ICAI

Preface to the Second Edition

It is over two years now, since the Insolvency and Bankruptcy Code, 2016, the new legal framework has been implemented in the country.

During this period, two amendments have been brought in the Code, namely, the Insolvency and Bankruptcy Code (Amendment) Act, 2018 and Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

Some of the important amendments that have taken place are related to the home buyers who have been given the status of financial creditors; clarity has been provided regarding the persons who can submit a resolution plan; making certain persons ineligible for being a resolution applicant; that the committee of creditors shall approve the resolution plan by a vote of not less than sixty six per cent of voting share of the financial creditors; punishment for contravention of the provisions where no specific penalty or punishment is mentioned etc.

The Institute of Chartered Accountants of India through the Corporate Laws and Corporate Governance Committee had earlier issued the publication "Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016", in the year 2017.

Considering the various amendments, the Committee on Insolvency & Bankruptcy Code of ICAI which has been constituted to focus on the Insolvency and Bankruptcy Laws has undertaken the exercise of revision of the publication, "Frequently Asked Questions on the Insolvency & Bankruptcy Code, 2016".

The publication is in a question and answer format which comprehensively covers questions to assist our members and other stakeholders to enable them to have conceptual clarity on the various aspects of Insolvency and Bankruptcy Code, 2016.

Our sincere thanks to President ICAI CA. Prafulla P. Chhajed, and the Vice President ICAI CA. Atul Kumar Gupta for providing us this opportunity to revise the publication to resolve queries that are in the minds of practitioners.

We also wish to place on record our sincere thanks to all the Committee members and all the Co-opted Members for their support and guidance in this initiative.

We appreciate the efforts made by the Secretary to the Committee Ms. S. Rita, CA. Sarika Singhal and Ms Surabhi Arora for revising the publication and providing their technical and administrative support.

We are confident that this revised publication would be of use to the members and other stakeholders.

CA. Prakash Sharma
Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

CA. (Dr.) Debashis Mitra
Vice-Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

Date: 17th June, 2019

Foreword to the First Edition

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 (IIIPI) 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 to the First Edition

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 realties 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, Bankruptcy 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

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"This Publication covers summary of Section-wise case laws under Insolvency and Bankruptcy Code till 30th September,2021"

Chapter 1
Preliminary

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

Ans. 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 implementation of the Code in a time bound manner.

(c) To maximize the value of assets of stakeholders.

(d) To promote entrepreneurship.

(e) To increase/stimulate 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 the Code.

Judicial pronouncements with regard to Objectives of Code

1. **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos.99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019**

   The Code is a beneficial legislation which puts the CD back on its feet and is not a mere recovery legislation for creditors. The interests of the CD have, therefore, been bifurcated and separated from that of its promoters/those who are in management. The defaulter's paradise is lost. In its place, the economy's rightful position has been gained.

2. **Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos 8337-8338 of 2017] SC order dt. 31.08.2017**

One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the objective of speeding up the insolvency process.

3. **Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. [CA (AT) (Ins.) No. 89 of 2017] NCLAT order dt. 18.08.2017**

   CIRP is not a recovery proceeding to recover the dues of the creditors. The Code is an Act relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including Government dues.

4. **DF Deutsche Forfait AG & Anr. Vs. Uttam Galva Steel Ltd. [C.P. No. 45/I & BP/NCLT/MAH/2017] NCLT, Mumbai order dt. 10.04.2017**

   To get conversant to new law and to see fruits of it, it will take time, but just for the sake of this reason, we cannot wish away the mandate of this nation which has come through Parliament.

5. **Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors. [CA (AT) (Ins.) No. 354 of 2019 and other appeals] NCLAT order dt. 19.12.2019**

   In view of Statement of Objects and Reasons of the Code read with section 53, the Government cannot claim first charge over the property of the CD.

6. **V Hotels Ltd. Vs. Asset Reconstruction Company (India) Ltd. [MA 693/2018 in CP No. 532/IBC/NCLT/MB/MAH/2018] NCLT, Mumbai order dt. 01.05.2019**

   What is sought to be achieved in the Code is not shutting down of the CD, but reviving it by ousting the defaulter promoters/ directors who were in control and management of the CD.

7. **Bharatbhai Vrajlalbhai Selani Vs. State Bank of India [CP.(IB) No. 63/10/NCLT/AHM/2017] NCLT, Ahmedabad order dt. 21.08.2017**

The object of the Code is no doubt to protect the genuine CD with a view to maximise its value of assets and find out a resolution to revive the CD.

8. **Action Ispat & Power Pvt. Ltd. Vs. Shyam Metalics & Energy Ltd. & Ors. [Company Appeal 11/2019 & CM No. 31047/2019, CM No. 34726/2019] HC, New Delhi order dt. 10.10.2019**

   The proceedings under Code are independent and have an object different from the one envisaged under the scheme of liquidation provided in the company law. The former aims for resolution by way of revival in a manner that benefits all stakeholders, the creditors as well as the CD.

9. **Kridhan Infrastructure Pvt. Ltd. (now known as Krish Steel and Trading Pvt. Ltd.) Vs. Venkatesan Sankaranarayan & Ors. [Civil Appeal No. 3299 of 2020] SC order dt. 01.03.2021**

   Time is a crucial facet of the scheme under the Code and to allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the Code.

10. **K.N. Rajakumar Vs. V. Nagarajan & Ors. [Civil Appeal No. 2901 of 2021] SC order dt. 15.09.2021**

    One of the principal objects of the Code is providing for revival of the CD and to make it a going concern. Every attempt has to be first made to revive the concern and make it a going concern, liquidation being the last resort.

11. **Basavaraj Koujalagi & 82 Ors. Vs. Sumit Binani, Liquidator of Gujarat NRE Coke Ltd. [IA No. 865/KB/2020 in CP (IB) No. 182/KB/2017] NCLT, Kolkata order dt. 03.05.2021**

    An objective of the Code is to free up resources of unviable companies by permitting an easy exit. It cannot be misconstrued to keep unviable units afloat by some sleight of hand under the guise of keeping it as a going concern, thereby defeating a key objective of the Code.

12. **Ram Ratan Modi Vs. ICICI Bank [IA No. 1477/KB/2020 in CP (IB) No. 184/KB/2018] NCLT, Kolkata order dt.19.05.2021**

One of the objects of the Code is to conduct the CIRP in a time bound manner, therefore, to save the time, upon coming to knowledge of the order of admission of the CD into CIRP, the statutory authorities should withdraw their direction of attachment of the assets of the CD.

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

Ans. According to Section 2, the provisions of the Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be, of the following entities:-

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

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

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

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

(e) personal guarantors to corporate debtors;

(f) partnership firms and proprietorship firms; and

(g) individuals, other than persons referred to in clause (e).

Judicial pronouncements with regard to Section 2: Application

1. **State Bank of India Vs. V. Ramakrishnan & Anr. [Civil Appeal No. 3595 of 2018 with 4553 of 2018] SC order dt. 14.08.2018**

   Section 2(e) of the Code, which was brought into force on 23.11.2017 would, when it refers to the application of the Code to a personal guarantor of a CD applies only for limited purpose contained in sub-sections (2) and (3) of section 60. This is what is meant by strengthening the CIRP in the Statement of Objects and Reasons of the Insolvency and Bankruptcy Code (Amendment) Act, 2018.

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

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

Judicial pronouncements with regard to Section 3: Definitions

1. **Apeejay Trust Vs. Aviva Life Insurance Co. India Ltd. [(IB)-1885 (ND) 2019] NCLT, New Delhi order dt. 04.11.2019**

   The CD cannot use the provisions of section 3, as a blanket cover to claim exclusion from proceedings under the Code on the ground that it is a financial service provider.

2. **Laxmi Pat Surana Vs. Union Bank of India &Anr. [Civil Appeal No. 2734 of 2020] SC order dt. 26.03.2021**

   If a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of expression "corporate debtor" in section 3(8).

Q.4. Who is a Corporate Person?

Ans. A Corporate Person as defined under section 3 (7) is as follows:

a) a company as defined under section 2(20) of the Companies Act, 2013;

b) a limited liability partnership as defined in Section 2(1)(n) of the Limited Liability Partnership 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.

Judicial pronouncements with regard to Section 3(7): Corporate Person

1. **Hindustan Construction Company Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 1074 of 2019 with other Civil Appeals] SC order dt. 27.11.2019**

   National Highway Authority of India (NHAI) is a statutory body which functions as an extended limb of the Central Government and performs Governmental functions which obviously cannot

be taken over by an RP, or by any other corporate body nor can NHAI ultimately be wound up under the Code. For all these reasons, it is not possible to either read in, or read down; the definition of 'corporate person' in Section 3(7) of the Code to include NHAI.

2. **Asset Reconstruction Company (India) Ltd. Vs. Mohammadiya Educational Society and other matters [CA (AT) (Ins.) No. 495 and 496 of 2019] NCLAT order dt. 03.08.2021**

Under section 3(7) of the Code, Co-operative Societies are not 'corporate persons' to whom the provisions of the Code applies.

Q.5. What are the services that are included in the term Financial Service?

Ans. As per Section 3(16), Financial Service include any of the following services, namely:

(a) accepting of deposits;

(b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;

(c) effecting contracts of insurance;

(d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;

(e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—

(i) buying, selling, or subscribing to, a financial product;

(ii) availing a financial service; or

(iii) exercising any right associated with a financial product or financial service;

(f) establishing or operating an investment scheme;

(g) maintaining or transferring records of ownership of a financial product;

(h) underwriting the issuance or subscription of a financial product; or

(i) selling, providing, or issuing stored value or payment instruments or providing payment services;

Q.6. Who shall be covered in the definition of a Financial Service Provider?

Ans. 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.

Q.7. What do we understand as Financial Sector Regulator?

Ans. As per Section 3(18), "financial sector regulator" means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;

Q.8. What shall be included in Financial Information?

Ans. As per Section 3(13), "financial information", in relation to a person, means one or more of the following categories of information, namely:-

a) records of the debt of the person;

b) records of liabilities when the person is solvent;

c) records of assets of person over which security interest has been created;

d) records, if any, of instances of default by the person against any debt;

e) records of the balance sheet and cash-flow statements of the person; and

f) such other information as may be specified

Q.9. What shall be treated as Debt under the Code?

Ans. 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.10. What is the meaning of the term 'default?

Ans. As per Section 3(12) of the Code, "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.

Judicial pronouncements with regard to Section 3(11) & 3(12) : Debt & Default

1. **Brand Realty Services Ltd. Vs. Sir John Bakeries India Pvt. Ltd. [(IB) 1677 (ND)/2019] NCLT order dt.22.07.2020**

   When the definitions of 'operational debt', 'debt' and 'default' are read together, it can be said that the definition of 'debt' as defined under the Code does not mean 'operational debt' only, rather it includes 'financial debt' as well as liability or obligation in respect of a claim, which is due from any person, and 'default' means non-payment of 'debt', but in order to trigger section 9 of the Code, an OC is required to establish a 'default' for non-payment of 'operational debt' as defined under section 5(21) of the Code and if a person fails to establish that, they cannot initiate CIRP.

2. **Rita Kapur Vs. Invest Care Real Estate LLP and Ors. [CA (AT) (Ins.) No. 111 of 2020] NCLAT order dt. 02.09.2020**

   It is latently and patently clear that once the 'debt' is converted into 'capital', it cannot be termed as 'financial debt'.

3. **Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos 8337-8338 of 2017] SC order dt. 31.08.2017**

   The 'debt' is disputed so long as the 'debt' is 'due' i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of AA, that it may reject an application and not otherwise.

4. **Transmission Corporation of Andhra Pradesh Ltd. Vs. Equipment Conductors and Cables Ltd. [Civil Appeal No. 9597 of 2018] SC order dt. 23.10.2018**

   Existence of an undisputed 'debt' is *sine qua non* of initiating CIRP.

5. **Krishna Enterprises Vs. Gammon India Ltd. [CA (AT) (Ins.) No. 144 of 2018 and other appeals] NCLAT order dt. 27.07.2018**

   If in terms of any agreement, interest is payable to the OC or the FC, then 'debt' will include interest, otherwise, the principal amount is to be treated as 'debt' which is the liability in respect of the 'claim' which can be made from the CD.

6. **Park Energy Pvt. Ltd, Vs. Syndicate Bank and Anr. [CA (AT) (Ins.) No. 270 of 2020] NCLAT order dt. 24.08.2020**

   Mere fact of 'debt' being due and payable is not enough to justify the initiation of CIRP at the instance of the FC, unless the 'default' on the part of the CD is established.

7. **Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos 8337-8338 of 2017] SC order dt. 31.08.2017**

   'Default' is defined in section 3(12) of the Code in very wide terms as non- payment of a 'debt' once it becomes due and payable, which includes non- payment of even part thereof or an instalment amount.

8. **B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017 and other appeals] SC order dt. 11.10.2018**

   The context of section 3(12) of the Code is actual non- payment by the CD when a 'debt' has become due and payable.

9. **R. Sridharan Vs. Assets Care & Reconstruction Enterprise Ltd. [CA (AT) (Ins.) No. 241 of 2018] NCLAT order dt. 25.07.2018**

   An amount not released to FC due to misunderstanding between the consortium of banks, cannot be treated as 'default'.

10. **Promila Taneja Vs. Surendri Design Pvt. Ltd. [CA (AT) (Ins.) No. 459 of 2020] NCLAT order dt. 10.11.2020**

    The legislature was conscious regarding liabilities arising from a particular type of lease and it made specific provision in section 5(8)(d) to make it a 'financial debt'. No such provision was made in respect of an operational debt.

11. Anand Rathi Global Finance Ltd. Vs. Doshi Holdings Pvt. Ltd. [C.P.(IB)-1220/(MB)/2020] NCLT, Mumbai order dt.19.02.2021

CIRP can be initiated against a CD which has 'defaulted' in repaying the loan in the capacity of co-borrower/pledgor, as the liability of borrower and co-borrower/pledgor is co-extensive under the Indian Contract Act, 1872.

12. State Bank of India Vs. Shri Lal Mahal Ltd. [IB-613/ND/2019] NCLT, New Delhi order dt. 25.02.2021

It is beyond purview of the AA to venture into the question of the reason for the 'default' and the intention behind the 'default' as submitted by the CD especially when the application is filed under section 7 of the Code.

Q.11. What shall be considered as Claim under the Code?

Ans. As per Section 3(6) of the Code, "claim" means:

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;

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

Judicial pronouncements with regard to Section 3(6): Claim

1. Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos 8337-8338 of 2017] SC order dt. 31.08.2017

'Claim' under section 3(6) of the Code means a right to payment, even if it is disputed.

2. Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos.99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019

'Claim' gives rise to 'debt' only when it is due and 'default' occurs only when debt becomes due and payable and is not paid by the debtor.

3. **International Road Dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Ltd. And D. A Toll Road Pvt. Ltd. [CA (AT) (Ins.) No. 72 and 77 of 2017] NCLAT order dt. 01.08.2017**

   The different claim(s) arising out of different agreements or work order, having different amount and different dates of default, cannot be clubbed together for alleged default of debt, as the cause of action is separate.

4. **K.K.V. Naga Prasad Vs. Lanco Infratech Ltd. [CP (IB) No. 9/9/HDB2017] NCLT, Hyderabad order dt. 21.02.2017**

   The tribunal cannot go in to roving enquiry into the disputed claims of parties as the object of the Code is to ensure reorganization and insolvency resolution of corporate persons, individuals, etc., in a time bound manner for maximisation of value of assets.

Q.12. Who are covered in the definition of person?

Ans. As per Section 3(23) of the Code, a "person" 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

g) any other entity established under a Statute;

and includes a person resident outside India;

As per Section 3(25) "person resident outside India" means a person other than a person resident in India and as per Section 3(24), "person resident in India" shall have the meaning as assigned to

such term in Section 2(v) of Foreign Exchange Management Act, 1999 and includes a person resident outside India.

Judicial pronouncements with regard to Section 3(23): Person

1. **R.G. Steels Vs. Berrys Auto Ancillaries (P) Ltd. [IB-722/ND/2019] NCLT, New Delhi order dt. 23.09.2019**

   A sole proprietary concern, not being a 'person' under section 3(23) of the Code and also when there is a pre-existing dispute, cannot file application under section 9.

2. **JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 20978 of 2017] SC order dt. 30.04 2019**

   A 'trade union' is an entity established under a statute i.e. the Trade Unions Act, 1926 and is therefore, a 'person' under section 3(23) of the Code.

3. **Shri Shakti Dyeing Works Vs. Berawala Textiles Pvt. Ltd. [CP (IB) No. 854/NCLT/AHM/2019] NCLT, Ahmedabad order dt. 25.01.2021**

   A proprietorship concern does not fall within the purview of "person" as per section 3(23) for the purpose of filing an application under section 9 of the Code. Proprietorship concern cannot sue and be sued unless it is represented by a proprietor.

Q.13. What do you understand by the term Security Interest?

Ans. As per Section 3(31) of the Code, "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.

Provided that security interest shall not include a performance guarantee.

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

Ans. As per Section 3(30) of the Code, "secured creditor" means a creditor in favour of whom security interest is created.

Judicial pronouncements with regard to Section 3(30): Secured Creditor

Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors. [CA (AT) (Ins.) No. 354 of 2019 and other appeals] NCLAT order dt. 19.12.2019

The State Tax Officer does not come within the meaning of 'secured creditor' as defined under section 3(30) read with section 3(31) of the Code.

Q.15. What is termed as a transaction under the Code?

Ans. As per Section 3(33) of the Code, "transaction" includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor.

Q.16. What shall be included in Transfer as per the Code?

Ans. As per Section 3(34) of the Code, "transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. Additionally, as per section 3(35) of the Code "transfer of property" means transfer of any property and includes a transfer of any interest in the property and creation of any charge upon such property.

Q.17. What is a "Charge" under the Code?

Ans. As per Section 3(4) of the Code, "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.18. Who shall be termed as Creditor under the Code?

Ans. As per Section 3(10) of the Code, "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.

Judicial pronouncements with regard to Section 3(10): Creditor

1. **Nikhil Mehta and Sons Vs. AMR Infrastructure Ltd. [CA (AT) (Ins.) No. 7 of 2017] NCLAT order dt. 21.07.2017**

   The parties who have entered into agreement, for purchase of flat or shop or any immovable property, which contains a clause of assured or committed returns are 'financial creditors' under the Code.

2. **Biogenetics Drugs Pvt. Ltd. Vs. Themis Medicare Ltd. [C.P. (I.B) No. 696/ NCLT/ AHM/2019] NCLT, Ahmedabad order dt. 18.02.2021**

   A 'decree holder' though covered under the definition of 'creditor' under section 3(10) would not fall within the class of FCs or OCs and therefore, a decree holder cannot initiate CIRP against the CD with an objective to execute the decree.

3. **Franklin Templeton Trustee Services Pvt. Ltd. and Anr. Vs. Amruta Garg and Ors. [Civil Appeal No. 498-501 of 2021 with other appeals] SC order dt. 14.07.2021**

   To equate the unitholders in mutual funds with the creditors under the Code, will be unsound and incongruous.

Q.19. What is a Financial Product?

Ans. As per Section 3(15) of the Code, "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 as may be prescribed.

Q.20. What is the definition of property under the Code?

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

a) money, goods, actionable claims, land and every description of property 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.

Q.21. What is meant by Financial Institution?

Ans. As per Section 3(14) of the Code, "financial institution" means

(a) a scheduled bank;

(b) financial institution as defined in Section 45-I of the Reserve Bank of India Act, 1934,

(c) public financial institution as defined in Section 2(72) of the Companies Act, 2013; and

(d) such other institution as the Central Government may by notification specify as financial institution.

Q.22. What is the definition of an Insolvency Professional ?

Ans. As per Section 3(19) of the Code, "insolvency professional" means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207.

Q.23. Who shall be termed as Workman ?

Ans. As per Section 3(36) of the Code, "workman" shall have the same meaning as assigned to in Section 2(s) of the Industrial Disputes Act, 1947.

Q.24. What is meant by Information Utility?

Ans. As per Section 3(21) of the Code, "information utility" means a person who is registered with the Board as an information utility under Section 210.

Chapter 2
Insolvency Resolution and Liquidation for Corporate Persons

Q.1. What is the threshold limit for making an application for insolvency and liquidation of corporate persons?

Ans. 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.

Note: Vide S.O.1205(E), dated 24.03.2020 the Central Government specifies one crore rupees as the minimum amount of default.

Additionally, vide Notification S.O. 1543(E), dated 09.04.2021,the Central Government has specified ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code.

Judicial pronouncements with regard to Section 4 : Application of Part-II

1. **Madhusudan Tantia Vs. Amit Choraria & Anr. [CA (AT) (Ins.) No. 557 of 2020] NCLAT order dt.12.10.2020**

   The enhancement of threshold vide Notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, is prospective in nature and would not apply to the pending applications filed prior to the issuance of the said Notification.

2. **Al Sadiq Sweets Vs. Krisenter Impex Pvt. Ltd. [IBA/35/KOB/2020] NCLT, Kochi order dt. 26.02.2021**

   The Notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, whereby the minimum amount of default limit was specified as ₹ 1 crore, is prospective in nature and not a retrospective one.

3. **Manipal Media Network Ltd. Vs. Vishwakshara Media Pvt. Ltd. [CA (AT) (Ins.) No. 369 of 2020] NCLAT order dt. 21.06.2021**

   The law is very clear that it is enough if under section 4 of the Code the unpaid debt is more than the threshold value of ₹ 1 lakh for acceptance of application under section 9 of the Code.

4. **BLS Ploymers Ltd. Vs. RMS Power Solutions Pvt. Ltd. [CP No. IB-340(ND)/2021] NCLT, New Delhi order dt. 27.07.2021**

   Where the default has occurred prior to the issuance of Notification dated 24.03.2020 and demand notice was also delivered prior to that notification but the application has been filed after 24.03.2020, the enhancement of the threshold limit from ₹ 1 lakh to ₹ 1 crore rupees is not applicable.

Q.2. Who is the Adjudicating Authority for corporate persons?

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

Q.3. Who is a corporate guarantor?

Ans. According to Section 5(5A) of the Code, "Corporate Guarantor" means a Corporate Person who is the surety in a contract of guarantee to a Corporate Debtor.

Judicial pronouncements with regard to Section 5(5A) : Corporate Guarantor

1. **State Bank of India Vs. D. S. Rajender Kumar [CA (AT) (Ins.) No. 87 to 91 of 2018] NCLAT order dt.18.04.2018**

   If CIRP has been initiated against the CD, the insolvency and bankruptcy process against the personal guarantor can be filed under section 60(2) before the same NCLT and not before the DRT.

2. **Rai Bahadur Shree Ram and Company Pvt. Ltd. Vs. Rural Electrification Corporation Ltd. &Ors. [Civil Appeal No. 1484 of 2019] SC order dt.11.02.2019**

Without initiating CIRP against the principal borrower, it is open to the FC to initiate CIRP under section 7 against corporate guarantors as the creditor is also the FC qua corporate guarantor.

3. **State Bank of India Vs. Sungrowth Shares & Stocks Ltd. [CP (IB) No. 796/KB/2018] NCLT, Kolkata order dt. 04.09.2019**

   The principal debtor (CD) is discharged under the Code not on the instance of a creditor but due to operation of law, i.e., approval of resolution plan. Hence, the guarantor is not discharged of its liability merely because the creditor consented to a resolution plan of the principal debtor.

4. **Export Import Bank of India Vs. CHL Ltd. [CA (AT) (Ins.) 51 of 2018] NCLAT order dt. 16.01.2019**

   The corporate guarantees given by the CD can be invoked only in the event of a default on the part of the borrower.

5. **The Karur Vysya Bank Ltd. Vs. Maharaja Theme Parks and Resorts Pvt. Ltd. [CP/1314/IB/2018] NCLT,Chennai order dt. 08.04.2019**

   It makes no difference as to whether the corporate person stood as guarantor to an individual or a corporate person, and as so long as the obligation in respect of a claim is due from a corporate person falling within the definition of 'financial debt', then it is obvious that the creditor can proceed under Section 7 of the Code against such corporate person.

6. **Insolvency and Bankruptcy Board of India Vs. Lalit Kumar Jain &Ors. [TP (Civil) No.(s) 1034/2020 with other TPs]SC order dt. 29.10.2020**

   The Code is at a nascent stage and it is better that the interpretation of the provisions is taken up by the SC to avoid any confusion and to authoritatively settle the law. It directed that no further petitions involving the challenge to the notification dated November 15, 2019, which brought into force certain provisions relating to the personal guarantors (PGs) to CDs, shall be entertained by any High Court.

7. **Kiran Gupta Vs. State Bank of India &Anr. [W.P.(C) 7230/2020 & CM.APPL. 24414/2020 (stay)] HC, New Delhi order dt. 02.11.2020**

   Neither section 14 nor section 31 of the Code place any fetters on a bank/financial institutions from initiation and continuation of proceedings against the guarantor for recovering of their dues. The liability of the principal borrower and guarantor remain co-extensive and a bank/financial institution is entitled to initiate proceedings against the personal guarantor under the SARFAESI Act during the continuation of the CIRP against the principal borrower.

8. **State Bank of India Vs. Athena Energy Ventures Pvt. Ltd. [CA (AT) (Ins.) No. 633 of 2020] NCLAT order dt. 24.11.2020**

   CIRP can be proceeded against the principal borrower as well as guarantor.

Q.4. Define the term dispute under the Code.

Ans. As per Section 5 (6) of the Code, "Dispute" includes a suit or arbitration proceedings relating to –

(a) The existence of the amount of debt;

(b) The quality of goods or service; or

(c) The breach of a representation or warranty.

Judicial pronouncements with regard to Section 5(6) : Dispute

1. **Yogendra Yasupal Vs. Jigsaw Solutions &Anr. [CA (AT) (Ins.) No. 222 of 2017] NCLAT order dt. 16.10.2017**

   Any observations with regard to individual officer if made by a court of law or in any communication made by the operational creditor, the same cannot be treated to be an existence of dispute.

2. **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No.9405 of 2017]SC order dt. 21.09.2017**

   The test of existence of a dispute is: (a) whether the corporate

debtor has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence (b) whether the defence is not spurious, mere bluster, plainly frivolous or vexatious (c) a dispute, if it truly exists in fact between the parties, which may or may not ultimately succeed.

3. **Simplex Infrastructures Ltd. Vs. Agrante Infra Ltd. [IB No. (IB)- 167(ND)/2017] NCLT, New Delhi order dt.10.08.2017**

   The dispute should not be a mere eyewash and attempt to derail the OC's entitlement to initiate the proceedings under sections 8 and 9 of the Code.

4. **Chetan Sharma Vs. Jai Lakshmi Solvents (P) Ltd. &Anr. [CA (AT) (Ins.) No. 66 of 2017 and other appeals] NCLAT order dt. 10.05.2018**

   A unilateral transfer of liability does not constitute a 'dispute' within the meaning of section 5(6) and an inter-se dispute between two groups of shareholders of the CD does not constitute a 'dispute' in reference to OCs. The 'dispute' under section 5(6) of the Code must be between the CD and the OCs.

5. **Anuj Khanna Vs. Wishwa Naveen Traders &Anr. [CA (AT) (Ins.) No. 555 of 2020] NCLAT order dt. 25.11.2020**

   On the 'existence of a dispute', it was observed that section 5(6) is an inclusive provision and does not confine the AA from considering the existence of a dispute from a broader angle. Therefore, dispute in terms of section 8(2)(a) of the Code shall not be limited to instances specified in the definition under section 5(6).

Q.5. Define the term Financial Creditor?

Ans. "Financial Creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Judicial pronouncements with regard to Section 5(7) : Financial Creditor

1. **State Bank of India Vs. Meenakshi Energy Ltd. [CP(IB) 184/7/HDB/2019] NCLT, Hyderabad order dt. 07.11.2019**

   Mere invocation of pledge of shares will not result in automatic conversion of debt into equity and repayment of debt.

2. **Edelweiss Asset Reconstruction Company Limited Vs. Kalptaru Alloys Pvt. Ltd. [CP (IB) No. 84/7/NCLT/AHM/2017] NCLT, Ahmedabad order dt. 05.09.2017**

   The assignee of the debt is also entitled to file application and such assignee steps into the shoes of the FC.

3. **Canara Bank Ltd. Vs. Deccan Chronicle Holdings Ltd. [IA 121 and 24/2019 in CP(IB)No. 41/7/HDB/2017] NCLT, Hyderabad order dt. 09.05.2019**

   The grouping of FCs in accordance with the amount of security holding is not discriminatory.

4. **B.V.S. Lakshmi Vs. Geometrix Laser Solutions Pvt. Ltd. [CA (AT) (Ins.) No. 38 of 2017] NCLAT order dt. 22.12.2017**

   Essential criteria for being an FC: (i) A person to whom a financial debt is owed and includes a person whom such debt has been legally assigned or transferred to (ii) The debt along with interest, if any, is disbursed against the consideration for time value of money and include any one or more mode of disbursed as mentioned in clause (a) to (i) of sub-section (8) of Section 5.

5. **Pioneer Urban Land and Infrastructure Ltd. &Anr. Vs. Union of India &Ors. [WP (C) No. 43 of 2019 with other appeals] SC order dt. 09.08.2019**

   The allottees/home buyers were included in the main provision, i.e., section 5(8)(f) with effect from the inception of the Code. The Explanation was added in 2018 merely to clarify doubts that had arisen. The deeming fiction that is used by the Explanation is to put beyond doubt the fact that allottees are to be regarded as financial creditors within section 5(8)(f) of the Code.

6. **Export Import Bank of India Vs. Resolution Professional JEKPL Pvt. Ltd. [CA (AT) (Ins.) No. 304 of 2017 and other appeals] NCLAT order dt .14.08.2018**

   On the basis of counter indemnity obligation, EXIM Bank comes within the definition of section 5(7) r/w section 5(8) of the Code.

7. **Chitra Sharma and Ors. Vs. Union of India and Ors. [WP (Civil) 744 of 2017 and other appeals] SC order dt. 09.08.2018**

   Home buyers are brought within the purview of the financial creditors under the Code.

8. **Mohanlal Dhakad Vs. BNG Global India Ltd. [CA (AT) (Ins.) No. 684 of 2020] NCLAT order dt. 22.02.2021**

   In a 'Recurring Investment Plan' wherein the CD failed in its commitment to offer the allotment of plots of land as promised by it or pay the assured returns, or repay the sums collected by it along with interest on the maturity of the schemes etc, the investor's position is that of a FC as per section 5(7) read with section 5(8) of the Code.

9. **Phoenix ARC Pvt. Ltd. Vs. Ketulbhai Ramubhai Patel [Civil Appeal No. 5146 of 2019] SC order dt. 03.02.2021**

   The SC reiterated that a person having only security interest over the assets of CD, even if falling within the description of 'secured creditor' by virtue of collateral security extended by the CD, would not be covered by the definition of 'financial creditor' under the Code. It held that the CD in the matter has only extended security through pledge of shares and there was no liability to repay the loan taken by the borrower on the CD. Therefore, the creditor in such a case will at best be secured creditor *qua* CD and not the FC *qua* CD.

Q.6. What is included in the Financial Debt?

Ans. 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 as may be prescribed;

(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.

[Explanation- For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;]

(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 sub clauses (a) to (h) of this clause;

Judicial pronouncements with regard to Section 5(8) : Financial Debt

1. **Vipul Limited Vs. Solitaire Buildmart Pvt. Ltd. [CA (AT) (Ins.) No. 550 of 2020] NCLAT order dt. 18.08.2020**

   The Joint Development Agreement entered, is a contract of reciprocal rights and obligations, both parties are admittedly Joint Development Partners, who entered into a consortium of sorts for developing an Integrated Township and for any breach of terms of contract, Section 7 Application is not maintainable as the amount cannot be construed as financial debt as defined under section 5(8) of the Code.

2. **Vistara ITCL (India) Ltd. & Ors. Vs. Dinkar Venkatasubramanian & Ors. [CA (AT) (Ins.) No. 703 of 2020] NCLAT order dt. 24.08.2020**

   Pledge of shares would not fall within the concept of guarantee and indemnity so as to bring it within the meaning of financial debt.

3. **Radha Exports (India) Pvt. Ltd. Vs. K.P. Jayaram &Anr. [Civil Appeal No. 7474 of 2019] SC order dt. 28.08.2020**

   The payment received for shares, duly issued to a third party at the request of the payee as evident from official records would not be a debt.

4. **Nikhil Mehta and Sons Vs. AMR Infrastructure Ltd. [CA (AT) (Ins.) No. 07 of 2017] NCLAT order dt. 21.07.2017**

   In order to satisfy the requirement of this provision, the financial transaction should be in the nature of debt and no equity has been implied by the opening words of section 5(8) of the Code.

5. **Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India &Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019**

A financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money.

6. **DF Deutsche Forfait AG & Anr. Vs. Uttam Galva Steel Ltd. [C.P. No. 45/I & P/NCLT/MAH/2017] NCLT, Mumbai order dt. 10.04.2017**

   A transaction will be considered as an operational debt if the payment is made to goods or services and if money is lent in contemplation of returns in the form of interest will be a financial debt.

7. **Shailesh Sangani Vs. Joel Cardoso &Anr. [CA (AT) (Ins.) No. 616 of 2018] NCLAT order dt. 30.01.2019**

   It is manifestly clear that money advanced by a Promoter, Director or a Shareholder of the CD as a stakeholder to improve financial health of the Company and boost its economic prospects, would have the commercial effect of borrowing on the part of CD notwithstanding the fact that no provision is made for interest thereon.

8. **Pioneer Urban Land and Infrastructure Ltd. &Anr. Vs. Union of India & Ors. [WP (C) No. 43 of 2019 with other appeals] SC order dt. 09.08.2019**

   In real estate projects, money is raised from the allottee, against consideration for the time value of money. Thus, allottees are to be regarded as FCs.

9. **Narendra Kumar Agarwal & Anr. Vs. Monotrone Leasing Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 549 of 2020] NCLAT order dt. 19.01.2021**

   If Inter-Corporate Deposit is made for a certain period which was to be paid back with interest, then such transaction will fall in the definition of 'financial debt'.

10. **State Bank of India Vs. Rajendra Bhuta, IRP of Prabhat Technologies (India) Ltd. &Ors. [IA No. 440 of 2020 in C.P. No. 1874/MB/2019] NCLT, Mumbai order dt. 06.01.2021**

    The amount raised under a Forward Purchase Agreement (FPA) would not come within the definition of a 'financial debt' unless it bears the dual attributes of (i) having been disbursed

against the consideration for time value of money and (ii) has the commercial effect of a borrowing.

11. Orator Marketing Pvt. Ltd. Vs. Samtex Desinz Pvt. Ltd. [Civil Appeal No. 2231 of 2021] SC order dt. 26.07.2021

The definition of 'financial debt' does not expressly exclude an interest free loan. 'Financial debt' would have to be construed to include interest free loans advanced to finance the business operations of the corporate body.

12. New Okhla Industrial Development Authority Vs. Anand Sonbhadra, RP [CA (AT) (Ins.) No. 1183 of 2019] NCLAT order dt. 16.04.2021

When lease involves real estate with a fair value different from its carrying amount, the lease can be classified as a finance lease if the lease transfers ownership of the property to the lessee with substantially all the risks and also rewards incidental to ownership of the asset.

Q.7. What is insolvency commencement date under Insolvency and Bankruptcy Code, 2016?

Ans. As per section 5 (12) of the Code, "Insolvency Commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under section 7, 9 or section 10, as the case may be.

Q.8. What is "insolvency resolution process period"?

Ans. As per Section 5(14) of the Code "insolvency resolution process period" means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day;

Judicial pronouncements with regard to Section 5(14) : Insolvency Resolution Process Period

1. Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 185 of 2018] NCLAT order dt. 08.05.2018

It is always open to the NCLT/NCLAT to exclude certain period for the purpose of counting the total period of 270

days. The grounds include the following: (i) If the CIRP is stayed by a court of law or the NCLT/NCLAT/Supreme Court (ii) If no RP is functioning for one or other reason during the CIRP (iii) The period between the date of order of admission/moratorium is passed and the actual date on which the RP takes charge for completing the CIRP (iv) On hearing a case, if order is reserved by the NCLT/NCLAT/Supreme Court and finally pass order enabling the RP to complete the CIRP (v) If the CIRP is set aside by the NCLAT or order of the NCLAT is reversed by the Supreme Court and CIRP is restored (vi) Any other circumstances which justifies exclusion of certain period.

Q.9. Define the term operational creditor.

Ans. As per Section 5 (20) of the Code, "Operational Creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

Judicial pronouncements with regard to Section 5(20) : Operational Creditor

1. **Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. [CA (AT) (Ins.) No. 242 of 2019 and Other appeals] NCLAT order dt. 04.07.2019**

   The OCs can be classified in three different classes for determining the manner in which the amount is to be distributed to them (as per section 5(21). However, they are to be given the same treatment, if similarly situated.

2. **IRK Raju Vs. Immaneni Eswara Rao & Ors. [CA (AT) (Ins.) No. 1058 of 2019] NCLAT order dt. 30.01.2020**

   Custom Duty as a statutory due is only operational in nature when it is paid to the relevant authority, and not when it is repaid to a party that has paid such statutory authority.

3. **Cooperative Rabobank U.A. Singapore Branch Vs. Shailendra Ajmera [CA (AT) (Ins.) No. 261 of 2018] NCLAT order dt. 29.04.2019**

It is clear that an OC who has assigned or legally transferred any operational debt to an FC, the assignee or transferee shall be considered as an OC to the extent of such assignment or legal transfer.

4. **Suresh Narayan Singh Vs. Tayo Rolls Ltd. [CA (AT) (Ins.) No. 112 of 2018] NCLAT order dt. 26.09.2018**

   The workmen of a Company come within the meaning of an OC in terms of section 5(20) r/w section 5(21) of the Code.

5. **Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017] SC order dt. 31.08.2017**

   An OC means a person to whom an operational debt is owed, and an operational debt under section 5(21) means a claim in respect of provision of goods or services.

6. **JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Co. Ltd. [CA (AT) (Ins.) No. 82 of 2017] NCLAT order dt. 12.09.2017**

   A Trade Union or Association of workmen/employee does not come within the meaning of OC as no services is rendered by the Workmen's Association/Trade Union to the CD to claim any dues which can be termed to be debt as defined in sub-section (11) of section 3.

Q.10. What is included in Operational Debt?

Ans. 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, or

(c) a debt in respect of the payment 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.

Judicial pronouncements with regard to Section 5(21) : Operational Debt

1. **Andal Bonumalla Vs. Tomato Trading LLP & Anr. [CA (AT) (Ins.) No. 752 of 2019] NCLAT order dt. 20.08.2020**

   The advance amount paid for supply of sugar is not an operational debt.

2. **Shree Ram Lime Products Pvt. Ltd. Vs. Gee Ispat Pvt. Ltd. [CA -666/2019 in (IB)-250(ND)/2017] NCLT, New Delhi order dt. 22.10.2019**

   The dues towards the Government, be it tax on income or on sale of properties, would qualify as operational debt and must be dealt with accordingly.

3. **JSW Steel Ltd. Vs. Mahender Kumar Khandelwal &Ors. [CA (AT) (Ins.) No. 957 and other appeals] NCLAT order dt. 25.10.2019**

   In case assets seized by the ED were purchased out of the proceeds of crime, the amount as may be generated out of the assets would come within the meaning of operational debt payable to the ED for which it may file claim in terms of the Code.

4. **M. Ravindranath Reddy Vs. G. Kishan & Ors. [CA (AT) (Ins.) No. 331 of 2019] NCLAT order dt. 17.01.2020**

   Lease of immovable property cannot be considered as supply of goods or rendering of any services. For a debt to be operational, claim must be regarding provision of goods, services, employment or the Government dues.

5. **Sudhir Garg Vs. ASG Hospital Pvt. Ltd. [CP No. (IB)-12/9/JPR/2019] NCLT, Jaipur order dt. 10.01.2020**

   Claim arising out of lease of immovable property neither falls in the category of goods or services including employment nor is it a debt of repayment of dues arising under any law.

6. **Parmod Yadav & Anr. Vs. Divine Infracon Pvt. Ltd. [IB - No. (IB) 229 (ND)/2017] NCLT, New Delhi order dt. 28.09.2017**

   Lease of immovable property cannot be considered as a

supply of goods or rendering of any services and thus cannot fall within the definition of operational debt.

7. **Pr. Director General of Income Tax (Admn. & TPS) Vs. Synergies Dooray Automotive Ltd. &Ors. [CA (AT) (Ins.) No. 205 of 2017 & other appeals] NCLAT order dt. 20.03.2019**

   All statutory dues including Income Tax, Value Added Tax, etc., come within the meaning of operational debt.

8. **Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India &Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019**

   Operational debt would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.

9. **Renish Petrochem FZE Vs. Ardor Global Pvt. Ltd. [C.P. (I.B) No. 33/9/NCLT/AHM/2017] NCLT, Ahmedabad order dt. 31.07.2017**

   The amount due from the buyer of the goods, and which is due to the seller and is guaranteed by the guarantee agreement, is also an operational debt.

10. **Samskar Financial Services Pvt. Ltd. Vs. Votary Trading Pvt. Ltd. [C.P. (IB) No. 735/KB/2019] NCLT, Kolkata order dt. 21.08.2019**

    Transaction of sale of share is an operational debt.

11. **Kolkata Municipal Corporation and Anr. Vs. Union of India and Ors. [WPA No.977 of 2020] HC, Calcutta order dt. 29.01.2021**

    The property seized by Kolkata Municipal Corporation (KMC) towards recovery of municipal tax dues from CD, can be the subject-matter of the CIRP under the Code as the claim of KMC had attained finality and fastened a liability upon the CD, thus constituting an 'operational debt' under section 5(21) of the Code.

12. Union of India Vs. Vijaykumar V. Iyer [CA (AT) (Ins.) No. 733/2020 with other appeals] NCLAT order dt. 13.04.2021

Dues of Central Government /Department of Telecommunications under the License Agreement fall within the ambit of 'operational debt' under the Code.

Q.11. Explain who is a related party in relation to an individual under the Code.

Ans. According to Section 5 (24A) of the Code, "Related Party" in relation to an individual means:

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

(i) a company, where the individual or the individual along with its related party, own more than fifty percent of the share capital of the company or controls the appointment of the board of directors of the company.

Q.12. Who is termed as relative with reference to an individual under the Code?

Ans. As per Explanation to section 5 (24A) of the Code,

(a) "Relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—

(i) members of a Hindu Undivided Family,

(ii) husband,

(iii) wife,

(iv) father,

(v) mother,

(vi) son,

(vii) daughter,

(viii) son's daughter and son,

(ix) daughter's daughter and son,

(x) grandson's daughter and son,

(xi) granddaughter's daughter and son,

(xii) brother,

(xiii) sister

(xiv) brother's son and daughter,

(xv) sister's son and daughter,

(xvi) father's father and mother,

(xvii) mother's father and mother,

(xviii) father's brother and sister,

(xix) mother's brother and sister and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included

Q.13. Who is a resolution applicant?

Ans. As per Section 5 (25) of the Code, a Resolution Applicant means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of the sub-section (2) of section 25 or pursuant to section 54K, as the case maybe.

Q.14. Who is a corporate applicant?

Ans. As per Section 5(5) of the Code, Corporate applicant means –

(a) corporate debtor; or

(b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process or the pre-packaged insolvency resolution process, as the case may be, under the constitutional document of the corporate debtor; or

(c) an individual who is in charge of managing the operations and resources of the corporate debtor; or

(d) a person who has the control and supervision over the financial affairs of the corporate debtor;

Q.15. What does the term resolution plan mean?

Ans. According to Section 5 (26) of the Code, "resolution plan" means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II, which may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;

Q.16. Who may initiate corporate insolvency resolution process against a corporate debtor?

Ans. The corporate insolvency resolution process may be initiated against any defaulting corporate debtor by

(a) Financial creditor,

(b) Operational creditor

(c) Corporate debtor itself

Q.17. What is the process for initiation of Corporate Insolvency Resolution Process by financial creditors?

Ans. As per section 7 of the Code, a financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by Central Government, may file 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.

Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (*6A*) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

The financial creditor shall along with the application in Form I (prescribed under The Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016) and accompanied by prescribed

fees, give evidence in support of the default committed by the corporate debtor. In case applicant is an assignee or transferee of a financial contract, the application shall be accompanies with a copy of the assignment or transfer agreement. He shall also give the name of the Resolution Professional to act as interim resolution professional and any other information as may be specified by the Board. The applicant shall serve a copy of the application to the registered office of the corporate debtor and to the Board, by registered post, or speed post, or by hand or by electronic means, before filing with the Adjudicating Authority. In case the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf.

The Adjudicating Authority shall within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an Information Utility or on the basis of other evidence furnished by the financial creditor.

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

Judicial pronouncements with regard to Section 7 :
Initiation of CIRP by FC

1. **Vipul Limited Vs. Solitaire Buildmart Pvt. Ltd. [CA (AT) (Ins.) No. 550 of 2020] NCLAT order dt. 18.08.2020**

   The Joint Development Agreement entered into, is a contract of reciprocal rights and obligations, both parties are admittedly 'Joint Development Partners', who entered into a consortium of sorts for developing an integrated township and for any breach of terms of contract, section 7 application is not maintainable as the amount cannot be construed as financial debt as defined under section 5(8) of the Code.

2. **Action Barter Pvt. Ltd. Vs. SREI Equipment Finance Ltd. & Anr. [I.A. Nos. 811/2020, 917/2020, 962/2020 & 1587/2020 in CA (AT) (Ins.) No. 1434 of 2019] NCLAT order dt. 21.09.2020**

   An application under section 7 admitted by the AA being an independent proceeding has to be decided in terms of the provisions of the Code and the CIRP has to proceed unhindered and notwithstanding pendency of any other proceedings.

3. **Sushil Ansal Vs. Ashok Tripathi & Ors. [CA (AT) (Ins.) No. 452 of 2020] NCLAT order dt. 14.08.2020**

   Decree holders under UP RERA seeking execution of decree/recovery of money due under the Recovery Certificate, cannot claim to be allottees of a real estate project and the application under section 7 is impermissible. Though decree holder is included in the definition of 'creditor', they do not fall within the definition of FC and hence cannot seek initiation of CIRP as FC.

4. **Mack Soft Tech Pvt. Ltd. Vs. Quinn Logistics India Ltd. [CA (AT) (Ins.) No. 143 of 2017 and other appeals] NCLAT order dt. 21.05.2018**

   There being a continuous cause of action evident from the books of account of the CD wherein liability of loan payable to the FC is accepted, the application under section 7 cannot be held to be barred by limitation.

5. **Saumil A. Bhavnagri Vs. Nimit Builders & Anr. [CA (AT) (Ins.) No.710 of 2019] NCLAT order dt. 21.11.2019**

   The CD is NBFC and being FSP, section 7 application could not be admitted against it.

6. **Univalue Projects Pvt. Ltd. Vs. The Union of India &Ors. [W.P. No. 5595 (W) of 2020 With C.A.N. 3347 of 2020 and another appeal] HC, Calcutta order dt. 18.08.2020**

   The AA exceeded its jurisdiction while directing that all FCs should submit information of default of CDs from the IU while filing applications under section 7. This is beyond section 424 of the Companies Act, 2013, and section 7(3)(a) of the Code r/w rule 4 of AA Rules and regulation 8 of CIRP Regulations.

7. **Noor Alam & Ors. Vs. Prism Infracon Ltd. [CP(IB)No. 762/KB/2017] NCLT, Kolkata order dt. 03.07.2018**

   While admitting an application under section 7, the AA should be satisfied that the default has occurred, the application is complete and no disciplinary proceeding is pending against the proposed IRP.

8. **Dharani Sugars and Chemicals Ltd. Vs. Union of India &Ors. [Transferred Case (Civil) No. 66 of 2018 in Transfer Petition (Civil) No. 1399 of 2018 and other appeals] SC order dt. 02.04.2019**

   The SC held that the RBI circular dated 12th February, 2018, by which the RBI promulgated a revised framework for resolution of stressed assets is ultra vires of section 35AA of the Banking Regulation Act, 1949 and all actions taken under the said circular which has triggered the CIRP under section 7 will fall along with the circular.

9. **Sunrise 14 A/S Denmark Vs. Ravi Mahajan [Civil Appeal Nos. 21794-21795 of 2017] SC order dt. 03.08.2018**

   The order of admission by NCLT, which was set-aside by the NCLAT, was restored stating that FC being a foreign company need not observe the requirement of section 7(3)(a) for filing of statutory form and that the application can be filed by an advocate.

10. **Mamatha Vs. AMB Infrabuild Pvt. Ltd. &Ors. [CA (AT) (Ins.) No. 155 of 2018] NCLAT order dt. 30.11.2018**

    If the two CDs collaborate and form an independent corporate unit entity for developing the land and allotting the premises to its allottee, the application under section 7 will be maintainable against both of them jointly and not individually against one or other.

11. **Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 8400 of 2017 and other appeals] SC order dt. 19.09.2017**

    The time limit of 7 days for removal of defects in the application

as provided in proviso to sub-section (5) of section 7, is directory and not mandatory in nature.

12. Palogix Infrastructure Pvt. Ltd Vs. ICICI Bank Ltd. [CA (AT) (Ins.) No. 30 of 2017 and other appeals] NCLAT order dt. 20.09.2017

The 7 days for rectification of defects is to be counted not from the 'date of the order' passed by the AA but from the 'date of receipt' of such notice from the AA to rectify the defects in the application. Further, the holidays such as Saturdays, Sundays and other holidays of the AA are to be excluded.

13. Essar Steel India Ltd. Vs. Reserve Bank of India [Special Civil Application 12434 of 2017] HC, Gujarat order dt.17.07.2017

The filing of an application may not result into mechanical admission of application. The AA in exercise of judicial discretion needs to deal with such application in accordance with law and based upon facts, evidence and circumstance placed before it. The AA is certainly required to extend hearing and reasonable opportunity to the company to explain as to why such an application should not be entertained.

14. Innoventive Industries Ltd. Vs. ICICI Bank &Anr. [Civil Appeal Nos. 8337-8338 of 2017] SC order dt. 31.08.2017

The scheme of section 7 stands in contrast with the scheme under section 8 where an OC is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in section 8(1) of the Code.

15. Bank of India Vs. Tirupati Infraprojects Pvt. Ltd. [C.P. No. IB-104(PB)/2017] NCLT, New Delhi order dt. 03.07.2017

A perusal of Form – 1 prescribed under AA Rules would reveal that there is no requirement specified in any part of the proforma with regard to power of attorney. It does not however lead to the conclusion that there is no requirement of filing a power of attorney. But then it is a different matter and would not be hit by the defect in the proforma. It is not that every defect is hit by section 7(2) of the Code.

16. **AVON Capital Vs. Tattva & Mittal Lifespaces Pvt. Ltd. [CA (AT) (Ins.) No. 256 of 2017] NCLAT order dt. 09.08.2018**

    Initiation of a CIRP is not an adversary litigation nor is a money claim. If the application is complete and the AA is satisfied that there is a 'debt' and 'default' on the part of the CD, the application is to be admitted.

17. **V. R. Hemantraj Vs. Stanbic Bank Ghana Ltd. & Anr. [CA (AT) (Ins.) No. 213 of 2018] NCLAT order dt. 29.08.2018**

    Application under section 7 isnot a recovery proceeding or a proceedings for determination of claim on merit, which can be decided only by a court of competent jurisdiction. Application under section 7 or 9 or 10 of the Code being not money claim or suit and not being an adversarial litigation, the AA is only required to be satisfied that there is a 'debt' and default has occurred.

18. **V. R. Hemantraj Vs. Stanbic Bank Ghana Ltd. & Anr. [Civil Appeal No. 9980 of 2018] SC order dt. 12.10.2018**

    In the application filed for commencement of CIRP, the AA is not required to get into the merits of a foreign decree, because the AA under the Code does not have the powers of a Civil Court.

19. **Naveen Luthra Vs. Bell Finvest (India) Ltd. & Anr. [CA (AT) (Ins.) No. 336 of 2017 and other appeals] NCLAT order dt. 29.11.2018**

    The AA being not a Court of law and as the AA does not decide a money claim or suit, it cannot exercise any of the power vested under sections 3 or 4 of the Usurious Loans Act, 1918.

20. **Sree Metaliks Ltd. & Anr. Vs. Union of India & Anr. [W.P. 7144 (W) of 2017] HC, Calcutta order dt. 07.04.2017**

    When the NCLT receives an application under section 7, it must afford a reasonable opportunity of hearing to the CD as section 424 of the Companies Act, 2013, mandates it to ascertain the existence of default as claimed by the FC in the application.

21. Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd. [Civil Appeal No. 818 of 2018] SC order dt. 22.01.2019

Section 7 application filed under the Code is an independent proceeding and must run its entire course, which has nothing to do with the pendency of winding up proceedings before the HC.

22. Micro Dynamics Vs. Cosmos Cooperative Bank Ltd. & Anr. [CA (AT) (Ins.) No. 875 of 2020] NCLAT order dt. 12.10.2020

Once the application under section 7 of the Code, which was the basic edifice for order of admission, was dismissed and proceedings emanating there from and consequential thereto were closed, the incidental and ancillary applications will not survive for further consideration.

23. Supertech Township Project Ltd. Vs. Inderpal Singh Khandpur HUF [CA (AT) (Ins.) No. 17 of 2021] NCLAT order dt. 18.01.2021

The AA directed the CD to provide information about the allottees of the project to the respondent for meeting the threshold criteria to initiate the class action. While dismissing the appeal, the NCLAT observed that no legal right vested in the CD has been infringed by such direction and no prejudice can be claimed by the CD on account of providing such information. It directed the CD to display the information about the allottees with full particulars on its website within two weeks.

24. Manish Kumar Vs. Union of India & Anr. [Writ Petition (C) No.26 of 2020 with other writ petitions] SC order dt. 19.01.2021

i. The term 'allotment' under second proviso to section 7 means allotment in the sense of documented booking as mentioned in section 11(1)(b) of the Real Estate (Regulation and Development) Act, 2016. A person to whom allotment of a plot, apartment, or a building has been made is an allottee. The allottee would also include a person who acquires the allotment either through sale, transfer or otherwise. What is required is allotment qua apartments, and not promised flats as per a brochure.

ii. The default under section 7 need not be qua the applicant or applicants. Any number of applicants, without any amount being due to them, could move an application under section 7, if they are financial creditors (FCs) and there is a default, even if such default is owed to none of the applicants but to any other FC.

iii. It does not matter whether a person has one or more allotments in his name or in the name of his family members. As long as there are independent allotments made to him or his family members, all of them would qualify as separate allottees.

25. Laxmi Pat Surana Vs. Union Bank of India & Anr. [Civil Appeal No. 2734 of 2020] SC order dt. 26.03.2021

An action under section 7 of the Code could be legitimately invoked against a corporate guarantor concerning guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and is not a "corporate person".

26. Ketaki Shah Talati Vs. Mirador Constructions Pvt. Ltd. [C.P.(IB) 1707/MB/2019] NCLT, Mumbai order dt. 02.03.2021

Purely contractual disputes cannot be decided by the AA under section 7 of the Code in a summary proceedings.

27. Indus Biotech Pvt. Ltd. Vs. Kotak India Venture (Offshore) Fund (earlier known as Kotak India Venture Ltd.) &Ors. [Arbitration Petition (Civil) No. 48/2019 with another appeal] SC order dt. 26.03.2021

Any proceeding which is pending before the AA under section 7 of Code and if the petition is admitted by the AA recording the satisfaction with regard to the default and the debt being due from the CD, any application under section 8 of the Arbitration and Conciliation Act, 1996 made thereafter will not be maintainable.

28. Rajendra Narottamdas Sheth & Anr. Vs. Chandra Prakash Jain & Anr. [Civil Appeal No. 4222 of 2020] SC order dt. 30.09.2021

The burden of prima facie proving occurrence of the default and

that the application filed under section 7 is within the period of limitation, is entirely on the FC.

29. Kanwar Raj Bhagat Vs. Gujarat Hydrocarbons and Power SEZ Ltd. & Anr. [CA (AT) (Ins.) No. 1096 of 2020] NCLAT order dt. 11.05.2021

An FC can simultaneously or one after another initiate CIRP against the CD as well as corporate guarantor for the same debt and default.

Q.18. What is the process for initiation of Corporate Insolvency Resolution Process by operational creditors?

Ans. As per Section 8 and 9 of the Code, on the occurrence of default, an operational creditor shall first deliver a demand notice (Form 3) and a copy of invoice (Form 4) demanding payment of the amount involved in the default to the corporate debtor. As per Rule 5(2) of The Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016, it may be delivered to the corporate debtor at the registered office by hand, by registered post or speed post with acknowledgement due or by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor. A copy of demand notice or invoice demanding payment served by an operational creditor shall also be filed with information utility, if any. Demand notice means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

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 any, or record of pendency of any suit or arbitration proceedings filed before receipt of such notice or invoice in relation to such dispute. Corporate Debtor shall also provide the details of payment 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 notice 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 and may propose a resolution professional to act as interim resolution professional and furnish along with application, inter alia, copy of certificate from financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available.

The Adjudicating Authority shall within fourteen days of receipt of the application, after ascertaining as to whether the application is complete and whether payment of operational debt is made, 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.

Judicial pronouncements with regard to Section 8 & 9 : Insolvency Resolution by OC and Application for initiation of CIRP by OC

1. **Gaurang Nipinbhai Nagarsheth Vs. POSCO- India Pune Processing Center Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 214 of 2020] NCLAT order dt. 20.08.2020**

   The CD did not raise the dispute before the statutory notice and the dispute raised in reply to the application does not require any investigation. Such dispute is a patently feeble legal argument and is not supported by evidence.

2. **Vishal Vijay Kalantri Vs. DBM Geotechnics & Constructions Pvt. Ltd. & Anr. [Civil Appeal No. 2730 of 2020] SC order dt. 20.07.2020**

   A dispute must truly exist in facts and should not be spurious, hypothetical and illusory.

3. **Kuntal Construction Pvt. Ltd. Vs. Bharat Hotels Ltd. [CA (AT) (Ins.) No. 542 of 2020] NCLAT order dt. 04.09.2020**

   The expression 'existence of a dispute, if any', infers that a dispute shall not only be limited to instances specified in the definition as provided under section 5(6) of the Code, as it has far arms, apart from pending Suit or Arbitration.

4. **Innoventive Industries Ltd. Vs. ICICI Bank &Anr. [Civil Appeal Nos. 8337-8338 of 2017] SC order dt. 31.08.2017**

The moment there is pre-existence of a dispute, the OC gets out of the clutches of the Code.

5. **Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 and other appeals] SC order dt. 15.12.2017**

   The expression 'an operational creditor may on the occurrence of a default deliver a demand notice' under section 8 of the Code must be read as including an OCs authorised agent and lawyer, as has been fleshed out in Forms 3 and 5 appended to the AA Rules.

6. **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No.9405 of 2017]SC order dt. 21.09.2017**

   So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the AA has to reject the application.

7. **Seema Gupta Vs. Supreme Infrastructure India Ltd. &Ors. [CA (AT) (Ins.) No. 53 of 2017] NCLAT order dt. 25.05.2017**

   A prior notice under section 8 of the Code is mandatory before initiation of interim resolution process, in the absence of which, the AA was right in rejecting the application.

8. **K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. [Civil Appeal Nos.21824 & 21825 of 2017] SC order dt. 14.08.2018**

   OCs cannot use the Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures.

9. **Sudhi Sachdev Vs. APPL Industries Ltd. [CA (AT) (Ins.) No. 623 of 2018] NCLAT order dt. 13.11.2018**

   Pendency of the case under section 138/141 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, cannot be held to be a dispute pending before a court of law. Such pendency actually amounts to admission of debt and not an existence of dispute.

10. **Prajna Prakash Nayak Vs. ASAP Info Systems Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 196 of 2018] NCLAT order dt. 11.07.2018**

The legislative intent of issuance of demand notice under section 8(1) is not a mere formality but a mandatory provision.

11. Era Infra Engineering Ltd. Vs. Prideco Commercial Projects Pvt. Ltd. [CA (AT) (Ins.) No. 31 of 2017] NCLAT order dt. 03.05.2017

Due to the demand notice not being served by the OC, the NCLAT quashed all orders, interim arrangement, moratorium, appointment of IRP, as declared earlier by AA.

12. Neha Himatsingka & Anr. Vs. Himatsingka Resorts Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 201 and another appeal] NCLAT order dt. 30.11.2018

The CD can show and satisfy the AA that a default has not occurred in the sense that the debt, which may also include a disputed claim, is not due or payable in law or in fact.

13. iValue Advisors Pvt. Ltd. Vs. Srinagar Banihal Expressway Ltd. [CA (AT) (Ins.) No. 1142 of 2019] NCLAT order dt. 13.01.2020

The OC had a relief open under the MSME Act and utilising the same does not mean that there is a pre-existing dispute. The context of the word 'dispute' in section 18 of the MSME Act takes colour from section 17 thereof and is different from the context of section 5(6) read with section 8 of the Code.

14. CG Power & Industrial Solutions Ltd. Vs ACC Ltd. [CP No. 1681/IB &C/2017] NCLT, Mumbai order dt. 16.02.2018

Since arbitration proceedings u/s 37 of Arbitration and Conciliation Act, 1996, on the same subject matter was pending, the AA dismissed the application holding that the dispute has already been in pre-existence in between the petitioner and the CD even before section 8 notice was issued by the petitioner.

15. Rajendra Bhai Panchal Vs. Jay Manak Steels & Anr. [CA (AT) (Ins.) No. 592 of 2020] NCLAT order dt. 20.10.2020

A mistake in a demand notice does not necessarily mean it is defective, and if a CD wants to question the validity of the demand it must show that a prejudice was suffered as a result of such defect.

16. **Ravinder Kumar Kalra (Director of Suspended Board of Evershine Solvex Pvt. Ltd.) Vs. Ricela Health Foods Ltd. & Ors. [CA (AT) (Ins.) No. 54 of 2020] NCLAT order dt. 01.02.2021**

    If the CD did not choose to appear in response to the notice issued upon it at the pre-admission stage and did not take stand as regards a pre-existing dispute qua the operational debt, then it cannot be said that no opportunity of being heard was provided to it.

17. **Naresh Sevantilal Shah Vs. Malharshanti Enterprises & Anr. [CA (AT) (Ins.) No. 415 of 2020] NCLAT order dt. 19.01.2021**

    As the arbitration was invoked after the service of the first demand notice, the AA rightly concluded that there was no pre-existing dispute prior to the demand notice, in terms of section 8 of the Code preventing the initiation of CIRP.

18. **D. Srinivasa Rao Vs. Vaishnovi Infratech Ltd. [CA (AT) (Ins.) No. 880 of 2020] NCLAT order dt. 05.01.2021**

    In case of a CD who refuses to accept the delivery of notice under section 8 of the Code, it would not be justified to say that the notice has not been served on the CD.

19. **Damont Developers Pvt. Ltd. Vs. Bank of Baroda & Anr. [CA (AT) (Ins.) No. 436-437 of 2019] NCLAT order dt. 24.04.2019**

    Except the CD, no other party has the right to intervene at the stage of admission of an application under section 7 or 9 of the Code.

20. **Hemang Phopalia Vs. The Greater Bombay Co-operative Bank Ltd. & Anr. [CA (AT) (Ins.) No. 765 of 2019] NCLAT order dt. 05.09.2019**

    The AA is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of CIRP under sections 7 and 9 of the Code based on the application, if filed by an FC or OC or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of section 248 of the Companies Act, 2013.

21. Shashikant Thakar Vs. Windsor Paper Pvt. Ltd. [CP(IB)No. 701/9/NCLT/AHM/2019] NCLT, Ahmedabad order dt. 04.09.2020

While admitting an application under section 9 of the Code, the AA directed the OC to pay an advance of Rs. 25,000/- to the IRP within two weeks from the date of receipt of the order, for the purpose of smooth conduct of the CIRP and that the IRP has to file a proof of receipt of such amount to the AA with the First Progress Report.

22. Vinod Mittal Vs. Rays Power Experts & Anr. [CA (AT) (Ins.) No. 851 of 2019] NCLAT order dt. 18.11.2019

Starting of CIRP against a functional company is a serious matter and parties cannot be allowed to play hide and seek. A cost of Rs. 5 lakh was imposed on the OC.

23. Excel Metal Processors Ltd. Vs. Benteler Trading International GMBH and Anr. [CA (AT) (Ins.) No. 782 of 2019] NCLAT order dt. 21.08.2019

CIRP is not a 'suit', a 'litigation' or a 'money claim' for any litigation and no one is selling or buying the CD a 'resolution plan'. It is not an auction or a recovery or liquidation. It is a resolution process so that the CD does not default on dues.

24. NUI Pulp and Paper Industries Pvt. Ltd. Vs. Roxcel Trading GMBH [CA (AT) (Ins.) No. 664 of 2019] NCLAT order dt. 17.07.2019

Once an application under sections 7 or 9 is filed, it is not necessary for the AA to await hearing of the parties for passing order of moratorium under section 14 of the Code. To ensure that one or other party may not abuse the process or for meeting the ends of justice, it is always open to the AA to pass appropriate interim order.

25. Neeraj Jain Vs. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 1354 of 2019] NCLAT order dt. 24.02.2020

The applicability of Form 3 or Form 4 under of the AA Rules depends on whether invoices were generated during the course of transaction or not. Further, a copy of invoice is not mandatory if the demand notice is issued in Form 3 provided the documents to prove the existence of operational debt and the amount in default is attached with the application. Also, submission of a copy of the invoice along with the application in Form 5 is not a mandatory requirement, if demand notice is delivered in Form 3 and documents to prove the existence of operational debt and the amount in default is attached with the application.

26. Peter Johnson John (Employee) Vs. KEC International Ltd. [CA (AT) (Ins.) No. 188 of 2019] NCLAT order dt. 03.07.2019

Unless the decree of a foreign court and decretal amount is adjudicated upon by a Civil Court as a legally payable claim, the same would not constitute a debt in the hands of OC and unless the debt is crystallized and payable in law, the issue of default would not be attracted.

27. Macquarie Bank Ltd. Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 and other appeals] SC order dt. 15.12.2017

A copy of the certificate required under section 9(3)(c) of the Codefrom the financial institution maintaining accounts of the OC confirming that there is no payment of an unpaid operational debt by the CD is certainly not a condition precedent to triggering the insolvency process under the Code.

28. Annapurna Infrastructure Pvt. Ltd. &Ors Vs. Soril Infra Resources Ltd. [C.P. No. (IB)-22(PB)/2017] NCLT, New Delhi order dt. 24.03.2017

The definition of the word 'dispute' is not exhaustive but is, in fact illustrative. In other words, a CD is not left with the only option of showing the existence of dispute by way of a pending suit, arbitration or to show the breach of representation or warranty. The CD would be well within its right to show that 'goods' and services were not supplied at all or the supply was

far from satisfactory in case of demand raised by an OC. Hence, a CD would be well within its rights to reject the demand on any sustainable grounds. It would therefore, depend on the facts and circumstances of each case.

29. Mother Pride Dairy India Pvt. Ltd. Vs. Portrait Advertising & Marketing Pvt. Ltd. [CA (AT) (Ins.) No. 94 of 2017] NCLAT order dt. 13.07.2017

In view of Rule 8 of AA Rules, it was open to the OC to withdraw the application under section 9 before its admission but once it was admitted, it cannot be withdrawn even by the OC, as other creditors are entitled to raise claim pursuant to public announcement under section 15 read with section 18 of the Code.

30. Vinod Awasthy Vs. AMR Infrastructures Ltd. [C.P No. (IB)-10 (PB)/2017] NCLT, New Delhi order dt. 20.02.2017

The 'operational debt' under the Code is a claim in respect of provision of goods or services, including dues on account of employment or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Central/State Government/local authority. Hence, it is confined to four categories like goods, services, employment and the Government dues.

31. Transparent Technologies Pvt. Ltd. Vs. Multi Trade [CA (AT) (Ins.) No. 207 of 2017] NCLAT order dt. 25.10.2017

Since the OC has not submitted the information as required for admission of application under section 9 before the AA, and in the absence of non-supply of requisite information in terms of Rule 5 of the AA Rules, the application cannot be treated as an application under section 9 for initiation of CIRP against the CD.

32. One Coat Plaster Vs. Ambience Pvt. Ltd. [CA No. (I.B.) 07/PB/2017 and [CA (I.B.) No. 08/PB/2017] NCLT, New Delhi order dt. 01.03.2017

A dispute could be proved by showing that a suit has been filed or arbitration is pending.

33. Rio Glass Solar SA Vs. Shriram EPC Ltd. [CP/537/(IB)/CB/2017] NCLT, Chennai order dt. 10.08.2017

The OC had no account in India and it was not possible to produce a certificate from any bank in India in terms of definition of 'financial institution' in section 3(14) of the Code. The AA observed that this interpretation will render the provisions of the Code otiose and the purpose and object of the legislation would be defeated.

34. A.J. Agrochem Vs. Duncans Industries Ltd. [CA (AT) (Ins.) No. 710 of 2018] NCLAT order dt. 20.06.2019

Section 16G (1)(c) of the Tea Act, 1953, relates to winding up, while section 9 of the Code is for initiation of CIRP to ensure revival and continuation of the CD. Therefore, these provisions occupy different fields. Accordingly, no permission of the Central Government is required for initiation of CIRP of the CD in terms of section 16G (1) of the Tea Act, 1953.

35. Gammon India Ltd. Vs. Neelkanth Mansions & Infrastructure Pvt. Ltd. [CA (AT) (Ins.) No. 698 of 2018] NCLAT order dt. 19.12.2018

As the amount is due from the partnership firm, application under section 9 is not maintainable against one of the members of the partnership firm.

36. Magicrete Buildings Solutions Pvt. Ltd. Vs. Pratibha Industries Ltd. [T.C.P. No. 409/(MAH)/2017] NCLT, Mumbai order dt. 31.07.2017

Bank was directed to issue certificate as required under section 9 of the Code and it was clarified that all citizens of the country are bound by the statute governing the people of this country, including the Bank.

37. Roma Infrastructures India Pvt. Ltd. Vs. A.S. Iron & Steel (I) Pvt. Ltd. [CA (AT) (Ins.) No. 223 of 2019] NCLAT order dt. 22.04.2019

Since money was paid as advance for supply of goods but the goods were not supplied, the payment cannot be considered to

be an 'operational debt' and hence, application under section 9 was not maintainable.

38. Shailendra Sharma Vs. Ercon Composites & Ors. [CA (AT) (Ins.) No. 159 of 2020] NCLAT order dt. 13.01.2021

'Proceedings' under section 138 of the Negotiable Instruments Act, 1881 as well as Order 37 of the Code of Civil Procedure, 1908, will not prohibit an application under section 9 of the Code.

39. Silvassa Cement Products Pvt. Ltd. Vs. Noor India Buildcon Pvt. Ltd. [CA (AT) (Ins.) No. 675 of 2020] NCLAT order dt. 22.01.2021

Dismissal of an application under section 9 of Code as being non-maintainable for a technical defect such as incomplete Form 5, is not warranted.

40. Rajkumar Brothers and Production Pvt. Ltd. Vs. Harish Amilineni Shareholder and erstwhile Director of Amilionn Technologies Pvt. Ltd. & Anr. [Civil Appeal No. 4044 of 2020] SC order dt. 22.01.2021

The SC upheld the direction of NCLAT which ordered OC to pay the CIRP costs and fees of the IRP/RP, after the dismissal of its section 9 application by NCLAT.

41. Anoop Kumar Chhawchharia Vs. Emgreen Impex Ltd. & Anr. [CA (AT) (Ins.) No. 350 of 2021] NCLAT order dt. 26.07.2021

The CD is a healthy company, not substantiated by the corresponding balance sheet, cannot be a sole basis to substantiate that it does not require to go to CIRP. High turnover with positive net worth may reflect good fund flow but it does not substantiate a good cash flow.

Q.19. What is the process for initiation of Corporate Insolvency Resolution Process by Corporate Applicant?

Ans. As per Section 10 of the Code, 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.

As per Rule 7 of The Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016, the application shall be made in Form 6 and the applicant shall serve a copy of the application to the Board before filing with Adjudicating Authority.

The corporate applicant shall, along with the application, furnish:-

(i) the information relating to books of account and other documents for such period as may be specified;

(ii) the information relating to the resolution professional proposed to be appointed as an Interim Resolution Professional; and

(iii) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case maybe, approving filing of the application.

The Adjudicating Authority shall within fourteen days of receipt of application, by an order –

(i) admit the application, if it is complete and no disciplinary proceeding is pending against the proposed resolution professional;

(ii) reject the application, if it is incomplete or any disciplinary proceeding is pending against the proposed resolution professional.

However, applicant would be allowed to rectify the defect within seven days of receipt of notice of such rejection.

Judicial pronouncements with regard to Section 10 : Initiation of CIRP by Corporate Applicant

1. **Neesa Infrastructure Ltd. Vs. State Bank of India & Ors. [C.P. (I.B.) 61/10/NCLT/AHM/2018] NCLT, Ahmedabad order dt. 17.09.2020**

   Since the applicant was not a director and was disqualified under section 164 of the Companies Act, 2013, he had no authority to file the application.

2. **Alpfly Private Ltd. Vs. Ravi Kant Gupta &Ors. [CA No. 448-C/3-ND of 2019 in C.P. IB No. in 358/ND/2018] NCLT, New Delhi order dt. 30.09.2019**

   The IRP moved the AA stating that the application filed by the CD under section 10 of the Code was based on fraud and non-disclosure of material particulars. While holding that the application had been actuated by fraudulent and malicious intent, the order of admission and initiation of CIRP was recalled. The corporate veil was also pierced to identify the persons behind fraudulent initiation of CIRP.

3. **Unigreen Global Pvt. Ltd. Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 81 of 2017] NCLAT order dt. 01.12.2017**

   Section 10 does not empower the AA to go beyond the records as prescribed under section 10 and the information as required to be submitted in Form 6 of the AA Rules, subject to ineligibility prescribed under section 11.

4. **Export-Import Bank of India & Anr. Vs. Astonfield Solar (Gujarat) Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 754 of 2018] NCLAT order dt. 04.12.2018**

   The shareholder has a right to decide whether approving or disapproving the decision be proceeded with the CIRP under section 10 of the Code.

5. **Amit Spinning Industries Ltd. [IB-131 (PB)/2017] NCLT, New Delhi order dt. 01.08.2017**

   CIRP was ordered to speed up preferably within a period of 100 days as the Corporate Applicant had already availed the moratorium as provided under section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.

6. **Prithivraj Spinning Mill Pvt. Ltd. Vs. Indian Overseas Bank, Coimbatore & Ors. [IBA/120/2020] NCLT, Chennai order dt. 09.12.2020**

   An order of CIRP under section 10 cannot be passed, as the applicant obtained a fresh certificate of incorporation as well as new registered office address, and the name of CD as appearing

in the application is not in existence. It is necessary to relook the provisions of section 10 and tighten the same to avoid any further misuse. If a company chooses to file application under section 10, the company ought to maintain a status quo as on the date of filing of the application and this status quo shall not prevent the creditors and others from proceeding against it, till the disposal of the application by the AA.

Q.20. Can an application be filed for initiation of corporate insolvency resolution process for default occurring on or after 25th March, 2020 and upto 25th March, 2021?

Ans. As per Section 10A of the Code, no application shall be filed for initiation of corporate insolvency resolution process of a corporate debtor for defaults occurring on or after 25th March, 2020 for a period of 1 year as notified by the Central Government in this behalf.

Judicial pronouncements with regard to Section 10A : Suspension of initiation of CIRP

1. **Siemens Gamesa Renewable Power Pvt. Ltd. Vs. Ramesh Kymal [IA/395/2020 in IBA/215/2020] NCLT, Chennai order dt. 09.07.2020**

   The Explanation given under section 10A reinforces the retrospectively in the applicability of section 10A and because of the applicability of the newly inserted section, the primary application under section 9 cannot be proceeded with as the date of default was beyond the prescribed date under the section.

2. **Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd. [Civil Appeal No. 4050 of 2020] SC order dt. 09.02.2021**

   The substantive part of section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of CIRP in respect of a CD for a default occurring on or after March 25, 2020. The retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the CD or the right of creditors to recover it.

The decision of the NCLAT was upheld that the bar on filing application for initiation of CIRP applies to defaults committed after March 25, 2020 though such application was filed after March 25, 2020 but before June 5, 2020.

Q.21. What is the order of disposal of application with respect to application under Section 54C (pre-packaged resolution) and Application under Section 7, 9 and 10?

Ans. As per section 11A of the Code, where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7 or section 9 or section 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.

Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.

Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under sections 7, 9 or 10.

The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.

Q.22. When will the corporate insolvency resolution process commence?

Ans. The corporate insolvency resolution process shall commence from the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority. It is referred to as the Insolvency Commencement Date.

Q.23. What is the Corporate Insolvency Resolution Process initiation date?

Ans. As per Section 5(11) of the Code, the date of filing of an application before the National Company Law Tribunal (NCLT)for initiating corporate insolvency resolution process is referred to as the Initiation date.

Q.24. Who is not entitled to make application to initiate a corporate insolvency process?

Ans. 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 a corporate insolvency resolution process or a pre-packaged insolvency resolution process; or

(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or

(b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or

(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application; or

(d) a corporate debtor in respect of whom a liquidation order has been made.

Explanation I. - For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Explanation II.- For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses *(a)* to *(d)* from initiating corporate

insolvency resolution process against another corporate debtor.

Judicial pronouncements with regard to Section 11 :
Persons not entitled to make application

1. **Innoventive Industries Ltd. Vs. Kumar Motors Pvt. Ltd. [CA (AT) (Ins.) No. 181 of 2017] NCLAT order dt. 09.02.2018**

   Since the HC already admitted the winding up proceedings and ordered for winding up of the CD, therefore the question of initiation of CIRP against same CD does not arise.

2. **Jai Ambe Enterprise Vs. S.N. Plumbing Pvt. Ltd. [MA 78/2018 in CP 1268/I&BC/NCLT/MB/MAH/2017] NCLT, Mumbai order dt. 06.02.2018**

   Two parallel insolvency proceedings cannot run against a CD.

3. **Abhay N. Manudhane Vs. Gupta Coal India Pvt. Ltd. [CA (AT) (Ins.) No. 786 of 2019] NCLAT order dt. 01.10.2019**

   CD under liquidation is not entitled to make an application to initiate CIRP in terms of section 11(d).

4. **Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd. [Civil Appeal No. 818 of 2018] SC order dt. 22.01.2019**

   Section 11 is of limited application and only bars a CD from initiating an application under section 10 of the Code in respect of whom a liquidation order has been made. From a reading of the section, it does not follow that until a liquidation order has been made against the CD, an insolvency application may be filed under section 7 or 9 of the Code.

5. **Manish Kumar Vs. Union of India & Anr. [Writ Petition (C) No.26 of 2020 with other writ petitions] SC order dt. 19.01.2021**

   The intention of the legislature was always to target the CD only insofar as it purported to prohibit application by the CD against itself, to prevent abuse of the provisions of the Code. It could never had been the intention to create an obstacle in the path of the CD, in any of the circumstances contained in section 11, from maximizing its assets by trying to recover the liabilities due to it from others

Q.25. Is there any time limit for completion of the Insolvency Resolution Process?

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

However, the Adjudicating Authority may on an application made by the resolution professional, on the basis of a resolution passed by the Committee of Creditors, by a vote of 66% of voting shares, after being satisfied that the corporate insolvency resolution process cannot be completed within one hundred and eighty days, extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding 90 days.

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Judicial pronouncements with regard to Section 12 :
Time-limit for completion of insolvency resolution process

1. **Velamur Varadan Anand Vs. Union Bank of India & Anr. [CA (AT) (Ins.) No. 161 of 2018] NCLAT order dt.16.05.2018**

   The matter was admitted on 16.08.2017 and on intimation, the RP took charge on 14.09.2017. Accordingly, NCLAT directed AA to exclude the 30 days for the purpose of counting the period of CIRP.

2. **Committee of Creditors of Amtek Auto Ltd. Vs. Dinkar T. Venkatsubramanian & Ors. [Civil Appeal No(s). 6707/2019 and another appeal] SC order dt. 24.09.2019**

The resolution plan, which had consumed the time available under section 12 of the Code, has failed owing to non fulfilment of the commitment by Liberty House. However, the SC noted that the Insolvency and Bankruptcy Code (Amendment) Act, 2019 (w.e.f. 16.08.2019) permits resolution process to be completed within 90 days from the date of the commencement of the Amendment Act. Accordingly, it permitted the RP to invite fresh offers within a period of 21 days.

3. **Sunil S. Kakkad Vs. Parag Sheth & Anr. [CA (AT) (Ins.) Nos. 1260-1261 of 2019 and another appeal] NCLAT order dt. 19.11.2019**

   The NCLAT was not inclined to set-aside the order for re-starting the CIRP, even if there was some infirmity in the impugned order during the resolution process as almost two years had elapsed since the time CIRP was initiated.

4. **Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017] SC order dt. 31.08.2017**

   Time is of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.

5. **Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 8400 of 2017 and other appeals] SC order dt. 19.09.2017**

   The statutory scheme laying down time limits sends a clear message that time is the essence of the Code.

6. **Sky Blue Papers Pvt. Ltd., In re. [CP No. IB No. 09/Chd/CHD/ 2017] NCLT, Chandigarh order dt. 03.10.2017**

   Circumstances must exist for grant of extension of time under section 12(1).

7. **Quantum Limited Vs. Indus Finance Corporation Ltd. [CA (AT) (Ins.) No. 35 of 2018] NCLAT order dt. 20.02.2018**

   It was AA's duty to extend the period to find out whether a suitable resolution plan is to be approved instead of going for liquidation, which is the last recourse on failure of resolution process.

8. **RBL Bank Ltd. Vs. MBL Infrastructures Ltd. [CA (IB) Nos. 270/KB/2017, 238/KB/2018, 288/KB/2018 in CP (IB) No. 170/KB/2017] NCLT, Kolkata order dt. 18.04.2018**

   The AA can extend the time limit provided under section 12 of the Code if it is satisfied that grave injustice would be caused in case the prayer of extension is made for no fault of the applicant.

9. **Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 185 of 2018] NCLAT order dt. 08.05.2018**

   It is always open to the AA/Appellate Tribunal to exclude certain period for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances.

10. **Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta &Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals] SC order dt. 04.10.2018**

    Section 12, construed in the light of the object sought to be achieved by the Code, and in the light of the consequence provided by section 33, makes it clear that the periods mentioned are mandatory and cannot be extended. Regulation 40A of the CIRP Regulations presents a model timeline of the CIRP, and it is of utmost importance for all authorities concerned to follow this model timeline as closely as possible.

11. **Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta &Ors. [Civil Appeal No. 8766-67 of 2019 with other Civil Appeals and WP(C)s] SC order dt. 15.11.2019**

    While leaving the provision otherwise intact, the term "mandatorily" was struck down from second proviso to section 12(3), as being manifestly arbitrary under Article 14 of the Constitution and as being unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. If

the delay or a large part thereof is attributable to the tardy process of the AA and/or the NCLAT itself, it may be open in such cases for the AA and/or NCLAT to extend time beyond 330 days.

12. Maharashtra Seamless Ltd. Vs. State Bank of India & Ors. [CA (AT) (Ins.) No. 1039 of 2020] NCLAT order dt. 07.12.2020

CIRP must be conducted and carried on in accordance with the Code which prescribes timelines. Although withdrawal of the applications based on the consideration by the CoC and settlement are part of the same process, but whatever emerges should materialise within the prescribed timelines.

13. IDBI Bank Ltd. Vs. Cyclo Transmissions Ltd. [IA No. 1053 of 2020 in CP(IB) No. 381 of 2018] NCLT, Mumbai order dt. 07.10.2020

The time period can very well be extended beyond 330 days. It further observed that it will be in the best interest of the CD as well as the stakeholders if the resolution plan is considered, liquidation being the last resort.

14. Abhilash Lal, RP of Sevenhills Healthcare Pvt. Ltd. [IA No. 137 of 2020 in CP(IB) No. 282/7/HDB/2018] NCLT, Amravati order dt. 06.10.2020

The extension of time period enabling for completion of CIRP would be in the interest of all stakeholders, to allow the completion of CIRP rather than going into liquidation of the CD which should only be initiated as a last resort. It approved the extension of the period by 90 days.

15. Committee of Creditors of Trading Engineers International Ltd. Vs. Trading Engineers International Ltd. through RP [CA (AT) (Ins.) No. 61 of 2021] NCLAT order dt. 02.02.2021

The extension of CIRP period beyond 330 days was allowed to prevent the CD from being pushed into liquidation and a viable resolution plan being approved by the CoC.

16. George Vinci Thomas &Ors. Vs. Sasitharan Ramaswamy, Resolution Professional in the matter of India Techs Ltd. & Ors. [IA/218/KOB/2020 & MA/22/KOB/2020 in TIBA/14/KOB/2019] NCLT, Kochi order dt. 12.02.2021

Resolution Professional should file an application to the AA for extension of the period of the CIRP, only if instructed to do so by a resolution passed at a meeting of the CoC by a vote of 75% of the voting shares.

Q.26. What is the significance of the Corporate Insolvency Resolution Commencement Date?

Ans. The commencement date of the corporate insolvency resolution process is the beginning of moratorium or a calm period under Section 14 of the Code till the completion of the corporate insolvency resolution process during which all suits and legal proceedings etc. against the Corporate Debtor are kept in abeyance to give time to the entity to achieve value maximization and resolution.

Q.27. Whether an admitted application may be withdrawn under section 7, 9 or 10?

Ans. Yes, as per Section 12A of the Code, the Adjudicating Authority may allow the withdrawal of application admitted under section 7,9, or 10, on an application made by the applicant with the approval of ninety per cent voting share of the Committee of Creditors, in such manner as may be specified.

Judicial pronouncements with regard to Section 12A : Withdrawal of application admitted under section 7, 9 or 10

1. **Shipra Hotels Ltd. Vs. Value Lines Interiors Pvt. Ltd. [Civil Appeal No. 7405 of 2018] SC order dt. 03.08.2018**

   Section 12A, of the Code enacted with effect from 06.06.2018 will not come into the picture since the admission of the petition was on 01.06.2018.

2. **Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India &Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019**

   At any stage where the CoC is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, allow or disallow an application for withdrawal or settlement. This will be

decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.

3. **Brilliant Alloys Pvt. Ltd. Vs. S. Rajagopal & Ors. [Petition(s) for Special Leave to Appeal (C) No(s). 31557/2018] SC order dt. 14.12.2018**

   Regulation 30A of the CIRP Regulations must be read along with section 12A of the Code. Accordingly, the stipulation in regulation 30A can only be construed as directory depending on the facts of each case.

4. **Sukhbeer Singh Vs. Dinesh Chandra Agarwal & Ors. [CA (AT) (Ins.) No. 259 of 2019] NCLAT order dt. 07.08.2019**

   It is the promoter who can settle the matter with creditors and submit such proposal to RP and that he is bound to place it before the CoC which is supposed to consider such application in the light of section 12A.

5. **Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019 and other appeals] SC order dt. 22.01.2020**

   The exit route prescribed in section 12A is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking sections 7, 9 and 10 of the Code.

6. **Shweta Vishwanath Shirke & Ors. Vs. The Committee of Creditors & Anr. [CA (AT) (Ins.) No. 601 of 2019 and other appeals] NCLAT order dt. 28.08.2019**

   The application under section 12A having been approved by the CoC with more than 90% of the voting share, it was not open to the AA to reject the same and that too on a ground of ineligibility under section 29A, which is not applicable.

7. **Francis John Kattukaran Vs. The Federal Bank Ltd. & Anr. [CA (AT) (Ins.) No. 242 of 2018] NCLAT order dt. 13.11.2018**

   Regulation 30A of the CIRP Regulations cannot override the substantive provisions of section 12A of the Code, according to which the applicant can only move application for withdrawal before the AA and not by the RP.

8. **A. K. Corporation Vs. Anupam Extraction Ltd. [MA 2746/2019 in CP (IB) 2781/(MB)/2018] NCLT, Mumbai order dt. 14.08.2019**

   As CoC has already been constituted, the application for withdrawal can only be filed to the RP and not directly in the court under section 60(5) of the Code read with Rule 11 of NCLT Rules.

9. **Himadri Foods Ltd. Vs. Credit Suisse Funds AG [CA (AT) (Ins.) No. 1060 of 2020] NCLAT order dt. 07.01.2021**

   Once the terms of settlement providing a repayment schedule was incorporated in the order, thereby making it an order/ decree of the Court, the grant of liberty to the FC to come back in case of breach of settlement terms could only be interpreted to mean that the revival of CIRP would be sought for non-compliance with the terms of settlement.

10. **Sintex Plastics Technology Ltd. Vs. Zielem Industries Pvt. Ltd. & Anr. [IA 18 (AHM)/2021 in CP (IB) 759 (AHM) 2019] NCLT, Ahmedabad order dt. 29.06.2021**

    While allowing an application of withdrawal, the AA concluded that in a situation where CoC is not formed after admission of CD into CIRP, rule 11 of NCLT Rules under the Companies Act, 2013, and not regulation 30A of the CIRP Regulations, shall apply to withdrawal of CIRP. It observed that a situation, which is not covered under section 12A, cannot be covered under regulation 30A of the CIRP Regulations. However, the AA can exercise inherent jurisdiction under rule 11 for a situation not covered under any provisions of the Code.

    [Note: IBBI has preferred an appeal in the matter before the Hon'ble NCLAT, New Delhi.]

11. **In the matter of Siva Industries and Holdings Limited [MA/43/CHE/2021 & IA/647/IB/2020 & IA-586/CHE/2021 in IBA/453/2019] NCLT, Chennai order dt. 12.08.2021**

    Once the CIRP is triggered in relation to a CD, the same is an order in *rem* and not in *personam* and that whether the CD is required to be wriggled out of the CIRP is to be decided by the AA by exercising its judicial wisdom and cannot be carried away by the commercial wisdom of CoC.

Q.28. What shall be the effect to admission of application under Section 7, 9 or 10?

Ans. As per section 13, the Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order –

(a) declare a moratorium for the purposes referred to in section 14;

(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and

(c) appoint an interim resolution professional in the manner as laid down in section 16.

The public announcement referred to in above shall be made immediately after the appointment of the interim resolution professional and immediately means not later than 3 days as per Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Q.29. What is the effect of order of moratorium?

Ans. As per Section 14(1) of the Code, on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of 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.

It has further been clarified for the purpose of this sub-section that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period

The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period. As per Regulation 32 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, essential supplies shall mean electricity, water, telecommunication services and information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process or passing of liquidation order whichever is earlier.

Q.30. Whether the supply of the essential goods or services to the corporate debtor shall be terminated during moratorium period?

Ans. No, as per Section 14 (2) & 2A of the Code, the supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

Q.31. Whether the supply of the goods or services critical to protect and preserve the value of the corporate debtor shall be terminated during moratorium period?

Ans. Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

Q.32. When the moratorium shall cease to have effect?

Ans. As per Section, 14 of the Code, the order of moratorium shall have effect from the date of admission order till the completion of the Corporate Insolvency Resolution Process.

Also, if the Adjudicating Authority approves the Resolution Plan during corporate insolvency resolution process period under section 31(1) or passes an order for liquidation of corporate debtor, the Moratorium shall cease to have effect from the date of such approval or liquidation order.

Judicial pronouncements with regard to Section 14 :
Moratorium

1. **Sundaresh Bhat Vs. Assistant Commissioner of State Tax and Anr. [IA No. 1043 of 2020 in CP(IB)No. 490/MB/2018] NCLT, Mumbai order dt. 22.09.2020**

   A conjoint reading of section 14(1)(a) and section 238 of the Code clearly shows that the Code overrides section 44 of the Gujarat Value Added Tax Act, 2003, as the same is inconsistent with the provisions of the Code and thus the action of the Assistant Commissioner of State Tax directing a payment out of the account of the CD is clearly barred by the provisions of section 14(1)(a).

2. **Ramsarup Industries Ltd. Vs. ICICI Bank Ltd. [CA (IB) No. 116/KB/2018 in CP(IB) No. 349/KB/2017] NCLT, Kolkata order dt. 03.07.2018**

   The sale of goods by custom department through e-auction notice was violative of section 14 of the Code.

3. **Indian Overseas Bank Vs. Arvind Kumar [CA (AT) (Ins.) No. 558 of 2020] NCLAT order dt. 28.09.2020**

   'Security Interest' does not include 'Performance Bank Guarantee' and it is not covered by section 14 of the Code.

4. **Vijaykumar V. Iyer Vs. Union of India [MA-337/2018 in C.P. (IB)-298/(MB)/2018 and MA-336/2018 in C.P. (IB)-302/(MB)/2018] NCLT, Mumbai order dt. 27.11.2019**

   Section 14(1)(d) of the Code prohibits recovery of any property by an owner or lessor in possession of the CD. This prohibition is also applicable to Department of Telecom (DoT). Use of licence / spectrum is akin to "essential goods or services" without which the CD cannot run its telecom business. The AA instructed the DoT not to make any attempt to cancel the CD's licence.

5. **Weather Makers Pvt. Ltd. Vs. Parabolic Drugs Ltd. [CA 206/2019 in CP(IB)-102/CHD/2018] NCLT, Chandigarh order dt. 26.04.2019**

   The asset in question being owned by a third party but in

possession of the RP, that too due to a contractual arrangement, must not be retained but to be returned.

6. **SSMP Industries Ltd. Vs. Perkan Food Processors Pvt. Ltd. [CS (COMM) 470/2016 & CC(COMM) 73/2017] HC, New Delhi order dt. 18.07.2019**

   Once the counterclaims are adjudicated and the amount to be paid/ recovered is determined, at that stage, or in execution proceedings, depending upon the situation prevalent, section 14 could be triggered.

7. **State Bank of India Vs. Debashish Nanda [CA (AT) (Ins.) No. 49 of 2018] NCLAT order dt. 27.04.2018**

   Any amount deposited by any person in the account of CD cannot be appropriated by bank towards its own dues, during the period of moratorium.

8. **Sirpur Paper Mills Ltd. Vs. I.K. Merchants Pvt. Ltd. [A.P. No. 550 of 2008] HC, Calcutta order dt. 10.01.2020**

   Once moratorium is over, no further embargo remains for continuing to hear suits and other proceedings to which the CD is a party.

9. **Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [(IB)-378(PB)/2017] NCLT, New Delhi order dt. 25.04.2018**

   The appropriation of Fixed Deposit Receipts (FDRs) was barred by section 14 as it was initiated after the initiation of CIRP. Any withdrawal from the account/FDR by the bank will be regarded as violation of Regulation 19 of the CIRP Regulations and in the absence of such a bar, it will not be possible for RP to verify the claims and the object of moratorium will be defeated.

10. **Anand Rao Korada Vs. Varsha Fabrics (P) Ltd. &Ors. [Civil Appeal Nos. 8800-8801 of 2019] SC order dt. 18.11.2019**

    Once the proceedings under the Code had commenced and an order declaring moratorium has been passed by the AA, then if the assets of the CD are alienated during the pendency of the proceedings under the Code, it will seriously jeopardise the interest of all the stakeholders.

11. ICICI Bank Ltd. Vs. Gopalsamy Ganesh Babu [CA (AT) (Ins.) No. 655 of 2019] NCLAT order dt. 05.07.2019

Since the moratorium has expired, the appellant may pursue the suit pending before the subordinate court in the light of section 60(6) of the Code.

12. SSMP Industries Ltd. Vs. Perkan Food Processors Pvt. Ltd. [CS (COMM) 470/2016 & CC (COMM) 73/2017] HC, New Delhi order dt. 18.07.2019

Section 14 has created a piquant situation i.e., that the CD undergoing insolvency proceedings can continue to pursue its claims, but the counterclaim would be barred under section 14(1)(a). When such situations arise, the court has to see whether the purpose and intent behind the imposition of moratorium is being satisfied or defeated. A blinkered approach cannot be followed, and the court cannot blindly stay the counterclaim and refer the defendant to the NCLT/RP for filing its claims.

13. Alchemist Asset Reconstruction Company Ltd. Vs. Hotel Gaudavan Pvt. Ltd. &Ors. [Civil Appeal No. 16929 of 2017] SC order dt. 23.10.2017

The mandate of the Code is that the moment an insolvency application is admitted, the moratorium that comes into effect under section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against CD.

14. Canara Bank Vs. Deccan Chronicle Holdings Ltd. [CA (AT) (Ins.) No. 147 of 2017] NCLAT order dt. 14.09.2017

Moratorium will also not affect the power of the HC under Article 226 of the Constitution. However, so far as suit, if filed before any HC under original jurisdiction which is a money suit or suit for recovery, against the CD, such suit cannot proceed after declaration of moratorium under section 14 of the Code.

15. Amira Pure Foods Pvt. Ltd. Vs. Canara Bank & Ors. [W.P.(C) No. 5467/2019] HC, New Delhi order dt. 20.05.2019

The Debts Recovery Appellate Tribunal should have recalled its order so that the IRP/RP could take over the assets of the CD in

exercise of its mandate under the Code, during the period of moratorium.

16. **Schweitzer Systemtek India Pvt. Ltd. Vs. Phoenix ARC Pvt. Ltd. [T.C.P. No. 1059/I&BP/NCLT/MB/MAH/2017] NCLT, Mumbai order dt. 03.07.2017**

    The word 'its' used in section 14(1)(c) was interpreted to denote the property owned by the CD, thus the property not owned by CD would not fall within the ambit of moratorium.

17. **Jharkhand Bijli Vitran Nigam Ltd. Vs. IVRCL Ltd. & Anr. [CA (AT) (Ins.) No. 285 of 2018] NCLAT order dt. 03.08.2018**

    On determination, even if it is found that the CD is liable to pay certain amount, still no recovery can be made during the period of moratorium.

18. **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019**

    Moratorium imposed by section 14 is in the interest of the CD itself, thereby preserving its assets during the CIRP.

19. **Commissioner of Customs, (Preventive) West Bengal Vs. Ram Swarup Industries Ltd. &Ors. [CA (AT) (Ins.) No. 563 of 2018] NCLAT order dt. 20.06.2019**

    The RP has the right to take control and custody of any asset, though the customs authority is in possession of the same during the period of moratorium.

20. **Vasudevan Vs. State of Karnataka & Ors. [MA/632/2018 in CP/39/2018] NCLT, Chennai order dt. 03.05.2019**

    The termination of the mining lease with the CD during the moratorium has taken away the interest created in favour of the CD in relation to the mining operations and the CD cannot carry on mining business as a going concern, which frustrates the object of CIRP.

21. **Kitply Industries Ltd. Vs. Assistant Commissioner of Income Tax (TDS) & Anr. [I.A. No. 54/2018 in C.P. (IB)/02/GB/2018] NCLT, Guwahati order dt. 15.11.2018**

Freezing of the bank accounts in the name of CD is a proceeding of quasi-judicial nature and being so, such a proceeding is a proceeding before any other authority as contemplated in the provision of law, and as such, continuation of the same during the period when the moratorium is in operation is illegal in view of the prohibitions, rendered in section 14(1)(a) of the Code.

22. Tayal Cotton Pvt. Ltd. Vs. State of Maharashtra &Ors. [Criminal Writ Petition No. 1437of 2017] HC, Bombay order dt. 06.08.2018

Section 14 of the Code except that it only prohibits a suit or a proceeding of a like nature and does not include any criminal proceeding.

23. Canara Bank Vs. Deccan Chronicle Holdings Ltd. [CA (AT) (Ins.) No. 147 of 2017] NCLAT order dt. 14.09.2017

Moratorium will not affect any suit or case pending before the SC under Article 32 of the Constitution or where an order is passed under Article 136 of the Constitution.

24. ICICI Bank Ltd. Vs. Innoventive Industries Ltd. [MA 157 in CP 01/I&BP/2016] NCLT, Mumbai order dt. 23.08.2017

'*Essential service*' is for survival of humankind, but not for making business and earn profits without making payment to the services used. When company is using it for making profit, then the company must make payment to the services/goods utilised in manufacturing purpose.

25. Dakshin Gujarat VIJ Company Ltd. Vs. ABG Shipyard Ltd. &Anr. [CA (AT) (Ins.) No. 334 of 2017] NCLAT order dt. 03.02.2018

Essential goods or services, including electricity, water, telecommunication services and information technology services, if they are not direct input to the output produced or supplied by the CD, cannot be terminated, or suspended or interrupted during moratorium period.

26. Videocon Industries Ltd. Vs. State Bank of India &Ors. [MA 1300/2018 in C.P. (IB)-02/(MB)/2018] NCLT, Mumbai order dt. 13.03.2019

'Profit Petroleum' is not out of the ambit of section 14 of the Code and moratorium is applicable.

27. Varrsana Ispat Limited Vs. Deputy Director, Directorate of Enforcement [CA (AT) (Ins.) No. 493 of 2018] NCLAT order dt. 02.05.2019

Section 14 of the Code is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceedings under the PMLA.

28. Shah Brothers Ispat Pvt. Ltd. Vs. P. Mohanraj & Ors. [CA (AT) (Ins.) No. 306 of 2018] NCLAT order dt. 31.07.2018

Imposition of fine cannot held to be a money claim or recovery against the CD nor order of imprisonment, if passed by the court of competent jurisdiction and cannot come within the purview of section 14. Further, no criminal proceeding is covered under section 14 of the Code.

29. State Bank of India Vs. V. Ramakrishnan & Anr. [Civil Appeal No. 3595, 4533 of 2018] SC order dt. 14.08.2018

Sections 96 and 101, when contrasted with section 14, would show that section 14 cannot possibly apply to a personal guarantor.

30. Alpha and Omega Diagnostics (India) Ltd. Vs. Asset Reconstruction Company of India Ltd. &Ors. [CA (AT) (Ins.) No. 116 of 2017] NCLAT order dt. 31.07.2017

'Moratorium' shall be declared for prohibiting any action to recover or enforce any security interest created by the CD in respect of 'its' property.

31. Haravtar Singh Arora Vs. Punjab National Bank &Ors. [CA (AT) (Ins.) No. 567 of 2018] NCLAT order dt. 20.09.2018

In terms of section 14 of the Code, all the proceedings pending before any court against the CD automatically comes to halt and cannot be decided.

32. Anju Agarwal Vs. Bombay Stock Exchange &Ors. [CA (AT) (Ins.) No. 734 of 2018] NCLAT order dt. 23.04.2019

Section 14 of the Code will prevail over section 28A of the

Securities and Exchange Board of India Act, 1992, and SEBI cannot recover any amount including any penalty from the CD.

33. Monnet Ispat & Energy Ltd. Vs. Government of India, Ministry of Coal [CA (AT) (Ins.) No. 26 of 2018] NCLAT order dt. 30.11.2018

The Government of India issued show cause notice to the CD before issuance of the termination letter much prior to initiation of the CIRP. The CD having failed to act in terms of the said show cause notice and the order of cancellation passed by the Government being before declaration of moratorium, it cannot be held to be in violation of section 14(1)(d) of the Code.

34. Sojitz India Pvt. Ltd. Vs. Oren Hydrocarbons Pvt. Ltd. [CP/1182/IB/2018] NCLT, Chennai order dt. 12.02.2019

It is always fit to appoint local professional, instead of airlifting a person from Delhi, which will be taxing the stressed CD and there is every chance of delay in proceeding.

35. Indian Overseas Bank Vs. Dinkar T. Venkatsubramaniam [CA (AT) (Ins.) No. 267 of 2017] NCLAT order dt. 15.11.2017

After admission of application under section 7 of the Code, once moratorium is declared, it is neither open to any person including FCs and the appellant bank to recover any amount from the account of the CD, nor it can appropriate any amount towards its own dues.

36. ICICI Bank Ltd. Vs. Vista Steel Pvt. Ltd. [CP (IB) No. 552/KB/2017] NCLT, Kolkata order dt. 15.12.2017

It is true that guarantor's liability is co-extensive with that of principal borrower. But it does not mean that the insolvency application can be filed against the principal borrower and the corporate guarantor simultaneously. Another insolvency proceeding against the CD is barred on account of moratorium order passed under section 14(1)(a) of Code against the principal borrower.

37. RBL Bank Ltd. Vs. MBL Infrastructures Ltd. [C.A. (I.B.) No. 543/2017 arising out of C.P(IB)/170/KB/2017)] NCLT, Kolkata order dt. 18.12.2017

During the moratorium period, a guarantee cannot be invoked.

38. UCO Bank Vs. G. Ramachandran [CA (AT) (Ins.) No. 761 of 2020 with IA No. 2038 of 2020] NCLAT order dt. 03.11.2020

Once moratorium is declared in a CIRP, adjustment of fixed deposits of CD by the appellant against an outstanding loan of CD, cannot be maintained. The plea of lack of knowledge of initiation of CIRP is not relevant.

39. Alliance Broadband Services Pvt. Ltd. Vs. Manthan Broadband Service Pvt. Ltd. [IA No. 853/KB/2020 in CP (IB) No. 1634/KB/2018] NCLT, Kolkata order dt. 10.12.2020

Once the moratorium is declared, it is not open to any person, including FCs, to recover any amount from the account of the CD nor can it appropriate any amount towards its own dues. It held the actions of the bank to be in violation of section 14 of the Code and directed it to reverse the amount along with any interest accrued as per the nature of the deposit.

40. Bharat Aluminium Co. Ltd. Vs. J.P Engineers Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 759 of 2020] NCLAT order dt. 26.02.2021

The bank guarantee can be invoked even during the period of moratorium in view of section 14(3)(b) of the Code.

41. P. Mohanraj & Ors. Vs. Shah Brothers Ispat Pvt. Ltd. [Civil Appeal No. 10355 of 2018 with other appeals] SC order dt. 01.03.2021

On the issue as to whether institution or continuation of a proceeding under section 138 of the Negotiable Instruments Act, 1881 (NI Act) can be said to be covered under moratorium, the SC held as under:

i. A quasi-criminal proceeding which would result in the assets of the CD being depleted as a result of having to pay compensation which can amount to twice the amount of the cheque that has bounced would directly impact the CIRP in the same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective, it is impossible to discern any difference between the impact of a suit and a section 138

proceeding, insofar as the CD is concerned, on it getting the necessary breathing space to get back on its feet during the CIRP.

ii. Section 14(1)(a) refers to monetary liabilities of the CD and section 14(1)(b) refers to the CD's assets, and together, these two clauses form a scheme which shields the CD from pecuniary attacks against it during the moratorium period so that the CD gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequences.

iii. A moratorium does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, and such shadow is lifted when the moratorium period comes to an end.

iv. A section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases.

v. A quasi-criminal proceeding contained in Chapter XVII of the NI Act would, given the object and context of section 14 of the Code, amount to a "proceeding" within the meaning of section 14(1)(a) and therefore, the moratorium attaches to such proceeding.

vi. Moratorium would apply only to the CD, and the natural persons mentioned in section 141 of the NI Act shall continue to be statutorily liable under Chapter XVII of the NI Act.

42. Small Scale Industrial Manufactures Association (Regd.) Vs. Union of India and Ors. [Writ Petition (C) No. 476 of 2020] SC order dt. 23.03.2021

On deferment of payment of loan as per the notification of RBI dated 27.03.2020, the SC held, that there shall not be any charge of interest on interest/compound interest/ penal interest for the period during the loan moratorium and any amount already recovered under the same head, shall be refunded to the

concerned borrowers and to be given credit/adjusted in the next instalment of the loan account.

43. Gouri Prasad Goenka Vs. State Bank of India [WPO No. 171 of 2021] HC, Calcutta order dt. 21.06.2021

Moratorium creates no hindrance to a proceeding for declaration of a wilful defaulter. An act of wilful default is not obliterated automatically by the filing of an application under section 7.

44. Anjali Rathi and Others Vs. Today Homes & Infrastructure Pvt. Ltd. and Others [SLP (C) No. 12150 of 2019 with other appeals] SC order dt. 08.09.2021

Moratorium is only in relation to CD and not in respect of the director and management of CD.

45. Sandeep Khaitan, Resolution Professional Vs. JSVM Plywood Industries Ltd. & Anr. [Criminal Appeal No. 447 of 2021] SC order dt. 22.04.2021

The power under Section 482 of the Code of Criminal Procedure, 1973 may not be available to the court to countenance the breach of a statuary provision. The words 'to secure the ends of justice' in section 482 cannot mean to overlook the undermining of a statutory dictate, which in this case is section 14, and section 17 of the Code.

46. Union of India Vs. Vijaykumar V. Iyer [CA (AT) (Ins.) No. 733 of 2020 with other appeals] NCLAT order dt. 13.04.2021

In the event of telecom spectrum being subjected to proceedings under the Code, protection would be available to telecom licenses and spectrum under section 14(1).

47. Directorate of Economic Offences Vs. Binay Kumar Singhania & Ors. [CA (AT) (Ins.) No. 935 of 2020] NCLAT order dt. 04.05.2021

Section 14 of the Code is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceedings or any Act having essence of crime or crime proceeds.

48. Executive Engineer Uttar Gujarat VIJ Company Ltd. Vs Devang RP Samapat, RP [CA (AT) (Ins.) No. 371 and 372 of 2021] NCLAT order dt. 27.05.2021

If the supply of electricity is for managing the operations of the CD, the supply cannot be interrupted during moratorium except where CD has not paid dues arising from such supply during the moratorium.

Q.33. What shall be included in the Public Announcement made by an Adjudicating Authority?

Ans. 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, as may be specified.

(d) Penalties for false or misleading Claims.

(e) The last date for the submission of the claims, as may be specified

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

Q.34. Who shall appoint the Insolvency Resolution Professional?

Ans. As per Section 16 of the Code, the Adjudicating Authority shall appoint an interim resolution professional on the insolvency commencement date.

Q.35. Where the application for corporate insolvency resolution process is made by an operational creditor and no proposal has been made for an Insolvency Resolution Professional, who shall appoint the IRP?

Ans. As per Section 16 (3) of the Code, where the application for corporate insolvency resolution process is made by an operational creditor and no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the

Board for the recommendation of an insolvency professional who may act as an interim resolution professional.

Q.36. What shall be the term of Interim Resolution Professional?

Ans. As per Section 16 of the Code, the term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22 of the Code.

Judicial pronouncements with regard to Section 16 : Appointment and tenure of IRP

1. **State Bank of India Vs. Metenere Ltd. [CA (AT) (Ins.) No. 76 of 2020] NCLAT order dt. 22.05.2020**

   An ex-employee of the FC cannot be appointed as an IRP.

2. **Bank of New York Mellon Vs. Zenith Infotech Ltd. [Civil Appeal No. 3055 of 2017] SC order dt. 21.02.2017**

   Section 16 of the Code visualises appointment of an IRP to manage the affairs of the CD. Such appointment is to be made by the AA.

3. **Dharmendra Kumar Vs. IBBI & Ors. [CA (AT) (Ins.) No. 313 of 2018] NCLAT order dt. 24.08.2018**

   The appointment and tenure of IRP is prescribed under section 16 of the Code.

4. **IDBI Bank Ltd. Vs. Lanco Infratech Ltd. [C.P. (IB) No. 111/7/HDB/2017] NCLT, Hyderabad order dt. 07.08.2017**

   An IP must refrain from accepting too many assignments if he is unlikely to be able to devote adequate time to each of his assignment.

5. **Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017] SC order dt. 31.08.2017**

   Once an IP is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the CD.

6. **Innovsource Pvt. Ltd. Vs Getit Grocery Pvt. Ltd. [IB-295(PB)/2017] NCLT, New Delhi order dt. 08.01.2018**

IBBI vide its letter dated 01.01.2018, has recommended a panel of IPs for appointment as IRPs in compliance with section 16(3)(a) of the Code to cut delay. The list of recommended IP provides instant solution to the AA to pick up the name and make appointment. It helps in meeting the timeline given in the Code and helps unnecessary time wasted, first by asking the IBBI to recommend the name and then appointing such IRP by AA.

7. **Asset Reconstruction Company (India) Pvt. Ltd. Vs. Shivam Water Treaters Pvt. Ltd. [C.P. No. (IB) 1882 (MB)/2018] NCLT, Mumbai order dt. 02.01.2019**

It was clarified that IRP is acting as a court officer and any hindrance in the work of CIRP will amount to contempt of court.

Q.37. Who shall manage the affairs of the corporate debtor from the date of appointment of Insolvency Resolution Professional?

Ans. As per Section 17(1) of the Code, from the date of appointment of the interim resolution professional,

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

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

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

Q.38. What shall be the rights of Insolvency Resolution Professional when he is vested with the management of the affairs of the corporate debtor?

Ans. As per Section 17(2) of the Code, The interim resolution professional vested with the management of the corporate debtor, shall-

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of accounts, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and

(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

Judicial pronouncements with regard to Section 17 : Management of affairs of CD by IRP

1. **Subasri Realty Pvt. Ltd. Vs. N. Subramanian & Anr. [CA (AT) (Ins.) No. 290 of 2017] NCLAT order dt. 22.02.2018**

   To ensure that the CD remains a going concern, all the directors/employees are required to function and assist the RP who manages the affairs of the CD during moratorium. If an officer or employee had the power to sign a cheque on behalf of the CD prior to the order of moratorium, such power does not stand suspended on the suspension of the Board of Directors nor can be taken away by the RP.

2. **State Bank of India Vs. Essar Steel India Ltd. [C.P. (I.B) No. 40/7/NCLT/AHM/2017)] NCLT, Ahmedabad order dt. 02.08.2017**

   Once CIRP has commenced with the appointment of IRP, no doubt the Board of Directors would be suspended. That does not mean the entire machinery of the CD is suspended. Even after

appointment of IRP, all the employees of the CD, top to bottom, would continue to function under the control of IRP instead of the Board of Directors.

3. **Steel Konnect (India) Pvt. Ltd. Vs. Hero Fincorp Ltd. [CA (AT) (Ins.) No. 51 of 2017] NCLAT order dt. 29.08.2017**

   IRP has not vested with any specific power to sue any person on behalf of the CD. However, in case of such difficulty, it is always open to IRP to bring to the notice of the AA for appropriate order.

4. **Bohar Singh Dhillon Vs. Rohit Sehgal (IRP) & Ors. [CA (AT) (Ins.) No. 665 of 2018] NCLAT order dt. 09.05.2019**

   RP is required to act in terms of section 17(2)(e) of the Code for complying with the requirements under SEBI and the Regulations framed thereunder as well as the guidelines.

Q.39. What are the duties of Interim Resolution Professional ?

Ans. As per section 18 of the Code, the interim resolution professional shall perform the following duties, namely: -

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to -

  (i) business operations for the previous two years;

  (ii) financial and operational payments for the previous two years;

  (iii) list of assets and liabilities as on the initiation date; and

  (iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

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

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

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

Explanation. – For the purposes of this section, the term "assets" shall not include the following, namely: -

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central

Government in consultation with any financial sector regulator.

Judicial pronouncements with regard to Section 18 :
Duties of IRP

1. **Encore Asset Reconstruction Company Pvt. Ltd. Vs. Charu Sandeep Desai & Ors. [CA (AT) (Ins.) No. 719 of 2018] NCLAT order dt. 14.05.2019**

   It is the duty of the IRP to take control and custody of any asset over which the CD has ownership rights as recorded in the balance sheet of the CD.

2. **Rajendra K. Bhutta Vs. Maharashtra Housing and Area Development Authority [MA 96/2018 in C.P. No. 1061/I&BC/2017] NCLT, Mumbai order dt. 02.04.2018**

   The RP will come into picture after IRP having exercised his duties under section 18, so that IRP will hand over the custody of the assets as well as other records that have already been taken into custody, to the RP.

3. **Avil Menezes, Resolution Professional of AMW Auto Component Ltd. Vs. Shah Coal Pvt. Ltd. [CA (AT) (Ins.) No. 63 of 2021] NCLAT order dt. 03.02.2021**

   In terms of section 21(1), RP is only supposed to collate the claims which implies comparison with the record and verification. Unlike a liquidator who is empowered to admit or reject a claim under section 40 of the Code against which an appeal lies to the AA, the RP is not vested with any adjudicatory powers. All actions taken by RP are subject to control of the AA.

Q.40. What shall be the responsibilities of the interim resolution professional in case of Management of operations of corporate debtor as going concern?

Ans. As per Section 20 of the Code, the interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

The interim resolution professional shall have the authority-

(a) to appoint accountants, legal or other professionals as may be necessary;

(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and

(e) to take all such actions as are necessary to keep the corporate debtor as a going concern.

Judicial pronouncements with regard to Section 20 : Management of operations of CD as going concern

1. **Tuf Metallurgical Pvt. Ltd. Vs. Impex Metal & Ferro Alloys Ltd. & Ors. [CA (AT) (Ins.) No. 190 of 2020] NCLAT order dt. 03.02.2021**

   Section 20(2)(e) gives power to the IRP (subsequently RP) to take all actions as are necessary to keep the CD as a going concern. In such a process of managing the business operations of the CD, if advance payments for supply of goods is received, it cannot be treated as raising an interim finance. It is an advance for payment of goods which the CD as a going concern may be manufacturing. Such amount received as an advance payment for the supply of goods during the CIRP would have to be treated as CIRP cost.

Q.41. What shall be composition of the Committee of Creditors?

Ans. As per Section 21 of the Code, the committee of creditors shall comprise all financial creditors of the corporate debtor.

Financial Creditors, who are related parties of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of committee of creditors. However, this provision shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified. The same has been specified in Regulation 16(2) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Q.42. Who cannot participate in the Meeting of the Committee of Creditors?

Ans. As per Section 21 of the Code, a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) of Section 21 or sub-section (5) of Section 24, if it is a Related Party of the Corporate Debtor shall not have any right of Representation, Participation or Voting in a meeting of the Committee of Creditors.

However, the above provision shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

Q.43. In case a person is financial creditor as well as operational creditor, how will he be included in the Committee of Creditors?

Ans. As per Section 21 (4) of the Code, where any person is a financial creditor as well as an operational creditor -

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

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

Q.44. What shall be the remuneration payable to the authorised representative?

Ans. As per Section 21 (6B) of the Code, the remuneration payable to the authorised representative-

(i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (b) of sub-section (6A) shall be as specified which shall form part of the insolvency resolution process costs.

Q.45. How is the voting share of a creditor in the committee of creditors determined?

Ans. As per Section 21, the voting share is determined based on the value of the debt of the creditor in proportion to the total debt.

Q.46. Who shall act as an authorised representative for financial creditors where a financial debt is in the form of securities or deposits or is owed to a class of creditors or is represented by a guardian, executor or administrator?

Ans. As per Section 21 (6A) of the Code, where a financial debt—

(a) Is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors,

such trustee or agent shall act on behalf of such financial creditors;

(b) Is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) Is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

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

Q.47. What is the voting share on which decisions are taken by Committee of Creditors?

Ans. According to section 21 (8) of the Code, save as otherwise provided, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent of voting share of the financial creditors. The Code specifies requirement of 66% of voting share of the financial creditors for aspects including replacement of resolution professional, approval for extension of corporate insolvency resolution period, approval of matters listed in section 28 of the Code, approval of resolution plan etc.

In case a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.

Q.48. Within how many days, a Resolution Professional shall make available any financial information so required by Committee of Creditors?

Ans. According to section 21 (10) of the Code, the resolution professional shall make available any financial information so required by the committee of creditors within a period of seven days of such requisition.

Judicial pronouncements with regard to Section 21 : Committee of Creditors

1. **M.P. Agarwal Vs. Shri Lakshmi Cotsyn Ltd. & Anr. [CA (AT) (Ins.) No. 620 of 2020] NCLAT order dt. 27.07.2020**

   It is the settled law of the land that CoC enjoys primacy in the matter of approval or rejection of resolution plan/settlement proposal and the AA as well as the appellate tribunal would be exceeding its jurisdiction in approving or rejecting such plan/proposal which is essentially based on the commercial wisdom of the CoC.

2. **Standard Chartered Bank Vs. Satish Kumar Gupta & Ors. [CA (AT) (Ins.) No. 242 of 2019 and other appeals] NCLAT order dt. 04.07.2019**

   The CoC has no role in the matter of distribution of amount amongst the creditors, including the FCs or OCs. The members of the CoC being interested parties are not supposed to decide the manner of distribution. The inter se distribution amongst the FCs and OCs cannot be held to be purely commercial in nature to be in the domain of the CoC.

3. **State Bank of India Vs. Orissa Manganese & Minerals Ltd. [CA (IB) Nos. 402 and others in CP (IB) No. 371/KB/2017] NCLT, Kolkata order dt. 22.06.2018**

   CoC is the fit person to take its own business decision and no reason has been found to disturb or sit on the decision of the CoC taken on by majority vote share.

4. **Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India &Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019**

   The CoC is required to evaluate the resolution plan on the basis of feasibility and viability.

5. **Rama Subramaniam Vs. Sixth Dimension Projects Solutions Ltd. [M.A. No. 1626/2018 in C.P. No. 587/I&BP/2018] NCLT, Mumbai order dt. 13.03.2019**

   The CoC has no absolute power to change the IRP/RP at their whims and fancies without any valid or tenable reasons. The change of RP must be rational/tenable/reasonable and not at the whims and fancies of the CoC.

6. **Sai Regency Power Corporation Pvt. Ltd. Vs. CoC of Sai Regency Power Corporation Pvt. Ltd. [MA/872/2019 in IBA/92/2019] NCLT, Chennai order dt. 21.08.2019**

   All members of the CoC are bound by the resolution approved by it with requisite majority.

7. **IFCI Ltd. Vs. Era Housing & Developers (India) Ltd. [(IB)-489(PB)/2017] NCLT, New Delhi order dt. 26.04.2019**

   The decision of CoC taken by requisite majority cannot be questioned by non-applicant respondent and no one is permitted to strangulate the CIRP by refusing to contribute their share of expense.

8. **Asset Reconstruction Company (India) Ltd. (ARCIL) Vs. Koteswara Rao Karuchola and Anr. [IA No. 344 of 2018 in CP (IB) No. 219/7/HDB/2018] NCLT, Hyderabad order dt. 26.02.2019**

   All decisions of COC shall be taken by a vote of not less than 51% of voting share of FCs. It is just like a general provision that all matters other than those referred to in section 28 of the Code require to be approved by a voting of not less than 51% of voting share of FCs.

9. **SBJ Exports & Mfg. Pvt. Ltd. Vs. BCC Fuba India Ltd. [CP-659/2016] NCLT, New Delhi order dt. 07.06.2018**

   In a number of cases, it has now been seen that members of the CoC are nominated by FCs like Banks without conferring upon them the authority to take decision on the spot which acts as a block in the time bound process contemplated by the Code. Suchlike speed brakers and roadblocks obviously cause obstacles to achieve the targets of speedy disposal of the CIRP.

10. **Jindal Saxena Financial Services Pvt. Ltd. Vs. Mayfair Capital Pvt. Ltd. [C.A. No. 523(PB)/2018 in C.P. No. (IB)-84(PB)/2017)] NCLT, New Delhi order dt. 04.07.2018**

    The FCs/Banks must send only those representatives who are competent to take decisions on the spot. The wastage of time causes delay and allows depletion of value which is sought to be contained.

11. **Bank of Baroda and Binani Cements Limited &Ors. Vs. Vijaykumar V. Iyer [CA (IB) No. 201/KB/18 and other CAs/IAs in C.P.(IB) No. 359/KB/2017] NCLT, Kolkata order dt. 04.05.2018**

    It is time to recognise the OC's voice in the CoC for payment of minimum amount payable to them as required under the Code.

12. **Nikhil Mehta & Sons (HUF) &Ors. Vs. AMR Infrastructure Ltd. [CA No. 811(PB)/2018 in (IB)-02(PB) /2017] NCLT, New Delhi order dt. 29.09.2018**

    In case of deadlock in voting share in the appointment of RP under section 22 of the Code, preference can be given to the decision taken by highest percentage of the votes in the COC.

13. **Numetal Ltd. Vs. Satish Kumar Gupta &Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017] NCLT, Ahmedabad order dt. 19.04.2018**

    The CoC is also a creature of statute, and, can be termed as the instrumentality of the State, hence, they are under statutory obligation to follow the basic principles of administrative law. The instrumentality of the State has to act in transparent and fair manner and not to take arbitrary decision or to adopt discriminatory practice.

14. **Tata Steel Limited Vs. Liberty House Group Pte. Ltd. & Ors. [CA (AT) (Ins.) No. 198 of 2018] NCLAT order dt. 04.02.2019**

    Only the members of the CoC who attend the meeting directly or through video conferencing, can exercise its voting powers after considering the other requirements as may be specified by the IBBI. Those members of the CoC who are absent, their voting shares cannot be counted.

15. **Bank of Baroda and Binani Cements Ltd. & Ors. Vs. Vijaykumar V. Iyer [CA (IB) No. 201/KB/18 and other CAs/IAs in C.P.(IB) No. 359/KB/2017] NCLT, Kolkata order dt. 04.05.2018**

    The CoC cannot take an adverse decision as against the prospective bidding plan submitted more so by a leading company who is capable of effectively taking over the CD without giving a reasonable opportunity of being heard and the same amounts to being unjust and arbitrary.

16. **Anil N. Surwade & Ors. Vs. Prashant Jain, RP, Sejal Glass Ltd. [CA (AT) (Ins.) No. 1006 of 2020] NCLAT order dt. 03.12.2020**

    It is absurd to put the employees of CD at par with the erstwhile board of directors seeking information regarding resolution plan and proceedings before the CoC. Once their claims have been admitted, no role is ascribed to them in the deliberation of the CoC.

17. **Rajnish Jain Vs. Manoj Kumar Singh, IRP & Ors. [CA (AT) (Ins.) No. 519 of 2020] NCLAT order dt. 18.12.2020**

    The CoC has no role in deciding or changing the status of a creditor either as FC or OC and such decision of CoC can never be treated as an exercise under its commercial wisdom.

18. **Prakash Shanker Mishra &Ors. Vs. Ashok Kriplani & Anr. [CA (AT) (Ins.) No. 34 of 2020 and another appeal] NCLAT order dt. 13.01.2021**

    AA had no power to impose RP of its choice. Even for Authorised Representative, the decision of the majority is to be respected.

19. **Phoenix Arc Pvt. Ltd. Vs. Spade Financial Services Ltd. & Ors. [Civil Appeal No. 2842 of 2020 with 3063 of 2020] SC order dt. 01.02.2021**

    The SC held: (a) The collusive commercial arrangements between FCs and the CD would not constitute a 'financial debt'; (b) The objects and purposes of the Code are best served when the CIRP is driven by external creditors, so as to ensure that the

CoC is not sabotaged by related parties of the CD. The purpose of excluding a related party of a CD from the CoC is to obviate conflicts of interest; (c) Exclusion under the first proviso to section 21(2) is related not to the debt itself but to the relationship existing between a related party FC and the CD.; and (d) The FC, who in praesenti is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party FC divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the CoC and sabotage the CIRP, it would be in keeping with the object and purpose of the first proviso to section 21(2), to debar the former related party creditor.

20. Sunit Jagdishchandra Shah, RP for Sungracia Tiles Pvt. Ltd. Vs. Sungracia Tiles Pvt. Ltd. and Ors. [IA 678 of 2020 in C.P. (IB) No. 750/NCLT/AHM/2019] NCLT, Ahmedabad order dt. 18.02.2021

The AA reiterated that they have no power to interfere in the commercial wisdom of the CoC, until and unless there is gross violation of principle of law.

21. STCI Finance Limited through Subhash Modi, RP [(IA) No.264 of 2021 in CP No. (IB) 4147/MB/2019] NCLT, Mumbai order dt. 31.05.2021

By exercising the commercial wisdom, the CoC cannot avoid compliance with the provisions of the Code and Regulations.

Q.49. Who will conduct the meeting of creditors?

Ans. As per Section 24 of the Code, the resolution professional shall conduct all the meetings of the Committee of Creditors.

Q.50. Do Operational Creditors have right to vote in the meeting of Committee of Creditors?

Ans. As per Section 24, 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 (if their aggregate dues is not less than 10% of debt) may attend the meetings of Committee of Creditors.

But, in case there are no financial creditors, operational creditors forming part of the committee shall have all rights similar to financial creditors, including voting rights.

Judicial pronouncements with regard to Section 24 : Meeting of committee of creditors

1. **Vijay Kumar Jain Vs. Standard Chartered Bank &Ors. [Civil Appeal No. 8430 of 2018] SC order dt. 31.01.2019**

   A combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors of the CD being vitally interested in resolution plans that may be discussed at meetings of the CoC, must be given a copy of such plans as part of documents that have to be furnished along with the notice of such meetings.

2. **Consolidated Engineering Company & Anr. Vs. Golden Jubilee Hotels Pvt. Ltd. [CA (AT) (Ins.) No. 501 of 2018] NCLAT order dt. 12.12.2018**

   If the claim of OCs, on verification is found to be less than 10%, the OCs have no right to claim representation in the meeting of the CoC.

Q.51. Is it mandatory on the Board to confirm the Appointment of Resolution Professional proposed by Adjudicating Authority within 10 days?

Ans. No, as per Section 22(5) 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, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

Judicial pronouncements with regard to Section 22 : Appointment of RP

1. **Allahabad Bank Vs. Anil Kumar [IA No. 691 of 2019 and other IAs in C.P. (IB) 397 of 2018] NCLT, Ahmedabad order dt. 28.07.2020**

   When there is a conflict and no consensus is reached in the CoC where FCs comprising of financial institutions and non-financial institutions by the majority of voting shares to appoint the IRP/RP, proposed by the applicant under section 9 of the Code, it is expedient to appoint an independent IRP/RP to break stalemate between the FCs.

2. **Committee of Creditors of LEEL Electricals Ltd. Through State Bank of India Vs. Leel Electricals Ltd. through its IRP, Arvind Mittal [CA (AT) (Ins.) No. 1100 of 2020] NCLAT order dt. 21.12.2020**

   The decision of appointment of IRP as RP or replacement of IRP by another RP falls within the ambit of section 22 of the Code and is a decision based on commercial wisdom of CoC which is not amenable to judicial review. When the CoC has passed the resolution with the requisite majority, it is not proper to say that the legal rights of IRP have been infringed.

3. **Ranjeet Kumar Verma Vs. Committee of Creditors of Straight Edge Contract Pvt. Ltd. through Resolution Professional [CA (AT) (Ins.) No. 1129 of 2020] NCLAT order dt. 04.01.2021**

   The IRP has no locus standi to maintain an appeal against the decision of the CoC with a 100% majority to replace him with another RP. The outgoing IRP cannot claim invasion of any of his legal rights under the Code as he is not a stakeholder.

Q.52. What are the key roles of an Interim Resolution Professional?

Ans. The key roles of an Interim Resolution Professional are:-

(a) Issuance of public notice of the Corporate Insolvency Resolution process

(b) To take custody and control of all assets of the corporate debtor

(c) Collation of claims received

(d) Constitution of the Committee of Creditors

(e) Conduct of the first meeting of the Committee of Creditors

(f) To manage the affairs of corporate debtor on going concern basis

(g) To ensure compliance of applicable laws.

Q.53. What are the Duties of Resolution Professional?

Ans. As per Section 25 of the Code, following are the duties of the Resolution Professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board.

Judicial pronouncements with regard to Section 25 : Duties of RP

1. **KEC International Ltd. Vs. Bhuvan Madan & Anr. [IA No.139 of 2019 in CP (IB) No. 137/7/NCLT/AHM/2018] NCLT, Ahmedabad order dt. 04.09.2020**

   The goods lying in the form of raw material in the custody of CD for processing is under the contract of bailment preventing the RP from withholding the same. The RP was directed to handover the goods of the applicant with the liberty to proceed against the applicant under section 25(2) to recover any sum, if due.

2. **Kotak Investment Advisors Ltd. Vs. Krishna Chamadia & Ors. [CA (AT) (Ins.) No. 344-345 of 2020] NCLAT order dt. 05.08.2020**

   The act of RP to accept the resolution plan after opening of other bid cannot be justified by any means and is a blatant misuse of the authority invested in the RP to conduct CIRP. It was further observed that the material irregularity in exercise of powers by the RP, even with the approval of the CoC in the conduct of CIRP, cannot be treated as an exercise of commercial wisdom.

3. **Union Bank of India Vs. Paramshakti Steel Ltd. [MA No. 243/2018 in C.P. No. (IB) 727 (MB)/2017] NCLT, Mumbai order dt.12.04.2018**

While making physical verification of debtors appearing in the records of the CD, the RP found that some of them are not even aware of the CD. The AA suggested the RP to initiate all steps available under the Code to proceed against the promoters/directors of the CD.

4. **State Bank of India Vs. Jet Airways (India) Ltd. [MA 2955/2019 in C.P.(IB)-2205/(MB)/2019] NCLT, Mumbai order dt. 25.09.2019**

   It is pertinent to mention that RP is duty bound to maintain CD as going concern.

5. **Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India &Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019**

   1. The RP has administrative powers as opposed to quasi-judicial powers.
   2. The RP is really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the AA. Under the CIRP Regulations, the RP has to vet and verify claims made, and ultimately, determine the amount of each claim.

6. **BMW India Financial Services Pvt. Ltd. Vs. SK Wheels Pvt. Ltd. [MA No. 2319/2019 in CP(IB) 4301/ 2018] NCLT, Mumbai order dt. 16.10.2019**

   The action or rather inaction by the RP in not taking a decision on the claim is his abuse of the power under the Code, and contrary to justice and public policy.

7. **Amit Gupta Vs. Yogesh Gupta [CA (AT) (Ins) No. 903 of 2019] NCLAT order dt. 20.12.2019**

   The RP cannot go into investigations and enquiries whether or not a CD is an MSME, and the AA is also not expected to make such investigations, enquiries on such evidence or give findings on such issues.

8. **Tourism Finance Corporation of India Ltd. Vs. Rainbow**

Papers Ltd. & Ors. [CA (AT) (Ins.) No. 354 of 2019 and other appeals] NCLAT order dt. 19.12.2019

Whether a person is a secured or unsecured creditor is a question of fact normally determined by the RP or the CoC.

9. **S. Rajendran Vs. Jonathan Mouralidarane [CA (AT) (Ins.) No. 1018 of 2019] NCLAT order dt. 01.10.2019**

   RP has no jurisdiction to determine a claim. He can only collate it, based on evidence and the record of the CD, or as filed by the FC.

10. **Asset Reconstruction Company (I) Ltd. (ARCIL) Vs. Koteswara Rao Karuchola & Ors. [CA (AT) (Ins.) No. 633 of 2018] NCLAT order dt. 18.11.2019**

    After the constitution of the CoC, without its permission, the RP was not competent to entertain more applications after three months to include one or other person as FC.

11. **Sunrise Polyfilms Pvt. Ltd. Vs. Punjab National Bank [Inv P.5 of 2018 in IA 27 of 2018 in C.P. (I.B) No. 89/7/NCLT/AHM/2017] NCLT, Ahmedabad order dt. 04.05.2018**

    The very object of the Code is to revive a company under CIRP and not to liquidate it. In the instant case, it is clear that the RP has omitted to perform his statutory duties. It is amply clear that the RP has not invited prospective resolution applicants as per section 25 of the Code. Therefore, the RP was directed to act as per section 25 of the Code.

12. **Numetal Ltd. Vs. Satish Kumar Gupta & Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017] NCLT, Ahmedabad order dt. 19.04.2018**

    The nature of duties as assigned to the RP is/are similar to public servant because he is appointee of the Court.

13. **Panna Pragati Infrastructure Pvt. Ltd. & Anr. Vs. Amit Pareek & Ors. [CA (AT) (Ins.) No. 515 of 2020 and another appeal] NCLAT order dt. 19.10.2020**

RP had acted against the mandate of provisions contained in sections 25(2) and 30(3) of the Code by not placing the revised resolution plan before the CoC for consideration. This was also contrary to the objective of maximisation of value of assets of CD.

14. Subrata Monindranath Maity (Bhatia Coke and Energy Ltd.) Vs. Surender Singh Bhatia & 4 Ors. [IA/05/2021 in IBA/307/2019] NCLT, Chennai order dt. 12.01.2021

RP should not be bombarded with criminal prosecution and police investigation, because it would prevent the RP from conducting CIRP without fear and favour. AA while clarifying that it is not passing any orders on the merits of the FIRs filed against RP by the erstwhile directors of the CD, directed the police to give adequate protection to the RP along with his team. It further permitted the police to proceed as per the Code of Criminal Procedure, 1973 but directed that no arrest shall be made until the disposal of the application.

15. Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. [Civil Appeal No(s). 3395/2020] SC order dt. 02.03.2021

The SC was appalled with the developments leading to arrest of the IRP, who was working pursuant to the order passed by the Court and entrusted with the functioning of the CD. It observed that the police official dealing with the case is not familiar with the provision of privilege of IRP appointed by the Court in terms of section 233 of the Code. While directing immediate release of the IRP, the SC directed the investigation officer not to take any coercive action against the IRP.

16. Propyl Packaging Ltd. Vs. George Varkey, RP of Propyl Packaging Ltd. [M.A. No. 162/KOB/2020 in IBA No.52/KOB/2019] NCLT, Kochi order dt. 21.01.2021

Allowing the advocate/chartered accountant/company secretary of the CD to attend CoC meetings would serve no purpose. The CD itself is sufficient to provide any of the documents/papers/ details sought by the RP during the proceedings. Further, it is

the discretion of the RP to appoint accountants, legal and other professionals following the due process as specified by the IBBI under section 25(2)(d) of the Code and he is not permitted to disclose any information pertaining to the CIRP to any third parties including an advocate/chartered accountant/company secretary.

Q.54. Can an interim resolution professional have the authority to access the books of accounts, records and other relevant documents of the corporate debtor?

Ans. Yes, as per Section 17(2)(d), the interim resolution professional has the authority to 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.55. Whether the filing of an avoidance application by resolution professional shall have effect on Corporate Insolvency Resolution Process?

Ans. No, as per Section 26 of the Code, 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.56. What are the rights and duties of authorised representative of financial creditors?

Ans. As per Section 25A, the rights and duties of authorised representative of financial creditors are:

1. The authorised representative under sub section (6) or sub section (6A) of section 21 or sub section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditors he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.
2. It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

3. The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

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

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

3A. Notwithstanding anything to the contrary contained in sub-section *(3)*, the authorised representative under sub-section *(6A)* of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of subsection *(3)*

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

Q.57. What is the time limit prescribed to conduct corporate insolvency resolution process by the resolution professional?

Ans. According to section 23 (1) of the Code, subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

The resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section *(1)* of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.

Q.58. What is the procedure for replacement of insolvency resolution professional?

Ans. As per Section 27 of the Code read with Section 22(3)(b), the Committee of Creditors may at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.

The Committee of Creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority by way of an application 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.

Judicial pronouncements with regard to Section 27 : Replacement of RP by CoC

1. **Punjab National Bank Vs. Kiran Shah [CA (AT) (Ins.) No. 749 of 2019] NCLAT order dt. 06.08.2019**

   CoC is not required to record any reason or ground for replacing of the RP, which may otherwise call for proceedings against such RP. The CoC having decided to remove the RP with 88% voting share, it was not open to the AA to interfere with such decision, till it is shown that the decision of the CoC is perverse or without jurisdiction.

2. **Mussadi Lal Kishan Lal Vs. Ram Dev Int. Ltd. [(IB)-178 (PB)/2017] NCLT, New Delhi order dt. 15.05.2018**

   The proposed RP cannot be regarded as independent umpire to conduct CIRP as required by well settled practice.

3. **Devendra Padamchand Jain Vs. State Bank of India & Ors. [CA (AT) (Ins.) No. 177 of 2017] NCLAT order dt. 31.01.2018**

   The AA is also empowered to remove the RP, apart from the CoC, but it should be for the reasons and in the manner as provided under the relevant provisions.

4. **Naveen Kumar Jain Vs. Committee of Creditors of K.D.K Enterprises Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 882 of 2020] NCLAT order dt. 03.11.2020**

   The RP appealed against his replacement in a CIRP. While dismissing the appeal, it was observed that commercial wisdom of the CoC covers matters including replacement of the RP and it is neither under the limited scope of judicial review nor it is justiciable.

Q.59. What are the key tasks to be performed by a Resolution Professional?

Ans. The following are the key tasks to be performed by a resolution professional:-

(a) To carry on the duties of the interim resolution professional

(b) To ensure compliance with applicable laws.

(c) To obtain custody and control of the assets of the corporate debtor

(d) Obtaining Valuation of the entity

(e) Maintain updated List of Claims

(f) Preparation of Information Memorandum

(g) Inviting expression of interest in Form G

(h) Preparing Request for Resolution Plan and Evaluation Matrix for approval of committee of creditors

(i) Identifying and reporting avoidance transactions under section 43,45, 50 and 66 of the Code.

(j) Examine each Resolution plan

(k) Obtaining consent of the Committee of Creditors for the Resolution plan and filing the same with Adjudicating Authority

(l) Periodic reporting to the Board

Q.60. What are the actions for which the resolution professional needs prior approval of Committee of Creditors?

Ans. As per Section 28 of the Code, the resolution professional shall require prior approval of the Committee of Creditors by a vote of Sixty-six per cent of voting shares 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.

(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.61. What is a Resolution plan and what are its essential contents as per Code?

Ans. As provided in Section 5(26) of the Code, resolution plan means a plan proposed by resolution applicant for insolvency resolution of corporate debtor as a going concern in accordance with Part II of the Code.

Section 30 of the Code states that, a resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under Section 29A to the resolution professional prepared on the basis of the information memorandum.

Mandatory contents of resolution plan as per Section 30(2) is as under:

(i) Payment of insolvency resolution process costs;

(ii) Payment 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 any of the 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.62. What is the process of submitting a resolution plan?

Ans. The following are the steps to submit a resolution plan:

(i) As per section 30 (1), a resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible

under section 29 A to the resolution professional, prepared on the basis of the information memorandum and along with undertaking under Regulation 39(1)(c) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(ii) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan consists of mandatory contents as provided in the said section.

(iii) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in section along with details of preferential transactions observed, found or determined under section 43,45,50 and 66 of the Code as per regulation 39 (2) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(iv) As per regulation 39 (3) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the committee shall evaluate the plans as per evaluation matrix, record deliberations on the feasibility and viability of each resolution plan and vote on the resolution plan. The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board.

(v) As per regulation 39 (4) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with compliance certificate in Form H.

Q.63. Can the resolution applicant attend the meeting of the committee of creditors?

Ans. As per Section 30(5) of the Code, the resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered. However, the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

Q.64. When shall the resolution plan be considered as approved by Committee of Creditors?

Ans. As per Section 30 of the Code, the resolution plan shall be approved by the Committee of Creditors by a vote of not less than sixty six per cent of voting share of the financial creditors.

Judicial pronouncements with regard to Section 30 :
Submission of Resolution Plan

1. **CoC of Educomp Solutions Ltd. Vs. Ebix Singapore Pte. Ltd. & Anr. [CA (AT) (Ins.) No. 203 of 2020] NCLAT order dt. 29.07.2020**

   The AA, in law cannot enter into the arena of majority decision of the CoC other than the grounds mentioned in section 32(a) to (e) of the Code. After due deliberations, when the RP had accepted the conditions of the resolution plan, especially keeping in mind the ingredients of section 25(2)(h) of the Code to the effect that no change or supplementary information to the resolution plan shall be accepted after the submission date of plan, then it is not open to the resolution applicant to take a topsy turvy stance and is not to be allowed to withdraw the approved resolution plan.

2. **Shree SidhivinayakCotspinPvt. Ltd. & Anr. Vs. RP of Marurti Cotex Ltd. &Anr. [CA (AT) (Ins.) No. 694 of 2020] NCLAT order dt. 20.08.2020**

   The successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted and that all claims must be submitted to and decided by the RP, so that a prospective resolution applicant knows exactly, what has to be paid, in order that it may then take over and run the business of the CD.

3. **Bank of Baroda Vs. Sisir Kumar Appikatla Resolution & Ors. [CA (AT) (Ins.) No. 579 of 2020] NCLAT order dt. 20.07.2020**

   The restructuring plan projected as a resolution plan approved by the CoC could not be termed as a resolution plan within the ambit of section 30 of the Code.

4. **The Karad Urban Cooperative Bank Ltd. Vs. Swwapnil Bhingardevay & Ors. [Civil Appeal Nos. 2955 of 2020 and 2902 of 2020] SC order dt. 04.09.2020**

   The RP, CoC and successful resolution applicant already took note of the facts and yet took a conscious decision to go ahead with the resolution plan, as such it cannot be stated that the question of viability and feasibility was not examined in the proper perspective.

5. **DBS Bank Ltd., Singapore Vs. Shailendra Ajmera & Anr. [CA (AT) (Ins.) No. 788 of 2019] NCLAT order dt. 18.11.2019**

   No FC, including a secured creditor, can dissent on the ground that if it dissents against the resolution plan, in spite of plan being feasible and viable and in accordance with section 30(2), just to get more amount than the other secured creditor, can take advantage of the amended section 30(2)(b)(ii).

6. **Superna Dhawan & Anr. Vs. Bharti Defence and Infrastructure Ltd. &Ors. [CA (AT) (Ins.) No. 195 of 2019] NCLAT order dt. 14.05.2019**

   The NCLAT concurred with the observation of the AA that resolution plan should be planned for insolvency resolution of the CD as a going concern and not for addition of value with intent to sell the CD. The purpose to take up the company with the intent to sell the CD is against the basic object of the Code.

7. **Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. [CA (AT) (Ins.) No. 89 of 2017] NCLAT order dt. 18.08.2017**

   In case where all creditors have been satisfied and there is no default with any other creditor, the formality of submission of resolution plan under section 30 or its approval under section 31

is required to be expedited on the basis of plan if prepared. In such case, the AA, without waiting for 180 days of resolution process, may approve resolution plan under section 31, after recording its satisfaction that all creditors have been paid/ satisfied and any other creditor do not claim any amount.

8. **Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 -9405 of 2018 and other appeals] SC order dt. 04.10.2018**

   Section 30(2)(e) does not empower the RP to decide whether the resolution plan does or does not contravene the provisions of law. It is the CoC which will approve or disapprove a resolution plan, given the statutory parameters of section 30.

9. **Industrial Services Vs. Burn Standard Company Ltd. & Anr. [CA (AT) (Ins.) No. 141 of 2018 and other appeals] NCLAT order dt. 13.05.2019**

   Resolution plan which relates to the closure of the CD/corporate applicant being against the scope and the intent of the Code is in violation of section 30(2)(e) of the Code.

10. **Sunil Jain Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 156 of 2018 and other appeals] NCLAT order dt. 24.04.2019**

    If goods have been supplied during the CIRP period to keep the CD as going concern, it is the duty of the RP to include the costs on such goods in the CIRP cost. If it is not included, the resolution plan in question can be held to be in violation of section 30(2)(a) of the Code.

11. **Rajputana Properties Pvt. Ltd. Vs. Ultra Tech Cement Ltd. & Ors. [I.A. No. 594 of 2018 in CA (AT) (Ins.) No. 188 of 2018] NCLAT order dt. 15.05.2018**

    While scrutinising the resolution plan under section 30(2), the RP cannot hold or decide as to who is ineligible under section 29A. Neither section 30(2) nor any other provision in the Code confers such power on the RP to scrutinise the eligibility of resolution applicants.

12. Rave Scans Pvt. Ltd. [(IB)-01(PB)-2017] NCLT, New Delhi order dt. 17.10.2018

Section 30(2) nowhere provides that each FC must get proportionately equivalent share with other FCs. The only condition for approving the resolution plan by the CoC is by voting share of 75% as per the requirements of section 30(4) (which has now been reduced to 66% w.e.f. 06.06.2018).

13. Numetal Ltd. Vs. Satish Kumar Gupta & Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017] NCLT, Ahmedabad order dt. 19.04.2018

The RP ought to follow provision of section 29A (c) read with section 30 (4) for the purpose of affording the opportunity to the resolution applicants before declaring them ineligible.

14. Chitra Sharma and Ors. Vs. Union of India and Ors. [WP (Civil) 744 of 2017 and other appeals] SC order dt. 09.08.2018

Primacy is given in the process to commercial decisions. The success of the process is contingent upon the competence of the IRP and the CoC.

15. SICOM Ltd. Vs. Alok Employees Benefit and Welfare Trust &Ors. [CA (AT) (Ins.) No. 344 of 2018] NCLAT order dt. 29.11.2018

Even though amended sub section (4) of section 30 came into force from 06.06.2018, it is applicable to all resolution plans which were not approved by the CoC or by the AA.

16. State Bank of India Vs. Electrosteel Steels Ltd. [CA (IB) No. 202-203/KB/2018 in CP (IB) No. 361/KB/2017] NCLT, Kolkata order dt. 20.03.2018

The CoC is empowered under section 30(4) of the Code to independently consider the question of eligibility of all applicants under section 29A.

17. Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India &Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019

The CoC has the primary responsibility of financial restructuring.

They are required to assess the viability of a CD by taking into account all available information as well as to evaluate all alternative investment opportunities that are available. The CoC is required to evaluate the resolution plan on the basis of feasibility and viability.

18. K. Sashidhar Vs. Indian Overseas Bank &Ors. [Civil Appeal No. 10673 of 2018 and other appeals] SC order dt. 05.02.2019

The word 'may' in section 30(4) is ascribable to the discretion of the CoC to approve the resolution plan or not to approve the same.

19. J.R. Agro Industries P Ltd. Vs. Swadisht Oils P Ltd. [CA No. 59 of 2018 in CP No. (IB) 13/ALD/2017] NCLT, Allahabad order dt. 24.07.2018

All OCs are ranked equal. Therefore, resolution plan should not create classes of OCs and treat them differently.

20. Bank of Baroda and Binani Cements Ltd. & Ors. Vs. Mr. Vijay Kumar V. Iyer, [CA (IB) NO.201/KB/2018 and other CAs/IAs in C.P.(IB) No. 359/KB/2017] NCLT, Kolkata order dt. 04.05.2018

Whenever, a resolution applicant's plan is under consideration of CoC and that plan is not at all placed before the AA for approval, and if another resolution applicant comes forward making an offer before the CIRP duration expires, and that it satisfies all the stakeholders of the CD, then there is nothing in the Code or Regulations to prevent the CoC from considering a revised offer of the other applicant.

21. Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019 and another appeal] SC order dt. 22.01.2020

Once the resolution plan has been approved by the CoC, the AA ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan itself.

22. Next Orbit Ventures Fund Vs. Print House (India) Pvt Ltd & Ors. [CA (AT) (Ins.) No. 417 of 2020] NCLAT order dt. 13.04.2021

If the resolution plan contemplates a change in the nature of business to another line when the existing business is obsolete or non-viable, it cannot be construed that the resolution plan is not 'feasible' or 'viable'. There is nothing in the Code which prevents a resolution applicant from changing the present line of business to adding value or creating 'synergy' to the existing assets and converting an obsolete line of business to a more 'viable and feasible' option.

23. Harish Polymer Product Vs. George Samuel & Anr. [CA (AT) (Ins.) No. 420 of 2021] NCLAT order dt. 18.06.2021

At a belated stage when the resolution applicants are already before CoC with their resolution plans, if new claims keep popping up and are entertained, the CIRP would be jeopardized, and resolution process may become more difficult.

24. Dinesh Gupta Vs. Vikram Bajaj Liquidator M/s Best Foods Ltd. [CA (AT) (Ins.) No.276 of 2021] NCLAT order dt. 29.09.2021

A 'resolution plan' is not a recovery / sale / auction / liquidation. Through a resolution plan no individual is purchasing or selling the CD.

Q.65. Is the resolution professional required to provide access to information of the information memorandum to the resolution applicant?

Ans. As per Section 29 of the Code, the resolution professional shall provide all the access of the information memorandum to the 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 from the resolution applicant :-

(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 to; and

(c) They will not to share the relevant information to the third party.

For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.

Q.66. What remedy is available to a Resolution Professional with whom the Corporate debtor personnel do not cooperate?

Ans. As per Section 19 of the Code, the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor. Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

The Adjudicating Authority, on receiving an application 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.

Judicial pronouncements with regard to Section 19 :
Personnel to extend co-operation to IRP

1. **Shailesh Chawla & Anr. Vs. Vinod Kumar Mahajan, RP & Ors. [CA (AT) (Ins.) No. 571 of 2020 and another appeal] NCLAT order dt. 23.09.2020**

   Section 19 of the Code latently and patently imposes an obligation on the personnel and promoters of the CD to extend all assistance and cooperation which the IRP will require in running / managing the affairs of the CD.

2. Bank of India Vs. Tirupati Infraprojects Pvt. Ltd. [CP No. IB-104(PB)/2017] NCLT, New Delhi order dt. 03.07.2017

All the personnel connected with the CD, its promoters or any other person associated with the management of the CD are under legal obligation under section 19 of the Code to extend every assistance and cooperation and in case there is any violation, the IRP would be at liberty to make appropriate application to the AA with a prayer for passing an appropriate order.

3. Punjab National Bank Vs. Divyajyoti Sponge Iron Pvt. Ltd. [C.P. (IB) No.363/KB/17)] NCLT, Kolkata order dt. 22.12.2017

Any interference in RP's discharge of duty/work, action shall be initiated against the CD and it will be presumed that the CD is not obeying the order of the Court. It is expected that CD should fully cooperate with the RP.

Q.67. Does the Adjudicating Authority has power to reject Resolution plans?

Ans. Yes, the Adjudicating Authority has powers to reject Resolution plans proposed by the Committee of Creditors, Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1) of section 31 , it may, by an order, reject the resolution plan.

Q.68. What happens when the Resolution Plan is not filed within 180 days of the Insolvency Commencement date or such other extended period?

Ans. Adjudicating Authority 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 Adjudicating Authority shall do the following

(i) Pass an order requiring the corporate debtor to be liquidated in the manner as laid down;

(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.69. Who all are not eligible to be a resolution applicant?

Ans. According to section 29 A of the Code, a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

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

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

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

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

convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

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

(d) has been convicted for any offence punishable with imprisonment –

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

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

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

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

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

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

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit

transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i)

Q.70. Whether Section 29A (Persons not eligible to be resolution applicant) is applicable to a resolution applicant where such applicant is a financial entity and is not related to the corporate debtor?

Ans. Section 29A(c) of the Code is not applicable to a resolution applicant where such applicant is a financial entity and is not related to the corporate debtor, i.e., such financial entity can submit resolution plan. Here the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

Q.71. What does the expression “connected person” mean as per Section 29A?

Ans. As per Explanation I to Section 29A (j), the expression “connected person” means-

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)

Q.72. What does "financial entity" mean as per Section 29A?

Ans. As per Explanation II to Section 29A, "financial entity" means-

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999;

(d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(e) an Alternate Investment Fund registered with Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.

Q.73. When will an ineligible person to be a resolution applicant because of being classified as non- performing asset become eligible to submit resolution plan and what is the time period allowed to such resolution applicant to make payment of overdue amounts as per Section 29(A)?

Ans. The ineligible person as per Section 29A because of being classified as non- performing asset shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan. However the Committee of Creditors shall allow such resolution applicant not exceeding thirty days to make payment of overdue amounts.

Judicial pronouncements with regard to Section 29A :
Persons not eligible to be resolution applicant

1. **Sandip Kumar Bajaj & Anr. Vs. State Bank of India & Anr. [I.A. No. GA 1 of 2020 with (Old G.A. 1062 of 2020) with W.P.O 236 of 2020] HC, Calcutta order dt. 15.09.2020**

   Section 29A or section 31 would not provide a shield against the operation of section 14(3)(b) of the Code and that CD/Promoter would not come under the immunity blanket of section 14 as the same is contrary to the law governing CIRP and RBI guidelines.

2. **Wig Associates Pvt. Ltd. [M.A. No. 435 of 2018 in C.P. No. 1214/I&BC/NCLT/MB/MAH/2017] NCLT, Mumbai order dt. 04.06.2018**

   Since the application was admitted prior to the promulgation of Ordinance bringing section 29A into force, the resolution plan would be eligible for due adjudication.

3. **State Bank of India Vs. Anuj Bajpai [CA (AT) (Ins.) No. 509 of 2019] NCLAT order dt. 18.11.2019**

   The NCLAT held that if it comes to the notice of the liquidator that a secured creditor intends to sell the assets to a person who is ineligible in terms of section 29A, it is always open to reject the application under section 52(1)(b) read with section 52(2) and (3) of the Code.

4. **K. Periyasamy & 1 another Vs. J. Manivannan [MA/347/2019 in CP/422/IB/2018] NCLT, Chennai order dt. 01.05.2019**

   The certificate issued by the Ministry of MSME raises no objection to the fact that the CD is an MSME. Hence, clauses (c) and (h) of section 29A are not applicable to the CD.

5. **Jindal Steel and Power Ltd. Vs. Arun Kumar Jagatramka & Anr. [CA (AT) No. 221 of 2018] NCLAT order dt. 24.10.2019**

   Promoter, if ineligible under section 29A, cannot make an application for compromise and arrangement for taking back the immovable and movable properties or actionable claims of the CD.

6. **Saravana Global Holdings Ltd. & Anr. Vs. Bafna Pharmaceuticals Ltd. & Ors. [CA (AT) (Ins.) No. 203 of 2019] NCLAT order dt. 04.07.2019**

   The intention of the Legislature shows that the promoters of MSME should be encouraged to pay back the amount with the satisfaction of the CoC to regain control of the CD and entrepreneurship by filing resolution plan, which is viable, feasible and fulfils other criteria as laid down by the IBBI.

7. **T. Johnson Vs. St. John Freight Systems Ltd. & Anr. [CA (AT) (Ins.) No. 1402 of 2019] NCLAT order dt. 04.03.2020**

   The promoters/employees of the CD without the knowledge of RP had secured the registration certificate under the MSME Act to overcome the bar under section 29A of the Code and submitted their resolution plan. The same was not approved by the CoC although no other resolution plan was submitted and that the AA's order of liquidation of the CD does not have any legal flaw.

8. **Arcelormittal India Pvt.Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals] SC order dt. 04.10.2018**

   Section 29A is a de facto as opposed to a de jure position of persons mentioned therein. This is a typical see through provision so that one can see persons who are actually in control, whether jointly or in concert. A purposeful and contextual interpretation of section 29A is imperative to pierce the corporate

veil to find out as to who are the real individuals or entities who are acting jointly or in concert for submission of a resolution plan.

9. **SBI Global Factors Ltd. Vs. Sanaa Syntex Pvt. Ltd. [MA 1123/2018 in CP No. 172/ IBC/NCLT/MB/MAH/2017] NCLT, Mumbai order dt. 08.04.2019**

   The defaulters disqualified under Section 29A should not get any benefit under the Code. This is a clear message conveyed through section 29A. A defaulter must not be benefitted by entering into those very assets through side doors, otherwise not permitted to enter from the front doors, for e.g. by submission of a resolution plan.

10. **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India &Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019**

    Constitutional validity of section 29A was upheld.

11. **Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd. & Anr. [Civil Appeal No. 9664 of 2019 with other appeals] SC order dt. 15.03.2021**

    Upholding the constitutional validity of regulation 2B of the Liquidation Process Regulations, the SC held that prohibition in section 29A and section 35(1)(f) of the Code must also attach to a scheme of compromise or arrangement under section 230 of the Companies Act, 2013 (scheme), where a company is undergoing liquidation under the Code. Even in the absence of said regulation, a person ineligible under section 29A read with section 35(1)(f) is not permitted to propose a scheme for revival of a company undergoing liquidation under the Code. In case of a company undergoing liquidation pursuant to the provisions of Chapter III of the Code, a scheme is a facet of the liquidation process. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the company in liquidation or participating in the sale of the corporate debtor as a 'going concern', are somehow permitted to propose a scheme.

The same rationale which permeates the resolution process under Chapter II (by virtue of the provisions of section 29A) permeates the liquidation process under Chapter III (by virtue of the provisions of section 35(1)(f)).

12. Digambar Anandrao Pingle Vs. Shrikant Madanlal Zawar, Erstwhile RP of M/s Pingle Builders Pvt. Ltd. &Ors. [CA (AT) (Ins.) No. 43-43A of 2021] NCLAT order dt. 09.07.2021

After CIRP was initiated former promoter/ director cannot suppress from IRP/RP and apply for MSME Certificate and tide over ineligibility under section 29A of the Code.

13. Telangana State Trade Promotion Corporation Vs. A.P. Gems & Jewellery Park Private Limited & Anr. [CA (AT) (CH) (Ins.) No. 54 of 2021] NCLAT order dt. 21.09.2021

The expression 'control' in section 29A(c) of the Code symbolizes only the positive control i.e., that the mere power to block special resolutions of a Company cannot amount to control. In reality, the word 'control' juxtaposed with the term 'management' means de-facto control of actual management or policy decisions that may be or are in reality taken.

Q.74. What is the time limit prescribed to the resolution applicant for taking approvals pursuant to the resolution plan approval from Adjudicating Authority?

Ans. As per Section 31 (4) of the Code, the resolution applicant, pursuant to resolution plan approval from Adjudicating Authority, shall obtain necessary approval required under any law for the time being in force within the period of 1 year from the date of approval of the resolution plan by the Adjudicating Authority under 31 (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains provision for combination as referred to in section 5 of Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the Approval of such resolution plan by the committee of creditors.

Q.75. What is the first step that Adjudicating Authority takes in approval of resolution plan?

Ans. According to section 31 (1), if the Adjudicating Authority is satisfied that the resolution plan, after approval from the committee of creditors under section 30 (4) and fulfilling all the requirements as referred to in section 30 (2), it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

The Adjudicating Authority shall, before passing an order for approval of resolution plan, must satisfy that the resolution plan has provisions for its effective implementation.

Judicial pronouncements with regard to Section 31 : Approval of Resolution Plan

1. **Shri Dutt India Pvt. Ltd Vs. Office of the Sugar Commissioner [I.A. No. 1055 of 2020 in C.P. (IB) No. 2956 of 2018] NCLT, Mumbai order dt. 21.09.2020**

   Once the resolution plan is approved under section 31 of the Code, all the assets and benefits of the contracts of the CD stands unconditionally transferred and assigned and vested in the successful resolution applicant free from all encumbrances. All persons including Central and State Governments as well as the Local Authorities are bound by the said Order.

2. **Kundan Care Products Ltd. Vs. Amit Gupta and Ors. [CA (AT) (Ins.) No. 653 of 2020] NCLAT order dt. 30.09.2020**

   A resolution applicant whose resolution plan stands approved by CoC, cannot be permitted to alter his position to the detriment of various stake holders after pushing out all potential rivals during the bidding process, and the same fraught with disastrous consequences for the CD which may be pushed into liquidation, as the CIRP period may by then be over thereby setting at naught all possibilities of insolvency resolution and protection of a CD, more so, when it is a going concern.

3. **Sunil Jain Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 156 of 2018 and other appeals] NCLAT order dt. 24.04.2019**

   Where the AA has approved a resolution plan that provides for taking over the shares of the promoters, it is not required to comply with the provisions of sections 56 and 57 of the Companies Act, 2013. The same can be completed at the stage of implementation of the resolution plan.

4. **Arcelormittal India Pvt. Ltd. Vs. Abhijit Guhathakurta & Ors. [CA (AT) (Ins.) No. 524 of 2019] NCLAT order dt. 16.12.2019**

   The proviso to sub-section 31(4) of Code which relates to obtaining the approval from the CCI under the Competition Act, 2002, prior to the approval of such resolution plan by the CoC, is directory and not mandatory.

5. **Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. &Ors. [CA (AT) (Ins.) No. 242 of 2019 and other appeals] NCLAT order dt. 04.07.2019**

   The FCs and OCs whose claims have been decided by the AA or the NCLAT, such decision being final is binding on all such FCs and OCs in terms of section 31 of the Code. Their total claims stand satisfied and, therefore, they cannot avail any remedy under section 60(6) of the Code.

6. **K. Sashidhar Vs. Indian Overseas Bank &Ors. [Civil Appeal No. 10673 of 2018 and other appeals] SC order dt. 05.02.2019**

   The legislature has not endowed the AA with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting FCs. The discretion of the AA is circumscribed by section 31 to scrutiny of resolution plan 'as approved' by the requisite percent of voting share of FCs.

7. **MSTC Ltd. Vs. Adhunik Metalliks Ltd. &Ors. [CA (AT) (Ins.) No. 519 of 2018 and another appeal] NCLAT order dt. 15.03.2019**

   The resolution applicant is bound by the mandate under section

30(2)(f) and shall ensure that the resolution plan shall not be against any of the provisions of the existing law.

8. **K. Sashidhar Vs. Kamineni Steel & Power India Pvt. Ltd. & Ors. [CP (IB) No. 11/10/HDB/2017] NCLT, Hyderabad order dt. 27.11.2017**

   Even though the CoC may approve a resolution plan with not less than 75% of the voting share, a discretion is given to the AA to approve the resolution plan.

9. **ICICI Bank Ltd. Vs. Innoventive Industries Ltd. [MA 557/2017 & other MAs in IA 72/2017 in C.P 01/I&BP/2016] NCLT, Mumbai order dt. 08.12.2017**

   A resolution by CoC with less than 75% voting share in CoC is non *est* in law.

10. **JEKPL Pvt. Ltd. [CA No. 223/2017 in CP No. 24/ALD/2017] NCLT, Allahabad order dt. 15.12.2017**

    The AA is not expected to substitute its view with commercial wisdom of the RP and COC nor should it deal with technical complexity and merits of resolution plan unless it is found contrary to express provision of law and goes against the public interest. This observation finds support from the UNCITRAL Legislative Guide, which recommends for similar approach to be taken by a court.

11. **Gupta Energy Pvt. Ltd. [MA 24, 80 & 110/2018 in C.P. No. 43/I&BP/2017] NCLT, Mumbai order dt. 20.02.2018**

    Either by principle or by jurisdictional aspect, the AA cannot say that 180/270 days' period as procedural, therefore, it has no jurisdiction to trespass into the domain set out for the CoC except to the extent mentioned in section 31 of the Code.

12. **Facor Alloys Ltd. and Anr. Vs. Bhuvan Madan &Ors. [CA (AT) (Ins.) No. 340 of 2020] NCLAT order dt. 25.11.2020**

    i. The RA after taking over the CD is entitled to exercise its right over its subsidiary company. Appellant's objection regarding the inclusion of the subsidiary company of the CD in the resolution plan is not sustainable.

ii. An approved resolution plan can deal with the related party claim and extinguish the same which will ensure that the successful resolution applicant can take over the CD on clean slate.

iii. The amendment to regulation 38(1) of CIRP Regulations which mandated priority in payment to dissenting FCs. This amendment came into effect on November 27, 2019, i.e., post the approval of resolution plan by the erstwhile CoC of the CD.

iv. The approved resolution plan is not discriminatory as it does not give differential treatment among the same class of FCs merely based on assenting or dissenting FCs.

13. Singh Raj Singh Vs. SRS Meditech Ltd. & Ors. [CA (AT) (Ins.) No. 522 of 2020] NCLAT order dt. 07.10.2020

The law does not enjoin any right or power to challenge the commercial wisdom of the CoC regarding approval of the resolution plan which is undergoing implementation.

14. Oriental Bank of Commerce Vs. Lotus Auto Engineering Ltd. & Ors. [IB-31(PB)/2018] NCLT, New Delhi order dt. 15.12.2020

Though it is in the realm of the CoC to approve or reject a plan and of the liquidator to determine the value of the assets, such huge variations in values call for enquiry. Considering the fact that the CoC failed to approve a resolution plan valued double the liquidation value and the Liquidator set very low reserve price, the AA directed IBBI to enquire into as to why valuation has become so low after liquidation is ordered and the FCs to enquire as to whether its representatives acted to maximise the value of the CD.

15. Committee of Creditors of AMTEK Auto Limited through Corporation Bank Vs. Dinkar T Venkatasubramanian & Ors. [I.A. No. 58156 of 2020 in Civil Appeal No. 6707 of 2019 and another petition] SC order dt. 23.02.2021

To assert that there is any scope for negotiations and discussions after the approval of the resolution plan by the CoC, would be plainly contrary to the terms of the Code.

16. Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. & Anr. [Civil Appeal Nos. 2943-2944 of 2020] SC order dt. 10.03.2021

i. The commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the Code.

ii. There is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. The opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision.

iii. The legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the AA and that the decision of CoC's 'commercial wisdom' is made non justiciable.

iv. Appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same

v. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the Code.

17. Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. [Civil Appeal No. 3395 of 2020 and other appeals] SC order dt. 24.03.2021

i. The role of CoC is akin to that of a protagonist, giving finality to the process (subject to approval by the AA), who takes the key decisions in its commercial wisdom and the consequences thereof. The power of judicial review in section 31 of the Code is not akin to the power of a superior authority to deal with the merits of the decision of any inferior or subordinate authority. The AA has limited jurisdiction in the

matter of approval of a resolution plan, which is well defined and circumscribed by sections 30(2) and 31 read with the parameters delineated by the SC in its various judgments. Within its limited jurisdiction, if the AA finds any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back -to the CoC for re-submission after satisfying the parameters delineated by Code and exposited by the SC.

ii. The process of simultaneous voting over two plans for electing one of them cannot be faulted. The legislature itself has made the position clear by way of a later amendment with effect from August 7, 2020, by specifically making stipulations for simultaneous voting over more than one resolution plan by the CoC, particularly with amendment of sub-regulation (3) of regulation 39 of CIRP Regulations and insertion of sub-regulations (3A) and (3B) thereto.

iii. The dissenting financial creditor is entitled to receive the amount payable in monetary terms and not in any other term. It cannot be forced to remain attached to the CD by way of equities or securities.

iv. The homebuyers as a class having assented to the resolution plan of the resolution applicant, any individual homebuyer or any association of homebuyers cannot maintain a challenge to the resolution plan and cannot be treated as a dissenting FC or an aggrieved person.

18. Seroco Lighting Industries Pvt. Ltd. Vs. Ravi Kapoor, RP for Arya Filaments Pvt. Ltd. &Ors. [CA (AT) (Ins.) No. 1054 of 2020] NCLAT order dt. 10.12.2020

A successful resolution applicant cannot be permitted to withdraw the approved resolution plan, coupled with the fact in the instant case being the sole RA in the CIRP, which is an MSME and having knowledge of the financial health of the CD as a promoter or as a connected person cannot be permitted to seek revision of the approved plan, on the ground which would not be a material irregularity within the ambit of section 61(3) of the Code.

19. Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. & Ors. [CA No. 8129 of 2019 with other appeals] SC order dt. 13.04.2021

Once a resolution plan is approved by the AA under section 31(1), the claims as provided in the resolution plan shall stand frozen and will be binding on the CD and its employees, members, creditors, including the central government, any state government or any local authority, guarantors, and other stakeholders. On the date of approval of resolution plan by the AA, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

20. Lalit Kumar Jain Vs. Union of India & Ors. [Transferred Case (Civil) No. 245/2020 and other writ petitions] SC order dt. 21.05.2021

The sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability.

21. Ebix Singapore Pvt. Ltd. Vs. Committee of Creditors of Educomp Solutions Ltd. &Anr. (Civil Appeal No. 3224 of 2020 and other appeals] SC order dt. 13.09.2021

The existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC approved resolution plans, at the behest of the successful resolution applicant once the plan has been submitted to the AA.

A submitted resolution plan is binding and irrevocable as between the CoC and the successful resolution applicant.

22. Deputy Commissioner, CGST Kalol, Gujrat Vs. Gopala Polyplast Ltd. [CA (AT) (Ins.) No. 477 of 2021] NCLAT order dt. 16.07.2021

Sufficiency or insufficiency of the amount in a resolution plan is a matter of commercial decision of the CoC and it would not be appropriate on the part of NCLAT to interfere with the same.

23. BRS Ventures Investment Ltd. Vs. Registrar of Companies, Guwahati [CA (AT) (Ins.) No. 1028 & 1042 of 2020] NCLAT order dt. 09.08.2021

Successful resolution applicant filed an application to increase the authorised share capital without paying any fees/stamp duty to the Registrar of Companies. It was observed that when a new company takes over and starts on a new slate and take certain management decision then everything cannot be exempted at a later stage.

24. Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 to 9405 of 2018] SC order dt. 04.10.2018

There is no vested right or fundamental right in the resolution applicant to have its resolution plan approved.

25. Jayesh N. Sanghrajka Vs. The Monitoring Agency nominated by the Committee of Creditors of Ariisto Developers Pvt. Ltd. [CA (AT) (Ins.) No. 392 of 2021] NCLAT order dt. 20.09.2021

'Success fees' which is more in the nature of contingency and speculative is not part of the provisions of the Code and the Regulations, and the same is not chargeable by IP.

26. Nitin Chandrakant Naik &Anr. Vs. Sanidhya Industries LLP &Ors. [CA (AT) (Ins.) No. 257 of 2020] NCLAT order dt. 26.08.2021

After portion of Part III has been applied to personal guarantors of CDs, one would have to resort to those provisions under Code if personal guarantors of CDs are to be proceeded against.

Q.76. What are Insolvency Resolution Process Costs? What is the significance of these costs?

Ans. As per Section 5(13) of the Code read with Regulation 31 of Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, "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; and

(e) Any other costs as may be specified by the Board.

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

Judicial pronouncements with regard to Section 5(13) : Insolvency Resolution Process Cost

1. **Dakshin Gujarat VIJ Company Ltd. Vs. ABG Shipyard Ltd. & Anr. [CA (AT) (Ins.) No. 334 of 2017] NCLAT order dt. 08.02.2018**

   If any cost is incurred towards supply of essential services during the period of moratorium, it may be accounted towards the insolvency resolution process costs.

2. **S3 Electricals and Electronics Pvt. Ltd. Vs. Brian Lau & Anr. [Civil Appeal No.103 of 2018] SC order dt. 05.08.2019**

   In case where a CoC has not been appointed as a result of non-initiation of the interim resolution process, it is clear that, whatever the AA fixes as expenses will be borne by the creditor who moved the application.

3. **Newogrowth Credit Pvt. Ltd. Vs. Resolution Professional, Bhaskar Marine Services Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 1053 of 2020] NCLAT order dt. 10.12.2020**

   The direction requiring the appellant to bear 27% of the CIRP cost is in consonance with and proportionate to the share of the appellant, is not arbitrary and unreasonable.

Q.77. Will the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease ?

Ans. Section 32A. of the Code provides that:

Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

It is hereby clarified that nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

Notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.

Judicial pronouncements with regard to Section 32A : Liability for prior offences, etc.

1. **SBER Bank Vs. Varrsana Ispat Ltd. [C.P. (IB) No. 543/KB/2017] NCLT, Kolkata order dt. 22.07.2020**

   Considering the object behind the introduction of section 32A, the section is also applicable to the CD undergoing liquidation as well, and the liquidator can file an application under the same.

2. **Tata Steel BSL Ltd. & Anr. Vs. Union of India & Anr. [W.P. (CRL) 3037/2019 & CRL.M.A. 39126/2019] HC, New Delhi order dt. 16.03.2020**

   CD would not be liable for any offence committed prior to commencement of the CIRP.

3. **Raj Kumar Ralhan Vs. Deputy Director, ED and Ors. [IA No. 54 of 2020 in CP (IB) No. 43/07/HDB/2018] NCLT, Hyderabad order dt. 06.05.2020**

   Section 32A (2) of the Code will not apply to the provisional attachment order under the PMLA.

4. **JSW Steel Ltd. Vs. Mahender Kumar Khandelwal &Ors. [CA (AT) (Ins.) No. 957 of 2019 and other appeals] NCLAT order dt. 17.02.2020**

   The ED/other investigating agencies do not have the powers to attach assets of a CD, once a resolution plan stands approved and the criminal investigations against the CD stands abated.

5. Manish Kumar Vs. Union of India & Anr. [Writ Petition (C) No.26 of 2020 with other writ petitions]SC order dt. 19.01.2021

The extinguishment of the criminal liability of the CD is apparently important to the new management to make a clean break with the past and start on a clean slate. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable.

Q.78. In which cases the Adjudicating Authority can order for the liquidation of the Corporate Debtor?

Ans. 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 period or maximum period permitted for completion of the corporate insolvency resolution process, if the Adjudicating Authority does not receive the Resolution Plan.

(b) If the Adjudicating Authority rejects the resolution plan under section 31.

(c) If the resolution professional 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. For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section *(1)* of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

(d) Where the Resolution Plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interest is prejudicially affected by the contravention, may make an application to the Adjudicating Authority to pass the liquidation order.

Q.79. What shall be the contents of order of liquidation?

Ans. 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 Part II Chapter III 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.80. What happens when the committee of creditors approve for liquidating the corporate debtor before the confirmation of resolution plan?

Ans. According to section 33 (2), where the resolution professional, at any time during the corporate insolvency resolution process but before the confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by at-least sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order.

Q.81. What will be the effect of order of liquidation?

Ans. 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.

Judicial pronouncements with regard to Section -33: Initiation of Liquidation

1. **Edelweiss Asset Reconstruction Co. Ltd. Vs. Shri Shyam Sundar Rathi & Anr. [CA (AT) (Ins.) No. 683 of 2020] NCLAT order dt. 14.08.2020**

   The CoC unanimously decided to send the CD into liquidation for want of resolution plans. Once the application under section 33 was moved it was left with no option but to order liquidation.

2. **Siva Rama Krishna Prasad Vs. S Rajendran & Ors. [CA (AT) (Ins.) No. 751 of 2020 and another appeal] NCLAT order dt. 04.09.2020**

   Liquidation was ordered by the AA as a last option since there was no response from any viable prospective resolution applicant, despite an extension of time period.

3. **Sunil S. Kakkad Vs. Atrium Infocom Pvt. Ltd. and Ors. [CA (AT) (Ins.) No. 194 of 2020] NCLAT order dt. 10.08.2020**

   The decision of CoC to liquidate the CD without taking any steps for resolution of the CD is covered under the Explanation to sub-clause (2) of section 33 of the Code which is based on the commercial wisdom and is non-justiciable given the law laid by the SC in case of K. Sashidhar vs. Indian Overseas Bank.

4. **RMS Employees Welfare Trust Vs. Anil Goel [CA (AT) (Ins.) No. 699 of 2018] NCLAT order dt. 30.05.2019**

   In the event of liquidation, the amount to be paid to the Central Government or the State Government against the operational debt should not be less than an amount to be paid to the OC.

5. **Nathella Sampath Jewelry Pvt. Ltd. [MA/1147/2019 & MA/547/2018 in CP/129/IB/CB/2018] NCLT, Chennai order dt. 03.01.2020**

   After completion of CIRP period, ordering liquidation, will not have any bearing on PMLA proceedings.

6. **GNB Technologies (India) Pvt. Ltd. [C.P. (IB) No. 167/BB/2019] NCLT, Bengaluru order dt. 08.11.2019**

   The AA directed liquidation of the CD without admission and appointment of IRP.

7. **Punjab National Bank Vs. Mr. Kiran Shah [CA (AT) (Ins.) No. 102 of 2020] NCLAT order dt. 21.01.2020**

   The CoC has no role to play after the order of liquidation. They are mere claimants, whose matters are to be determined by the liquidator. They cannot move an application for removal of the liquidator.

8. **Y. Shivram Prasad Vs. S. Dhanapal & Ors. [CA (AT) (Ins.) No. 224 of 2018 and another appeal] NCLAT order dt. 27.02.2019**

   During the liquidation process, it is necessary to take steps for revival and continuance of the CD by protecting it from its management and from a death by liquidation.

9. **Ratna Singh and Anr. Vs. Theme Export Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 917 of 2020] NCLAT order dt. 18.11.2020**

   An appeal against a liquidation order passed under section 33 may be filed on the grounds of material irregularity or fraud committed in relation to liquidation order. The Code is not for initiating proceedings for prevention of oppression and mismanagement but is armed with provisions for initiation of actions against wrong doers/illegal transactions, etc.

10. **Bhavarlal Mangilal Jain & Anr. Vs. Metal Link Alloys Ltd. & Ors. [IA 361 of 2018 in CP(IB) 67 of 2017] NCLT, Ahmedabad order dt. 26.11.2020**

    The moratorium under section 14 of the Code comes to an end on passing of the order of liquidation. As per section 33(5) of the Code, the legal proceedings can be continued against the CD during liquidation.

11. **Chennai Metro Rail Ltd. Vs. Lanco Infratech Ltd. (Represented by the Liquidator) & Ors. [Application No. 2826 of 2019] HC, Madras order dt. 15.10.2020**

    i. Section 279 of the Companies Act, 2013 applies only in cases of winding up under the Companies Act, 2013 and not the Code;

    ii. Section 279 of the Act deals with both pending suits and institution of new suits, while section 33(5) of the Code deals with new proceedings; and

iii. Section 33(5) of the Code overrides section 279 of Act, by virtue of section 238 and by the principle 'special law overrides general law'.

12. Orbit Electro Equipments Pvt. Ltd. & Anr. Vs. Mr. Kapil Dev Taneja & Anr. [CA (AT) (CH) (INS) No. 142 of 2021] NCLAT order dt. 02.07.2021

The Code provides for liquidation of the CD in case of failure of the approved resolution plan. Under no circumstance on the failure of the approved resolution plan, CoC is empowered for fresh consideration. While dealing with insolvency matters, the role of AA is confined to the four corners of the Code.

13. IDBI Bank Ltd. Vs. EPC Constructions India Ltd. [IA 1623 of 2019 in CP (IB) 1832/MB/C-II/2017] NCLT, Mumbai order dt. 07.05.2021

If no resolution plan is approved by the CoC/AA within the prescribed timeline, the extended timeline the natural corollary, automatic next step is only liquidation of the CD.

Q.82. What shall be the fees that liquidator may charge for conducting liquidation proceeding?

Ans. Under Section 34(8) of the Code, liquidator shall charge fee for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets, as may be specified by the Board. The fee of the liquidator shall either be in accordance with the decision of Committee of Creditors under Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or shall be in accordance with Regulation 4(2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, being at the same rate as the resolution professional was entitled during the corporate insolvency resolution process for the period of compromise or arrangement under section 230 of Companies Act, 2013, or as a percentage of the amount realised net of other liquidation cost and of the amount distributed.

Judicial pronouncements with regard to Regulation 39D of CIRP Regulations

1. **Narinder Bhushan Aggarwal Vs. Little Bee International Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 980 of 2020] NCLAT order dt. 18.11.2020**

   The fact that CoC has taken a decision regarding the liquidation costs, expenses, and the remuneration payable to the liquidator with the requisite percentage, brings it within the ambit of regulation 39D of the CIRP Regulations. It is not permissible to resort to any other provision if action of CoC falls within the purview of regulation 39D.

Q.83. Can a resolution professional act as a liquidator?

Ans. Yes, under section 34 (1), where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority, may act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.

Q.84. Under what circumstances can a resolution professional be replaced by an Adjudicating Authority in the process of liquidation?

Ans. According to section 34 (4) the Adjudicating Authority may by an order replace the resolution professional, under the following circumstances:

(i) The resolution plan submitted by the resolution Professional under section 30 was rejected due to failure to meet the requirements mentioned in section 30 (2).

(ii) The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.

(iii) The resolution professional fails to submit written consent under section 34 (1).

Also, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator as described under section 34 (5). After the directions by Adjudicating Authority, the board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specific form within ten days, as provided under section 34 (6).

Judicial pronouncements with regard to Section – 34: Appointment of Liquidator and fee to be paid

1. **Sandeep Kumar Gupta Vs. Stewarts & Lloyds of India Ltd. & Anr. [CA (AT) (Ins.) No. 263 of 2017 and another appeal] NCLAT order dt. 28.02.2018**

   AA was well within its jurisdiction to engage another person as RP or Liquidator as the performance of the previous RP was unsatisfactory.

2. **Vijay Kumar Singh Vs. Anil Kumar & Ors. [CA (AT) (Ins.) No. 391 of 2020] NCLAT order dt. 09.11.2020**

   Interest of FCs as well as other creditors will remain even during liquidation proceedings.

   Accordingly, AA should have considered appointing any other IP as liquidator when it was evident that the CIRP has not been conducted in a way desired, before passing the liquidation order.

Q.85. What is the remedy available to the creditors if the liquidator rejects his claims?

Ans. As per section 42, a creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.

Judicial pronouncements with regard to Section – 42: Appeal against the decision of Liquidator

1. **Bank of India Vs. V. Mahesh & Anr. [IA/497/2020 in MA/289/2018 in TCP/10/IB/2017 and IA/115/2020 in MA/289/2018 in TCP/10/IB/2017] NCLT, Chennai order dt. 03.09.2020**

It is almost impracticable for the liquidator to follow the principles of natural justice before admitting or rejecting a claim because he cannot be selective in his approach and if the same is applied universally, it will make the timeline under the Code haywire and defeat the provisions of Code.

2. **Asmi Enterprises Vs. Yog Industries Ltd. [MA1098/2018 in CP No.82/IBC/NCLT/MB/MAH/2017] NCLT, Mumbai order dt. 10.04.2019**

   The AA allowed a creditor to file claim before the conclusion of liquidation but after the due date of submission of claims and condoned the delay on the ground that if the claim is admitted, no prejudice would be caused.

Q.86. Under what circumstances transactions will be referred to as preferential transactions?

Ans. As provided in Section 43 of the Code, 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; and

(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.87. When can a liquidator apply for avoidance of preferential transaction?

Ans. As provided under section 43 (4), where the liquidator is of the opinion that the corporate debtor has at a relevant time given a preference in transactions to:

(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.

The Resolution professional or liquidator as the case may be shall apply to Adjudicating Authority for avoidance of such preferential transactions.

Q.88. Under what circumstances transactions will not be referred to as preferential transactions?

Ans. 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.

Judicial pronouncements with regard to Section – 43 & 44: Preferential transactions and relevant time, Order in case of preferential transactions

1. Anuj Jain Vs. Manoj Gaur & Ors. [CA No. 26/2018 in CP No. (IB)77/ALD/2017] NCLT, Allahabad order dt. 16.05.2018

The mortgage of land of the CD in favour of a creditor amounts to transfer of interest in the property of the CD for the benefit of the creditor, and putting it in a beneficial position vis-à-vis other creditors, is a preferential transaction.

2. **K.L. Jute Products Pvt. Ltd. Vs. Tirupti Jute Industries Ltd. & Ors. [CA (AT) (Ins.) No. 277 of 2019] NCLAT order dt. 20.02.2020**

   Section 43 of the Code is applicable during the pendency of resolution process or liquidation proceedings, if there are genuine, reasonable grievances relating to preferential transactions at a relevant time. A liquidator by filing an application can seek one or other order from the AA as per section 44 of the Code.

3. **S.V. Ramkumar Vs. Orchid Health Care Pvt. Ltd. &Ors. [MA/86/2018 in CP/540/IB/CB/2017] NCLT, Chennai order dt. 04.07.2019**

   To invoke section 43 of the Code, there shall be two elements in the given facts, (1) there shall be transfer of property or interest from CD to a creditor, (2) and it must be for the benefit of such creditors in preference to the other creditors of the CD in the event of a distribution of assets being made in accordance with section 53 of the Code.

4. **Anuj Jain Vs. Axis Bank Ltd. & Ors. [Civil Appeal Nos. 8512-8527 of 2019 with other appeals] SC order dt. 26.02.2020**

   (a) **Preferential Transactions:** A CD shall be deemed to have given a preference at a relevant time if: (i) there is a transfer of property or the interest thereof of the CD for the benefit of a creditor or surety or guarantor for or on account of an antecedent financial debt or operational debt or other liability; (ii) such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets in accordance with section 53 of the Code; and (iii) preference is given, either during the period of two years/one year preceding the ICD when the beneficiary is a related/an unrelated party. However, such deemed preference may not be an offending preference, if it falls into any or both exclusions provided by section 43(3).

   Section 43(3)(a) exempts transfers made in ordinary course of business of the CD or the transferee. This calls for

purposive interpretation. The expression 'or', appearing as disjunctive between the expressions 'corporate debtor' and 'transferee', ought to be read as 'and'. Therefore, a preference shall not include the transfer made in the ordinary course of the business of the CD and the transferee.

(b) Duties and responsibilities of RP: The RP shall –

(i) sift through all transactions relating to the property/interest of the CD backwards from the ICD and up to the preceding two years;

(ii) identify persons involved in the transactions and put them in two categories: (1) related party under section 5(24) and (2) remaining persons;

(iii) identify which of the said transactions of preceding two years, the beneficiary is a related party of the CD and in which the beneficiary is not a related party. The sub-set relating to unrelated parties shall be trimmed to include only the transactions preceding one year from the ICD;

(iv) examine every transaction in each of these sub-sets to find out whether (1) the transaction is of transfer of property of the CD or its interest in it; and (2) beneficiary involved in the transaction stands in the capacity of creditor/surety/ guarantor;

(v) scrutinise the shortlisted transactions to find, if the transfer is for or on account of antecedent financial debt/operational debt/other liability of the CD;

(vi) examine the scanned and scrutinised transactions to find, if the transfer has the effect of putting such creditor/surety/ guarantor in beneficial position, then it would have been in the event of distribution of assets under section 53. If answer is in the affirmative, the transaction shall be deemed to be of preferential, provided it does not fall within the exclusion under section 43(3); and then

(vii) apply to the AA for necessary orders, after carrying out the aforesaid volumetric and gravimetric analysis of the transactions.

(c) **Undervalued and fraudulent transactions:** As the transactions are held as preferential, it is not necessary to examine whether these are undervalued and/or fraudulent. In preferential transaction, the question of intent is not involved and by virtue of legal fiction, upon existence of the given ingredients, a transaction is deemed to be of giving preference at a relevant time, while undervalued transaction requires different enquiry under sections45 and 46 where the AA is required to examine the intent, if such transactions were to defraud the creditors. The AA needs to examine the aspect of preferential, undervalued and fraudulent separately and distinctively.

5. Venus Recruiters Pvt. Ltd. Vs. Union of India & Ors. [W.P. (C) 8705/2019 & CM APPL. 36026/2019] HC, New Delhi order dt. 26.11.2020

In the context of CIRP, it was observed that:

i. Avoidance applications cannot survive beyond the conclusion of the CIRP. It is meant to give benefit to the creditors of the CD and not to the CD in its new avatar, after the approval of the resolution plan.

ii. The NCLT has the jurisdiction to deal with all applications and petitions 'in relation to insolvency resolution and liquidation for corporate persons'. After the approval of the resolution plan and the new management has taken over the CD, no proceedings remain pending before the NCLT, except issues relating to the resolution plan itself, as permitted under section 60. It has no jurisdiction to entertain and decide avoidance applications, in respect of a CD which is now under a new management unless provision is made in the final resolution plan.

iii. The RP cannot continue to act on behalf of the CD under the title of `Former RP', once the plan is approved and the new management takes over. His continuation beyond the closure of the CIRP would in effect mean an interference in the conduct and management of the company.

iv. The successful resolution applicant cannot file an avoidance

application, as it is neither for the benefit of the resolution applicant nor for the CD after the resolution is complete.

v. Section 26 of the Code cannot be read in a manner to mean that an application for avoidance of transactions under section 25(2)(j) can survive after the CIRP. Once the CIRP process itself comes to an end, an application for avoidance of transactions cannot be adjudicated. If the CoC or the RP are of the view that there are any transactions which are objectionable in nature, the order in respect thereof would have to be passed prior to the approval of the resolution plan.

6. Mohan Lal Jain, in the capacity of Liquidator of Kaliber Associates Pvt. Ltd. Vs. Lalit Modi & Ors. [CA (AT) (Ins.) No. 944 of 2020] NCLAT order dt.16.12.2020

Allegations of preferential transaction as also fraudulent trading/wrongful trading carried on by the CD during the insolvency resolution can be inquired into by the AA.

7. Suraj Fabrics Industries Ltd. & Anr. Vs. Bipin Kumar Vohra & Ors. [IA (IB) No. 750/KB/2020 in CP (IB) No. 1635/KB/2018] NCLT, Kolkata order dt. 18.02.2021

The RP is duty bound to file the application for preferential transaction within time and also seek for urgent hearing of the application before the plan is approved. Once the resolution plan is approved, the CD is managed by a new management and the RP becomes functus officio. An application for avoidance of preferential transaction cannot be carried on by the RP on behalf of the CD.

Q.89. When shall a transaction entered by any corporate debtor be deemed as Undervalued?

Ans. 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 assets by the corporate debtor 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.90. What is the relevant period for avoiding any undervalued transaction?

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

(a) that the transaction was made with any person 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.

Judicial pronouncements with regard to Section – 45 & 46: Avoidance of undervalued transactions, Relevant period for avoidable transactions

1. Axis Bank Ltd. Vs. Anuj Jain [CA (AT) (Ins.) No. 243 of 2018 with other CAs] NCLAT order dt. 01.08.2019

The transactions as has been made i.e. mortgage(s) in favour of the appellants as and when made against the amount payable by Jaiprakash Associates Limited, the amount is not payable by the CD. Therefore, clause (a) of sub-section (2) of section 45 is not attracted. For the same reason, clause (b) of sub-section (2) of section 43 or section 45 cannot be made applicable with regard to transaction in question which are not related to any payment due from the CD.

Q.91. Can a creditor make an application to the Adjudicating Authority for avoidance of any undervalued transactions in case of a corporate debtor?

Ans. 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.92. What are Extortionate credit transactions?

Ans. As per section 50 of the Code, any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

As provided in Regulation 5 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an Extortionate Credit Transactions shall be considered extortionate under section 50(2) where the terms:

(i) require the corporate debtor to make exorbitant payments in respect of the credit provided, or

(ii) are unconscionable under the principles of the law relating to contracts.

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

Ans. 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 extortionate transactions?

Ans. 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?

Ans. As per Section 53 (1) 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.

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

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

ii. 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, if any

(h) Equity shareholders or partners, as the case may be

Any contractual arrangements between recipients under sub- section (1) with equal ranking, 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?

Ans. The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under Section 53(1) and the proceeds to the relevant recipient shall be distributed after such deduction. The fees payable to liquidator shall have priority over other payments during liquidation. Regulation 2(1)(ea) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 defines fee payable to liquidator as part of liquidation cost.

Judicial pronouncements with regard to Section 53: Distribution of assets

1. **Shree Ram Lime Products Pvt. Ltd. Vs. Gee Ispat Pvt. Ltd. [CA-666/2019 in (IB)-250(ND)/2017] NCLT, New Delhi order dt. 22.10.2019**

   Upon realisation of the liquidation estate of the CD, it has to be distributed in accordance with the waterfall mechanism under section 53 of the Code. The dues towards the Government, be it tax on income or sale of properties, would qualify as 'operational debt' and has to be dealt with accordingly. Further, the applicability of section 178 or 194IA of the Income-tax Act, 1961 will not have an overriding effect over section 53 of the Code, and the capital gains shall not be taken into consideration as the liquidation cost.

2. **LML Ltd. Vs. Office of Commissioner of Income Tax, Mumbai [CA No. 389 of 2019 in CP(IB) No. 55/ALD/2017] NCLT, Allahabad order dt. 31.08.2020**

   Section 45 and 46 of the Income-tax Act, 1961 will not have an overriding effect on the waterfall mechanism provided under

section 53 of the Code, which is a complete Code in itself and thus capital gains shall not be taken into consideration as the liquidation cost.

3. **Union of India Vs. Infrastructure Leasing & Financial Services Ltd. & Ors. [CA (AT) No. 346 of 2018with I.A. Nos. 3616, 3851, 3860, 3962, 4103, 4249 of 2019, 182, 185 of 2020 with other appeals] NCLAT order dt. 12.03.2020**

   Section 53 of the Code will not be followed for distribution in the case as it would cause injustice to shareholders who have invested public money in Infrastructure Leasing & Financial Services Ltd. and its group companies and therefore the pro-rata distribution as proposed by the Central Government was accepted.

4. **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India &Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019**

   There is an intelligible differentia between the financial debts and operational debts, which are unsecured, which has direct relation to the object sought to be achieved by the Code. It can be seen that unsecured debts are of various kinds and as long as there is some legitimate interests sought to be protected, having relation to the object sought to be achieved by the statute in question, Article 14 of the Constitution does not get infracted. Accordingly, validity of section 53 was upheld.

5. **Binani Industries Ltd. Vs. Bank of Baroda & Anr. [CA (AT) (Ins.) No. 82,123, 188,216 & 234 of 2018] NCLAT order dt. 14.11.2018**

   Section 53, including Explanation given therein cannot be relied upon while approving the resolution plan. However, that does not mean that a discriminatory plan can be placed and can get through on one or other ground, which is against the basic object of maximization of the assets of the CD on one hand and for balancing the stakeholders on the other.

6. **Autonix Lighting Industries Pvt. Ltd. Vs. Moser Baer Electronics Ltd. [IA No. 412/2020 in CP No. (IB)-1265(ND)/2019] NCLT, New Delhi order dt. 19.11.2020**

Any shortfall in gratuity must be made over by the RP and payments of the dues has to be paid outside the waterfall mechanism. The RP was directed to release the dues of the ex-employees and deposit the provident fund with EPFO and release gratuity forthwith.

7. **Pinakin Shah – Liquidator of Brew Berry Hospitalities Pvt. Ltd. Vs. The Assistant Commissioner of State Tax & Anr. [CA (AT) (Ins.) No. 32 of 2021] NCLAT order dt. 25.02.2021**

   Liquidation proceedings are time-bound to maximize the value and all the creditors are entitled to get their dues only in terms of section 53 of the Code and different creditors cannot be allowed to resort to different proceedings and enactments only because they are 'authorities' under earlier enactments considering the provision of section 238 of the Code.

8. **Gaurav Jain Vs. Sanjay Gupta, Liquidator of Topworth Pipes and Tubes Pvt. Ltd. [IA No. 2264 of 2020 in CP (IB) No. 1239-MB-2018] NCLT, Mumbai order dt. 09.03.2021**

   In the normal parlance "going concern" sale is transfer of assets along with the liabilities. However, as far as the 'going concern' sale in liquidation is concerned, there is a clear difference that only assets are transferred and the liabilities of the CD has to be settled in accordance with section 53 of the Code and hence the purchaser of this assets takes over the assets without any encumbrance or charge and free from the action of the creditors.

   Further, the decision to sell the CD as a going concern is taken by the liquidator himself or in consultation with the creditors / stakeholders and the proceeds from the sale of assets are going to be utilised for distribution to the creditors in the manner specified under section 53 of the Code. Hence all the Creditors of the CD get discharged and the assets are transferred free of any encumbrances. The legal entity of the CD, however survives.

9. **Technology Development Board Vs. Anil Goel & Ors. [CA (AT) (Ins.) No. 731 of 2020] NCLAT order dt. 05.04.2021**

   A conjoint reading of sections 52 and 53 of the Code leaves no room for doubt that the legislature in its wisdom thought it proper to provide an option to the secured creditor armed with a security interest to choose out of the two options, namely, either enforce security interest against the asset out of liquidation estate which

is the subject of security interest or relinquish the same and claim as secured creditor in the manner set out under section 53(1)(b)(ii) ranking equal to other secured creditors. First charge holder will have priority in realising its security interest if it elects to realise its security interest and does not relinquish the same. However, if it opts to relinquish its security interest, the distribution of assets would be governed by the section 53(1)(b)(ii) where under all secured creditors having relinquished security interest rank equally.

10. Sri Supriyo Kumar Chaudhuri, Liquidator of JVL Agro Industries Ltd. Vs. State Bank of India, Sarg & Ors. [IA No. 19/2021, IVN. P. 02/ALD/2020 In CP No. (IB) 223/ALD/2019] NCLT, Allahabad order dt. 26.07.2021

Since the CD in liquidation is not a going concern and assets which are to be distributed are in the form of liquid assets and are non-saleable, the Code does not bar such distribution as such distribution will not hamper the liquidation process of the CD.

Q.97. What is the procedure for enforcement of security interest by secured creditor?

Ans. As per Section 52(4) of the Code, the secured creditor may enforce, realise, 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 is required to intimate its decision with respect to enforcement of security interest within 30 days of liquidation commencement date.

The secured creditor may apply to Adjudicating Authority under Section 52(5) of the Code to facilitate the secured creditor to realise such security interest in case it faces any resistance.

Judicial pronouncements with regard to Section 52: Secured creditor in liquidation proceedings

1. **JM Financial Asset Reconstruction Company Ltd. Vs. Finquest Financial Solutions Pvt. Ltd. and Ors. [CA (AT) (Ins.) No. 593 of 2019] NCLAT order dt. 11.12.2019**

   If one or more secured creditors have not relinquished the security interest and have opted to realise their security interest against the same asset in terms of section 52(1)(b) read with section 52(2) and (3), the liquidator will act in terms of section 52(3) and find out as to who has the first charge (security interest). If any dispute is pending as to the question of who has the first charge, the liquidator may inform the same to parties and proceed as per section 52(3).

2. **State Bank of India Vs. Anuj Bajpai [CA (AT) (Ins.) No. 509 of 2019] NCLAT order dt. 18.11.2019**

   If it comes to the notice of the liquidator that a secured creditor intends to sell the assets to a 'person' who is ineligible in terms of section 29A, it is always open to him to reject the application under section 52(1)(b) read with section 52(2) and (3) of the Code.

3. **B.R. Traders Vs. Venkataramanarao Nagarajan & Ors. [CA (AT) (Ins.) No. 189 of 2019 with other CAs] NCLAT order dt. 13.11.2019**

   Even during liquidation process, the liquidator is to ensure that CD remains a going concern. If no arrangement or scheme framed under sections 230 to 232 of the Companies Act, 2013 becomes possible or the CD is not sold in its totality along with the employees and there is no option but to sell the assets of the CD and to distribute the same amongst the creditors in terms of section 53 read with section 52 of the Code, the liquidator may be asked to return the third party assets.

4. **In the matter of Clutch Auto Ltd. [CA-1432(PB)/2019 & CA-1433(PB)/2019 in (IB)-15(PB)/2017] NCLT, New Delhi order dt. 06.01.2020**

   If the liquidator concludes that the claimants have security

interest over the assets of the CD, he shall permit the creditors to utilise their rights under section 52 of the Code. Application seeking directions from AA against such creditors to compel them to relinquish security interest, is not supported by the Code.

5. **Anuj Bajpai Vs. State Bank of India [MA 1123/2018 in CP No. 172/IBC/NCLT/MB/MAH/2017] NCLT, Mumbai order dt. 08.04.2019**

   Section 52(4) of the Code releases the secured creditor from the clutches of the Code and gives liberty to recover its security interest as per any other law which may be applicable. Once the secured creditor is out of liquidation under section 52(1)(b) of the Code, it is relieved from all the clutches of the Code or the liquidation process. To move under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or any other Act, to sell the assets to any party, is all the prerogative of the secured creditor because his rights are given a specific protection under the Code. However, it has to be kept in mind that the intent of the Code cannot be hampered by allowing the promoters/directors a backdoor entry in the liquidation process.

6. **Finquest Financial Solutions Pvt. Ltd. Vs. Ravi Shankar Devarakonda [M.A 1392/2019 in CP No. 382/IB/MB/MAH/2018] NCLT, Mumbai order dt. 10.05.2019**

   Only the first charge holder/secured creditor with the first pari-passu charge can stay outside the liquidation process and realise his security interest in the manner provided under section 52(1)(b).

7. **Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) & Ors. [Writ Petition No. 8560 of 2018] HC, Hyderabad order dt. 26.07.2018**

   Income-tax Department does not enjoy the status of a secured creditor, on par with a secured creditor covered by a mortgage or other security interest, who can avail the provisions of section 52 of the Code. At best, it can only claim a charge under the attachment order, in terms of section 281 of the Income-tax Act, 1961.

8. Volkswagen Finance Pvt. Ltd. Vs. Shree Balaji Printopack Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 02 of 2020] NCLAT order dt. 19.10.2020

Under section 52(3)(a) of the Code before any security interest is sought to be realised by the secured creditor under this section, the Liquidator shall verify such security interest and permit the secured creditors to realise only such security interest, the existence of which may be proved either by the records of such security interest maintained by an IU or by such other means as may be specified by IBBI.

Q.98. What are the powers and duties of liquidator?

Ans. As per Section 35 of the Code, subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -

(a) to verify claims of all the creditors;

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified:

Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate

debtor in liquidation to any person who is not eligible to be a resolution applicant.

(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board;
and

(o) to perform such other functions as may be specified by the Board.

Q.99. Can the liquidator consult stakeholders? Is such consultation binding on the liquidator?

Ans. Yes, as per Section 35(2) 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.

As per Regulation 31A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Liquidator shall constitute a Stakeholder's Consultation Committee to advise him on matters relating to mode of sale under Regulation 32. Advice shall be by a vote of not less than sixty six per cent of representatives of the consultation committee, present and voting.

However, such consultation shall not be binding on the liquidator. Where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing.

Judicial pronouncements with regard to Section 35: Powers and Duties of Liquidator

1. **Nicco Corporation Ltd. in Liquidation [C.A. (IB) No. 487/KB/2017 connected to C.P. No. 03/2017] NCLT, Kolkata order dt. 24.11.2017**

   The liquidator is duty bound to exercise his powers under the Code and does not require the prior permission of AA for every action to be performed under the Code.

2. **Reliance India Power Fund Vs. Raj Kumar Ralhan [CA (AT) (Ins.) No. 318 of 2020] NCLAT order dt. 24.02.2020**

   Liquidator has a duty under section 35(1)(k) of the Code but the

FC has no right to force the liquidator to take part in the arbitration proceedings. The duty of the liquidator would include a conscious decision not to take part in the proceedings.

3. **Rasiklal S. Mardia Vs. Amar Dye Chem Ltd. & Ors. [CA (AT) No. 337 of 2018] NCLAT order dt. 08.04.2019**

   Liquidator is only an additional person and not exclusive person who can move an application under section 391 of the Companies Act, 1956, when the company is in liquidation.

4. **B.R. Traders Vs. Venkataramanarao Nagarajan & Ors. [CA (AT) (Ins.) No. 189 of 2019 and other appeals] NCLAT order dt. 13.11.2019**

   The liquidator is duty bound to make every endeavour to protect and preserve the value of the property of the CD and manage the operations as a going concern.

5. **IFCI Ltd. & Ors. Vs. BS Ltd. (in liquidation) IA No. 1148/2020 in CP(IB) No. 278/7/HDB/2018] NCLT, Hyderabad order dt. 07.01.2021**

   The liquidator has been endowed with very wide powers as a quasi-judicial functionary under the Code. Section 35(2) empowers the liquidator to consult any of the stakeholders entitled to a distribution of proceeds under section 53, but the proviso makes it amply clear that such consultation is not binding on the liquidator.

6. **In the matter of C. Ramasubramaniam (Liquidator) M/s Aqua Designs India Pvt. Ltd. [CA/342/CAA/2020 in CP/1022/IB/2018] NCLT, Chennai order dt. 05.07.2021**

   Liquidator ought to do preliminary investigation of the scheme received by him under section 230(1) of the Companies Act 2013, before filling the application with AA. Unless the person funding the scheme and the person who is willing to invest in the company are verified and only on being satisfied, the same ought to have been filed before the AA for approval.

Q.100. Which assets shall comprise liquidation estate?

Ans. As per Section 36(3) of the Code, the liquidation estate shall comprise all liquidation estate assets which shall include the following: -

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

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

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

Q.101. Which assets shall not be used for recovery in liquidation?

Ans. As per section 36(4) of the Code, 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.

(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.

Judicial pronouncements with regard to Section 36: Liquidation estate

1. **Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [(IB)-378(PB)-2017] NCLT, New Delhi order dt. 19.03.2019**

   Provident fund dues, pension funds dues and gratuity fund dues are not treated as a part of the liquidation estate.

2. **Savan Godiwala Vs. Apalla Siva Kumar [CA (AT) (Ins.) No. 1229 of 2019] NCLAT order dt. 11.02.2020**

   All sums due to any workman or employees from the provident fund, pension fund and the gratuity fund, do not form part of the liquidation estate/liquidation assets of the CD.

3. **State Bank of India Vs. Moser Baer Karamchari Union and Anr. [CA (AT) (Ins.) No. 396 of 2019] NCLAT order dt. 19.08.2019**

   Due to the workmen or employees viz., provident fund, pension fund and the gratuity fund, do not form part of the liquidation estate/liquidation assets of the CD.

4. **Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) IT Dept. Hyderabad [Writ Petition No. 8560 of 2018] HC, Hyderabad order dt. 26.07.2018**

   The order of attachment by the tax authorities constituting an encumbrance on the property, does not have the effect of taking it out of the purview of section 36(3)(b) of the Code.

5. **V-Con Integrated Solutions Pvt. Ltd. Vs. Acharya Techno Solutions (India) Pvt. Ltd. & Anr. [I.A/176/KOB/2020 in MA/05/KOB/2020 in TIBA/01/KOB/2019] NCLT, Kochi order dt.18.02.2021**

   Dues payable under sub-section 7A, 7Q and 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952) are statutory dues and not claims that can be submitted to the liquidator.

   Section 53 of the Code is not applicable to the recovery of dues which do not form part of the liquidation estate under the Code, by virtue of section 36(4)(a)(iii).

   Further, the Employee's Provident Fund Organization (EPFO) has got first charge over the Assets of the defaulter and its priority of payment over other debts is as per Section 11 of the EPF & MP Act, 1952.

Q.102. Is a liquidator bound to provide information to creditors?

Ans. As per Section 37 of the Code, 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.

Judicial pronouncements with regard to Section 37: Powers of Liquidator to access information

1. **Hema Manoj Shah Vs. Gaurav Dave & Ors.[IA 2511/2019, MA 2400/2019, MA 876/2019, in MA 1082/2019, MA 2314/2019 CP (IB)-1882 (MB)/2018] NCLT, Mumbai order dt. 17.07.2019**

   The liquidator has to perform his duties as the officer of the court and he should never be afraid of false complaints.

Q.103. Is there any time limit for receipt of claim of creditors?

Ans. 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.104. Can a creditor withdraw or vary his claim?

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

Q.105. How does a liquidator verify the claim?

Ans. 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.106. What is fast track corporate insolvency resolution process?

Ans. A fast track corporate insolvency resolution, as the name suggests, is a process wherein the insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.

According to section 55, 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.

Judicial pronouncements with regard to Section 55: Fast track corporate insolvency resolution process

1. **Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd. & Anr. [CA (AT) (Ins.) No. 560 of 2018] NCLAT order dt. 03.01.2019**

   The CD does not come within the category of CD in terms of clauses (a) or (b) or (c) of sub-section (2) of section 55 as its assets and income being not below a level, notified by the Central Government nor having class of creditors or amount of debt as notified by the Central Government. Therefore, section 55 cannot be invoked against the CD.

Q.107. Can the time period for fast track corporate insolvency resolution process be extended?

Ans. Yes, the Adjudicating Authority may extend time period for fast track corporate insolvency resolution process.

As provided under section 56 (2), the resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast track corporate insolvency resolution process beyond ninety days, if instructed to do so by a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy-five per cent of the voting share.

Further, under section 56 (3), on receipt of an application to the Adjudicating Authority and if 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 and such extension shall not be granted more than once.

Q.108. Can a liquidator make application for dissolution of the Corporate Debtor?

Ans. 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 corporate debtor.

As per Section 54 of the Code, where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

Judicial pronouncements with regard to Section 54
Dissolution of corporate debtor

1. **In the matter of SGP Software Solutions Pvt. Ltd. [I.A. No. 14/2021 and C.P. (IB) No. 137/BB/2018] NCLT, Bengaluru order dt. 01.02.2021**

   By conjoint reading of section 54, section 60 and regulation 45 of Liquidation Process Regulations, the ultimate objective of the Code is either to resolve the issue by way of resolution plan or to dissolve the corporate debtor, as expeditiously as possible.

2. **Mohan Gems & Jewels Pvt. Ltd. Vs. Vijay Verma & Anr. [CA (AT) (Ins.) No. 849 of 2020] NCLAT order dt. 24.08.2021**

   The Code does not prevent the closure of liquidation process where the CD is sold as a going concern pursuant to regulation 32(e) of the Liquidation Process Regulations following a closure report filed under regulation 45(3)(a) of the said Regulations. It would be contradictory to observe that closure of liquidation proceedings cannot be done and only dissolution is provided for under the Code. This would demolish the very spirit and objective of the Code.

Q.109. When can a corporate person initiate voluntary liquidation process?

Ans. As per Section 59 of the Code read with Regulation 3 of IBBI (Voluntary Liquidation Process) Regulations, 2017, empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default may initiate voluntary liquidation proceedings under the provisions of the 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.

(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 of the members of the company at a general meeting stating that the company should be liquidated voluntarily and appointing an insolvency professional to act as the liquidator.

(ii) Pass a resolution of the members of the company 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.

Provided that the Company owes any debt to any person, creditors representing two-thirds in value of the debt of the

Company shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

Q.110. When does a corporate person require approval of creditors for voluntary liquidation process?

Ans. As per the proviso to Section 59(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 passed at the general meeting, within seven days of such resolution.

Judicial pronouncements with regard to Section 59
Voluntary liquidation of corporate persons

1. Central Inland Water Transport Corporation Ltd. [C.A. (IB) No. 791/KB/2018] NCLT, Kolkata order dt. 28.09.2018

Voluntary liquidation can only be done, as required under regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, if the debt of the CD has been discharged to the satisfaction of the creditors and no litigation is pending against CD. Since the CD did not satisfy the twin requirements in the matter, the voluntary liquidation of the CD was suspended.

Q.111. Who shall be the Adjudicating Authority for a corporate person?

Ans. In case of a corporate person including corporate debtors and personal guarantors the Adjudicating Authority shall be National Company Law Tribunal (NCLT) having territorial jurisdiction over the place where the registered office of the corporate person is situated, as per section 60 (1) of the Code.

Further as per section 60 (2), the Code provides that without any prejudice to section 60 (1), where the corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, of such corporate debtor shall be filed before such National Company Law Tribunal (NCLT).

In addition to the above, section 60 (3) provides that an insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation processing of such corporate debtor.

Q.112. What are the jurisdictional powers of Adjudicating Authority?

Ans. 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 proceeding by or against the Corporate Debtor / Corporate person;

(b) any claim made by or against the Corporate Debtor or Corporate Person, including claims by or against any of its subsidiaries situated in India.

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

Q.113. Is the period of moratorium excluded for the purpose of limitation?

Ans. 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.

Judicial pronouncements with regard to Section 60
Adjudicating Authority for corporate persons

1. Finquest Financial Solutions Pvt. Ltd. Vs. Ravi Shankar Devarakonda [M.A 1392/2019 in CP No. 382/IB/MB/MAH/2018] NCLT, Mumbai order dt. 10.05.2019

With regard to the issue as to whether AA has jurisdiction to determine the issue of disputed question of fact as to who holds the first charge, it was held that it is the exclusive prerogative of

AA which is exclusively vested with the power to adjudicate the matters relating to and connected with insolvency and bankruptcy law particularly the process of liquidation and the related measures to be adopted in the said process of liquidation. It was observed that it is not just a substantive law but also a procedural law and therefore, the AA can decide on the issues of disputed question of fact when the documents unequivocally prove the point that is sought to be decided.

2. **State Bank of India Vs. Anil Dhirajlal Ambani [IA No. 1009 of 2020 in CP (IB) 916 (MB) of 2020 and Anr.] NCLT, Mumbai order dt. 20.08.2020**

   A plain reading of section 60(2) with sections 95 and 97(3) of the Code indicates that, even while an application for CIRP or liquidation is pending against CD, an application against the personal guarantor can be allowed to be filed. The law does not envisage that the insolvency resolution of the personal guarantor should follow only when the process of CIRP of the CD has come to an end.

3. **GE Power India Ltd. Vs. NHPC Ltd. [CS (COMM) 140/2020 & I.A. 4016/2020] HC, New Delhi order dt. 26.06.2020**

   Clause (c) sub-section (5) of section 60 of the Code vests the jurisdiction in AA to entertain and dispose of any question of priorities or any question of law or fact, arising out of or in relation to the insolvency resolution for liquidation proceedings. Therefore, the jurisdiction vested in AA while dealing with a resolution plan is of wide ambit and any question of law or fact in relation to the insolvency resolution has to be determined by the AA.

4. **Stanbic Bank Ghana Ltd. Vs. Rajkumar Impex Pvt. Ltd. [CP/670/IB/2017] NCLT, Chennai order dt. 27.04.2018**

   The AA has no jurisdiction to enforce a foreign decree, however, there is no bar in taking cognizance of a foreign decree.

5. **Embassy Property Development Pvt. Ltd. Vs. State of Karnataka & Ors. [Civil Appeal No. 9170, 9172 of 2019] SC order dt. 03.12.2019**

Though the AA and the NCLAT have jurisdiction to enquire into questions of fraud, however, they would not have jurisdiction to adjudicate upon disputes such as those arising under the Mines & Minerals (Development and Regulation) Act, 1957, and the rules thereunder, especially when the disputes revolve around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action.

6. **M. Srinivas Vs. Ramanathan Bhuvaneshwari & Ors. [CA (AT) (Ins.) No. 498 of 2019] NCLAT order dt. 24.07.2019**

   If the AA is satisfied that there are circumstances suggesting that the business of a CD is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members, and that the affairs of the CD ought to be investigated, after giving a reasonable opportunity of being heard to the parties concerned, it may refer the matter to the Central Government for investigation into the affairs of the CD.

7. **IBBI Vs. Rishi Prakash Vats & Ors. [CA (AT) (Ins.) No. 324 of 2019] NCLAT order dt. 11.07.2019**

   Once a disciplinary proceeding is initiated by IBBI on the basis of evidence on record, it is for the disciplinary authority i.e. IBBI to close the proceedings or pass appropriate orders in accordance with law. Such power having been vested with IBBI and in absence of such power being vested with AA, the AA cannot quash the disciplinary proceedings initiated by IBBI.

8. **Ilam Chand Kamboj Vs. ANG Industries Ltd. [CA (AT) (Ins.) No. 253 of 2019 and I.A. No. 995 of 2019] NCLAT order dt. 02.08.2019**

   The AA is not supposed to pass any adverse observations, even prima facie, against the RP, without giving an opportunity to him as to why in view of certain act, the matter be not referred to the IBBI.

9. **Union of India Vs. Maharashtra Tourism Development Corporation & Anr. [CA (AT) (Ins.) No. 964 and 965 of 2019] NCLAT order dt. 02.12.2019**

Section 212 of the Companies Act, 2013 does not empower the NCLT or AA to refer the matter to the Central Government for investigation by Serious Fraud Investigation Office (SFIO) even if it notices the company defrauding creditors and others. However, in terms of section 213(b) of the said Act, it can direct the Central Government to investigate through inspectors and after investigation and if case is made out, it may decide the matter to be investigated by SFIO. It was held that the AA is not competent to straight away direct any investigation to be conducted by the SFIO.

10. Committee of Creditors of Metalyst Forging Ltd. Vs. Deccan Value Investors LP & Ors. [CA (AT) (Ins.) No. 1276 and 1281 of 2019] NCLAT order dt. 07.02.2020

The Code does not confer any power and jurisdiction on the AA to compel specific performance of a resolution plan by an unwilling resolution applicant.

11. State Bank of India Vs. V. Ramakrishnan & Anr. [CA No. 3595 of 2018] SC order dt. 14.08.2018

Section 60 of the Code in sub-section (1) thereof, refers to insolvency resolution and liquidation for both CDs and personal guarantors, the AA for which shall be the NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located. The scheme of section 60(2) and (3) is clear that the moment there is a proceeding against the CD pending under the Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the CD, be transferred to the NCLT or, if initiated after such proceedings had been commenced against the CD, be filed only in the NCLT.

12. State Bank of India Vs. D. S. Rajendra Kumar [CA (AT) (Ins.) Nos. 87 to 91 of 2018] NCLAT order dt. 18.04.2018

An order of moratorium will be applicable only to the proceedings against the CD and the personal guarantor, if pending before any court of law/tribunal or authority. However, this order of moratorium will not be applicable on filing of applications for

triggering CIRP under sections 7 or 9 or 10 of the Code against the guarantor or the personal guarantor under section 60(2).

13. Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67 of 2019 with other Civil Appeals and WP(C)s] SC order dt. 15.11.2019

The limited judicial review available to AA can in no circumstance trespass upon a business decision of the majority of the CoC. The residual jurisdiction of the AA under section 60(5)(c) cannot, in any manner, whittle down section 31(1) of the Code, by the investment of some discretionary or equity jurisdiction in the AA outside section 30(2) of the Code, while adjudicating a resolution plan.

14. Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd. [CA (AT) (Ins.) No. 92, 93 & 148 of 2017] NCLAT order dt. 08.01.2019

Without initiating any CIRP against the principal borrower, it is always open to the FC to initiate CIRP under section 7 against the corporate guarantors, as the creditor is also the FC qua corporate guarantor.

15. UT Worldwide (India) Pvt. Ltd. Vs. Integrated Caps Pvt. Ltd. [IB-298/ND/2017] NCLT, New Delhi order dt. 17.10.2017

It was noted that the AA under the Code exercises only a summary jurisdiction and cannot be made to conduct the proceedings by way of a detailed trial to ascertain the amount of debt claimed is as claimed or not, as is done by a Civil Court taking a detailed examination of documents supported by oral examination of witnesses when the plaintiff approaches it by way of a suit.

16. Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 to 9405 of 2018] SC order dt. 04.10.2018

The non-obstante clause in section 60(5) is designed for a different purpose i.e. to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a CD covered by the Code, making it clear that no other

forum has jurisdiction to entertain or dispose of such applications or proceedings.

17. P. Purushothaman Vs. Union Bank of India & Anr. [MA/496/2019 in CP/280/IB/2018] NCLT, Chennai order dt. 04.06.2019

Section 60(5) of the Code does not provide for review jurisdiction to the NCLT.

18. Vistar Financiers Pvt. Ltd. Vs. Datre Corporation Ltd. [CA No. 209 of 2018 in CP (IB) No. 441/KB/2017] NCLT, Kolkata order dt. 22.06.2018

The prayer to recall and cancel NCLTs own order of admission of CIRP would not come within the purview of section 60 of the Code. Moreover, the order of admission of CIRP is an appealable order under section 32 of the Code.

19. Amandeep Singh Bhatia &Ors. Vs. Vitol S.A. & Anr. [CA (AT) (Ins.) No. 502 of 2018] NCLAT order dt. 30.08.2018

The AA is empowered to direct the ex-directors not to leave the country without its prior permission.

20. Vishnu Kumar Agarwal Vs. Piramal Enterprises Ltd. [CA (AT) (Ins.) 346 & 347 of 2018] NCLAT order dt. 08.01.2019

There is no bar in the Code against filing of two applications under section 7 simultaneously, against the principal borrower as well as the corporate guarantor or against both the guarantors. However, once for same set of claim, application under section 7 filed by the FC is admitted against one of the CDs (i.e. principal borrower or corporate guarantor), second application by the same FC for same set of claim and default cannot be admitted against the other CD (i.e. corporate guarantor or the principal borrower).

21. Prasad Gempex Vs. Star Agro Marine Exports Pvt. Ltd. & Anr. [CA (AT) (Ins.) 469 of 2019] NCLAT order dt. 02.05.2019

The AA has no jurisdiction to pass any order with regard to any matter pending before the court of criminal jurisdiction.

22. Jotun India Pvt. Ltd. Vs. PSL Ltd. [CP Nos. 434, 1048, 878 of

2015 & 256 and 392 of 2016] HC, Bombay order dt. 05.01.2018

NCLT is not a court subordinate to the HC and hence as prohibited by the provisions of section 41(b) of the Specific Relief Act, 1963, no injunction can be granted by the HC against a CD from institution of proceedings in NCLT.

23. Skillstech Services Pvt. Ltd. Vs. Registrar, National Company Law Tribunal, New Delhi & Anr. [W.P.(C) 474/2021 & CM Appl. 1227/2021] HC, New Delhi order dt. 13.01.2021

The question as to whether the NCLT has jurisdiction to entertain a particular case or not cannot be determined by the Registrar, NCLT in its administrative capacity. The Registrar, NCLT is bound to place the matter before the appropriate bench of the NCLT, for the said question to be judicially determined.

24. Liquidator of Precision Fasteners Ltd. Vs. Siddhi Edibles Pvt. Ltd. [M.A. No. 1512/2018 and M.A. No. 47/2019 in CP (IB) No. 1339/NCLT/MB/2017] NCLT, Mumbai order dt. 27.10.2020

The recovery of rent from the tenant and the eviction of tenant from the property of the CD is in exclusive domain of the civil courts and cannot be dealt by the AA by invoking section 60(5) and the jurisdiction lies with the Civil Court/Rent Control Court only. On the guise that the Code is complete in itself, the AA can neither enlarge nor amplify its jurisdiction.

25. Kalinga Allied Industries India Pvt. Ltd. Vs. Hindustan Coils Ltd. & Ors. [CA (AT) (Ins.) No. 518 of 2020] NCLAT order dt. 11.01.2021

When the application for approval of resolution plan is pending before the AA, at that time the AA cannot entertain an application of a person who has not participated in CIRP even when such person is ready to pay more amount in comparison to the successful resolution applicant. If a resolution plan is considered beyond the time limit then it will make a never ending process.

26. Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta & Ors. [Civil Appeal No. 9241 of 2019] SC order dt. 08.03.2021

i. NCLT/NCLAT can exercise jurisdiction under section 60(5)(c) of the Code to stay termination of contracts solely on account of CIRP being initiated against the CD.

ii. NCLT has the jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the CD; however, in doing so, the NCLT and NCLAT must ensure that they do not usurp the legitimate jurisdiction of other courts and tribunals.

iii. RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes out of the insolvency, the RP must approach the competent authority.

iv. NCLT cannot do what the Code consciously did not provide it the power to do.

v. The jurisdiction of the NCLT cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the CD.

vi. It cannot even be invoked in the event of a legitimate termination of a contract based on an ipso facto clause, if such termination will not have the effect of making certain the death of the CD.

vii. NCLT to be cautious in setting aside valid contractual terminations which would merely dilute the value of the CD, and not push it to its corporate death.

27. Alok Kaushik Vs. Bhuvaneshwari Ramanathan and Ors. [Civil Appeal No. 4065 of 2020] SC order dt. 15.03.2021

AA is sufficiently empowered under section 60(5)(c) of the Code to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs, even in a situation where the CIRP is eventually set aside by the AA or by the Appellate Authority, as the case may be.

28. Mandar Wagh, IRP of Synew Steel Pvt. Ltd. [C.P. (IB)No. 96/BB/2020 and I.A. No. 435/2020] NCLT, Bengaluru order dt. 16.11.2020

If the facts and circumstances of a case justify that no purpose would be served to keep the CD under regular CIRP proceedings, and thereafter under liquidation proceedings, under

the provisions of the Code, the AA, by exercising its inherent powers conferred under the Act, may pass appropriate order(s) in the interest of speedy justice.

29. Ranjeet Singh vs. M/s Karan Motors Private Limited [CA (AT) (Ins) No. 719/2020] NCLAT order dt. 13.08.2021

Both NCLT and NCLAT work under the Code where there is no equity jurisdiction, and they are bound by the provisions of the Code while adjudicating the matters under the Code.

Q.114. Whether an appeal can be filed against the order of the Adjudicating Authority?

Ans. Yes, as per Section 61 of the Code, any person aggrieved by the order of the Adjudicating Authority 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). Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

Q.115. On what grounds can an appellant appeal against an order of National Company Law Tribunal for approving the resolution plan?

Ans. 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.

(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.

Judicial pronouncements with regard to Section 61 Appeals and Appellate Authority

1. **SEL Manufacturing Company Ltd. & Anr. Vs. Union of India &Ors. [CWP No. 9131 of 2018] HC, Punjab and Haryana order dt. 01.05.2018**

   There is a sea of difference between 'erroneous exercise of jurisdiction' or 'lack of jurisdiction' by a tribunal. The erroneous or failure to exercise jurisdiction by a tribunal is a ground which can effectively be taken before the Appellate Authority.

2. **Custodial Services (India) Pvt. Ltd. Vs. Metafilms (India) Ltd. [CA (AT) (Ins.) No. 183 of 2017] NCLAT order dt. 16.11.2017**

   As per sub-section (3) of section 61 of the Code, an appeal is required to be filed within 30 days and the NCLAT has been empowered to condone delay not exceeding 15 days, if satisfied on the ground mentioned in the petition for condonation of delay. It was held that NCLAT has no jurisdiction to condone the delay beyond 45 days.

3. **Hindustan Oil Exploration Company Vs. Erstwhile Committee of Creditors JEKPL Pvt. Ltd. &Ors. [CA (AT) (Ins.) No. 969 of 2020] NCLAT order dt. 17.11.2020**

   An unsuccessful resolution applicant has no locusto question any action of any of the stakeholders qua implementation of the approved resolution plan nor can it claim any prejudice on the pretext that any of the actions post approval of the resolution plan of successful resolution applicant in regard to its implementation has affected its prospects of being a successful resolution applicant.

4. **Surinder Kaur & Ors. Vs. International Recreation and Amusement Ltd. through RP [CA (AT) (Ins.) No. 208 of 2021] NCLAT order dt. 18.03.2021**

   There is a need to introduce provisions in the legal framework to

vest power of superintendence and control qua NCLTs in the NCLAT.

5. **Adish Jain Vs. Sumit Bansal & Anr. [Review Application No. 13 of 2020 in CA (AT) (Ins.) No. 379 of 2020] NCLAT order dt. 03.02.2021**

   The NCLAT does not have an inherent power to review its own orders and that the 'power of review' has to be granted by statute and it is not an inherent power, and therefore cannot be exercised unless conferred specifically or by necessary implications.

6. **Committee of Creditors of Leel Electricals Ltd. Vs. Arvind Mittal, IRP of Leel Electricals Ltd. [Contempt Case (AT) No. 01 of 2021 in CA (AT) (Ins.) No. 1100 of 2020] NCLAT order dt. 29.01.2021**

   The NCLAT dropped the contempt proceedings admitted against the IRP, on an application filed by CoC as the latter was in the process of approaching IBBI for taking action against the IRP.

7. **National Spot Exchange Ltd. Vs. Mr. Anil Kohli, RP for Dunar Foods Ltd. [Civil Appeal No. 6187 of 2019] SC order dt. 14.09.2021**

   Considering section 61(2) which provide that delay beyond 15 days in preferring the appeal is uncondonable, the same cannot be condoned even in exercise of powers under Article 142 of the Constitution.

8. **Ideal Surgical Vs. National Company Law Tribunal and Ors. [WP(C) No 8257 of 2021] HC order dt. 02.07.2021**

   A writ petition under Article 226 of the Constitution against an order of NCLT under the Code, is not maintainable.

Q.116. Does an appeal lie from the order of National Company Law Appellate Tribunal?

Ans. 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 such order under this Code.

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

Judicial pronouncements with regard to Section 62
Appeal to Supreme Court

1. **Gammon India Ltd. Vs. Neelkanth Mansions and Infrastructure Pvt. Ltd. [Civil Appeal No. D No 13202 of 2019] SC order dt. 20.11.2020**

   Section 62 of the Code provides a period of 45 days from the date of the receipt of an order of the NCLAT for filing an appeal. It empowers the SC to condone a delay of a further period up to 15 days for sufficient cause. Since the delay of 51 days is beyond the period of delay which can be condoned, the SC dismissed the appeal on the ground that it is barred by limitation.

2. **Upendra Choudhury Vs. Bulandshahar Development Authority & Ors. [Writ Petition (Civil) No. 150 of 2021] SC order dt. 11.02.2021**

   The SC declined to entertain a writ petition under Article 32 of the Constitution filed by a singular homebuyer, stating that it would be inappropriate to do so as there are specific statutory provisions holding the field, including the Consumer Protection Act 1986 and its successor legislation; the Real Estate (Regulation and Development) Act 2016; and the Code.

   Remedy under Article 32 cannot be used as a ruse to flood the SC with petitions that must be filed before the competent authorities set up pursuant to the appropriate statutory framework.

Q.117. Does Civil Court have jurisdiction in matters relating to insolvency of corporate persons?

Ans. No, as per section 63, Civil Court shall not have jurisdiction to entertain any suit or proceedings 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.

Judicial pronouncements with regard to Section 63
Civil Court not to have jurisdiction

1. **GE Power India Ltd. Vs. NHPC Ltd. [CS (COMM) 140/2020 & I.A. 4016/2020] HC, New Delhi order dt. 26.06.2020**

   Sections 63 and 231 of the Code create a bar on the jurisdiction of the Civil Court in respect of any matter in which the AA and NCLAT has jurisdiction under the Code and the AA under the Code is competent to pass any order.

2. **Liberty House Group PTE Ltd. Vs. State Bank of India &Ors. [CS (COMM) 1246 /2018 and IAs No. 16056/2018 and 16060/2018 and CS (COMM) 1247/2018 and IAs No. 16061/2018 and 16065/2018] HC, New Delhi order dt. 22.02.2019**

   If the questions raised in the suits arise out of or in relation to insolvency resolution, the NCLT will have jurisdiction to entertain the same. The jurisdiction of the HC will also be barred by section 231 of the Code.

Q.118. 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?

Ans. Yes, as per section 64, 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.

Judicial pronouncements with regard to Section 64
Expeditious disposal of applications

1. **Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 to 9405 of 2018] SC order dt. 04.10.2018**

Section 64 makes it clear that the timelines are to be adhered to by the NCLT and NCLAT as they are of great importance, and reasons must be recorded by either the NCLT or NCLAT, if the matter is not disposed of within the time limit specified.

2. **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No. 9405 of 2017] SC order dt. 21.09.2017**

   The strict adherence of the timelines is of essence to both the triggering process and the insolvency resolution process.

Q.119. What is the punishment for fraudulently or maliciously initiating the insolvency resolution process or liquidation?

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

Judicial pronouncements with regard to Section 65
Fraudulent or malicious initiation of proceedings

1. **Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd. [CA (AT) (Ins.) No. 99 of 2020] NCLAT order dt. 16.07.2020**

   Though section 65 provides for penal action against initiating CIRP with a fraudulent or malicious intent, the same cannot be construed to mean that if an application is filed under section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the AA on the ground that the intent of the applicant was not resolution.

2. **Unigreen Global Pvt. Ltd. Vs Punjab National Bank and Ors. [CA (AT) (Ins.) No. 81 of 2017] NCLAT order dt. 01.12.2017**

   There is nothing on record to suggest that the corporate applicant has suppressed any fact or has not come with the clean hands. The AA has also not held that the application has been filed by the corporate applicant 'fraudulently' or 'with malicious

intent' for any purpose other than for the resolution process or liquidation or that the voluntary liquidation proceedings have been initiated with the intent to defraud any person. In absence of any such reasons recorded by the AA, the impugned order of AA was not be upheld.

Further, as the AA before imposing penalty under section 65 has not given nor served any notice to the corporate applicant recording its prima facie view and intent to punish the corporate applicant, therefore, the impugned order of AA cannot be upheld as being passed in violation of rules of natural justice.

3. Amit Katyal Vs. Meera Ahuja & Ors. [CA (AT) (Ins.) No. 1380 of 2019] NCLAT order dt. 09.11.2020

i. In case an allottee does not want to go ahead with its obligation to take possession of the flat, but wants to get back the monies already paid, by way of coercive measure, the use of section 65 is justified, as one allottee is misusing his position to stall the entire project. But it does not mean that an application satisfying the requirements of section 7 or 9 could be dismissed arbitrarily under the guise of section 65.

ii. The Code provides stringent action under section 65 against the person who initiates proceeding fraudulently or with malicious intent, for the purpose other than the resolution of insolvency or liquidation.

Q.120. What action can be taken for Fraudulent trading or wrongful trading ?

Ans. As per Section 66 of the Code, If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

Judicial pronouncements with regard to Section 66
Fraudulent trading or wrongful trading

1. Axis Bank Ltd. Vs. Anuj Jain [CA (AT) (Ins.) No. 243 of 2018 and Ors.] NCLAT order dt. 01.08.2019

The AA had allowed the application under sections 66, 43 and 45 of the Code and ordered that the mortgaged properties be vested with the CD. On appeal, the NCLAT noted that the mortgages were made in favour of the banks and financial institutions by the CD in the ordinary course of business. Further, in absence of any contrary evidence to show that they were made to defraud the creditors of the CD or for any fraudulent purpose, it set aside the order of the AA.

Q.121. What is the punishment for concealment of property by the officers of the corporate debtor?

Ans. In accordance with section 68 of the Code, where any officer of the Corporate Debtor, within twelve months immediately preceding the insolvency commencement date,

a) wilfully concealed any property or part of such property or concealed any debt due to or from the Corporate Debtor, of the value of Rs 10,000/- or more,

b) fraudulently removed any part of the property of the value of Rs 10,000/- or more,

c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property.

d) wilfully made any false entry in any book or paper affecting or related to the property,

e) fraudulently parted with, altered or made any omission in any document affecting or relating to property,

f) wilfully created any security interest over, transferred or disposed of any property which has been obtained on credit and has not been paid for unless such creation, transferor disposal was in the ordinary course of business,

g) wilfully concealed the knowledge of the doing by other of any acts mentioned in (c), (d) or (e);

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.

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.

Q.122. What is the punishment for entering in transactions for defrauding creditors?

Ans. As per Section 69 of the Code, if 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, 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 unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor

such officer of the corporate debtor or the corporate debtor, 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.

Provided that a person shall not be punishable under this section if the acts mentioned in clause (a) were committed more than five years before the insolvency commencement date; or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the corporate debtor.

Q.123. What shall be treated as misconduct in the course of corporate insolvency resolution process?

Ans. According to Section 70 of the Code, the following acts of an officer of the corporate debtor on or after the insolvency commencement 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 the 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.124. What is the punishment for misconduct in the course of corporate insolvency resolution process?

Ans. Where an officer of the corporate debtor is liable for misconduct under Section 70 of the Code, 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.125. What is the punishment for contravention of the provisions of the Code by an Insolvency Professional?

Ans. Section 70(2) of the Code provides that 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.

Judicial pronouncements with regard to Section 70
Punishment for misconduct in course of CIRP

1. **Asset Reconstruction Company (India) Ltd. Vs. Shivam Water Treaters Pvt. Ltd. [CP(IB) 1882(MB)/2018]NCLT, Mumbai order dt. 28.03.2019**

   Despite directions of handing over the CD to the RP, the business head and statutory auditor did not extend any co-operation for handing over possession of the CD to the RP. Hence, a penalty of Rs. 10 lakh each was imposed under section 70 of the Code.

Q.126. What is the punishment for falsification of books of corporate debtor?

Ans. In accordance with section 71 of the Code, 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.127. What is the punishment for wilful and material omissions from statements relating to affairs of corporate debtor?

Ans. As per Section 72 of the Code, where an officer of the corporate debtor makes any material and wilful 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.128. What is the punishment for making false representations to creditors?

Ans. Section 73 provides that where any officer of the corporate debtor-

(a) on or after the insolvency commencement date, makes a false representation or commits any fraud for the purpose of obtaining the consent of the creditors of the corporate debtor or any of them to an agreement with reference to the affairs of the corporate debtor, during the corporate insolvency resolution process, or the liquidation process;

(b) prior to the insolvency commencement date, has made any false representation, or committed any fraud, for that purpose,

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

Q.129. What is the punishment for contravention of moratorium or resolution plan?

Ans. In accordance with Section 74, 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.130. What is the punishment for furnishing false information in application for initiating insolvency process under Section 7 of the Code?

Ans. As per Section 75 of the Code, 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.131. What is the punishment for non-disclosure of dispute or payment of debt by operational creditor?

Ans. Section 76 provides that if an operational creditor has wilfully or knowingly concealed in an application under Section 9 the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final payment of the unpaid operational debt or any person who 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.132. What is the punishment for providing false information in application made by corporate debtor?

Ans. Section 77 provides that, 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.

Chapter 3
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

Q.1. What is the date of enforcement of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016?

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

Q.2. What is meant by a Demand Notice?

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

Q.3. Can a Demand Notice by an operational creditor be issued in any form?

Ans. No, the Demand Notice has to be issued in Form No. 3 or a copy of an invoice attached with a notice in Form 4 as provided in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Q.4. What shall be the mode of service of demand notice?

Ans. 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.5. 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?

Ans. The form in which the application is to be preferred is provided in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as follows:

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

Q.6. What is the process for making an application by financial creditor?

Ans. As per Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, a financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The applicant shall serve a copy of the application to the registered office of the corporate debtor and to the Board, by registered post or speed post or by hand or by electronic means, before filing with the Adjudicating Authority.

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

Q.7. What is a Financial Contract?

Ans. 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.

Q.8. Can an assignee of a financial contract make an application under corporate insolvency resolution process?

Ans. Yes, as per Rule 4 of Insolvency and Bankruptcy (Application to 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 transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

Q.9. What is the process for making an application by Operational creditor?

Ans. An operational creditor shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 9 of the Code in Form 5, accompanied with documents and records required therein and as specified in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The applicant shall serve a copy of the application to the registered office of the corporate debtor and to the Board, by registered post or speed post or by hand or by electronic means, before filing with the Adjudicating Authority.

Judicial pronouncements with regard to Rule 6 of AA Rules

1. **JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 20978 of 2017] SC order dt. 30.04.2019**

   The trade union collectively represents its members who are workers, to whom dues may be owed by the employer, which are debts owed for services rendered by each individual workman. If each workman files a separate cause of action, the fact that a joint petition could be filed under rule 6 of AA Rules would be ignored.

Q.10. What is the process for making an application by Corporate applicant?

Ans. A corporate applicant shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 10 of the Code in Form 6, accompanied with documents and records required therein and as specified in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The applicant shall serve a copy of the application to the Board by registered post or speed post or by hand or by electronic means, before filing with the Adjudicating Authority.

Q.11. Can an applicant withdraw its application for insolvency process?

Ans. Yes, as per Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 an applicant may withdraw application for insolvency process by making a request to the Adjudicating Authority before admission.

Judicial pronouncements with regard to Rule 8 of AA Rules

1. Lokhandwala Kataria Construction Pvt. Ltd. Vs. Nisus Finance and Investment Managers LLP [Civil Appeal no. 9279 of 2017] SC order dt. 24.07.2017

In the appeal before SC, a question as to whether, in view of rule 8 of the AA Rules, the NCLAT could utilise the inherent power under rule 11 of the National Company Law Appellate Tribunal Rules, 2016, to allow compromise before it by the parties after admission of the matter. The SC upheld the views of NCLAT that after admission, inherent power could not be utilised. However, by using its power under Article 142 of the Constitution, allowed the consent terms.

Q.12. Does an applicant need any declaration from the proposed interim resolution professional?

Ans. Yes, as per Rule 9 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 an applicant wherever he is required to propose or proposes to appoint an insolvency professional shall obtain a written communication in Form 2, from the insolvency professional for appointment as an interim resolution professional and enclose it along with application to be made.

Q.13. 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?

Ans. Yes, the proviso to Rule 10 of Insolvency and Bankruptcy (Application to 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.

Chapter 4

IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017

Q.1. What is the meaning of the term 'class of creditors'?

Ans. According to Regulation 2(1)(aa) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 "class of creditors" means a class with at least ten financial creditors under clause (b) of sub-section (6A) of section 21 and the expression, "creditors in a class" shall be construed accordingly.

Q.2. What does "evaluation matrix" mean?

Ans. As per Regulation 2(1)(ha) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, "evaluation matrix" means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval.

Q.3. What does "fair value" mean?

Ans. As per Regulation 2(1)(hb) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, "fair value" means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

Q.4. What is the meaning of the term "liquidation value"?

Ans. As per Regulation 2(1)(k) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, "liquidation value" means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.

Q.5. What are the evidences of default by financial creditor?

Ans. The financial creditor may furnish either the certified copy of entries in the relevant account in the banker's book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 or an order of a court or a tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired.

Q.6. What are the eligibility criteria for appointment of an Insolvency Professional as a Resolution Professional for a corporate insolvency resolution process?

Ans. As per Regulation 3 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an insolvency professional shall be eligible for appointment as interim resolution professional or 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.

(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 secretarial auditors 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 five per cent or more of the gross turnover of such firm in the last three financial years.

Q.7. What is the meaning of the term Extortionate credit transaction?

Ans. As per Regulation 5 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a transaction shall be considered extortionate under section 50(2) where the terms:

(1) require the corporate debtor to make exorbitant payments in respect of the credit provided; or

(2) are unconscionable under the principles of law relating to contracts

Q.8. What is the protocol for issuance of public announcement?

Ans. As per Regulation 6(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the public announcement shall be published in Form A in following:-

- One English newspaper and one regional newspaper with wide circulation at the location of registered office and principal office and any other location where material business is conducted, in the opinion of the interim resolution professional.
- Website of the Corporate Debtor
- Website designated by the Insolvency and Bankruptcy Board of India

Q.9. Who shall bear the expenses of public announcement?

Ans. 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.

Judicial pronouncements with regard to Regulation 6 of CIRP Regulations

1. **Dy. Commissioner of Customs DEEC (Monitoring Cell) Vs. Jyoti Structures Ltd. & Ors. [IA 1218/MB/2020 in CP(IB) 1137/MB/2017] NCLT, Mumbai order dt. 05.10.2020**

   It is the responsibility of the creditor to file claim within the time after the issue of public notice inviting claims by the RP.

Q.10. What is the procedure for claims by Operational Creditors?

Ans. A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit claim with proof to the interim resolution professional in person, by post or by electronic means in Form B of the Schedule.

Such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee of creditors.

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

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

(b) other relevant documents, including –

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

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

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

(iv) financial accounts.

Q.11. What is the procedure for claims by Financial Creditors?

Ans. A person claiming to be a financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof to the interim resolution professional in electronic form in Form C of the Schedule

Such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee of creditors.

The existence of debt due to the financial creditor may be proved on the basis of –

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

(b) other relevant documents, including –

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been paid;

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

Q.12. Who shall bear the cost of proof?

Ans. As per Regulation 11 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a creditor shall bear the cost of proving the debt due to such creditor.

Q.13. What is the remedy if a Creditor fails to submit proof of claim within the time stipulated in the public announcement?

Ans. As per Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a Creditor who failed to submit claim with proof within stipulated time mentioned in public announcement may submit such claim with proof to Interim Resolution Professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.

Q.14. When can a creditor update his claim?

Ans. As per Regulation 12A of the IBBI (Insolvency Resolution Process `for Corporate Persons) Regulations, 2016, a creditor shall update its claim as and when the claim is satisfied, partly of fully, from any source in any manner, after the insolvency commencement date.

Q.15. Is there any time limit for verification of claims by the resolution professional?

Ans. Yes, as per Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, all the claims must be verified by the resolution professional within seven days from the last date of receipt of claims.

Q.16. Can list of creditors prepared by resolution professional be inspected?

Ans. Yes, as per Regulation 13 IBBI (Insolvency Resolution Process for Corporate Persons) 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, be filed on the electronic platform of the Board for dissemination on its website, filed with Adjudicating Authority and presented at the first meeting of the committee.

Q.17. Who will determine the amount claimed by the creditor which is not precise due to any contingency or any other reason?

Ans. As per Regulation 14 (1) IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, shall make the best estimate of the amount of the claim based on the information available with him.

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

Q.18. If there is no financial creditor, how will the committee of creditors be constituted?

Ans. As per Regulation 16 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be 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.

A member of the committee formed under this Regulation shall have voting rights in proportion of the debt due to such creditor or debt represented by such representative, as the case may be, to the total debt. A committee formed under this Regulation and its members shall have the same rights, powers, duties and obligations as a committee comprising financial creditors and its members, as the case may be.

Q.19. Who is Authorized representative?

Ans. As per Regulation 16A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorized representative of the creditors of the respective class.

Provided that the choice for an insolvency professional to act as authorised representative in Form CA received under sub-regulation (2) of regulation 12 shall not be considered.

Q.20. What is the compliance with Adjudicating Authority post constitution of committee of creditors?

Ans. After the constitution of committee of creditors, as per Regulation 17 of Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, interim resolution professional shall file a report certifying constitution of Committee of Creditors to the Adjudicating Authority within 2 days of verification of claims and hold first meeting of committee of creditors within 7 days of filing the report.

The resolution professional acts as chairperson of the meeting as per regulation 24 of Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Q.21. Can a member attend the meeting of committee of creditors by video conferencing?

Ans. Yes, as per Regulation 22 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 a member of the committee of creditors may attend the meeting by video conferencing or other audio and visual means.

Q.22. What is the quorum required for convening of the meeting of committee of creditors?

Ans. As provided in Regulation 22(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a meeting of committee of creditors shall be quorate if members of the committee of creditors representing at least thirty three per cent of the voting rights are present either in person or by video/audio means.

Q.23. What shall be the consequence if the quorum is not fulfilled?

Ans. As per Regulation 22(2) and 22(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, 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 be quorate with the members of the committee attending the meeting.

Q.24. Who will appoint the registered valuers and within how many days?

Ans. As per Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.

Provided that the following persons shall not be appointed as registered valuers, namely:

(a) a relative of the resolution professional;

(b) a related party of the corporate debtor;

(c) an auditor of the corporate debtor at any time during the period of five years preceding the insolvency commencement date; or

(d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

Q.25. What are the provisions in relation to appoint any professional by insolvency professional?

Ans. According to Regulation 27(2) the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the interim resolution professional or the resolution professional, as the case may be, may appoint any professional, in addition to registered valuers under sub-regulation (1), to assist him in discharge of his duties in conduct of the corporate insolvency resolution process, if he is of the opinion that the services of such professional are required and such services are not available with the corporate debtor. As per Regulation 27(3) the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the interim resolution professional or the resolution professional, as the case may be, shall appoint a professional under this regulation on an arm's length basis following an objective and transparent process

Provided that the following persons shall not be appointed, namely: - (a) a relative of the resolution professional; (b) a related party of the corporate debtor; (c) an auditor of the corporate debtor at any time during the period of five years preceding the insolvency commencement date; (d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

The invoice for fee and other expenses incurred by a professional appointed under this regulation shall be raised in the name of the professional and be paid directly into the bank account of such professional.

Q.26. How the sale of the assets outside the ordinary course of business take place?

Ans. As per Regulation 29 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case:

But the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional. The sale of assets under this Regulation shall require the approval of the committee by a vote of sixty-six per cent of voting share of the members.

Q.27. What is the process for withdrawal of application under Section 12A?

Ans. As per Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an application for withdrawal under section 12A of the Code, may be made to the Adjudicating Authority

a) before the constitution of the committee, by the applicant through the interim resolution professional or

b) after the constitution of the committee, by the applicant (Provided if application is made after the issue of invitation for expression of interest, then applicant shall state the reasons justifying withdrawal after issue of such invitation) through the interim resolution professional or resolution professional, as the case maybe.

The application shall be made in Form FA of the Schedule accompanied by the bank guarantee towards the estimated expenses incurred on or by the interim resolution professional till the date of filling the application under Regulation 31 or Regulation 33.

Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

In case, the application received under clause (b),the Committee of Creditors shall consider the application within seven days of receipt of the application, and if approved by ninty percent voting share then the resolution professional shall submit the application to the Adjudicating Authority on behalf of applicant, within three days of such approval.

Judicial pronouncements with regard to Regulation 30A(1) of CIRP Regulations

1. **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India &Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019**

   Regulation 30A(1) of the CIRP Regulations is not mandatory but directory for the simple reason that on the facts of a given case, an application for withdrawal may be allowed in exceptional cases even after issue of invitation for expression of interest under regulation 36A of the said Regulations.

Q.28. What are Insolvency Resolution Process costs as per Sec. 5(13)(e) ?

Ans. Regulation 31 of Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 specifies other costs as:

a) amounts due to suppliers of essential goods and services under Regulation 32;

b) fee payable to authorised representative under Regulation 16A(8).

c) out of pocket expenses of authorised representative for discharge of his functions under section 25A;

d) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);

e) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33

f) expenses incurred on or by the resolution professional fixed under Regulation 34;

g) other costs directly relating to the corporate insolvency resolution process and approved by the committee

Q.29. What is the meaning of the term "essential supplies"

Ans. The essential goods and services referred to in section 14(2) of the Code has been defined in regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,& shall mean-

(a) electricity;

(b) water;

(c) telecommunication services; and

(d) information technology services,

to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Q.30. What are the Costs of the Interim Resolution Professional?

Ans. As per Regulation 33 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016-

(1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses.

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

For the purposes of this regulation, "expenses" include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional..

Q.31. Who will fix the expenses to be incurred by Resolution Professional?

Ans. As per Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the committee of creditors shall fix the expenses to be incurred on or by the resolution

professional and the expenses shall constitute insolvency resolution process costs..

Q.32. What is the compliance requirement with respect to disclosure of costs?

Ans. As per Regulation 34A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the interim resolution professional or the resolution professional, shall disclose item wise insolvency resolution process costs in such manner as may be required by IBBI.

Q.33. How fair value and liquidation value shall be determined?

Ans. As per Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, fair value and liquidation value shall be determined in the following manner:-

(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

(b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and

(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value.

Q.34. Where the resolution professional is of the opinion that the corporate debtor has been subjected to preferential and other transactions, what shall he do?

Ans. As per Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016-

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date.

(3) Where the resolution professional makes a determination, he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.

Q.35. By when the resolution professional shall submit the information memorandum?

Ans. As per Regulation 36 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier. Similarly under regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 it should be issued to every prospective resolution applicant named in the provisional list within 5 days of issue of provisional list of prospective resolution applicants.

Q.36. What is the process for Invitation for expression of interest?

Ans. Regulation 36A (1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that the resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.

(2) The resolution professional shall publish Form G-

(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of

the resolution professional, the corporate debtor conducts material business operations;

(ii) on the website, if any, of the corporate debtor;

(iii) on the website, if any, designated by the Board for the purpose; and

(iv) in any other manner as may be decided by the committee.

(3) The Form G in the Schedule shall -

(a) state where the detailed invitation for expression of interest can be downloaded or obtained from, and

(b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.

Q.37. What is the timeline to issue provisional list of eligible prospective resolution applicants and final list of prospective resolution applicants?

Ans. As provided in Regulation 36A (10) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list may be made with supporting documents within five days from the date of issue of the provisional list.

On considering the objections received, the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

Judicial pronouncements with regard to Regulation 36A of CIRP Regulations

1. **State Bank of India Vs. Su Kam Power Systems Ltd. [(IB)-540(PB)/2017] NCLT, New Delhi order dt. 05.09.2018**

   Section 25(2)(h) inserted on 23.11.2017 by way of amendment does not contemplate floating of any Expression of Interest. IBBI taking upon itself the task of framing regulation 36A of CIRP Regulations, using the expression 'invitation of expression of interest' along with Form 'G' amounts to assumption of power and beyond the competence of IBBI. The source of power to frame regulations under the Code is drawn from section 240 of the Code.

   [**Note:** This order has since been stayed by the Delhi High Court vide order dated 05.10.2018 in the matter of IBBI Vs. State Bank of India &Ors. (LPA 566/2018)]

Q.38. What is the Procedure to be followed and timeline for submission of resolution plan ?

Ans. As per Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans, within five days of the date of issue of the provisional list to –

(a) every prospective resolution applicant in the provisional list; and

(b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.

The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s). It shall also require the resolution applicant to provide a performance security within the time specified in case its resolution plan is approved. The performance security shall stand forfeited if the resolution applicant fails to implement or contribute to the failures of

implementation of the plan after its approval by the Adjudicating Authority.

Q.39. What are the mandatory contents of the resolution plan ?

Ans. As per Regulation 38 of Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, amount payable to operational creditors and financial creditors not voting in favour of the plan shall be paid in priority over financial creditors who voted for the plan. A resolution plan shall include a statement as to how it has dealt with interest of all stakeholders and if resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past. A resolution plan shall provide term of the plan, implementation schedule, management and control of the business of the corporate debtor during its term and adequate means for supervising its implementation.

Further, a resolution plan shall demonstrate that it addresses cause of default, it is feasible and viable, has provisions for effective implementation, provisions for obtaining required approvals and timeline for same and the resolution applicant has the capability to implement the resolution plan.

Q.40. What is the process for evaluating the resolution plans as received by Committee of Creditors?

Ans. The Committee of Creditors as per Regulation 39 (3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall evaluate the resolution plans received as per the evaluation matrix, record its deliberations on the feasibility and viability of each resolution plan & vote on all such resolution plans simultaneously;

Q.41. What is the timeline for a resolution professional to submit the resolution plan approved by Committee of Creditors to the Adjudicating Authority?

Ans. The resolution professional as per Regulation 39 (4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall endeavour to submit the resolution plan approved by the

committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.

Q.42. What is meant by performance security under sub-regulation (4A) of Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,?

Ans. Explanation I to Regulation 36B (4A) defines "Performance security" shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.

Q.43. After deciding to liquidate the corporate debtor, how does the Committee meet the liquidation costs?

Ans. As per Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Committee in consultation with the resolution professional may make a best estimate of the amount required to meet liquidation costs in the event an order for liquidation is passed . The Committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs. Where the estimated value of the liquid assets is less than the estimated liquidation costs, the committee shall approve a plan providing for contribution for meeting the difference between the two. The resolution professional shall submit the plan approved to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33.

As per Regulation 2A of IBBI (Liquidation Process) Regulations, 2016, where the committee of creditors did not approve a plan under sub-regulations (3) of regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

Corporate Persons) Regulations, 2016, the liquidator shall call upon the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by him, in proportion to the financial debts owed to them by the corporate debtor.

Q.44. What is fast track process period?

Ans. As per Regulation 2 (1) (j) of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, "fast track process period" means the period of ninety days beginning from the fast track commencement date and ending on the ninetieth day.

Q.45. What is fast track commencement date?

Ans. As per Regulation 2 (1) (l) of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, "fast track commencement date" means the date of admission of an application by the Adjudicating Authority for initiating the fast track process under Chapter IV of Part II of the Code.

Q.46. When shall an interim resolution professional file a report certifying the constitution of the Committee of Creditors to the Adjudicating Authority in case of fast track process?

Ans. As provided in Regulation 17 of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, the interim resolution professional shall file a report certifying the constitution of the Committee of Creditors to the Adjudicating Authority on or before the expiry of twenty-one days from the date of his appointment.

Q.47. What happens if the interim resolution professional is of the opinion that the fast track process is not applicable to the corporate debtor?

Ans. As per Regulation 17 of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, based on records of the corporate debtor and claims, if the interim resolution professional is of the opinion that the fast track process is not applicable to the corporate debtor as per notifications under section 55(2), he shall file an application to the Adjudicating Authority along with the report to pass an order converting the fast track process to

corporate insolvency resolution process under Chapter II of Part II of the Code.

Q.48. What happen in an event if the creditor assigns or transfers the debt due to such creditor to any other person during the fast track process period?

Ans. As provided in Regulation 27 of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, in the event a creditor assigns or transfers the debt due to such creditor to any other person during the fast track process period, both parties shall provide the interim resolution professional or the resolution professional, the terms of such assignment or transfer and the identity of the assignee or transferee.

The resolution professional shall notify each creditor and the Adjudicating Authority of any resultant change in the committee within two days of such change.

Q.49. What is the fast track process cost?

Ans. As provided in Regulation 30 of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 **"Fast track process costs" shall mean –**

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the process;

(e) amounts due to suppliers of essential goods and services under Regulation 31;

(f) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);

(g) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 32;

(h) expenses incurred on or by the resolution professional fixed under Regulation 33; and

(i) other costs directly relating to the fast track process and approved by the committee.

Q.50. When shall the resolution professional submit the information memorandum in fast track process?

Ans. As provided in Regulation 35 of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment as resolution professional and to each prospective resolution applicant latest by the date of invitation of resolution plan.

Q.51. When will the Invitation of Resolution Plans be made by the resolution professional in fast track process?

Ans. As per Regulation 35A of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, the resolution professional shall issue an invitation, including evaluation matrix, to the prospective resolution applicants to submit resolution plans at least fifteen days before the last date of submission of resolution plans.

Where the invitation does not contain the evaluation matrix, the resolution professional shall issue, with the approval of the committee, the evaluation matrix to the prospective resolution applicants at least eight days before the last date for submission of resolution plans.

Q.52. When shall the resolution professional submit the resolution plan approved by Committee of Creditors to the Adjudicating Authority in case of fast track process?

Ans. As provided in Regulation 38 (4) of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, the resolution professional shall submit the resolution plan approved by

the Committee of Creditors to the Adjudicating Authority, at least fifteen days before the expiry of the maximum period permitted for the completion of the fast track corporate insolvency resolution process, with the certification that the contents of the resolution plan meet all the requirements of the Code and the Regulations and the resolution plan has been approved by the Committee of Creditors.

Chapter 5

IBBI (Liquidation Process) Regulations, 2016 and IBBI (Voluntary Liquidation Process) Regulations, 2017

Q.1. What does contributory mean?

Ans. As per Regulation 2(1)(c) of IBBI (Liquidation Process) Regulations, 2016, "contributory" means a member of the company, a partner of the limited liability partnership, and any other person liable to contribute towards the assets of the corporate debtor in the event of its liquidation.

Q.2. What does Corporate Liquidation Account mean?

Ans. As per Regulation 2(1)(ca) of IBBI (Liquidation Process) Regulations, 2016, "Corporate Liquidation Account" means the Corporate Liquidation Account operated and maintained by the Board under Regulation 46.

Q.3. What is liquidation cost?

Ans. As per Regulation 2(1)(ea) of IBBI (Liquidation Process) Regulations, 2016, "liquidation cost" under sub-section (16) of section 5 means-

(i) fee payable to the liquidator under regulation 4;

(ii) remuneration payable by the liquidator under sub-regulation (1) of regulation 7;

(iii) costs incurred by the liquidator under sub-regulation (2) of regulation 24;

(iv) costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor;

(v) costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;

(vi) interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;

(vii) the amount repayable under sub-regulation (3) of regulation 2A;

(viii) any other cost incurred by the liquidator which is essential for completing the liquidation process:

Provided that the cost, if any, incurred by the liquidator in relation to compromise or arrangement under section 230 of the Companies Act, 2013, if any, shall not form part of liquidation cost.

Q.4. What happens when the committee of creditors do not approve a resolution plan?

Ans. As per regulation 2A of IBBI (Liquidation Process) Regulations, 2016, where the committee of creditors did not approve a plan, the liquidator shall call upon the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by him, in proportion to the financial debts owed to them by the corporate debtor. The contributions made under the approved resolution plan or contributions made under regulation 2A shall be deposited in a designated escrow account to be opened and maintained in a scheduled bank, within seven days of the passing of the liquidation order. The amount shall be repayable with interest at bank rate referred to in section 49 of the Reserve Bank of India Act, 1934 (2 of 1934) as part of liquidation cost.

Q.5. Whether compromise or arrangement is possible during liquidation? Within what time the same should be completed?

Ans. As per regulation 2B of IBBI (Liquidation Process) Regulations, 2016, where compromise or arrangement is proposed under section 230 of the Companies Act, 2013, it shall be completed within ninety days of the order of liquidation.

Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.

The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

Q.6. What are the reports that are submitted by liquidator under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016?

Ans. As per Regulation 5 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator shall prepare and submit:

(a) a preliminary report;

(b) an asset memorandum;

(c) progress report(s);

(d) sale report(s);

(e) minutes of consultation with stakeholders; and

(f) the final report prior to dissolution

to the Adjudicating Authority in the manner specified under these Regulations.

Q.7. When will the liquidator make a public announcement under Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016?

Ans. The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment.

The public announcement shall-

(a) call upon stakeholders to submit their claims or update their claims submitted during the corporate insolvency resolution process, as on the liquidation commencement date; and

(b) provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date.

Q.8. When does a liquidator submit a Preliminary Report to the Adjudicating Authority under the IBBI (Liquidation Process) Regulations, 2016?

Ans. As per Regulation 13 of IBBI (Liquidation Process) Regulations, 2016, the liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy five days from the liquidation commencement date, detailing-

(a) the capital structure of the corporate debtor;

(b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate debtor:

Provided that if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate debtor are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;

(c) whether, he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate debtor or the conduct of the business thereof; and

(d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

Q.9. Is early dissolution possible by liquidator under IBBI (Liquidation Process) Regulations, 2016?

Ans. Yes, as per Regulation 14 of the said Regulations, at any time after the preparation of the Preliminary Report, if it appears to the liquidator that-

(a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and

(b) the affairs of the corporate debtor do not require any further investigation;

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

Q.10. What is the process for submission of proof of claim to the liquidator by stakeholders?

Ans. The following is the process for submission of proof of claim to the liquidator by stakeholders -

(1) A person claiming to be an operational creditor of the corporate debtor, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form C of Schedule II

(2) A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II

(3) A person claiming to be a workman or an employee of the corporate debtor shall submit proof of claim to the liquidator in person, by post or by electronic means in Form E of Schedule II.

(4) Where there are dues to numerous workmen or employees of the corporate debtor, an authorized representative may submit one proof of claim for all such dues on their behalf in Form F of Schedule II.

(5) A person, claiming to be a stakeholder other than those as mentioned above, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form G of Schedule II.

Q.11. What is the process of relinquishment of security interest by a secured creditor?

Ans. As per regulation 21A of IBBI (Liquidation Process) Regulations, 2016, a secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest in Form C or Form D of Schedule II.

Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

Q.12. Who shall bear the cost of proof in liquidation process?

Ans. As per Regulation 24 of the IBBI (Liquidation Process) Regulations, 2016, a claimant shall bear the cost of proving its claim. Further, Costs incurred by the liquidator for verification and determination of a claim shall form part of liquidation cost.

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

Q.13. How are debts denominated in foreign currency valued?

Ans. The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the liquidation commencement date. The official exchange rate is the reference rate published by the Reserve Bank of India or derived from such reference rates.

Q.14. What is the timeline for Verification of claims by liquidator?

Ans. As provided in Regulation 30 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part.

Q.15. What is the process for transferring of a debt by a creditor?

Ans. As per Regulation 30A the IBBI (Liquidation Process) Regulations, 2016, a creditor may assign or transfer the debt due to him or it to any other person during the liquidation process in accordance with the laws for the time being in force dealing with such assignment or transfer. Both parties shall provide to the liquidator the terms of such assignment or transfer and the identity of the assignee or transferee. Also, the liquidator shall modify the list of stakeholders in accordance with the provisions of regulation 31.

Q.16. What is the process for preparation of List of stakeholders by the liquidator and filing of the same with the Adjudicating Authority?

Ans. As provided in Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and

accepted. The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of claims. Similarly, the list should be filed on the electronic platform of the Board for dissemination on its website.

Q.17. What is Stakeholders' consultation committee?

Ans. As per regulation 31A of the IBBI (Liquidation Process) Regulations, 2016, the liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to -

(a) appointment of professionals and their remuneration under regulation 7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy:

Provided that the decision(s) taken by the liquidator prior to the constitution of consultation committee shall be placed before the consultation committee for information in its first meeting.;

The liquidator may facilitate the stakeholders of each class to nominate their representatives for inclusion in the consultation committee.

Judicial pronouncements with regard to Regulation 31A of Liquidation Process Regulations

1. **Advance Cargo Movers (India) Pvt. Ltd. Vs. SBS Transpole Logistics Pvt. Ltd. [I.A. 2084/ND/2021 in CP(IB)-1373(ND)/2019] NCLT, New Delhi order dt. 20.07.2021**

   Regulation 31A(3) of Liquidation Process Regulations is silent on both 'the criteria as well as the process of nomination' of a representative but has bestowed a duty on the liquidator to facilitate the stakeholders of each class to nominate their representatives for inclusion in the Stakeholders Consultation Committee.

Q.18. What shall be the reserve price in case of public auction under Schedule I? Can the reserve price be kept higher?

Ans. The reserve price shall be the value of assets identified under Regulation 35. If the auction fails at reserve price, the same shall be reduced by twenty five percent for subsequent auction and if the subsequent auctions fails, then the reserve price may be reduced by not more than ten per cent at a time.

Q.19. Should bid amount of other bidders be visible?

Ans. As per Schedule I, auction shall be transparent and highest bid at any point shall be visible to others. However, with permission of Adjudicating Authority, liquidator to maximize realization, may conduct in such manner wherein bid amounts may not be visible.

Q.20. Is the Liquidator required to take permission from stakeholder for appointing professionals?

Ans. As per Regulation 7, a liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

Q.21. Can Liquidator sell the corporate debtor as going concern even after 90 day period prescribed under the Code?

Ans. As per Regulation 32A(4), if the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.

Q.22. Can Liquidator sell "not readily realizable assets" of corporate debtor?

Ans. As per Regulation 37A, a liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders' consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

"Not readily realisable asset" means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.

Q.23. How will the liquidator sell an asset?

Ans. As per Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016, The liquidator may sell-

(a) an asset on a standalone basis;

(b) the assets in a slump sale;

(c) a set of assets collectively;

(d) the assets in parcels;

(e) the corporate debtor as a going concern; or

(f) the business(s) of the corporate debtor as a going concern.

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.

Q.24. What is the mode of sale provided to Liquidator?

Ans. As per Regulation 33 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-

(a) the asset is perishable;

(b) the asset is likely to deteriorate in value significantly if not sold immediately;

(c) the asset is sold at a price higher than the reserve price of a failed auction; or

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

(a) a related party of the corporate debtor;

(b) his related party; or

(c) any professional appointed by him.

The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.

Judicial pronouncements with regard to Regulation 33 of Liquidation Process Regulations

1. **Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [CA-769(PB)/2019 in C.P. No. IB-378(PB)/2017] NCLT, New Delhi order dt. 16.07.2019**

   The proper interpretation on clauses (a) and(b) of the regulation 33 of Liquidation Process Regulations would be that a liquidator is entitled to sell the assets without requirement of prior permission after reaching the conclusion that the assets are perishable and it is likely to deteriorate significantly in value if not sold immediately. Otherwise, the purpose of Regulation would be defeated if time is required to be spent in filing an application and taking permission, because the assets which are perishable may not remain available for sale and perish or it may deteriorate significantly in value, if not sold immediately.

2. **MRG Estates LLP Vs. Akash Shinghal, Liquidator, Amira Pure Foods Pvt. Ltd. &Ors. [W.P.(C) 10023/2020] HC, New Delhi order dt. 15.12.2020**

   The HC directed IBBI to consider the petition as a representation on the issue of adoption of Swiss Challenge method as a form of an auction under the Liquidation Process Regulations.

Q.25. When shall the liquidator prepare an asset memorandum?

Ans. On forming the liquidation estate under section 36, the liquidator shall prepare an asset memorandum in accordance with Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016 within seventy-five days from the liquidation commencement date.

Q.26. What are the contents of an Asset sale report?

Ans. As per Regulation 36 of the IBBI (Liquidation Process) Regulations, 2016, On sale of an asset, the liquidator shall prepare an asset sale report in respect of said asset, to be enclosed with the Progress Reports, containing –

(a) the realized value;

(b) cost of realization, if any;

(c) the manner and mode of sale;

(d) if the value realized is less than the value in the asset memorandum, the reasons for the same;

(e) the person to whom the sale is made; and

(f) any other details of the sale.

Q.27. When shall the liquidator distribute the proceeds from realization to the stakeholders?

Ans. As per Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority. The liquidator shall distribute the proceeds from realization within ninety days from the receipt of the amount to the stakeholders. Further the insolvency resolution process costs, if any, and the liquidation costs shall be deducted before such distribution is made.

Q.28. At what period of time the liquidator shall liquidate the corporate debtor under IBBI (Liquidation Process) Regulations, 2016?

Ans. As per Regulation 44 of the said Regulations, the liquidator shall liquidate the corporate debtor within a period of one year from liquidation commencement date, notwithstanding pendency of any

application for avoidance of transactions under Part II of the Code, before the Adjudicating Authority. If the liquidator fails to liquidate the corporate debtor within one year, he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation

Q.29. Explain the preparation of Final report before dissolution.

Ans. As per Regulation 45 of IBBI (Liquidation Process) Regulations. 2016, provides that **w**hen the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor's assets have been liquidated. If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain the reasons for the same. The liquidator shall submit an application along with the final report and the compliance certificate in Form H to the Adjudicating Authority for-

(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or

(b) for the dissolution of the corporate debtor, in cases not covered under clause (a).

Q.30. How is the process of Voluntary Liquidation initiated ?

Ans. As per Regulation 3 of IBBI (Voluntary Liquidation Process) Regulations, 2017, liquidation proceedings of a corporate person shall meet the following conditions, namely: —

(a) a declaration from majority of

(i) the designated partners, if a corporate person is a limited liability partnership,

(ii) individuals constituting the governing body in case of other corporate persons,

as the case may be, verified by an affidavit stating that-

(i) they have made a full inquiry into the affairs of the corporate person and they have formed an opinion that either the corporate person has no debt or that it will be able to pay its

debts in full from the proceeds of assets to be sold in the liquidation; and

(ii) the corporate person is not being liquidated to defraud any person;

The declaration shall be accompanied with the following documents-

(a) audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later.

(b) a report of the valuation of the assets of the corporate person, if any prepared by a registered valuer;

Within four weeks of a declaration, there shall be-

(i) a resolution passed by a special majority of the partners or contributories, as the case may be, of the corporate person requiring the corporate person to be liquidated and appointing an insolvency professional to act as the liquidator; or

(ii) a resolution of the partners or contributories, as the case may be, requiring the corporate person to be liquidated as a result of expiry of the period of its duration, if any, fixed by its constitutional documents or on the occurrence of any event in respect of which the constitutional documents provide that the corporate person shall be dissolved, as the case may be, and appointing an insolvency professional to act as the liquidator

Q.31. What will be the effect of liquidation under IBBI (Voluntary Liquidation Process) Regulations, 2017?

Ans. As per Regulation 4 of the said Regulations the following will be the effect:-

The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business

However, the corporate person shall continue to exist until it is dissolved under section 59(8) of the Code.

Q.32. What are the reports that are submitted by liquidator under IBBI (Voluntary Liquidation Process) Regulations, 2017?

Ans. As per Regulation 8, the liquidator shall prepare and submit-

(a) Preliminary Report;

(b) Annual Status Report;

(c) Minutes of consultations with stakeholders; and

(d) Final Report

in the manner specified under these Regulations.

Q.33. In how many days a Preliminary report is submitted by liquidator to a corporate person in Voluntary liquidation process?

Ans. As per Regulation 9 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the liquidator shall submit a Preliminary Report to the corporate person within forty five days from the liquidation commencement date, detailing-

(a) the capital structure of the corporate person;

(b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate person.

If the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate person are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;

(c) whether he intends to make any further inquiry into any matter relating to the promotion, formation or failure of the corporate person or the conduct of the business thereof; and

(d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

Q.34. Who will make the public announcement to stakeholders to submit their claims in Voluntary liquidation process?

Ans. As per Regulation 14 of IBBI (Voluntary Liquidation Process) Regulations, 2017 –

(1) The liquidator shall make a public announcement in Form A of Schedule I within five days from his appointment.

(2) The public announcement shall-

(a) call upon stakeholders to submit their claims as on the liquidation commencement date; and

(b) provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.

Q.35. What is the process for submission of proof of claim to the liquidator by stakeholders in Voluntary liquidation process?

Ans. As per Regulation 16, 17, 18 & 19 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the following is the process for submission of proof of claim to the liquidator by stakeholders in voluntary liquidation process-

1. A person claiming to be an operational creditor of the corporate person, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form B of Schedule I.

2. A person claiming to be a financial creditor of the corporate person shall submit proof of claim to the liquidator in electronic means in Form C of Schedule I.

3. A person claiming to be a workman or an employee of the corporate person shall submit proof of claim to the liquidator in person, by post or by electronic means in Form D of Schedule I.

4. A person, claiming to be a stakeholder other than those as mentioned above, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form F of Schedule I.

Q.36. How is the existence of security interest proved under IBBI (Voluntary Liquidation Process) Regulations, 2017?

Ans. As per Regulation 20 of the said Regulations, the existence of a security interest may be proved by a secured creditor on the basis of-

(a) the records available in an information utility;

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

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

(d) other relevant documents which adequately establish the security interest.

Q.37. When will the person who is seeking to prove debt against corporate debtor shall produce bills of exchange, promissory note and other negotiable instrument?

Ans. As per Regulation 21 of IBBI (Voluntary Liquidation Process) Regulations, 2017 where a person seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature for which the corporate person is liable, such bill of exchange, note, instrument or security, shall be produced before the liquidator before the claim is admitted.

Q.38. Who will verify the claims under IBBI (Voluntary Liquidation Process) Regulations, 2017?

Ans. As per Regulation 29 of the said Regulations, the liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be, as per section 40 of the Code. A creditor may appeal to the Adjudicating Authority against the decision of the liquidator as per section 42 of the Code.

Q.39. In how many days the liquidator shall complete the voluntary liquidation process?

Ans. As per Regulation 37 of IBBI (Voluntary Liquidation Process) Regulations, 2017 the liquidator shall endeavour to complete the liquidation process of the corporate person within twelve months from the liquidation commencement date.

Q.40. What happens if the voluntary liquidation process is continued for more than 12 months?

Ans. As per Regulation 37 of IBBI (Voluntary Liquidation Process) Regulations, 2017, In the event of the Voluntary liquidation process continuing for more than twelve months, the liquidator shall-

(a) hold a meeting of the contributories of the corporate person within fifteen days from the end of the twelve months from the liquidation commencement date, and at the end every succeeding twelve months till dissolution of the corporate person; and

(b) shall present an Annual Status Report(s) indicating progress in liquidation, including-

(i) settlement of list of stakeholders,

(ii) details of any assets that remains to be sold and realized,

(iii) distribution made to the stakeholders, and

(iv) distribution of unsold assets made to the stakeholders;

(v) developments in any material litigation, by or against the corporate person; and

(vi) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.

Q.41. Where shall the liquidator deposit the amount of unclaimed dividends?

Ans. As per Regulation 39 of IBBI (Voluntary Liquidation Process) Regulations, 2017 -

The Board shall operate and maintain an Account to be called the Corporate Voluntary Liquidation Account in the Public Accounts of India:

A liquidator shall deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon till the date of deposit, into the Corporate Voluntary Liquidation Account before he submits an application under sub-section (7) of section 59.

A liquidator, who holds any amount of unclaimed dividends or undistributed proceeds in a liquidation process on the date of commencement of the IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2020, shall deposit the same within fifteen days of the date of such commencement, along with any income earned thereon till the date of deposit.

A liquidator, who fails to deposit any amount into the Corporate Voluntary Liquidation Account under this regulation, shall deposit the same along with interest thereon at the rate of twelve percent per annum from the due date of deposit till the date of deposit.

Q.42. What will liquidator do if there is detection of fraud or insolvency in case of voluntary liquidation process?

Ans. As per Regulation 40 of IBBI (Voluntary Liquidation Process) Regulations, 2017 where the liquidator is of the opinion that the liquidation is being done to defraud a person, he shall make an application to the Adjudicatory Authority to suspend the process of liquidation and pass any such orders as it deems fit.

(2) Where the liquidator is of the opinion that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation, he shall make an application to the Adjudicating Authority to suspend the process of liquidation and pass any such orders as it deems fit.

Chapter 6

Pre-Packaged Insolvency Resolution Process for Corporate Persons

Q.1. What is the objective for introducing a pre-packaged insolvency resolution process for corporate persons classified as micro, small and medium enterprises?

Ans. Micro, small and medium enterprises are critical for India's economy as they contribute significantly to its gross domestic product, manufacturing value added, exports and provide employment to a sizeable population. The objective to introduce a pre-packaged insolvency resolution process for corporate persons classified as micro, small and medium enterprises is as follows:

- To mitigate the distress caused by the COVID-19 pandemic which has impacted the business operations of micro, small and medium enterprises and exposed many of them to financial distress.
- To provide an efficient alternative insolvency resolution process for corporate persons classified as micro, small and medium enterprises under the Insolvency and Bankruptcy Code, 2016, ensuring quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserves jobs.

Q.2. To whom shall the provisions relating pre-packaged insolvency resolution process apply?

Ans. Provisions relating pre-packaged insolvency resolution process shall apply to corporate persons classified as micro, small and medium enterprises.

As per Section 240A of the Code, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)

Q.3. What is the threshold limit for making an application for pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code?

Ans. As per Notification F. No. 30/20/2020-Insolvency, the Central Government, specifies ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code. 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, for matters relating to the prepackaged insolvency resolution process of corporate debtors under Chapter III-A of the Code.

Q.4. What does the term base resolution plan mean?

Ans. According to Section 5 (2A) of the Code, base resolution plan means a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A.

Q.5. What is meant by preliminary information?

Ans. According to Section 5 (23A) of the Code, preliminary information means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G.

Q.6. What is pre-packaged insolvency commencement date under Insolvency and Bankruptcy Code, 2016?

Ans. As per section 5 (23B) of the Code, pre-packaged insolvency commencement date means the date of admission of an application for initiating the pre-packaged insolvency resolution process by the Adjudicating Authority under clause (a) of sub-section (4) of section 54C.

Q.7. What are pre-packaged insolvency resolution process costs?

Ans. As per Section 5(23C) of the Code, " pre-packaged 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 and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the pre-packaged insolvency resolution process period, subject to sub-section (6) of section 54F ;

c) Any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order under sub-section (2) of section 54J ;

d) Any costs incurred at the expense of the Government to facilitate the prepackaged insolvency resolution process ; and

e) Any other costs as may be specified.

Q.8. What is pre-packaged insolvency resolution process period?

Ans. As per Section 5(23D) of the Code, pre-packaged insolvency resolution process period means the period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order under sub-section (1) of section 54L, or sub-section (1) of section 54N, or sub-section (2) of section 54-O, as the case may be, is passed by the Adjudicating Authority.

Q.9. Who can make an application for initiating pre-packaged insolvency resolution process?

Ans. Where a corporate debtor meets the requirements of section 54A, a corporate applicant thereof may file an application with the Adjudicating Authority for initiating pre-packaged insolvency resolution process.

An application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

Q.10. What are the pre – conditions for making an application for initiating pre-packaged insolvency resolution process in respect of a corporate debtor?

Ans. As per Section 54 A of the Code, an application for initiating pre-packaged insolvency resolution process may be made in respect of

a corporate debtor, who commits a default referred to in section 4, subject to the following conditions, that—

a) It has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;

b) It is not undergoing a corporate insolvency resolution process;

c) No order requiring it to be liquidated is passed under section 33;

d) It is eligible to submit a resolution plan under section 29A;

e) The financial creditors of the corporate debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the corporate debtor, and the financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified.

f) The majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified, stating, inter alia, —

i. That the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days;

ii. That the pre-packaged insolvency resolution process is not being initiated to defraud any person; and

iii. The name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e);

g) The members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating pre-packaged insolvency resolution process.

Q.11. What is the procedure of prepackaged insolvency resolution process for a Corporate Applicant?

Ans. Where a corporate debtor meets the requirements of section 54A, a corporate applicant thereof may file an application with the Adjudicating Authority for initiating prepackaged insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars, in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application, furnish—

(a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating pre-packaged insolvency resolution process in terms of section 54A;

(b) the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional, as approved under clause (e) of sub-section (2) of section 54A, and his report as referred to in clause (a) of sub-section (1) of section 54B;

(c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in such form as may be specified;

(d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order,—

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete:

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

(5) The pre-packaged insolvency resolution process shall commence from the date of admission of the application under clause (a) of sub-section (4).

Q.12. What are the duties of resolution professional before initiation of pre-packaged insolvency resolution process?

Ans. As per sub-section (1) of section 54B of the Code, the insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval of his appointment under clause (e) of sub-section (2) of section 54A, namely:—

a. Prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in clause (c) of sub-section (4) of section 54A;

b. File such reports and other documents, with the Board, as may be specified; and

c. Perform such other duties as may be specified.

As per sub –section (2) of section 54 B of the Code, the duties of the insolvency professional under sub-section (1) shall cease, if, —

a) The corporate debtor fails to file an application for initiating pre-packaged insolvency resolution process within the time

period as stated under the declaration referred to in clause (f) of subsection (2) of section 54A; or

b) The application for initiating pre-packaged insolvency resolution process is admitted or rejected by the Adjudicating Authority,

as the case may be.

Q.13. What is the time limit prescribed for completion of pre-packaged insolvency resolution process?

Ans. According to sub-section (1) of section 54D of the Code, the pre-packaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.

As per sub-section (2) without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or subsection (12), as the case may be, of section 54K, within a period of ninety days from the pre-packaged insolvency commencement date.

Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

Q.14. What shall be the effect to admission of application under Section 54C?

Ans. As per section 54E, the Adjudicating Authority shall, on the pre-packaged insolvency commencement date, along with the order of admission under section 54C —

(a) declare a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, which shall, mutatis mutandis apply, to the proceedings under this Chapter;

(b) appoint a resolution professional —

(i) as named in the application, if no disciplinary proceeding is pending against him; or

(ii) based on the recommendation made by the Board, if any disciplinary proceeding is pending against the insolvency professional named in the application.

(c) cause a public announcement of the initiation of the pre-packaged insolvency resolution process to be made by the resolution professional, in such form and manner as may be specified, immediately after his appointment.

Q.15. When the moratorium shall cease to have effect?

Ans. As per sub-section (2) of section 54E of the Code, the order of moratorium shall have effect from the date of such order till the date on which the prepackaged insolvency resolution process period comes to an end.

Q.16. What shall be the duties of the resolution professional during prepackaged insolvency resolution process?

Ans. As per sub-section (1) of section 54F of the Code, the resolution professional shall conduct the pre-packaged insolvency resolution process of a corporate debtor during the pre-packaged insolvency resolution process period.

As per sub-section (2) of section 54F of the Code, the resolution professional shall perform the following duties, namely:—

(a) confirm the list of claims submitted by the corporate debtor under section 54G, in such manner as may be specified;

(b) inform creditors regarding their claims as confirmed under clause (a), in such manner as may be specified;

(c) maintain an updated list of claims, in such manner as may be specified;

(d) monitor management of the affairs of the corporate debtor;

(e) inform the committee of creditors in the event of breach of any of the obligations of the Board of Directors or partners, as the case may be, of the corporate debtor, under the provisions of this Chapter and the rules and regulations made thereunder;

(f) constitute the committee of creditors and convene and attend all its meetings;

(g) prepare the information memorandum on the basis of the preliminary information memorandum submitted under section 54G and any other relevant information, in such form and manner as may be specified;

(h) file applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, if any; and

(i) such other duties as may be specified.

Q.17. What shall be the powers of resolution professional during prepackaged insolvency resolution process?

Ans. As per sub-section (3) of section 54F of the Code, the resolution professional shall exercise the following powers, namely:—

(a) access all books of accounts, records and information available with the corporate debtor;

(b) access the electronic records of the corporate debtor from an information utility having financial information of the corporate debtor;

(c) access the books of accounts, records and other relevant documents of the corporate debtor available with Government authorities, statutory auditors, accountants and such other persons as may be specified;

(d) attend meetings of members, Board of Directors and committee of directors, or partners, as the case may be, of the corporate debtor;

(e) appoint accountants, legal or other professionals in such manner as may be specified;

(f) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor and the existence of any transactions that may be within the scope of provisions relating to avoidance of transactions under Chapter III or

fraudulent or wrongful trading under Chapter VI, including information relating to —

(i) business operations for the previous two years from the date of pre-packaged insolvency commencement date;

(ii) financial and operational payments for the previous two years from the date of prepackaged insolvency commencement date;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(g) take such other actions in such manner as may be specified.

Q.18. Whether the financial institutions maintaining accounts and the personnel of corporate debtor has any duty with respect to resolution professional conducting prepackaged insolvency resolution process?

Ans. As per sub-section (4) of section 54F of the Code, from the date of appointment of the resolution professional, the financial institutions maintaining accounts of the corporate debtor shall furnish all information relating to the corporate debtor available with them to the resolution professional, as and when required by him. The personnel of the corporate debtor, its promoters and any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (2) and (3) of section 19 shall, mutatis mutandis apply, in relation to the proceedings under this Chapter.

Q.19. What shall be the fees that the resolution professional may charge for conducting the prepackaged insolvency resolution process?

Ans. As per sub-section (6) of section 54F of the Code, the fees of the resolution professional and any expenses incurred by him for

conducting the prepackaged insolvency resolution process shall be determined in such manner as may be specified:

Provided that the committee of creditors may impose limits and conditions on such fees and expenses:

Provided further that the fees and expenses for the period prior to the constitution of the committee of creditors shall be subject to ratification by it.

As per sub-section (7) of section 54 F of the Code, the fees and expenses referred to in sub-section (6) shall be borne in such manner as may be specified.

Q.20. In how many days list of claims and preliminary information memorandum are submitted by corporate debtor to resolution professional in prepackaged insolvency resolution process?

Ans. As per sub-section (1) of section 54G of the Code, the corporate debtor shall, within two days of the pre-packaged insolvency commencement date, submit to the resolution professional the following information, updated as on that date, in such form and manner as may be specified, namely:—

(a) a list of claims, along with details of the respective creditors, their security interests and guarantees, if any; and

(b) a preliminary information memorandum containing information relevant for formulating a resolution plan.

Q.21. What will be the consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum submitted by the corporate debtor?

Ans. As per sub-section (2) of section 54G of the Code, where any person has sustained any loss or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum submitted by the corporate debtor, every person who—

(a) is a promoter or director or partner of the corporate debtor, as the case may be, at the time of submission of the list of claims

or the preliminary information memorandum by the corporate debtor; or

(b) has authorised the submission of the list of claims or the preliminary information memorandum by the corporate debtor,

shall, without prejudice to section 77A, be liable to pay compensation to every person who has sustained such loss or damage.

As per sub-section (3) no person shall be liable under sub-section (2), if the list of claims or the preliminary information memorandum was submitted by the corporate debtor without his knowledge or consent.

As per sub-section (4)subject to section 54E, any person, who sustained any loss or damage as a consequence of omission of material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum shall be entitled to move a court having jurisdiction for seeking compensation for such loss or damage.

Q.22. Who shall manage the affairs of the corporate debtor during the pre-packaged insolvency resolution process period?

Ans. As per section 54H of the Code, the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor, subject to such conditions as may be specified.

The Board of Directors or the partners, as the case may be, of the corporate debtor, shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern; and

The promoters, members, personnel and partners, as the case may be, of the corporate debtor, shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor, subject to the provisions of this Chapter and such other conditions and restrictions as may be prescribed.

Q.23. When shall be the first meeting of Committee of Creditors held?

Ans. As per sub-section (2) of section 54I of the Code, the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

Q.24. Explain the provisions in relation to constitution of committee of creditors as given under Chapter IIIA in Part II of the Code.

Ans. As per section 54I of the Code, the resolution professional shall, within seven days of the pre-packaged insolvency commencement date, constitute a committee of creditors, based on the list of claims confirmed under clause (a) of sub-section (2) of section 54F: Committee of creditors.

Provided that the composition of the committee of creditors shall be altered on the basis of the updated list of claims, in such manner as may be specified, and any such alteration shall not affect the validity of any past decision of the committee of creditors.

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

Provisions of section 21, except sub-section (1) thereof, shall, mutatis mutandis apply, in relation to the committee of creditors under this Chapter:

Provided that for the purposes of this sub-section, references to the "resolution professional" under subsections (9) and (10) of section 21, shall be construed as references to "corporate debtor or the resolution professional".

Q.25. Under what circumstances resolution professional is vested with the management of the affairs of the corporate debtor during the pre-packaged insolvency resolution process period?

Ans. As per section 54 J of the Code, where the committee of creditors, at any time during the pre-packaged insolvency resolution process period, by a vote of not less than sixty-six percent. of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional, the resolution professional shall make an application for this purpose to the Adjudicating Authority, in such form and manner as may be specified.

On an application made under sub-section (1), if the Adjudicating Authority is of the opinion that during the pre-packaged insolvency resolution process—

(a) the affairs of the corporate debtor have been conducted in a fraudulent manner; or

(b) there has been gross mismanagement of the affairs of the corporate debtor,

It shall pass an order vesting the management of the corporate debtor with the resolution professional.

Notwithstanding anything to the contrary contained in this Chapter, the provisions of sub-sections (2) and (2A) of section 14, section 17, clauses (e) to (g) of section 18, sections 19 and 20, sub-section (1) of section 25, clauses (a) to (c) and clause (k) of subsection (2) of section 25, and section 28, shall, mutatis mutandis apply, to the proceedings under this Chapter, from the date of the order under subsection (2), until the pre-packaged insolvency resolution process period comes to an end.

Q.26. What is a Base Resolution plan?

Ans. According to clause 2A of section 5 of the Code, base resolution plan means a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A

As per sub-section (1) of section 54 K of the Code, the corporate debtor shall submit the base resolution plan to the resolution professional within two days of the pre-packaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors.

The committee of creditors may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval under sub-section (4) or invitation of prospective resolution applicants under sub-section (5) of section 54K, as the case may be.

Q.27. What is the process of submitting of a resolution plan under Chapter IIIA in Part II of the Code?

Ans. The following are the steps to submit a resolution plan which are given under section 54K:

(i) The corporate debtor shall submit the base resolution plan to the resolution professional within two days of the pre-packaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors. (Sub-section (1) of section 54K)

(ii) The committee of creditors may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval or invitation of prospective resolution applicants, as the case may be. (Sub-section (2) of section 54K)

(iii) The resolution plans and the base resolution plan, submitted under this section shall conform to the requirements referred to in sub-sections (1) and (2) of section 30, and the provisions of sub-sections (1), (2) and (5) of section 30 shall, mutatis mutandis apply, to the proceedings under this Chapter. (Sub-section (3) of section 54K)

(iv) The committee of creditors may approve the base resolution plan for submission to the Adjudicating Authority if it does not impair any claims owed by the corporate debtor to the operational creditors. (Sub-section (4) of section 54K)

(v) Where —

(a) the committee of creditors does not approve the base resolution plan or

(b) the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors,

the resolution professional shall invite prospective resolution applicants to submit a resolution plan or plans, to compete with the base resolution plan, in such manner as may be specified. (Sub-section (5) of section 54K)

(vi) The resolution applicants submitting resolution plans pursuant to invitation shall fulfil such criteria as may be laid down by the resolution professional with the approval of the committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified. (Sub-section (6) of section 54K)

(vii) The resolution professional shall present to the committee of creditors, for its evaluation, resolution plans which conform to the requirements referred to in sub-section (2) of section 30. (Sub-section (8) of section 54K)

(viii) The committee of creditors shall evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst them. (Sub-section (9) of section 54K)

(ix) Where, on the basis of such criteria as may be laid down by it, the committee of creditors decides that the resolution plan selected under sub-section (9) is significantly better than the base resolution plan, such resolution plan may be selected for approval under subsection (12):

Provided that the criteria laid down by the committee of creditors shall be subject to such conditions as may be specified. (Sub-section (10) of section 54K)

(x) Where the resolution plan selected under subsection (9) of section 54K is not considered for approval or does not fulfil the requirements of sub-section (10) of section 54 K, it shall compete with the base resolution plan, in such manner and subject to such conditions as may be specified, and one of them shall be selected for approval under subsection (12) of section 54K. (Sub-section (11) of section 54K)

(xi) The resolution plan selected for approval under sub-section (10) of section 54 K or sub-section (11) of section 54K, as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority:

Provided that where the resolution plan selected for approval under sub-section (11) of section 54 K is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified. (Sub-section (12) of section 54K)

(xii) The approval of the resolution plan under subsection (4) or sub-section (12), as the case may be, by the committee of creditors, shall be by a vote of not less than sixty-six per cent. of the voting

shares, after considering its feasibility and viability, the manner of distribution proposed, taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified. (Sub-section (13) of section 54K)

(xiii) The resolution professional shall submit the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12), as the case may be, to the Adjudicating Authority. (Sub-section (15) of section 54K).

Q.28. What information the resolution professional shall provide to the resolution applicants during the stage of submitting resolution plan by resolution applicant?

Ans. As per sub-section (7) of section 54K, the resolution professional shall provide to the resolution applicants, —

(a) the basis for evaluation of resolution plans for the purposes of sub-section (9) of section 54K, as approved by the committee of creditors subject to such conditions as may be specified; and

(b) the relevant information referred to in section 29, which shall, mutatis mutandis apply, to the proceedings under this Chapter, in such manner as may be specified.

Q.29. Explain the process of approval of resolution plan by Adjudicating Authority under Chapter IIIA in Part II of the Code.

Ans. According to sub-section (1) of section 54L of the Code, If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12) of section 54K, as the case may be, subject to the conditions provided therein, meets the requirements as referred to in sub-section (2) of section 30, it shall, within thirty days of the receipt of such resolution plan, by order approve the resolution plan:

Provided that the Adjudicating Authority shall, before passing an order for approval of a resolution plan under this sub-section, satisfy itself that the resolution plan has provisions for its effective implementation

According to sub-section (2) of section 54L of the Code, the order of approval under sub-section (1) shall have such effect as provided under sub-sections (1), (3) and (4) of section 31, which shall, mutatis mutandis apply, to the proceedings under this Chapter.

Q.30. In which cases the Adjudicating Authority can order for termination of pre-packaged insolvency resolution process of the Corporate Debtor?

Ans. According to sub-section (3) of section 54L of the Code, where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order under section 54N.

According to sub-section (1) of section 54N of the Code, Where the resolution professional files an application with the Adjudicating Authority, —

(a) Under the proviso to sub-section (12) of section 54K [If the resolution plan selected for approval under sub-section (11) of section 54K is not approved by the committee of creditors] or

(b) Under sub-section (3) of section 54D [If no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2) of section 54D on the day after the expiry of such time period]

the Adjudicating Authority shall, within thirty days of the date of such application, by an order, —

(i) terminate the pre-packaged insolvency resolution process; and

(ii) provide for the manner of continuation of proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any.

As per sub-section (2) of section 54N, where the resolution professional, at any time after the pre-packaged insolvency commencement date, but before the approval of resolution plan under subsection (4) or sub-section (12), as the case may be, of section 54K, intimates the Adjudicating Authority of the decision of

the committee of creditors, approved by a vote of sixty-six per cent. of the voting shares, to terminate the pre-packaged insolvency resolution process, the Adjudicating Authority shall pass an order under sub-section (1) of section 54K of the Code.

Notwithstanding anything to the contrary contained in section 54N, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the pre-packaged insolvency resolution process is required to be terminated under sub-section (1), the Adjudicating Authority shall pass an order —

(a) of liquidation in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and

(b) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Q.31. In which cases the Adjudicating Authority can order for initiation of corporate insolvency resolution process of the Corporate Debtor under Chapter IIIA in Part II of the Code?

Ans. According to sub-section (1) of section 54-O of the Code, the committee of creditors, at any time after the pre-packaged insolvency commencement date but before the approval of resolution plan under subsection (4) or sub-section (12), as the case may be, of section 54K, by a vote of sixty-six per cent of the voting shares, may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II.

Q.32. What happens when the committee of creditors resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor under section 54-O of Chapter IIIA in Part II of the Code?

Ans. According to section 54-O of the Code, where the resolution professional intimates the Adjudicating Authority of the decision of the committee of creditors to initiate a corporate insolvency resolution process in respect of the corporate debtor, if such

corporate debtor is eligible for corporate insolvency resolution process under Chapter II.

The Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to —

(a) terminate the pre-packaged insolvency resolution process and initiate corporate insolvency resolution process under Chapter II in respect of the corporate debtor.

(b) appoint the resolution professional referred to in under clause (b) of sub-section (1) of section 54E as the interim resolution professional, subject to submission of written consent by such resolution professional to the Adjudicatory Authority in such form as may be specified; and

(c) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor.

Q.33. What is the effect of order passed by Adjudicating authority under sub-section (2) of section 54-O to initiate a corporate insolvency resolution process in respect of the corporate debtor?

Ans. Where the Adjudicating Authority passes an order under sub-section (2) of section 54-O —

(a) such order shall be deemed to be an order of admission of an application under section 7 and shall have the same effect;

(b) the corporate insolvency resolution process shall commence from the date of such order;

(c) the proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any, shall continue during the corporate insolvency resolution process;

(d) for the purposes of sections 43, 46 and 50, references to "insolvency commencement date" shall mean "pre-packaged insolvency commencement date"; and

(e) in computing the relevant time or the period for avoidable transactions, the time-period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50.

Chapter 7

IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021

Q.1. What does "fair value" mean?

Ans. As per Regulation no. 2(1)(g) of IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021 fair value means the estimated realisable value of the assets of the corporate debtor, if they were to be exchanged on the pre-packaged insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

Q.2. What is the meaning of the term "liquidation value"?

Ans. As per Regulation no. 2(1)(k) of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021 liquidation value means the estimated realisable value of the assets of the corporate debtor, if it were to be liquidated on the pre-packaged insolvency commencement date.

Q.3. What is the meaning of the term Pre-packaged insolvency resolution process cost?

Ans. As per Regulation no. 6 For the purposes of sub-clause (e) of clause (23C) of section 5, pre-packaged insolvency resolution process costs shall mean-

(a) fee payable to authorised representative under sub-regulation (5) of regulation 34;

(b) out of pocket expenses of authorised representative for discharge of his functions under section 25A; and

(c) any other cost directly relating to the process and approved by the committee.

Q.4. What are the eligibility criteria for appointment of an Insolvency Professional as a Resolution Professional for a pre-packaged insolvency resolution process?

Ans. As per Regulation no. 7 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021, subject to consent in Form P1, an insolvency professional shall be eligible to be appointed as an interim resolution professional or resolution professional, as the case may, if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

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

(a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate debtor is a company;

(b) is not a related party of the corporate debtor; or

(c) is not an employee or proprietor or a partner-

i. of a firm of auditors or secretarial auditors or cost auditors of the corporate debtor; or

ii. of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to five per cent. or more of the gross turnover of such firm, in any of the preceding three financial years.

A resolution professional, who is a director or a partner of an insolvency professional entity, shall be ineligible to continue as a resolution professional in a process, if the insolvency professional entity or any partner or director of such insolvency professional entity represents any of the stakeholders in the same process.

Q.5. Who shall bear the fee of resolution professional?

Ans. As per Regulation no. 8 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021, where the corporate debtor fails to file an application or the application for initiation of the process is rejected, the fee payable to the resolution professional for

performing duties under sub-section (3) of section 54B shall be borne by the corporate debtor.

The corporate debtor shall maintain a separate bank account with such amount as may be advised by the committee from time to time and, subject to provisions of clause (23C) of section 5, such account shall be operated by the resolution professional to meet his fee and expenses incurred by him for conducting the process.

Q.6. Who shall not be appointed as a professional?

Ans. As per Regulation no. 10 of IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021, the resolution professional may appoint a professional under clause (e) of sub-section (3) of section 54F:

Provided that the following persons shall not be appointed as a professional, namely:-

(a) a person who is not registered with the regulator of the profession concerned;

(b) a related party of the corporate debtor;

(c) an auditor of the corporate debtor at any time during the five years preceding the pre-packaged insolvency commencement date;

(d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director; or

(e) a relative of the resolution professional or of a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

Q.7. What information the corporate applicant shall furnish along with the application for initiating prepackaged insolvency resolution process?

Ans. As per Regulation no. 18 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021, for the purposes of clause (d) of sub-section (3) of section 54C, the applicant shall furnish-

(a) audited financial statements of the corporate debtor for the last two financial years;

(b) provisional financial statements for the current financial year made up to the date of declaration under clause (f) of sub-section (2) of section 54A; and

(c) Form P5 submitted by the authorised representatives selected under sub-regulation (5) of regulation 15.

Q.8. Explain provisions with respect to public announcement as provided in IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021.

Ans. As per regulation no. 19, the resolution professional shall make a public announcement within two days of the commencement of the process. The public announcement referred to in sub-regulation (1) shall be –

- in Form P9
- sent to every creditor listed in Form P2
- sent to information utilities
- published on the website, if any, of the corporate debtor and the Board.

Q.9. If there is no financial creditor, how will the committee of creditors be constituted?

Ans. As per Regulation no. 25 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021, where the corporate debtor has no financial debt or all financial creditors are related parties, the committee shall consist of operational creditors, being not related to the corporate debtor, as under:-

(a) ten largest operational creditors by value, and if the number of operational creditors is less than ten, the committee shall include all such operational creditors;

(b) one representative elected by all workmen other than those workmen included under clause (a); and

(c) one representative elected by all employees other than those employees included under clause(a).

A member of the committee formed under this regulation shall have voting rights in proportion of the debt due to such creditor or debt

represented by such representative, as the case may be, to the total debt.

Explanation.– For the purposes of this sub-regulation, ‗total debt' is the sum of-

(a) the amount of debt due to the creditors listed in clause (a) of sub-regulation (1);

(b) the amount of the aggregate debt due to workmen under clause (b) of sub-regulation (1); and

(c) the amount of the aggregate debt due to employees under clause (c) of sub-regulation (1).

A committee formed in accordance with regulation 24 or regulation 25, as the case may be, and its members shall have the same rights, powers, duties and obligations as a committee comprising financial creditors and its members.

Q.10. When a resolution professional shall convene a meeting of creditors?

Ans. As per Regulation no. 27 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021,a resolution professional may convene a meeting of the committee as and when he considers necessary. A resolution professional shall convene a meeting, if a request to that effect is made by members of the committee representing thirty-three per cent of voting share.

Q.11. Is shorter period notice is allowed to conduct meetings of the Committee of creditors?

Ans. As per Regulation no. 28 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021, a meeting of the committee shall be convened by giving not less than three days' notice in writing to every participant, at the address provided to the resolution professional by the creditor. The committee may reduce the notice period from three days to such other period of not less than twenty-four hours, as it deems fit. Provided that the committee may reduce the period to such other period of not less than forty-eight hours if there is any authorised representative in the committee.

Q.12. What is the quorum required for convening of the meeting of committee of creditors?

Ans. As per Regulation no. 31 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021, a meeting of the committee shall quorate if members of the committee representing at least thirty three percent of the voting share are present either in person or by video conferencing or other audio and visual means. Provided that the committee may modify the percentage of voting share required for quorum in respect of any future meetings of the committee.

Q.13. What shall be the consequence if the quorum is not fulfilled?

Ans. As per Regulation no. 31 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021, where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day. In the event a meeting of the committee is adjourned, the adjourned meeting shall quorate with the members of the committee attending the meeting.

Q.14. Can a member attend the meeting of committee of creditors by video conferencing?

Ans. Yes. As per Regulation no. 32 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021, the notice convening the meetings of the committee shall provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with this Regulation. The resolution professional shall make necessary arrangements to ensure uninterrupted and clear video or audio and visual connection. Where a meeting is conducted through video conferencing or other audio and visual means, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

Q.15. What care shall be taken by resolution professional when meeting of Committee of creditors is conducted through audio or visual means?

Ans. As per Regulation no. 32 (3) of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021, the resolution professional shall take due and reasonable care-

(a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;

(b) to ensure availability of proper video conferencing or other audio and visual equipment or facilities for providing transmission of the communications for effective participation of the participants at the meeting;

(c) to record proceedings and prepare the minutes of the meeting;

(d) to store for safe keeping and marking the physical recording(s) or other electronic recording mechanism as part of the records of the corporate debtor; and

(e) to ensure that no person other than the intended participants attends or has access to the proceedings of the meeting through video conferencing or other audio and visual means.

Provided that the persons, who are differently abled, may make a request to the resolution professional to allow a person to accompany them at the meeting.

Q.16. Who will appoint the registered valuers and within how many days?

Ans. As per Regulation no. 38 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021, the resolution professional shall within three days of his appointment, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor. Provided that the following persons shall not be appointed as registered valuers, namely:-

(a) a related party of the corporate debtor;

(b) an auditor of the corporate debtor at any time during the five years preceding the pre-packaged insolvency commencement date;

(c) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director; or

(d) a relative of the resolution professional or of a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

Q.17. How fair value and liquidation value shall be determined?

Ans. As per Regulation no. 39 of IBBI (Pre-packaged Insolvency Resolution Process)Regulations, 2021,Fair value and liquidation value shall be determined in the following manner:-

(a) the registered valuers appointed under regulation 38 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor

(b) the average of the value determined by the two registered valuers shall be considered the fair value or the liquidation value, as the case maybe.

After the receipt of resolution plans in accordance with the Code and these Regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person.

The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.

Q.18. What is contained in Information Memorandum?

Ans. As per Regulation 40, Information Memorandum shall contain following details of the corporate debtor:

(a) assets and liabilities with such description, as are generally necessary for ascertaining their values. Explanation.-_Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details;

(b) the latest annual financial statements;

(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year.

(d) a list of claims containing the names of creditors, the amounts of their claims and the security interest, if any, in respect of such claims;

(e) particulars of a debt due from or to the corporate debtor with respect to related parties;

(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;

(g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;

(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;

(i) the number of workers and employees and liabilities of the corporate debtor towards them; and

(j) other information, which the corporate debtor or resolution professional deems relevant to the committee.

Q.19. What is timeline for submission of Information Memorandum to committee of creditors?

Ans. The resolution professional shall finalise the information memorandum with details under sub-regulation (2) of Regulation 40 and submit to members of the committee within fourteen days of the

pre-packaged insolvency commencement after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person

Q.20. What is role of resolution professional towards preferential and other transactions?

Ans. (1) On or before the thirtieth day of the pre-packaged insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the forty-fifth day of the prepackaged insolvency commencement date, under intimation to the Board.

(3) Where the resolution professional makes such determination, he shall apply to the Adjudicating Authority for appropriate relief on or before the sixtieth day of the pre-packaged insolvency commencement date.

Q.21. What is required with respect to Invitation for resolution plan?

Ans. (1) For the purposes of sub-section (5) of section 54K, the resolution professional shall publish brief particulars of the invitation for resolution plans in Form P11 not later than twenty-one days from the pre-packaged insolvency commencement date.

(2) The resolution professional shall publish Form P11-

(a) on the website, if any, of the corporate debtor;

(b) on the website, if any, designated by the Board for the purpose; and

(c) in any other manner as may be decided by the committee.

(3) The Form P11 shall –

(a) state where the invitation for resolution plans can be downloaded or obtained from, as the case may be; and

(b) provide the last date for submission of resolution plan which shall not be less than fifteen days from the date of issue of invitation for resolution plan under sub-regulation (2).

(4) The invitation for resolution plans shall-

(a) detail each step in the process, and the manner and purposes of interaction between the resolution professional and the resolution applicant, along with corresponding timelines;

(b) include- (i) the basis for evaluation; (ii) basis for considering a resolution plan significantly better than another resolution plan; (iii) tick size; and (iv) the manner of improving a resolution plan; and

(c) not require any non-refundable deposit for submission of or along with resolution plan.

(5) The resolution professional shall require the resolution applicant, in case its resolution plan is approved under subsection (13) of section 54K, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

Explanation 1.– For the purposes of this sub-regulation, ―performance security‖ shall mean security of such nature, value, duration and source, as may be specified in the invitation for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

Explanation 2.– A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for

Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.

Q.22. What measures should resolution plan provide for?

Ans. As per Regulation 44 of Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021, a resolution plan shall provide for the measures, as may be necessary, for maximisation of value of its assets, including the following:-

(a) transfer of all or part of the assets of the corporate debtor to one or more persons;

(b) sale of all or part of the assets whether subject to any security interest or not;

(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;

(d) the substantial acquisition of shares of the corporate debtor;

(e) cancellation or delisting of any shares of the corporate debtor, if applicable;

(f) satisfaction or modification of any security interest;

(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;

(h) reduction in the amount payable to the creditors;

(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;

(j) amendment of the constitutional documents of the corporate debtor;

(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;

(l) change in portfolio of goods or services produced or rendered by the corporate debtor;

(m) change in technology used by the corporate debtor; and

(n) obtaining necessary approvals from the Central and State Governments and other authorities.

Q.23. What are the mandatory contents of resolution plan?

Ans. As per Regulation 45 of Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021,

(1) A resolution plan shall include-

(a) an affidavit that resolution applicant is eligible to submit a resolution plan for resolution of the corporate debtor under the Code;

(b) a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved by the Adjudicating Authority at any time in the past; and

(c) an undertaking that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the resolution applicant ineligible to participate in any resolution process under the Code.

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

(3) A resolution plan shall demonstrate that – (a) it addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant has the capability to implement the resolution plan.

(4) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including

financial creditors and operational creditors, of the corporate debtor.

(5) The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.

Q.24. How is resolution plan to be submitted?

Ans. As per Regulation 46 of Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021

(1) A resolution applicant may submit resolution plan or plans prepared in accordance with the Code and these Regulations to the resolution professional through electronic means within the time given in the invitation for resolution plan.

(2) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected

Q.25. How is resolution plan to be evaluated?

Ans. (1) The resolution plans received under regulation 46, which comply with the requirements of the Code and these Regulations, shall be evaluated on the basis for evaluation.

(2) The resolution plan which gets the highest score under sub-regulation (1) shall be selected for competition with the base resolution plan.

Q.26. What is the resolution plan approval process?

Ans. (1) The resolution plan selected under regulation 47 shall be considered by the committee for approval, if it is significantly better than the base resolution plan.

(2) Where no resolution plan is received under regulation 46, which complies with the requirements of the Code and these Regulations, the base resolution plan may be considered by the committee for approval.

(3) In cases not covered under sub-regulations (1) and (2), the resolution professional shall disclose the scores of the resolution plan selected under regulation 46 and the base resolution plan to submitters of these resolution plans and invite them to improve their resolution plans in accordance with sub-regulation (4).

(4) The submitter of the resolution plan under sub-regulation (3) shall have an option to improve its plan in the following manner:-

(a) the submitter of resolution plan, which has lower score, shall have an option to improve its resolution plan by at least a tick size;

(b) then the submitter of the other resolution plan shall have an option to improve its resolution plan by at least a tick size;

(c) then the submitter under clause (a) shall have an option to improve its resolution plan by at least a tick size;

(d) then the submitter under clause (b) shall have an option to improve its resolution plan by at least a tick size, and the process of improvement shall continue till either of the submitters fails to use the option within the time specified in the invitation for resolution plans.

(5) The process under sub-regulations (3) and (4) shall be completed within a time-window of forty-eight hours.

(6) The resolution plan having higher score on completion of process of improvement under sub-regulation (4) shall be considered by the committee for approval.

Q.27. What is process of application to adjudicating authority on resolution plan?

Ans. (1) Where a resolution plan is approved by the committee, the resolution professional shall submit an application, along

with a compliance certificate in Form P12, to the Adjudicating Authority for approval.

(2) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.

(3) The resolution professional shall, within seven days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formula, as the case may be, for payment of debts under such resolution plan.

(4) Where no resolution plan is approved by the committee or where the committee has approved the termination of process, the resolution professional shall file an application in Form P13 to the Adjudicating Authority for termination of process.

Q.28. What are the brief features regarding management of the corporate debtor?

Ans. (1) The corporate debtor shall not manage the affairs of the corporate debtor in a manner prejudicial to the creditors of the corporate debtor or in a fraudulent manner.

(2) The corporate debtor shall not undertake any of the following actions without obtaining prior approval of the committee, namely:- (a) transaction above a threshold as decided by the committee; and (b) any other matter as decided by the committee and not covered under section 28.

(3) The corporate debtor in consultation with the resolution professional shall prepare a monthly report and forward it to the members of the committee with the following details:- (a) details of legal proceedings having a material impact on the business of the corporate debtor; (b) details of key contracts executed during the reporting period; and (c) any other relevant matter(s) that may have a material impact on the business of the corporate debtor.

(4) The resolution professional may- (a) call for information related to operations of the corporate debtor, including payments made; (b) visit premise(s) of the corporate debtor; (c) inspect the assets of the corporate debtor; (d) call for information related to compliances applicable to the corporate debtor and its status; (e) ask for details related to litigation initiated by or against corporate debtor; and (f) ask details for ascertaining the conduct of corporate debtor during the process.

Chapter 8

Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms

Q.1. On what matters shall the Part III of the Code apply?

Ans. Part III shall apply to matters relating to

- fresh start
- insolvency resolution and bankruptcy for individuals and partnership firms

Q.2. What is the threshold limit for making an application under Part III of the Code?

Ans. As per section 78 of the Code, an application under Part III of the Code shall be made, where the amount of the default shall not be less than one thousand rupees. Further, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one lakh rupees.

Q.3. Who shall be referred to as a bankrupt?

Ans. As per Section 79 (3) of the Code, a bankrupt means –

(a) a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126;

(b) each of the partners of a firm, where a bankruptcy order under section 126 has been made against a firm; or

(c) any person adjudged as an undischarged insolvent;

Q.4. What shall bankruptcy debt in relation to a bankrupt means?

Ans. As per Section 79 (5) of the Code, bankruptcy debt in relation to a bankrupt means –

(a) any debt owed by him as on the bankruptcy commencement date;

(b) any debt for which he may become liable after bankruptcy commencement date but before his discharge by reason of any transaction entered into before the bankruptcy commencement date; and

(c) any interest which is a part of the debt under section 171;

Q.5. What shall be the bankruptcy commencement date?

Ans. As per Section 79 (6) of the Code, bankruptcy commencement date means the date on which a bankruptcy order is passed by the Adjudicating Authority under section 126;

Q.6. What is a bankruptcy order?

Ans. As per Section 79(7) of the Code, bankruptcy order means an order passed by an Adjudication Authority under section 126.

Q.7. Who is a Bankruptcy Trustee ?

Ans. As per section 79(9) of the Code, a bankruptcy trustee means the insolvency professional appointed as a trustee for the estate of the bankrupt under section 125.

Q.8. What do you mean by discharge order?

Ans. As per Section 79 (13) of the Code, discharge order means an order passed by the Adjudicating Authority discharging the debtor under sections 92, 119 and section 138, as the case may be.

Q.9. Who are members of immediate family of the debtor?

Ans. As per section 79(17) of the Code, immediate family of the debtor means his spouse, dependent children and dependent parents

Q.10. What is a partnership debt?

Ans. As per section 79(18) of the Code, partnership debt means a debt for which all the partners in a firm are jointly liable.

Q.11. What is a qualifying debt?

Ans. 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.12. What shall be treated as an excluded debt?

Ans. As per Section 79(15) of the Code, "excluded debt" means -

(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

(v) any other debt as may be prescribed.

Q.13. Who shall be referred as an undischarged bankrupt?

Ans. 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.14. What is the eligibility criteria for making an application for fresh start under Section 80 of the Code?

Ans. A debtor, who is unable to pay his debt and fulfils the conditions specified below shall be entitled to make an application, either by himself or through a resolution professional, for a fresh start for discharge of his qualifying debt under this Chapter, if -

(a) the gross annual income of the debtor does not exceed sixty thousand rupees;

(b) the aggregate value of the assets of the debtor does not exceed twenty thousand rupees;

(c) the aggregate value of the qualifying debts does not exceed thirty -five thousand rupees;

(d) he is not an undischarged bankrupt;

(e) he does not own a dwelling unit, irrespective of whether it is encumbered or not;

(f) a fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; and

(g) no previous fresh start order under this Chapter has been made in relation to him in the preceding twelve months of the date of the application for fresh start.

Q.15. Whether an application may be filed by the debtor personally under Section 80 of the Code?

Ans. Yes, a debtor may apply, either personally or through a resolution professional, for a fresh start under this Chapter in respect of his qualifying debts to the Adjudicating Authority if he fulfils the conditions stipulated under Section 80(2) of the Code..

Q.16. What is interim moratorium and its impact and time limit under Fresh Start ?

Ans. This is the special protection which is not available under CIRP. When an application is filed under section 80 of the Code by the debtor, an interim-moratorium shall commence on the date of filing of said application in relation to all the debts and shall cease to have effect on the date of admission or rejection of such application, as the case maybe.

During the interim moratorium period –

(1) any legal action or legal proceeding pending in respect of any of his debts shall be deemed to have been stayed; and

(2) no creditor shall initiate any legal action or proceedings in respect of such debt.

Q.17. 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?

Ans. Section 87 of the Code empowers an aggrieved debtor or creditor to make an application to the Adjudicating Authority challenging the action taken by the Resolution Professional under the Fresh Start

Process within 10 days of such decision, on any of the following grounds namely that :-

(a) the resolution professional has not given an opportunity to the debtor or the creditor to make a representation; or

(b) the resolution professional colluded with the other party in arriving at the decision; or

(c) the resolution professional has not complied with the requirements laid down in Section 86 of the Code.

Q.18. What is the effect of commencement of moratorium period under Chapter II of Part III of the Code?

Ans. After the commencement of moratorium period as per Section 85 of the Code 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 subject to the provisions of section 86.

Q.19. What are the restrictions imposed on a debtor during moratorium period under Chapter II of Part III of the Code?

Ans. The following restrictions are imposed on debtor during moratorium period u/s 85(3) of the Code :-

(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 a company.

(b) He shall not dispose off or alienate any of his 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 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 from the name in the application admitted under section 84 of the Code.

(f) He shall not travel outside India except with the permission of the Adjudicating Authority.

Q.20. When can an order passed by the Adjudicating Authority be revoked?

Ans. As per Section 91 of the Code, the resolution professional may submit an application to the Adjudicating Authority seeking revocation of its order made under Section 84 of the Code, 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 or .

(b) When the debtor fails to comply with the restrictions imposed u/s 85(3) of the Code.

(c) When the debtor has acted in a mala fide manner and has wilfully failed to comply with the provisions of this Chapter.

Q.21. Can a partner of a firm file an application to the Adjudicating Authority as a debtor on behalf of the firm?

Ans. Section 94(2) of the Code states that where the 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.22. Under what circumstances debtor is not entitled to make an application to the Adjudicating Authority under Section 94?

Ans. As per section 94(4) of the Code, 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.

A debtor shall not be eligible to apply if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.

Q.23. What are the requirements for making an application by a creditor for initiating an insolvency resolution process under Section 95?

Ans. As per Section 95(1) of the Code, a creditor may apply either himself or jointly with other creditors or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process by submitting an application. A creditor may apply under section 95(1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against any one or more partners of the firm or the firm. 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 and

(c) Relevant evidence of such default or non- repayment of debt

also provide a copy of the application made under 95(1) to the debtor.

Judicial pronouncements with regard to Section 95 - Application by creditor to initiate insolvency resolution process

1. Ravi Ajit Kulkarni Vs. State Bank of India [CA (AT) (Ins.) No. 316 and 317 of 2021] NCLAT order dt. 12.08.2021

Once the application is filed as per section 95 and 96 of the Code, the AA has to act on it, and following principles of natural justice, give limited notice to the personal guarantor to appear referring to the interim moratorium that has commenced as per terms of section 96.

Then the next stage is of appointing RP as per section 97. Third stage will be RP acting in terms of section 99 and submitting a report. At the fourth stage comes in adjudication of the application under section 100 which ought to be decided by giving hearing to parties keeping in view the application, evidence collected and report under section 99 of the Code.

2. Insta Capital Pvt. Ltd. Vs. Ketan Vinod Kumar Shah [CP (IB) 1365/MB-IV/2020] NCLT, Mumbai order dt. 10.08.2021

An application for insolvency for resolution against the personal guarantor is not maintainable unless that CIRP/liquidation is ongoing against the CD. Filing of applications seeking resolution of personal guarantors without the CD undergoing CIRP, would tantamount to vesting of jurisdiction on two course i.e. one being NCLT, and another being the DRT.

Q.24. What is the effect of moratorium under Chapter III of Part III of the Code? Is there any time limit for which moratorium shall be in force?

Ans. 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.

Under the moratorium period,

a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

c) the debtor shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficial interest therein;

If order admitting application is made against a firm, then the moratorium shall operate against all the partners of the firm

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

Q.25. How a resolution professional will be appointed ?

Ans. As per Section 97 of the Code if the application under section 94 or 95 is filed through a resolution professional, the Adjudicating

Authority shall direct the Board within seven days of the date of the application to confirm that there are no disciplinary proceedings pending against resolution professional.

The Board shall within seven days of receipt of directions communicate to the Adjudicating Authority in writing either –

(a) confirming the appointment of the resolution professional; or

(b) rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.

Where an application under section 94 or 95 is filed by the debtor or the creditor himself, as the case may be, and not through the resolution professional, the Adjudicating Authority shall direct the Board, within seven days of the filing of such application, to nominate a resolution professional for the insolvency resolution process.

The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority.

The Adjudicating Authority shall by order appoint the resolution professional recommended or as nominated by the Board.

A resolution professional appointed by the Adjudicating Authority shall be provided a copy of the application for insolvency resolution process.

Judicial pronouncements with regard to Section 97- Appointment of resolution professional

1. **Siemens Financial Services Pvt. Ltd. Vs. Vinod Sehwag [(IA 1774/ND/2021 in CP No. (IB) 116(ND)2021] NCLT, Delhi order dt. 09.06.2021**

   The scheme of insolvency resolution process in Chapter III of the Code does not warrant and provide issuance of notice at the stage of appointing RP under section 97 of the Code for the purpose of examining an application preferred under Section 95 and it does not amount to violation of principles of natural justice.

Q.26. Can a resolution professional be replaced?

Ans. Yes as per section 98 of the Code, if a debtor or a creditor is of the opinion that the resolution professional appointed under section 97 of the Code 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 make reference to the Board for Replacement of Resolution Professional. The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority, recommend the name of the resolution professional to the Adjudicating Authority against whom no disciplinary proceedings are pending. Additionally, the creditors may apply to the Adjudicating Authority for replacement of the resolution professional where it has been decided in the meeting of the creditors, to replace the resolution professional with a new resolution professional for implementation of the repayment plan.

Q.27. On filing of Application under section 95 of the Code, how can a debtor prove that the debt claimed as unpaid by the creditor has already been settled and paid?

Ans. 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; or

(c) A signed acknowledgement by the creditor accepting receipt of dues.

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

Q.28. What is a repayment plan and what details shall it include?

Ans. According to Section 105 of the Code, 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.

The repayment plan shall include the following:-

(a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan.

(b) provision for payment of fee to the resolution professional

(c) any such other matters as may be specified.

Q.29. Is there any time limit for submission of repayment plan?

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

Q.30. How will a repayment plan be approved?

Ans. As per section 118 of the Code, 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.31. When does a repayment plan end prematurely?

Ans. As per section 118 of the Code, 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.32. Who can file an application for bankruptcy of a debtor?

Ans. An application for bankruptcy of a debtor may be made by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority.

Q.33. How is the debtor discharged?

Ans. According to Section 119 of the Code, on the basis of the repayment plan, the resolution professional shall apply to the Adjudicating Authority for a discharge order in relation to the debts mentioned in the repayment plan and the Adjudicating Authority may pass such discharge order.

The discharge order shall not discharge any other person from any liability in respect of his debt.

Q.34. When can one make an application for bankruptcy?

Ans. According to section 121 of the Code, 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 under Section 115(2) 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.35. Is there any time limit for making application for bankruptcy?

Ans. 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 under the sections mentioned in Section 121(1).

Q.36. How will an application for bankruptcy be made?

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

(a) The records of insolvency resolution process undertaken under Chapter III of Part III..

(b) 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.

(c) A copy of the order passed by the Adjudicating Authority granting permission to apply for bankruptcy.

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.37. Can application of bankruptcy be withdrawn?

Ans. An application for bankruptcy by the debtor may be withdrawn with the leave of the Adjudicating Authority (section 122(4) of the Code) and by the creditor with the permission of the Adjudicating Authority (section 123(7) of the Code).

Q.38. What will be the effect of application of bankruptcy?

Ans. 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.39. What is the effect of beginning of an interim moratorium?

Ans. As per section 124 of the Code, during the interim moratorium period the 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.

(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.

Where the application has been made in relation to a firm, the interim moratorium shall operate against all the partners of the firm as on the date of the application. The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator

Q.40. What is the process of appointment of a Bankruptcy Trustee?

Ans. As per Section 125 of the Code, 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.41. Is there any time limit for passing a Bankruptcy Order by the Adjudicating Authority?

Ans. Yes, the Adjudicating Authority shall pass a Bankruptcy Order within fourteen days of receiving the confirmation or nomination of the Bankruptcy Trustee.

Q.42. What are the documents that shall be provided by the Adjudicating Auhority after passing the Bankruptcy order ?

Ans. As per Section 126(2) of the Code, the Adjudicating Authority shall provide the following documents to the bankrupt, creditors and the bankruptcy trustee within seven days of passing the bankruptcy order, namely:

(a) a copy of the application for bankruptcy; and

(b) a copy of the bankruptcy order.

Q.43. What shall be the validity of Bankruptcy Order?

Ans. As per Section 127 of the Code, the bankruptcy order passed by the Adjudicating Authority shall continue to have effect till the debtor is discharged.

Q.44. What will be the effect of passing of Bankruptcy Order?

Ans. As per Section 128 of the Code,The following shall be the effect of passing of the Bankruptcy Order:-

(a) The estate of the bankrupt shall vest in the bankruptcy trustee as provided in section 154;

(b) The estate of the bankrupt shall be divided among his creditors;

(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 and on such terms as the Adjudicating Authority may impose.

However, the Bankruptcy Order shall not affect the right of any secured creditor to realise or otherwise deal with his security interest. Provided that no secured creditor shall be entitled to any interest in respect of his debt after the bankruptcy commencement date if he does not take any action to realise his security within thirty days from the said date.

Q.45. How are claims invited from creditors by the Adjudicating Authority?

Ans. As per section 130 of the Code, the Adjudicating Authority invites the claims from creditors by sending notices to the creditors, within ten days of the bankruptcy commencement date and also by issuing a public notice inviting claims from creditors.

Q.46. What is the mode of publication of public notice?

Ans. The Public notice shall be published in at least one leading English and one leading vernacular newspaper which is having sufficient circulation in the place where the bankrupt resides. It shall also be affixed on the premises of the Adjudicating Authority and shall also be placed on the website of the Adjudicating Authority.

Q.47. Who will convene the meeting of creditors in bankruptcy?

Ans. 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.48. What is the process of passing of Discharge Order by the Adjudicating Authority?

Ans. As per Section 139 of the Code, 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 where such approval is obtained before one year of the bankruptcy commencement.. The Adjudicating Authority shall pass a discharge order on an application by the bankruptcy trustee.

Q.49. What is the effect of Discharge Order?

Ans. As per Section 139 of the Code, 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.50. What are the restrictions imposed on a Bankrupt?

Ans. As per Section 141 of the Code The following restrictions shall be imposed on a Bankrupt:-

(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 of any financial or commercial 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.51. Can restriction imposed on a bankrupt cease to have effect?

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

Q.52. Can the Bankruptcy Order be modified or recalled by the authority?

Ans. Yes, as per Section 139 of the Code the Adjudicating Authority may modify or recall a Bankruptcy Order, whether or not the bankrupt is discharged, 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 Bankruptcy Order.

Q.53. What will be the effect of modification or recall of bankruptcy order by the authority?

Ans. Where the Adjudicating Authority modifies or recalls the bankruptcy order any sale or other disposition of property, payment made or other things duly done by the Bankruptcy Trustee shall be valid except that the property of the bankrupt shall vest in such person as the Adjudicating Authority may appoint or, in default of any such appointment, revert to the bankrupt on such terms as the Adjudicating Authority may direct.

Q.54. Can a Bankruptcy Trustee be replaced?

Ans. 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.55. Under what circumstances can a Bankruptcy Trustee resign?

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

(a) When he intends to cease practicing as an insolvency professional; or

(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.56. What are the functions of the Bankruptcy Trustee under Chapter V of the Code?

Ans. The Bankruptcy Trustee shall -

- investigate the affairs of the bankrupt;
- take necessary steps for realizing the estate of the bankrupt; and
- distribute the estate of the bankrupt.

Q.57. What are the duties of Bankrupt towards the Bankruptcy Trustee?

Ans. 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 on the Bankruptcy Trustee at such times as may be required

(c) give notice to the Bankruptcy Trustee of any of the following events which have occurred after the bankruptcy commencement date –

- acquisition of any property by the bankrupt;
- devolution of any property upon the bankrupt;
- increase in the income of the bankrupt.

(d) doing all other things as may be prescribed.

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 which bankruptcy trustee is required to take possession for the purposes of the bankruptcy process 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.58. What are the rights of Bankruptcy Trustee?

Ans. 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.59. What are the powers of the Bankruptcy Trustee?

Ans. As per section 152 of the Code, the bankruptcy trustee has right to sell any part of the estate of the bankrupt, give receipts for any

money received, prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate, exercise the right of redemption in respect of any property which is pledged or hypothecated, exercise the right to transfer the property or securities in a company 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.60. Which are the acts that require approval from creditors prior to being conducted by the Bankruptcy Trustee?

Ans. 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.

(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.61. What shall be included in the estate of the Bankrupt?

Ans. 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, the capacity to exercise and to initiate proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the bankruptcy commencement date or before the date of the discharge order passed under section 138; and all property which 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; and

(d) such assets as may be notified by the Central Government in consultation with any financial sector regulator.

Q.62. What will be the effect of any disposition of property by the debtor?

Ans. As per Section 158 of the Code, 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.63. Can the Bankruptcy Trustee claim the after acquired property of bankrupt?

Ans. 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.64. What is onerous property?

Ans. An onerous property means and includes any unprofitable contract and any other property comprised in the estate of the bankrupt which is unsaleable or not readily saleable, or is such that it may give rise to a claim.

Q.65. Can a Bankruptcy Trustee disclaim any onerous property?

Ans. Yes as per Section 160 of the Code, 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; and

(b) If a decision under clause (a) has not been taken by the Bankruptcy Trustee within seven days of receipt of the notice.

Q.66. Who can make an application to challenge against disclaimed property?

Ans. The following persons may make an application challenging the disclaimed 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.

(c) 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.67. What will amount to undervalued transactions?

Ans. 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.68. What will be the consequence of an undervalued transaction entered between a bankrupt and any other person?

Ans. 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. The Adjudicating Authority may also pass any other order it thinks fit for restoring the position to what it would have been if the bankrupt had not entered into the undervalued transaction.

Q.69. What will be the consequence where a bankrupt gives preference to any person in a transaction?

Ans. 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 to an associate of the bankrupt; or
- six months ending on the date of the application for bankruptcy to other person not covered above.

The transaction giving preference as mentioned in above points should have caused the 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. The Adjudicating Authority may also pass any other order it thinks fit for restoring the position to what it would have been if the bankrupt had not entered into the transaction giving preference.

Q.70. What will be the fate of extortionate credit transactions entered into by a bankrupt?

Ans. 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.71. What are the rights of a party to a contract entered into with a bankrupt before the bankruptcy commencement date?

Ans. 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.72. Will death of a bankrupt affect the proceedings being initiated?

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

Q.73. What shall be acceptable as a proof of debt of the creditor?

Ans. The proof of debt shall require the creditor to give full particulars of debt or security if any and also include the date on which the debt or security was contracted or given, as the case may be, 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.

(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.74. Can a Bankruptcy Trustee distribute interim dividend?

Ans. Whenever 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.75. Can a Bankruptcy Trustee distribute final dividend?

Ans. 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.76. What shall be the consequences if a creditor fails to prove his debt?

Ans. 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.77. What shall be the order of priority of payments?

Ans. 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 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.

The debts in each class specified above shall rank in the order mentioned in that sub-section but debts of the same class shall rank equally amongst themselves, and shall be paid in full, unless the estate of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves. Where any creditor has given any indemnity or has made any payment of moneys by virtue of which any asset of the bankrupt has been recovered, protected or preserved, the Adjudicating Authority may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks taken by him in so doing. Unsecured creditors shall rank equally amongst themselves unless contractually agreed to the contrary by such creditors.

Any surplus remaining after the payment of the debts mentioned above shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the bankruptcy commencement date. Interest payments as mentioned shall rank equally irrespective of the nature of the debt.

Q.78. Who shall be the Adjudicating Authority for insolvency of individuals and partnership firms under Chapter VI of the Code?

Ans. Subject to provisions of section 60 of the Code, 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.79. Does Civil Court has jurisdiction in matters relating to insolvency of individuals and partnership firms?

Ans. 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.80. Who shall be the appellate authority for insolvency of individuals and partnership firms?

Ans. 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. The Debt Recovery Appellate Tribunal may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within thirty days, allow the appeal to be filed within a further period not exceeding fifteen days

Q.81. Can an appeal be filed against the Order of Debt Recovery Appellate Tribunal?

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

Q.82. What is the punishment for furnishing false information by debtor or creditor under Part III Chapter VII of the Code?

Ans. A debtor or creditor who provides information which is false in any material particulars to the resolution professional 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.83. What shall be the consequence where a creditor dishonestly accepts money for voting in favour of repayment plan?

Ans. 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.84. What is the punishment for contraventions by insolvency professional?

Ans. An insolvency professional, who deliberately contravenes the provisions of Part III, 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.85. What is the punishment for false information and concealment by the bankrupt?

Ans. 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.86. What is the punishment for withholding or destroying or altering etc. of books of accounts by bankrupt?

Ans. 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.87. What is the punishment for loss of property by the Bankrupt?

Ans. 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.88. What is the punishment for absconding Bankrupt?

Ans. 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.89. What are the punishments for violations of the Code by Bankruptcy Trustee?

Ans. 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.

Chapter 9

Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

Q.1. Which is the Adjudicating Authority to which application for insolvency resolution process of personal guarantors to corporate debtors has to be preferred ?

Ans. As per Section 60 of the Insolvency and Bankruptcy Code, 2016, ("IBC") the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located

As per Rule 3, for the purpose of section 60 of IBC, Adjudicating Authority shall mean National Company Law Tribunal (NCLT) and in other cases, the Debt Recovery Tribunal (DRT).

Q.2. Who is the Guarantor?

Ans. As per Rule 3 (e), "guarantor" means a debtor who is a personal guarantor to a Corporate Debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part.

Q.3. How can the communication be served ?

Ans. As per Rule 3(g), communication can be served by any means, including registered post, speed post or courier or electronic form , which is capable of producing or generating an acknowledgement of receipt of such communication.

Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other

conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personal works for gain.

Q.4. What are the excluded assets?

Ans. Excluded assets are defined under Section 79 of the Code. Rule 5 prescribes the value in relation to clause (c) of section 79(14) and clause (e) of section 79(14) of IBC as under:

(a) The value of unencumbered personal ornaments under clause (c) of section 79(14) of IBC shall not exceed one lakh rupees;

(b) The value of unencumbered single dwelling unit owned by the debtor under clause (e) of section 79 (14) shall not exceed Twenty lakh rupees in the case of dwelling unit in an urban area and Ten lakh rupees in the case of dwelling unit in a rural area.

Q.5. What is a rural area ?

Ans. As per explanation to Rule 5, Rural area shall have the same meaning as assigned to it in clause (o) of section 2 of the National Rural Employment Guarantee Act, 2005.

Q.6. What is an urban area ?

Ans. As per explanation to Rule 5, Urban Area means any area other than rural area.

Q.7. How is the application by a guarantor has to be submitted ?

Ans. The application under section 94(1) of IBC by the guarantor has to be submitted in Form A, along with an application fee of two thousand rupees .The guarantor shall serve forthwith a copy of the application to every financial creditor and the Corporate debtor for whom the guarantor is a personal guarantor.

Q.8. How is the application by the creditor has to be submitted ?

Ans. A demand notice under section 95(4)(b) of IBC shall be served on the guarantor demanding payment of the amount of default in Form B. The application under section 95(1) of IBC shall be submitted in Form C, along with a fee of two thousand rupee. The creditor shall serve forthwith a copy of the application to the guarantor and the

Corporate debtor for whom the guarantor is a personal guarantor. In case of joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors

Q.9. Whether application can be withdrawn?

Ans. Yes as per Rule 11, the Adjudicating Authority may permit withdrawal of the application for insolvency process of personal guarantors to Corporate debtors initiated by the guarantor or the creditor as the case may be

(a) Before its admission on a request made by the applicant.

(b) After admission, on the request made by the applicant , if ninety percent creditors agree to such withdrawal

And such application for withdrawal shall be in Form D

Chapter 10

Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019

Q.1. Which is the Adjudicating Authority to which application for bankruptcy process of personal guarantors to corporate debtors has to be preferred ?

Ans As per Section 60 of the Insolvency and Bankruptcy Code, 2016, ("IBC") the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located

As per Rule 3, for the purpose of section 60 of IBC, Adjudicating Authority shall mean National Company Law Tribunal (NCLT) and in other cases, the Debt Recovery Tribunal (DRT).

Q.2. Define Guarantor ?

Ans, As per Rule 3 (f), guarantor means a debtor who is a personal guarantor to a Corporate Debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part.

Q.3. How can the communication be served ?

Ans. As per Rule 3(h), communication can be served by any means including registered post, speed post or courier or electronic means, which is capable of producing or generating an acknowledgement of receipt of such communication. Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personal works for gain.

Q.4. What are the excluded assets?

Ans. Excluded Assets are defined under Section 79(14) of the Code.

Rule 5 prescribes the value in relation to clause (c) of section 79(14) and clause (e) of section 79(14) of IBC as under::

a) The value of unencumbered personal ornaments under clause (c) of section 79(14) of IBC shall not exceed one lakh rupees;

b) The value of unencumbered single dwelling unit owned by the debtor under clause (e) of section 79 (14) shall not exceed twenty lakh rupees in the case of dwelling unit in an urban area and ten lakh rupees in the case of dwelling unit in a rural area..

Q.5. What is a rural area ?

Ans. As per explanation to Rule 5, Rural area shall have the same meaning as assigned to it in clause (o) of section 2 of the National Rural Employment Guarantee Act, 2005 namely any area in a state except those covered by any urban local body or a Cantonment Board established or constituted under any law for the time being in force. { the act is rechristened as The Mahatma Gandhi National rural Employment Guarantee Act,2005}

Q.6. What is an urban area ?

Ans. As per explanation to Rule 5, Urban Area means any area other than rural area.

Q.7. How the application by a guarantor has to be submitted ?

Ans. As per Rule 6 , the application under section 122(1) of IBC by the guarantor has to be submitted in Form A, along with an application fee of two thousand rupees .The guarantor shall serve forthwith a copy of the application to the creditor and the corporate debtor for whom the guarantor is a personal guarantor.

Q.8. How the application by a creditor has to be submitted ?

Ans. As per Rule 7, the application under section 123(1) of IBC has to be submitted in Form B, along with a fee of two thousand rupee. The creditor shall serve forthwith a copy of the application to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor. In case of joint application, the creditors may

nominate one amongst themselves to act on behalf of all the creditors.

Q.9. Who shall issue a Public notice ?

Ans. As per Rule 9, the Adjudicating Authority or the bankruptcy trustee as directed by the Adjudicating Authority shall issue Public Notice in Form C

Q.10. Who shall issue notice to creditors ?

Ans. As per Rule 10, the Adjudicating Authority or the bankruptcy trustee as directed by the Adjudicating Authority shall issue Notice to creditors in Form D.

Q.11. Who shall submit the statement of financial position?

Ans. As per Rule 11, the bankrupt shall submit the statement of financial position in Form E.

Q.12. Who shall submit the claim with proof and how it is to be submitted ?

Ans. As per Rule 12, a creditor shall submit a claim in Form F along with proof to the bankruptcy trustee on or before the last date mentioned in the public notice, either through electronic means or by registered post or speed post or courier.

Q.13. Upto which period the creditor can submit proof of his claim ?

Ans. As per Rule 12, a creditor who has failed to submit the claim with proof within the time stipulated in the public notice, may submit such proof to the bankruptcy trustee till the final date referred to in section 176(2) of IBC. The creditor shall bear the costs relating to the proof of claim.

Q.14. What are the particulars to be provided in the notice of dividend?

Ans. As per Rule 13, the notice of dividend shall be sent thirty days prior to the date specified for distribution of dividend and contain the following particulars:

(i) the date on which the dividend is proposed to be distributed;

(ii) the list of creditors who shall be entitled to a dividend;

(iii) the amount of dividend for each creditor,

(iv) request for any details required from the creditors for the distribution of dividend , and the last date for receipt of such information;

(v) the last date by which the creditors must establish their claim against the estate with the bankruptcy trustee; and

(vi) a statement confirming that no further dividends shall be declared.

Q.15. Who shall provide the copy of application to the bankruptcy trustee ?

Ans. he Adjudicating Authority shall provide the copy of the application to the bankruptcy trustee within three days of his appointment.

Q.16. What is the monetary ceiling regarding restriction on bankrupt ?

Ans. The restriction on the bankrupt under clause (d) of section 141(1) of the Code shall be applicable for any financial or commercial transaction of one lakh rupees and above.

Chapter 11

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

Q.1. Who is an associate ?

Ans. As per Regulation 3(a), an associate in relation to a creditor, a resolution professional or professionals engaged by the resolution professional as the case may be, shall have the same meaning as assigned to it in relation to a debtor in Section 79(2) of IBC .

Q.2. Who is a participant ?

Ans. As per Regulation 3(f), "participant" means a person entitled to attend a meeting of creditors and includes a creditor, the guarantor, the resolution professional, and any other person authorised through a resolution by creditors to attend such meeting .

Q.3. What constitutes resolution process costs ?

Ans. As per Regulation 3(i), "resolution process costs" shall mean –

(i) fees payable to the resolution professional;

(ii) expenses incurred on and by the resolution professional for carrying out the resolution process, including the fee of professionals engaged, if any;

(iii) finances raised for the resolution process, and costs incurred in raising such finances; and

(iv) such other costs directly relatable to the resolution process,

to the extent approved or ratified by the creditors.

Q.4. What is resolution process commencement date?

Ans. As per Regulation 3(h), "resolution process commencement date" means the date of admission of an application under section 100;

Q.5. Who shall be appointed as a resolution professional ?

Ans. As per Regulation 4, an insolvency professional shall be eligible to be appointed as a resolution professional for a resolution process, if-

(a) the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;

(b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and

(c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the resolution process.

Q.6. When will a person shall be considered as independent of the guarantor?

Ans. As per explanation to Regulation 4, a person shall be considered independent of the guarantor, if he-

(a) is not an associate of the guarantor;

(b) is not a related party of the corporate debtor; and

(c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor.

The expression "related party" shall have the meaning assigned to it in sub-section (24) of section 5. An insolvency professional, other than who has filed an application under section 94 or 95 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the Adjudicating Authority before his appointment as resolution professional in a resolution process.

Q.7. What are the obligations of the resolution professional with regard to preservation of records?

Ans: The resolution professional shall preserve a physical as well as an electronic copy of the records relating to resolution process of the guarantor as per the record retention schedule, as may be communicated by the Board in consultation with insolvency professional agencies.

Q.8. How the claim can be submitted by a creditor?

Ans: As per Regulation 7, a creditor shall submit its claim along with proof to the resolution professional in Form B, on or before the last date mentioned in the public notice issued under sub-section (1) of section 102. And the creditor shall bear the costs relating to submission of the claim, including proof, under these regulations.

Q.9. How the claim can be proved by the creditor?

Ans. A creditor may prove its claim on the basis of-

(a) records available in an information utility, or

(b) any other documentary evidence which substantiates the existence of claim.

Q.10. What is the duty of the resolution professional with reference to the claim?

Ans. The resolution professional may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim and the resolution professional shall verify each claim as soon as it is received and prepare a list of creditors under sub section (1) of section 104 within thirty days from the date of public notice.

Where the amount claimed by a creditor is not precise due to any reason, the resolution professional shall make the best estimate of the amount of the claim based on the information available with him.

Q.11. Can the resolution professional modify the claim?

Ans. Yes, the resolution professional shall modify the amounts of claims admitted, including the estimates of claims made, as soon as may be practicable, after he comes across additional information warranting such revision, till the approval of a repayment plan by the creditors.

Q.12. How shall the claim in foreign currency be valued?

Ans: The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the resolution process commencement date. For the purposes, "official exchange rate" means the reference rate published by the Reserve Bank of India or derived from such reference rate.

Q.13. Whether debt due to Creditors can be transferred or assigned to any parties during the resolution process period?

Ans. Yes, transfer of debt due to creditors can be done during insolvency resolution period. Where a creditor assigns or transfers the debt to any person during the resolution process period, both parties shall provide the resolution professional the terms of such assignment or transfer, and the identity and details of the assignee or transferee and the resolution professional shall notify each creditor and the Adjudicating Authority of any resultant change in the list of creditors within two days of such change.

Q.14. What is the duty of the resolution professional with regard to list of creditors?

Ans. The resolution professional shall prepare the list of creditors which shall contain the names of creditors, amount claimed, amount admitted and security interest, if any, in respect of such claims and the resolution professional shall -

- make the list of creditors available for inspection by the persons who submitted claims with proof;
- serve a copy of the list of creditors to the guarantor;
- make available the list of creditors on the website, if any, of the guarantor;
- present the list of creditors at the meeting of creditors; and
- file a certified copy of the list of creditors with the Adjudicating Authority along with the repayment plan.

Q.15. What is the information to be provided in the statement of affairs?

Ans. The resolution professional shall prepare the statement of affairs of the guarantor which shall include :

(a) assets and liabilities for the preceding three financial years and the current financial year;

(b) details of the excluded assets and excluded debts;

(c) income statement for the preceding three financial years and the current financial year;

(d) income-tax returns filed by the guarantor, if any, for the preceding three financial years;

(e) creditor wise amount due, broken up into secured and unsecured debts for the preceding three financial years;

(f) details of debt owed by guarantor to his associates for the preceding three financial years;

(g) guarantees given in relation to any of his debts, and whether any of the guarantors is an associate of the guarantor; and

(h) details of the financial statements for the business owned by the guarantor, or of the firm in which he is a partner, as the case may be, for the preceding three financial years, if applicable.

Q.16. Who is entitled to attend the meeting?

Ans. A creditor, who is included in the list of creditors, shall be entitled to participate in the meetings of creditors.

Q.17. How the voting share is calculated?

Ans. The voting share of each creditor shall be in proportion to the debt owed to such creditor.

Q.18. When the meeting shall be convened ?

Ans. The resolution professional shall convene the first meeting of creditors in accordance with sub-section (1) of section 107 and shall convene the meeting, by giving such notice to the other participants as decided by the creditors, which shall not less than forty-eight hours.

The resolution professional shall convene a meeting of creditors on a request by creditors having thirty-three percent of voting share of creditors.

Q.19. What is the percentage of voting share will be required for approval?

Ans. Unless otherwise provided in the Code, any decision of the creditors shall require approval of more than fifty percent of voting share of the creditors who voted.

Q.20. What is the content of the notice convening meeting?

Ans. The notice convening the meeting of creditors shall inform the participants of the venue, the time, the date of the meeting and of the options available to -

(i) participants to attend the meeting either in person, through video conferencing, or through a proxy; and

(ii) creditors to cast vote in person, through a proxy, by electronic means, or by electronic proxy, as the case may be.

The notice of the meeting shall carry the agenda, which shall include the following-

(a) list of matters to be discussed;

(b) list of issues to be voted upon;

(c) relevant documents in relation to the matters to be discussed and issues to be voted upon.

If an option to attend the meeting through video conferencing is made available to the participants, the notice of the meeting shall -

(a) state the process and the manner for attending the meeting;

(b) provide the login ID and the details of a facility for generating password for access to the meeting in a secure manner; and

(c) provide contact details of the person who shall address the queries connected with the video conferencing.

If an option to cast vote by electronic means is made available to the creditors, the notice of the meeting shall -

(a) state the process and the manner of casting vote by such means;

(b) provide the login ID and the details of a facility for generating password for access to the electronic means for casting vote in a secure manner; and

(c) provide contact details of the person who shall address the queries connected with the electronic means.

Q.21. What is the quorum for the meeting?

Ans. A meeting of creditors shall be quorate if creditors representing at least thirty-three percent of voting share are present in person, by proxy or through video conferencing.

Provided that the creditors in a meeting may modify the percentage of voting share required for quorum in respect of any future meetings of the creditors.

Q.22. Who shall preside over the meeting of creditors?

Ans. The resolution professional shall preside over the meeting of creditors.

Q.23. How the meeting of creditors is to be conducted?

Ans: At the commencement of a meeting, the resolution professional shall take a roll call, when every participant, including those attending by proxy or through video conferencing, shall state, for the record, the following -

(a) his name;

(b) the capacity in which he is attending;

(c) the creditor he is representing, if applicable; and

(d) that he has received the agenda and all the relevant material for the meeting.

After the roll call, the resolution professional shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete.

The resolution professional shall ensure that the required quorum is present throughout the meeting.

From the commencement of the meeting till its conclusion, no person, other than the participants and any other person whose presence is required by the resolution professional, shall be allowed access to the meeting, without the permission of the resolution professional.

Q.24. What are the duties of the resolution professional with regard to voting by creditors?

Ans. (1) The resolution professional shall take a vote of the creditors present in the meeting on any item listed for voting after discussion on the same.

(2) At the conclusion of the meeting, the resolution professional shall prepare minutes of the meeting, including the names of creditors, who voted for, against or abstained from voting on the items put to vote in the meeting.

(3) The resolution professional shall-

(a) circulate the minutes of the meeting by electronic means to all participants of the meeting within forty-eight hours of the conclusion of the meeting, and

(b) seek a vote on the items listed for voting in the meeting from the creditors who were not present in the meeting or did not vote at the meeting, by electronic means, where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes as per clause (a).

(4) At the end of the voting period, the resolution professional shall record the decision arrived at on the items along with the names of creditors who voted for, against or abstained from voting on the items, after considering the voting at the meeting and through the electronic means.

(5) The resolution professional shall circulate a copy of the record made under sub-regulation (4) to all participants within twenty-four hours of the conclusion of the voting.

Q.25. Whether voting can be done by a proxy?

Ans. Yes, a creditor, who is entitled to vote at a meeting of creditors, shall be entitled to appoint an individual, who shall not be an associate of the guarantor, as a proxy to attend and vote on its behalf. For this purpose, a creditor shall deliver Form C, duly completed to the resolution professional at least twenty-four hours prior to the meeting of creditors. A proxy may vote by electronic means on behalf of the creditor.

Q.26. What are the contents of repayment plan ?

Ans: (1) As per Regulation 17, the repayment plan shall provide the following -

(a) the term of the repayment plan and its implementation schedule, including the amounts to be repaid and dates of repayment to creditors;

(b) the source of funds that will be used to pay resolution process costs and that such payment shall be made in priority over any creditor;

(c) a minimum budget for the duration of the repayment plan, to cover the reasonable expenses of the guarantor and members of his immediate family to the extent they are dependent on him, provided that at least ten percent of the realisable income of the guarantor shall be utilised for repayment of debts;

(d) financing required for implementation of the repayment plan;

(e) if the guarantor has any business, the manner in which it is proposed to be conducted during the course of the repayment plan, and the role of the resolution professional;

(f) the manner in which funds held for the purposes of the repayment plan, invested or otherwise dealt with, pending repayment to creditors;

(g) the functions which are to be undertaken by the resolution professional, including supervision and implementation of the repayment plan;

(h) variation of onerous terms of a contract or transaction involving the guarantor;

(i) the details of excluded assets and excluded debts of the guarantor; and

(j) terms and conditions for the discharge of the guarantor.

(2) The repayment plan may provide for the following-

(a) transfer or sale of all or part of the assets of the guarantor along with the mode and manner of such sale;

(b) administration or disposal of any funds of the guarantor;

(c) satisfaction or modification of any security interest;

(d) reduction in the amount payable to creditors;

(e) curing or waiving of any breach of a debt due from the guarantor;

(f) modification in the terms of repayment of any debt due from the guarantor;

(g) part of the income of the guarantor to be used for the repayment of the debt, and the manner of calculating the income of the guarantor;

(h) the manner in which funds held for the purpose of repayment to creditors, and not so repaid at the end of the repayment plan, are to be dealt with; and

(i) such other matters as may be required by the creditors.

Q.27. Who is not entitled to purchase of assets?

Ans: (1) The following persons shall not purchase or acquire any interest in the property of guarantor, directly or indirectly, without permission of the Adjudicating Authority –

(a) the resolution professional or any partner or director of the insolvency professional entity of which the resolution professional is a partner or director;

(b) any professional appointed by the resolution professional for the resolution process;

(c) any creditor;

(d) any company where the guarantor or a creditor is a promoter or director;

(e) any associate of the guarantor, creditor or resolution professional.

Q.28. Can the purchase of assets can be set aside ?

Ans: Yes, as per Regulation 18(2), the Adjudication Authority may set aside purchase or acquisition made contrary to the provisions of this regulation and may make such order as it may deem fit.

Q.29. Whether the repayment plan to be filed with the Adjudicating Authority?

Ans: Yes, the resolution professional shall file the repayment plan, as approved by the creditors, along with the report mentioned in sections 106 or 112, as the case may be, with the Adjudicating Authority on or before completion of one hundred and twenty days from the resolution process commencement date.

The resolution professional shall provide the copies of the documents filed with the Adjudicating Authority under to the guarantor and the creditors, within three days from the date of such filing.

Q.30. What is the duty of the resolution professional in case of breach of repayment plan by the guarantor?

Ans: (1) If in the opinion of the resolution professional, the guarantor has failed in implementation of the repayment plan, the resolution professional shall, within three days of knowledge of such failure, issue a notice to the guarantor identifying the failure and requiring him, within fifteen days of receipt of the notice, to-

(a) address such failure if it can be addressed, or

(b) provide an explanation for the failure.

(2) If the guarantor, within the period specified under sub-regulation (1), -

(a) addresses the failure in implementation of the repayment plan; or

(b) provides a satisfactory explanation for such failure,

the resolution professional shall report the failure to creditors within seven days of the date of failure addressed or explanation provided for such failure.

(3) In cases not covered under sub-regulation (2), the resolution professional may apply to the Adjudicating Authority under sub-section (2) of section 116 for directions, if he is of the opinion that the failure will affect the implementation of the repayment plan.

Q.31. How the discharge order is issued ?

Ans: The resolution professional shall, for the purpose of discharge order, file an application along with copies of the notice and report under section 117 to the Adjudicating Authority under section 119 and on consideration of the notice and the report under sub-section (1) of section 117, the Adjudicating Authority may pass the discharge order.

Q.32. What is the remedy available in case of non- cooperation by the guarantor ?

Ans: In the event of non-cooperation of the guarantor at any time during the resolution process period or during the implementation of the repayment plan, the resolution professional shall prepare a statement to this effect and file the same with the Adjudicating Authority for appropriate directions.

Chapter 12

Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

Q.1. Who is an associate ?

Ans: An associate in relation to a creditor, bankruptcy trustee or professionals appointed by the bankruptcy trustee shall have the same meaning as assigned to it in relation a debtor in 79(2) of IBC as may be applicable.

Q.2. What is bankruptcy process cost ?

Ans: As per Regulation 2(b), "bankruptcy process costs" shall mean –

(i) the fees payable to the bankruptcy trustee;

(ii) payments and expenses referred to in sub-regulation (1) of regulation 5, sub-regulation (4) of regulation 6, sub-clause (ii) of clause (c) and clause (f) of sub-regulation (3) of regulation 10, sub-regulation (3) of regulation 28, and sub-regulation (3) of regulation 31;

(iii) such other costs and expenses directly relatable to the bankruptcy process, to the extent approved or ratified by the committee;

Q.3. Who is a participant ?

Ans: As per Regulation 2(h), "participant" means a person entitled to attend a meeting of the committee and includes a creditor, bankrupt, bankruptcy trustee, and any other person authorised by the committee to attend such meeting.

Q.4. Who shall be appointed as a bankruptcy trustee ?

Ans: As per Regulation 3, an insolvency professional shall be eligible to be appointed as a bankruptcy trustee for a bankruptcy process, if-

(a) the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;

(b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and

(c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the bankruptcy process.

Q.5. When will a person be considered as independent of the guarantor?

Ans: As per explanation to Regulation 3, a person shall be considered independent of the guarantor, if he-

(a) is not an associate of the guarantor;

(b) is not a related party of the corporate debtor; and

(c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor.

A bankruptcy trustee, who has been an auditor of the guarantor at any time during the preceding three years, shall make a disclosure of remuneration received, year-wise for such audit, to the committee

Q.6. What are the procedures to be complied with by the bankruptcy trustee upon his appointment ?

Ans: An insolvency professional, other than who has filed an application under section 122 or 123 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the Adjudicating Authority before his appointment as bankruptcy trustee in a bankruptcy process.

Q.7. What is the fee payable to the bankruptcy trustee ?

Ans: As per Regulation 4(1), the bankruptcy trustee shall be entitled to such fee and the fee shall be paid in such manner as decided by the committee.

In all cases other than those covered under sub-regulation (1), the bankruptcy trustee shall be entitled to a fee as a percentage of the amount realised from the estate of the bankrupt and of the amount distributed from such realisation, in accordance with Schedule I.

Q.8. Whether a bankruptcy trustee can appoint professionals to assist him ?

Ans. Yes, a bankruptcy trustee may appoint accountants, registered valuers, advocates or other professionals, as may be necessary, to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the bankruptcy process cost.

Q.9. Who cannot be appointed as professionals to assist the bankruptcy trustee?

Ans. As per proviso to Regulation 5(1), the following persons shall not be appointed under this regulation, namely-

(a) a relative of the bankruptcy trustee;

(b) a partner or director of the insolvency professional entity of which the bankruptcy trustee is a partner or director;

(c) an insolvency professional who has acted or is acting as an interim resolution professional, a resolution professional or a liquidator in respect of the corporate debtor;

(d) an associate of the bankrupt;

(e) a related party of the corporate debtor.

Q.10. What are the disclosures that the bankruptcy trustee need to obtain from the professionals before appointing them ?

Ans: Before appointing a professional under Regulation 5(1), the bankruptcy trustee shall obtain a disclosure of details of the existence of any pecuniary or personal relationship with any of the

creditors, the bankruptcy trustee, the corporate debtor or the bankrupt, from the professional.

Q.11. What are the obligations of the bankruptcy trustee with regard to maintenance of registers and books?

Ans: As per Regulation 6, the bankruptcy trustee's obligations are :

(1) Where the books of account of the bankrupt are incomplete on the bankruptcy commencement date, the bankruptcy trustee shall get them completed and brought up-to-date within sixty days of the bankruptcy commencement date.

(2) The bankruptcy trustee shall maintain cash book, ledgers, registers and such other books, as may be required for the administration of the estate of the bankrupt.

(3) Where the bankruptcy trustee is authorised to carry on the business of the bankrupt, he shall keep separate books of account in respect of such business and such books shall, as far as possible, be in conformity with the books already kept by the bankrupt in the course of its business.

(4) The bankruptcy trustee shall keep receipts for all payments made or expenses incurred by him in relation to the bankruptcy process.

Q.12. When the preliminary report is to be submitted ?

Ans. The bankruptcy trustee shall submit a preliminary report to the Adjudicating Authority and the committee within ninety days of the bankruptcy commencement date and the bankruptcy trustee shall send a copy of the preliminary report to the bankrupt at the time of submission of the report.

Q.13. What are the details to be included in the preliminary report ?

Ans. As per Regulation 8(3), the preliminary report shall contain the following details-

(a) A list of the assets and liabilities of the bankrupt as on the bankruptcy commencement date based on the books of the bankrupt:

Provided that if the bankruptcy trustee has reasons to believe, to be recorded in writing, that the books of the bankrupt are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him.

(b) the proposed plan of action in relation to administration of the estate, including the timeline in which it is proposed to be carried out and the estimated costs;

(c) any further inquiry to be made in respect of the assets, business or affairs of the bankrupt;

(d) details of the assets which are intended to be realised, including the following-

(i) value of the assets, valued in accordance with regulation 33;

(ii) intended manner of realisation of the assets and reasons thereof;

(iii) expected amount of realisation;

(iv) any other information that may be relevant for the realisation of the assets.

(e) details of the excluded assets and other assets under sub-section (2) of section 155.

Q.14. Whether every one can have an access to the preliminary report ?.

Ans. No, the preliminary report shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it subject to such terms and conditions, as it may consider appropriate.

Q.15. When can a bankruptcy trustee apply for early completion of administration/discharge order ?

Ans. As per Regulation 9, at the time of the preparation of the preliminary report or any time thereafter, if it appears to the bankruptcy trustee that –

(a) the realisable assets of the bankrupt are insufficient to cover the costs of bankruptcy process; and

(b) the affairs of the bankrupt do not require further investigation,

he may apply to the Adjudicating Authority for an early discharge order.

Q.16. When the progress report to be submitted ?

Ans. As per Regulation 10(1), the bankruptcy trustee shall submit progress reports to the Adjudicating Authority and to the committee within fifteen days after the end of every quarter:

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

Q.17. Whether the bankrupt is entitled to a copy of the progress report?

Ans. Yes. As per Regulation 10(2), the bankruptcy trustee shall send a copy of the progress report to the bankrupt at the time of submission of the report to the Adjudicating Authority under Regulation 10(1).

Q.18. What are the details to be included in the progress report ?

Ans. As per Regulation 10(3), the progress report shall include-

(a) appointment, tenure of appointment and cessation of appointment of professionals;

(b) a statement indicating the progress in the bankruptcy process containing-

(i) distribution of dividend and interim dividend;

(ii) any material change in the expected realisation for any asset and basis for such change;

(iii) any material change in the value of assets or liabilities of the bankrupt and basis for such change;

(iv) any material change on estimated cost of bankruptcy process and basis for such change;

(v) distribution of unsold property made to the creditors;

(vi) details of any property that remains to be realised;

(vii) list of creditors; and

(viii) any other relevant information.

(c) an asset sale report with the following details of the assets realised–

(i) realised value;

(ii) cost of realisation;

(iii) manner and mode of realisation, including details as per Schedule II;

(iv) reasons for any reduction in the realisable value compared to the value mentioned in the preliminary report; and

(v) details of the persons in favour of whom the property has been realised.

(d) details of fee and remuneration due to and received by the bankruptcy trustee along with a description of the activities carried out by him;

(e) details of the fee and remuneration paid to professionals appointed by the bankruptcy trustee along with a description of activities carried out by them;

(f) other expenses incurred by the bankruptcy trustee in relation to the bankruptcy process;

(g) status of any material litigation by or against the bankrupt;

(h) filing of and developments in relation to disclaimer of onerous properties or leasehold interests under sections 160 and 162, or transactions under sections 164, 165 and 167.

(i) accounts maintained by the bankruptcy trustee showing the receipts and payments made during the period of the report, as well as cumulative receipts and payments made since the bankruptcy commencement date; and

(j) any other relevant aspect of the bankruptcy process.

Q.19. When shall the audited accounts of the receipts and payments of the bankrupt to be submitted ?

Ans. The progress report for the fourth quarter of the financial year shall enclose audited accounts of the receipts and payments of the bankrupt for the financial year.

Q.20. What are the details to be included in the final report ?

Ans. As per Regulation 11, the final report shall contain an account of the completion of the administration and distribution of the estate of the bankrupt, including -

(a) manner of realisation of the assets of the bankrupt;

(b) manner of distribution of the dividends amongst the creditors;

(c) details regarding the discharge of the bankrupt;

(d) unclaimed dividend, if any;

(e) surplus dividend, if any; and

(f) if the bankruptcy process cost exceeds the estimated cost provided in the preliminary report, along with reasons for the same.

The bankruptcy trustee shall file the final report with the Adjudicating Authority along with the application under sub-section (1) of section 138

Q.21. Who are the persons required to extend cooperation to the bankruptcy trustee ?

Ans. As per Regulation 12, the following persons shall extend all assistance and cooperation to the bankruptcy trustee to complete the bankruptcy process-

(a) the bankrupt;

(b) creditors of the bankrupt;

(c) employees and workmen of the bankrupt;

(d) partners of the bankrupt;

(e) auditors of the bankrupt;

(f) professionals appointed by the bankruptcy trustee under these regulations;

(g) the resolution professional or the previous bankruptcy trustee of the bankrupt;

(h) the interim resolution professional, the resolution professional and the liquidator in respect of the corporate debtor;

(i) any person who has possession of any of the properties of the bankrupt; and

(j) any other person connected or relevant to the bankruptcy process.

The bankruptcy trustee shall record and maintain the particulars of any consultation he had with the above persons. Where the bankruptcy trustee after making reasonable efforts fails to obtain the information or cooperation from such persons, he may make an application to the Adjudicating Authority for appropriate directions as may be necessary for the conduct of the bankruptcy process

Q.22. What is the provision with regard to preservation of records?

Ans. As per Regulation 13, the bankruptcy trustee shall preserve a physical or electronic copy of the registers, books, reports, minutes of meetings and other records relating to bankruptcy process, including administration of estate of the bankrupt as per the record retention schedule as may be communicated by the Board in consultation with insolvency professional agencies.

Q.23. Whether a future claim can be claimed?

Ans. Yes, as per Regulation 14, a person who is entitled to distribution in the same manner as any other creditor, may submit a claim, which is not due and payable on the bankruptcy commencement date, to the bankruptcy trustee. Subject to any contract to the contrary, the claimant shall be entitled to the principal and the interest that has accrued till the bankruptcy commencement date.

Q.24. Upto which period, the periodic payment can be claimed?

Ans. In case of rent, interest and such other payments of a periodic nature, a person can claim only for the amounts due and unpaid up to the bankruptcy commencement date.

Q.25. What are the obligations of bankruptcy trustee in respect of Committee of creditors?

Ans. (1) The bankruptcy trustee shall prepare a list of creditors, within the timeline mentioned in section 132, containing in respect of each creditor, –(a) the name; (b) the amount of claim made; (c) the amount of claim admitted; (d) security interest in respect of the claims, if any; and (e) reasons for rejection or admission of claim

(2) The bankruptcy trustee shall report the establishment of the committee of creditors to the Adjudicating Authority within three days of meeting of creditors.

(3) The bankruptcy trustee shall modify the list of creditors and the composition of the committee, if required, based on the proof received by him.

(4) The list of creditors and any modification thereof shall be filed with the Adjudicating Authority within fifteen days from the last date for receipt of proofs of debt, under intimation to other creditors.

(5) Any modification to the list of creditors shall not affect the validity of any decision taken prior to such modification.

Q.26. When the meeting of the committee of creditor to be convened ?

Ans. As per Regulation 21(1), a bankruptcy trustee may convene a meeting of committee of creditors as and when he considers necessary and shall convene a meeting on a request by creditors having not less than thirty three percent of voting share.

Q.27. Who shall preside over the committee of creditors meeting?

Ans. The bankruptcy trustee shall preside over the meetings of the committee.

Q.28. Whether voting can be done by a proxy?

Ans. Yes, a creditor, who is entitled to vote, shall be entitled to appoint an individual as a proxy, who shall not be an associate of the bankrupt, to attend and vote on behalf and the proxy may vote by electronic means.

Q.29. What is the mode of sale of assets?

Ans. As per Regulation 27(1) , a bankruptcy trustee shall ordinarily sell the assets of the bankrupt through an action as specified in Part A of schedule II.

Q.30. Whether a bankruptcy trustee can sell the assets by private sale?

Ans. Yes, as per Regulation 27(2), the bankruptcy trustee may sell the assets by private sale, in the manner specified in Part B of schedule II, if

(a) The asset is perishable in nature

(b) The value of the asset is likely to deteriorate significantly if the sale is delayed; or

(c) The selling price of the asset is higher than the reserve price of a failed auction.

Q.31. Who cannot purchase or acquire any interest in the property of bankrupt without the permission of the adjudicating authority?

Ans. As per section 27(3), the following persons shall not purchase or acquire any interest in the property of bankrupt , directly or indirectly, without permission of the Adjudicating Authority:-

(a) The bankruptcy trustee or any partner or director of the insolvency professional entity of which the bankruptcy trustee is a partner or director.

(b) Any professional appointed by the bankruptcy trustee for the bankruptcy process

(c) Any creditor or associate of the bankrupt; and

(d) Any company where the bankrupt or a creditor is a promoter or director.

Q.32. When the bankruptcy trustee shall not proceed with the sale?

Ans: The bankruptcy trustee shall not proceed with a sale, if he has reason to believe that there is any collusion amongst any one or more of the following persons:-

(a) The buyers

(b) The bankrupt

(c) The creditos

(d) Associate of the bankrupt or creditors

(e) The corporate debtor or

(f) Related party of the corporate debtor

and shall submit a report to the Adjudicating Authority for appropriate orders.

Q.33. Can a bankruptcy trustee recover the property of the bankrupt?

Ans. Yes. As per Regulation 28, after notice given by the bankrupt, he can not dispose of any property and if done, the bankruptcy trustee can trace and recover such property based on the information given by the bankrupt for the purpose of bankruptcy estate.

Q.34. Can a bankruptcy trustee disclaim onerous property?

Ans. Yes. As per Regulation 29, the bankruptcy trustee shall notify the bankrupt and the persons interested in the onerous property in respect of the proposed disclaimer, at least seven days prior to serving the notice of disclaimer under Section 160(1) of the Code and file such notice with the Adjudicating Authority within three days of giving such notice to the persons mentioned therein.

Q.35. When the valuer need to be appointed ?

Ans. As per Regulation 30, the bankruptcy trustee shall appoint a registered valuer to value the assets, which may or may not form part of the bankrupt's estate, when he is of the opinion that it is necessary or when a resolution to that effect has been passed by the committee. The bankruptcy trustee may appoint an additional valuer, for valuing the assets of the bankrupt if required in the circumstances of the case. In the event an additional registered

valuer is appointed, the average of the estimates received from both valuers will be considered to be the value of the assets.

Q.36. How the security interest can be realized?

Ans: (1) A secured creditor, who seeks to realise the security, shall intimate the bankruptcy trustee of the price at which he propose to realise the secured asset.

(2) The bankruptcy trustee shall attempt to identify a buyer willing to purchase the security at a price higher than the price intimated by the secured creditor, and the asset shall then be sold to such buyer, if any, at the higher price by the secured creditor.

(3) Where the secured asset is realised, the cost of identification of the buyer shall form part of bankruptcy process cost.

(4) If the bankruptcy trustee does not identify a buyer or the person so identified does not buy the secured asset, the secured creditor may realise the secured asset in the manner it deems fit, but at least at the price intimated and shall bear the cost of identification of the buyer.

Q.37. What happens to the excess realization of the security interest?

Ans. Where a secured creditor realises his security and the amount realised is in excess of the debts due to the secured creditor, such creditor shall tender such excess to the bankruptcy trustee.

Q.38. In what name the bank account shall be opened?

Ans. The bankruptcy trustee shall open a bank account in the name of the bankrupt followed by the words 'in bankruptcy process', in a scheduled bank, for the receipt of all moneys due to the bankrupt.

Q.39. Can the bankruptcy trustee deduct any amount from the realization ? .

Ans. No. As per Regulation 32(2), the bankruptcy trustee shall deposit in the bank account opened under Regulation 32(1) all moneys, including cheques and demand drafts received by him as the bankruptcy trustee of the bankrupt, and the realisations of each day

shall be deposited into the bank account, without any deduction, not later than the next working day.

Q.40. What is the cash balance that can be maintained by the bankruptcy trustee?

Ans. The bankruptcy trustee may maintain cash of ten thousand rupees or such higher amount, as may be permitted by the Adjudicating Authority to meet bankruptcy process costs.

Q.41. How the payment has to be made by bankruptcy trustee ?

Ans. All payments out of the account by the bankruptcy trustee above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

Q.42. How the distribution of dividend to claimant of deceased creditor is made?

Ans. As per Regulation 33, in the event an application is made by a claimant or heir of a deceased creditor for receiving dividend payable to such deceased creditor, the bankruptcy trustee shall satisfy himself as to the claimant's right and title to receive the dividend, and may call for evidence regarding such right or title. On being satisfied of the veracity of the claim, the bankruptcy trustee may apply to the Adjudicating Authority for sanctioning the payment of such dividend or return to the claimant.

Q.43. Can the bankruptcy trustee distribute the dividend without filing the preliminary report?

Ans. No. The bankruptcy trustee shall not commence distribution of dividend unless a preliminary report is filed with the Adjudicating Authority. The bankruptcy process cost shall be deducted before any dividend is distributed under this regulation.

Q.44. What happens to the unclaimed proceeds of bankruptcy or undistributed assets?

Ans. After filing the final report , the bankruptcy trustee shall, within three days from the date of such filing, apply to the Adjudicating Authority for an order to credit to the Insolvency and Bankruptcy Fund formed under the Code, any unclaimed dividends of bankruptcy process or

undistributed asset or any other balance amount payable to the creditors, left with him.

Q.45. When the interest is payable by the bankruptcy trustee ?

Ans. The bankruptcy trustee shall be liable to pay interest at the rate of twelve percent per annum on the amount retained by him , if he fails to-

(a) apply to the Adjudicating Authority within three days from the date of filing;

(b) credit to the Fund within three days from the date of order of the Adjudicating Authority.

Q.46. Whether debt counselling can be provided to bankrupt?

Ans. Yes. As per Regulation 37, Debt counselling in relation to bankruptcy process may be provided to a bankrupt by such person as may be recognized by the Board or the Central Government, as the case may be

Chapter 13

Regulation of Insolvency Professionals, Agencies and Information Utilities

Q.1. When was the Insolvency and Bankruptcy Board of India established?

Ans. 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.2. Where is the Head Office of Insolvency and Bankruptcy Board of India situated?

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

Q.3. What is the composition of the Insolvency and Bankruptcy Board of India?

Ans. As per section 189 of the Insolvency and Bankruptcy Code, 2016, The Insolvency and Bankruptcy Board of India 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, not below the rank of joint secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, ex officio

(iii) 1 member to be nominated by the Reserve Bank of India, ex officio

(iv) Five other members to be nominated by the Central Government, of whom at least three shall be the whole-time members

Q.4. What is the term of office of Chairperson of Insolvency and Bankruptcy Board of India?

Ans. The term of office of the Chairperson shall be 5 years or till the chairperson attains the age of 65 years, whichever is earlier.

Q.5. What are the functions of the Insolvency and Bankruptcy Board of India?

Ans. 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, to make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor, carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required etc;.

Judicial pronouncements with regard to Section 196 - Powers and functions of Board

1. **IBBI Vs. Wig Associates Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 415 of 2018] NCLAT order dt. 01.08.2018**

   IBBI can monitor the performance of the IPs and in appropriate cases, may pass any direction as may be required for compliance of the provisions of the Code.

2. **K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 with other CAs] SC order dt. 05.02.2019**

   IBBI cannot under section 196, directly or indirectly regulate the manner of exercise of commercial wisdom by FCs during the voting on resolution plan.

Q.6. What are the grounds for removal of a member of Insolvency and Bankruptcy Board of India?

Ans. 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.

Provided that no member shall be removed under clause (d) unless he has been given a reasonable opportunity of being heard in the matter.

Q.7. Is there any requirement for disclosure of interest by member of the Insolvency and Bankruptcy Board of India?

Ans. 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.8. Who shall make the Model Bye-Laws of an Insolvency Professional Agency?

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

Q.9. Explain the term non-discriminatory for the purpose of clause (c) of Section 196 (2) of the Code.

Ans. As per clause (c) of Section 196 of the Code, the requirements for enrolment of person as members of insolvency professional agency which shall be non-discriminatory;

For the purposes of this clause, the term “non-discriminatory” means lack of discrimination on the ground of religion, caste, gender or place of birth and such other grounds as may be specified;

Q.10. Who has the power to condone delay in performance of acts by the Board under the Insolvency and Bankruptcy Code, 2016?

Ans. 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 by the Board under the Insolvency and Bankruptcy Code, 2016.

Q.11. Whether a person can function as Insolvency Professional Agency without valid certificate of registration?

Ans. No person shall carry on its business as insolvency professional agencies under this Code and enrol insolvency professionals as its members except under and in accordance with a certificate of registration issued in this behalf by the Board.

Q.12. Explain the principles governing registration of insolvency professional agency.

Ans. As per Section 200 of the Code, the Board shall have regard to the following principles while registering the insolvency professional agencies under this Code-

(a) to promote the professional development of and regulation of insolvency professionals;

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

(c) to promote good professional and ethical conduct amongst insolvency professionals;

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

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

Q.13. Under what circumstances the Board may cancel or suspend the registration of an Insolvency Professional Agency?

Ans. As per Section 201(5) of the Code, the Board may, by order, 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.

(d) on any other ground as may be specified by regulations

Q.14. Can an Insolvency Professional Agency appeal against the order of the Board?

Ans. 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.15. What are the functions of an Insolvency Professional Agency?

Ans. Sec 204 of the Code lays down the following functions that an Insolvency Professional Agency shall perform:

(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.

Q.16. Who can become an Insolvency Professional?

Ans. 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 after obtaining the membership of an Insolvency Professional Agency, register himself with the Board with in such time, in such manner and on payment of such fee as per Regulations.

Q.17. Who is eligible to register as an Insolvency Professional?

Ans. The Insolvency and Bankruptcy Board of India has prescribed in Regulation 5 of Insolvency And Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 following persons to be eligible for registration as an Insolvency Professional:-

- Chartered Accountant, Company Secretary, Cost Accountant and Advocate who has enrolled as a member of respective Institute/Bar Council and has ten years of experience [Regulation 5(c)(iv) of the IBBI (Insolvency Professionals) Regulations, 2016], **or**
- A Graduate who has fifteen years of experience in management, after receiving a Bachelor's degree from a university established or recognized by law [Regulation 5(c)(iii) of the IBBI (Insolvency Professionals) Regulations, 2016], **or**
- Successfully completed the National Insolvency Programme, as may be approved by the IBBI [Regulation 5(c)(i) of the IBBI (Insolvency Professionals) Regulations, 2016], **or**
- Successfully completed the Graduate Insolvency Programme, as may approved by the IBBI [Regulation 5(c)(ii) of the IBBI (Insolvency Professionals) Regulations, 2016].

And

- Has passed the Limited Insolvency Examination within twelve months before the date of his application for enrolment with the insolvency professional agency [Regulation 5(a) of the IBBI (Insolvency Professionals) Regulations, 2016].

And

- Has completed a pre-registration educational course, as may be required by the IBBI, from an IPA after his enrolment as professional member. [Regulation 5(b) of the IBBI (Insolvency Professionals) Regulations, 2016]

Q.18. Provide an overview about the functions of Insolvency Professionals.

Ans. According to section 208(1) of the Code, it shall be the function of an insolvency professional takes such actions, as may be necessary, in the following matters:

(a) A fresh start order process;

(b) Individual insolvency resolution process;

(c) Corporate insolvency resolution process;

(d) Pre- Packaged insolvency resolution process;

(d) Individual bankruptcy process;

(e) Liquidation of a corporate debtor firm.

Q.19. Enumerate the Code of conduct to which an Insolvency Professional shall abide by as per Section 208.

Ans. As per section 208(2) of the Code , an Insolvency Professional shall abide by the following code of conduct:

(a) to take reasonable care and diligence while performing his duties;

(b) to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;

(c) to allow the insolvency professional agency to inspect his records;

(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and

(e) to perform his functions in such manner and subject to such conditions as may be specified.

Q.20. Who can be an Information Utility?

Ans. As per sec 3(21) of the Code, person who is registered with the Board as an information utility under Sec 210.

As per section 209 of the Code, no person shall carry on its business as information utility under the Code without a certificate of registration issued in that behalf by the Board.

Q.21. What are the grounds on which registration of an Information Utility can be cancelled?

Ans. 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,

(d) or any other ground as may be specified by regulations.

Q.22. Can an Information Utility appeal against the order of the Board?

Ans. Yes, as per section 211 of the Code, 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.23. Does Information Utility requires to set up a governing board?

Ans. 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 under the Code.

Q.24. What are the obligations of Information Utility?

Ans. As per Section 214, for the purposes of providing core services to any person, every information utility 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.

(c) It shall accept , in specified form and manner, 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.25. What is the procedure for submission of financial information to Information Utility?

Ans. 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.26. Can a person share the financial information submitted to Information Utility?

Ans. 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.27. Can a person modify the information submitted to Information Utility?

Ans. 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 specified.

Q.28. What is the procedure to raise complaint against an Insolvency professional agency or its member or an information utility?

Ans. As per Section 217, 218 and 219 of the Code, 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 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.29. What shall be the composition of the disciplinary committee?

Ans. As per Section 220 of the Code, the members of the disciplinary committee shall consist of whole-time members of the Board only.

Q.30. What are the powers of disciplinary committee?

Ans. As per Section 220 of the Code, 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.31. Is there any provision for restitution of loss suffered on account of any activity in contravention of this Code?

Ans. Yes, as per Section 220 of the Code, 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.

Judicial pronouncements with regard to Section 220 - Appointment of disciplinary committee

1. **Alchemist Asset Reconstruction Co. Ltd. Vs. Hotel Gaudavan Pvt. Ltd. [CP/CA. No. (IB)23(PB)/2017)] NCLT, New Delhi order dt. 22.09.2017**

   If there is any complaint against the IP, then IBBI is competent to constitute a disciplinary committee and have the same investigated from an investigating authority as per the provision of section 220 of the Code. If, after investigation IBBI finds that a criminal case has been made out against the IP, then IBBI has to file a complaint in respect of the offences committed by him.

2. **Shrikrishna Rail Engineers Pvt. Ltd. Vs. Madhucon Projects Ltd. [CP(IB) SR No. 4322/9/HDB/2017] NCLT, Hyderabad order dt. 22.11.2017**

   Since the remuneration quoted by the IRP being quite exorbitant, the matter was referred to IBBI for taking appropriate action/remedial measure against the proposed IRP, including disciplinary action, if any, as deemed fit.

3. **Bhavna Sanjay Ruia Vs. IBBI [CA (AT) (Ins.) No. 341 of 2019] NCLAT order dt. 08.04.2019**

   An appeal can only be entertained against an order passed by the AA. However, no appeal is maintainable against the order passed by the IBBI including its disciplinary committee.

4. **IBBI Vs. Rishi Prakash Vats & Ors. [CA (AT) (Ins.) No. 324 of 2019] NCLAT order dt. 11.07.2019**

   Once a disciplinary proceeding is initiated by IBBI on the basis of evidence on record, IBBI has to close the proceeding or pass appropriate orders in accordance with law. The AA cannot quash the proceeding, even if proceeding is initiated at the instance and recommendation made by the AA.

5. **Central Bank of India Vs. KSM Spinning Mills Limited [IA Nos. 249/2020 and there IAs in CP (IB) No. 250/Chd/Pb/2018] NCLT, Chandigarh order dt. 27.07.2021**

   When allegations of mala fides or corruption or professional misconduct or any other sort are alleged against a RP, the same are to be adjudicated by the IBBI and basing on the orders passed by the IBBI, appropriate action would be taken by the AA.

6. **Bank of Baroda Vs. Varia Engineering work Ltd [IA/4679(AHM)2021 in CP(IB)/149 (AHM)2017] NCLT, Ahmedabad order dt. 19.07.2021**

   IBBI is the only authority to look into and inquire into any allegation against the liquidator when he acts during the discharge of his duty as the liquidator.

Q.32. How can the Fund of the Insolvency and Bankruptcy Board be utilized?

Ans. As per section 222, 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.33. Who shall audit the accounts of the Board?

Ans. As per section 223, the accounts of the Board shall be audited by the Comptroller and Auditor-General of India.

Chapter 14

IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016

Q.1. What shall the Bye laws of an Insolvency Professional Agency provide?

Ans. As per Regulation 3, a company shall submit to the Board its bye-laws along with the application for its registration as an insolvency professional agency.

The bye-laws shall provide for all matters specified in the model bye-laws and at all times be consistent with the model bye-laws

Q.2. Whether an Insolvency Professional Agency shall publish the bye laws on its website?

Ans. Yes, as per Regulation 3, the insolvency professional agency shall publish its bye-laws, the composition of all committees formed, and all policies created under the bye-laws on its website.

Q.3. Whether an Insolvency Professional Agency can amend its bye laws?

Ans. Yes, as per Regulation 4, the Governing Board may amend the bye-laws by a resolution passed by votes in favor being not less than three times the number of the votes, if any, cast against the resolution, by the directors

Q.4. What shall be the composition of the governing board of an Insolvency Professional Agency?

Ans. As per Regulation 5, the Governing Board shall have minimum of 7 directors consisting of-

(a) Managing director;

(b) Independent directors;

(c) Shareholder directors.

More than half of the directors must be resident in India at the time of their appointment, and at all times during their tenure as directors.

The number of independent directors shall not be less than the number of shareholder directors.

A shareholder director shall be an individual, who satisfies the eligibility norms, including experience and qualification, as decided by the Governing Board

Q.5. Whether an employee of an insolvency professional agency may be appointed as a director on its Governing Board?

Ans. Yes, as per Regulation 5, any employee of an insolvency professional agency may be appointed as a director on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

Q.6. How an Independent Director of an Insolvency professional agency be nominated?

Ans. As per Regulation 5, an independent director shall be nominated by the Board from amongst the list of names proposed by the insolvency professional agency.

Q.7. What shall be term of an Independent Director of an Insolvency professional agency?

Ans. As per Regulation 5, an individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy-five years, whichever is earlier.

Q.8. Whether there is cooling off period for an independent director to become a shareholder director in the same or another insolvency professional agency?

Ans. As per Regulation 5, a cooling off period of three years shall be applicable for an independent director to become a shareholder director in the same or another insolvency professional agency.

Q.9. How many directors can be insolvency professionals on the Governing Board of insolvency professional agency?

Ans. As per regulation 5, not more than one fourth of the directors shall be insolvency professionals.

Q.10. Who shall be chairperson of the Governing Board of an Insolvency Professional Agency?

Ans. The Chairperson of the Governing Board of an Insolvency Professional Agency shall be an independent director.

Q.11. How a managing director can be appointed?

Ans. As per Regulation 5A, an individual shall be selected as managing director through an open advertisement in all editions of at least one national daily newspaper.

Q.12. What should be the age of a managing director at the time of appointment?

Ans. As per Regulation 5A, an individual at the time joining as managing director shall not be above the age of fifty-five years, which may be relaxed by the Governing Board up to sixty years, after recording reasons therefor.

Q.13. What shall be the maximum age upto which a managing director shall serve?

Ans. As per Regulation 5A, an individual shall not serve as managing director after he attains the age of sixty-five years.

Q.14. What shall be the tenure of a managing director?

Ans. As per Regulation 5A, the appointment of an individual as the managing director shall be for a tenure of not less than three years but not exceeding five years.

Q.15. For how many terms a managing director can serve?

Ans. As per Regulation 5A, an individual may serve as managing director for a maximum of two terms.

Q.16. What shall be the process for appointment of managing director for second term?

Ans. As per Regulation 5A, the process of appointment for the second term of an individual as managing director shall be conducted afresh.

Q.17. Who shall approve the appointment and remuneration payable to the managing director?

Ans. As per Regulation 5A, the appointment and remuneration payable to the managing director shall be approved by a compensation committee constituted by the Governing Board.

Q.18. Who shall approve the appointment, renewal of appointment and termination of service of the managing director?

Ans. As per Regulation 5A, the appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the Board.

Q.19. Whether the managing director shall be liable for removal or termination services?

Ans. As per Regulation 5A, the managing director shall be liable for removal or termination of services by the Governing Board, with the prior approval of the Board, for failure to give effect to the directions, guidelines and other orders issued by the Governing Board or the Board, or the rules, the articles of association or bye-laws of the insolvency professional agency or on the ground of misconduct or incapacity to continue in office.

Q.20. Name the committees of the Governing Board of which a managing director shall be a member?

Ans. As per Regulation 5A, the managing director shall be an ex-officio member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and Disciplinary Committee.

Q.21. What is the mechanism of self-evaluation by the Governing Board?

Ans. The Governing Board shall evaluate its performance in a financial year within three months of the closure of the year, in the manner decided by it. The insolvency professional agency shall publish a report on self-evaluation on its website.

Q.22. Whether an Insolvency Professional agency is required to form Advisory Committee?

Ans. As per Clause 7 of Model Bye Laws of an Insolvency Professional Agency under Regulation 3, the Governing Board of an insolvency professional agency may form an advisory committee of professional members of the agency.

Q.23. What is the scope of functions of Advisory Committee?

Ans. As per Clause 7(1) of Model Bye Laws of an Insolvency Professional Agency under Regulation 3, , the Advisory Committee may advise the Agency on matters pertaining to:-

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

Q.24. Which are the other Committees to be formed by Insolvency Professional Agency?

Ans. As per Clause 8 of Model Bye Laws of IPA, , the Agency may form the following committees:-

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

Q.25. What is the procedure for rejection of application by Insolvency Professional Agency?

Ans. Under Clause 10 (6) of Model Bye Laws of an Insolvency Professional Agency under Regulation 3, , the Agency while rejecting an application shall communicate the reasons for such rejection within 30 days of receipt of application excluding the time given to the applicant for removing the deficiencies or presenting additional documents or clarifications by the Agency.

Q.26. What is the remedy for the applicant aggrieved by the decision of Insolvency Professional Agency?

Ans. Under Clause 10 (8) of Model Bye Laws of IPA, , the applicant aggrieved of a decision of the Agency rejecting his application may

prefer an appeal to the Membership Committee of the Agency within 30 days from the receipt of such decision.

Q.27. Who is eligible for Authorisation for Assignment ?

Ans. A professional member is eligible to obtain an authorization for assignment if he is

(a) is registered with the Board as an insolvency professional,

(b) is a fit and proper person

(c) is not in employment

(d) is not debarred by any direction or order of the Agency or the Board

(e) has not attained the age of seventy years;

(f) has no disciplinary proceeding pending against him before the Agency or the Board;

(g) complies with requirements such as payment of fee, filing and disclosures to Agency and Board, continuous professional education etc.

Q.28. What is the remedy available if the AFA is rejected?

Ans. If the AFA is rejected, the member can prefer appeal to the membership Committee within fifteen days of date of receipt of the rejection order.

Q.29. Enumerate the duties of an Insolvency Professional as per Model Bye Laws.

Ans. Under Clause 13 (1) of Model Bye Laws of IPA, , in the performance of his functions, a professional member shall-

(i) act in good faith in discharge of his duties as an insolvency professional;

(ii) endeavour to maximize the value of assets of the debtor;

(iii) discharge his functions with utmost integrity and objectivity;

(iv) be independent and impartial;

(v) discharge his functions with the highest standards of professional competence and professional ethics;

(vi) continuously upgrade his professional expertise;

(vii) perform duties as quickly and efficiently as reasonable, subject to the timelines under the Code;

(viii) comply with applicable laws in the performance of his functions; and

(ix) maintain confidentiality of information obtained in the course of his professional activities unless required to disclose such information by law.

Q.30. Whether an Insolvency Professional Agency is required to have a Code of Conduct?

Ans. Yes, as per Clause 14 of Model Bye Laws of IPA, , the Insolvency Professional Agency shall have a Code of Conduct that shall be consistent with, and that shall provide for all matters in the Code of Conduct as specified in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

Q.31. What are the policies an Insolvency Professional Agency is required to have?

Ans. An Insolvency Professional Agency have the following Policies:

1. Monitoring Policy
2. Grievance Redressal Policy
3. Disciplinary Policy

Q.32. Why an Insolvency Professional Agency is required to have a Monitoring Policy?

Ans. As per Clause 15 of Model Bye Laws of IPA, , the Insolvency Professional Agency shall have a Monitoring Policy to monitor the professional activities and conduct of professional members for their adherence to the provisions of the Code, rules, regulations and guidelines issued thereunder, these bye-laws, the Code of Conduct and directions given by the Governing Board.

Q.33. What shall be the frequency of submission of information including records of the ongoing and concluded assignments by an Insolvency Professional?

Ans. As per Clause 16 of Model Bye Laws of IPA, a professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional at least twice a year in the manner and format specified by the Agency.

Q.34. What shall be included in the Monitoring Policy?

Ans. As per Clause 18 of Model Bye Laws of IPA, , the Monitoring Policy shall provide for the following -

a. the frequency of monitoring;

b. the manner and format of submission or collection of information and records of the professional members, including by way of inspection;

c. the obligations of professional members to comply with the Monitoring Policy;

d. the use, analysis and storage of information and records;

e. evaluation of performance of members; and

f. any other matters that may be specified by the Governing Board.

Q.35. What shall the Monitoring Policy have regard for?

Ans. As per Clause 19 of Model Bye Laws of IPA, , the Monitoring Policy shall –

(i) have due regard for the privacy of members,

(ii) provide for confidentiality of information received, except when disclosure of information is required by the Board or by law, and

(iii) be non-discriminatory.

Q.36. Whether the Agency is required to submit the monitoring report?

Ans. As per Clause 20 of Model Bye Laws of IPA, , the agency shall submit a report to the Board in the manner specified by the Board with information collected during monitoring, including information pertaining to -

(a) the details of the appointments made under the Code,

(b) the transactions conducted with stakeholders during the period of his appointment;

(c) the transactions conducted with third parties during the period of his appointment; and

(d) the outcome of each appointment.

Q.37. Why an Insolvency Professional Agency is required to have a Grievance Redressal Policy?

Ans. As per Clause 21 of Model Bye Laws of IPA, , the Insolvency Professional Agency shall have a Grievance Redressal Policy providing for the procedure for receiving, processing, redressing and disclosing grievances against the Agency or any professional member of the Agency by-

(a) any professional member of the Agency;

(b) any person who has engaged the services of the concerned professional members of the Agency; or

(c) any other person or class of persons as may be provided by the Governing Board.

Q.38. Whom shall the Grievance Redressal Committee refer the matter to?

Ans. As per Clause 21 (2) of Model Bye Laws of IPA , the Grievance Redressal Committee shall refer the matter to the Disciplinary Committee, wherever the grievance warrants disciplinary action.

Q.39. What shall be included in the Grievance Redressal Policy?

Ans. As per Clause 22 of Model Bye Laws of IPA, , the Grievance Redressal Policy shall provide for-

(a) the format and manner for filing grievances;

(b) maximum time and format for acknowledging receipt of a grievance;

(c) maximum time for the disposal of the grievance by way of dismissal, reference to the Disciplinary Committee or the initiation of mediation;

(d) details of the mediation mechanism

(e) provision of a report of the grievance and mediation proceedings to the parties to the grievance upon dismissal or resolution of the grievance;

(f) action to be taken in case of malicious or false complaints;

(g) maintenance of a register of grievances made and resolutions arrived at and ;

(h) periodic review of the Grievance Redressal Mechanism.

Q.40. What are the grounds for disciplinary proceedings against the Professional Member?

Ans. As per Clause 23 of Model Bye Laws of IPA, , the Agency may initiate disciplinary proceedings against Professional Members in following cases:-

- 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
- suo moto, on the basis of any information received by it.

Q.41. What happens to AFA on initiation of disciplinary proceedings.?

Ans. As per clause 23A of Model bye Laws of IPA, the authorization for assignment shall stand suspended upon initiation of disciplinary proceedings by the Agency or the Board, as the case maybe.

Q.42. What shall be included in the Disciplinary Policy?

Ans. As per Clause 24 (1) of Model Bye Laws of IPA, , the Disciplinary Policy shall provide for the following -

(a) the manner in which the Disciplinary Committee may ascertain facts;

(b) the issue of show-cause notice based on the facts;

(c) disposal of show-cause notice by a reasoned order, following principles of natural justice;

(d) timelines for different stages of disposal of show cause notice; and

(e) rights and obligations of the parties to the proceedings.

Q.43. What shall the Order of Disciplinary Committee include?

Ans. As per Clause 24 (2) of Model Bye Laws of IPA, , the orders that may be passed by the Disciplinary Committee shall include-

(a) expulsion of the professional member;

(b) suspension of the professional member for a certain period of time;

(c) Cancellation of authorisation for assignment

(d) admonishment of the professional member;

(e) imposition of monetary penalty;

(f) reference of the matter to the Board, which may include, in appropriate cases, recommendation of the amount of restitution or compensation that may be enforced by the Board; and

(g) directions relating to costs.

Q.44. When the disciplinary committee can expel a member ?

Ans. The Disciplinary Committee may pass an order for expulsion of a professional member if it has found that the professional member has committed -

(a) An offence under any law for the time being in force, punishable with imprisonment for a term exceeding six months or an offence involving moral turpitude.

(b) A gross violation of the Code, rules, regulations and guidelines issued thereunder, bye-laws or direction given by

the Governing Board which renders him not a fit and proper person to continue acting as an insolvency professional.

Q.45. Whether an Insolvency Professional Agency is required to constitute an Appellate Panel?

Ans. Yes, as per Clause 25 (1) of Model Bye Laws of IPA, , the Governing Board shall constitute an Appellate Panel consisting of one independent director of the Agency, one member from amongst the persons of eminence having experience in the field of law, and one member nominated by the Board.

Q.46. Under what circumstances an Insolvency Professional may make an application of surrender of Authorisation for Assignment ?

Ans. As per Clause 26 (1) of Model Bye Laws of IPA, a professional member shall make an application for surrender of his authorization for assignment at least thirty days before he-

(a) becomes a person resident outside India;

(b) takes up employment; or

(c) starts any business, except as specifically permitted under the Code of Conduct;

Q.47. Under what circumstances an Insolvency Professional Agency may refuse to accept the application of surrender of the Auhorisation of Assignment ?

Ans. As per Clause 26 (2) of Model Bye Laws of IPA , no application for surrender of authorization for assignment shall be accepted if -

(a) the authorisation for assignment has been suspended

(b) an assignment is continuing or

(c) the name of the professional member is included in the panel prepared by the board for undertaking assignment.

Q.48. Whether a professional member can surrender his professional membership of the IPA?

Ans. Yes. As per clause 27(1) of the Model Bye Laws of IPA, a professional member who wishes to surrender his membership of

the agency may do so by submitting an application for surrender of his membership.

Q.49. Whether the agency can refuse to accept the surrender of membership by a professional member ?

Ans. Yes, the agency may refuse to accept the surrender of membership by a professional member if –

(a) There is any grievance or disciplinary proceeding pending against the professional member before the agency or the board; or

(b) The professional member has been appointed as resolution professional, liquidator or bankruptcy trustee for a process under the Code and the appointment of another insolvency professional may be detrimental to such process.

Q.50. Whether an Insolvency Professional Agency may expel a professional member?

Ans. Yes, as per Clause 30 of Model Bye Laws of IPA, , a professional member shall be expelled by the Agency –

(a) if he becomes ineligible to be enrolled under bye-law 9;

(b) on expiry of thirty days from the order of the Disciplinary Committee, unless set aside or stayed by the Appellate Panel;

(c) upon non-payment of professional membership fee despite at least two notices served in writing;

(d) upon the cancellation of his certificate of registration by the Board;

(e) upon the order of any court of law.

Chapter 15

IBBI (Insolvency Professional Agencies) Regulations, 2016

Q.1. Explain the eligibility requirements to register as an Insolvency Professional Agency.

Ans. As per Regulation 3 (1), following are the eligibility requirements for registration as an insolvency professional agency:

(i) It shall be registered as a company under Section 8 of the Companies Act, 2013.

(ii) Its sole object shall be to carry on the functions of an insolvency professional agency under the Code.

(iii) 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), Regulations 2016.

(iv) It shall have minimum net worth of ten crore rupees.

(v) It shall have a paid up share capital of five crore rupees.

(vi) It shall not be under control of person(s) resident outside India

(vii) The person's resident outside India does not hold more than 49% of its share capital.

(viii) It shall not be subsidiary of a body corporate through more than one layer.

(ix) The applicant, its promoters, its directors and its shareholders are fit and proper persons.

Q.2. What shall be the minimum net worth of an Insolvency Professional Agency?

Ans. As per Regulation 3 (1), an insolvency professional agency shall have minimum net worth of ten crore rupees.

Q.3. What shall be the paid up share capital of an Insolvency Professional Agency?

Ans. As per Regulation 3 (1), an insolvency professional agency shall have the paid up share capital of five crore rupees.

Q.4. Whether an Insolvency Professional Agency can be formed by a subsidiary having more than one layer of subsidiary?

Ans. As per Regulation 3 (1), an insolvency professional agency shall not be subsidiary of a body corporate through more than one layer.

Q.5. Whether a person can hold more than five percent of paid up equity share capital of an Insolvency Professional Agency?

Ans. As per Regulation 3(2), no person shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than five per cent of the paid-up equity share capital in an insolvency professional agency.

Q.6. Who can acquire or hold upto fifteen percent of paid up equity share capital of an Insolvency Professional Agency?

Ans. As per Regulation 3(2), the following may, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent of the paid-up equity share capital of an insolvency professional agency-

(i) a stock exchange;

(ii) a depository;

(iii) a banking company;

(iv) an insurance company;

(v) a public financial institution; and

(vi) a multilateral financial institution.

Q.7. Who can acquire or hold upto hundred percent of paid up equity share capital of an Insolvency Professional Agency?

Ans. As per Regulation 3(2), the following may, acquire or hold, directly or indirectly, up to hundred per cent of the paid-up equity share capital of an insolvency professional agency.

(i) the Central Government;

(ii) a State Government; and

(iii) a statutory regulator,

Q.8. What is the procedure for registration as an Insolvency Professional Agency?

Ans. As per Regulation 4(1), a company eligible for registration as an Insolvency Professional Agency shall make an application to the Insolvency and Bankruptcy Board of India in Form A of the Schedule to the Regulations along with non-refundable application fee of ten lakh rupees.

Q.9. Can an Insolvency Professional Agency apply for renewal of certificate of registration?

Ans. As per Regulation 4(2), an insolvency professional agency may apply for renewal of registration six months before the expiry of such registration in Form A of the Schedule to the Regulations along with non-refundable fees of five lakh rupees.

Q.10. What are the requirements for grant of certificate of registration for an IPA?

Ans. As per Regulation 5(1) of the regulations, if the board is satisfied , after such inspection or inquiry as it deems necessary and having regard to the principles specified in section 200 of the Code, that the applicant

(a) is eligible under Regulation 3

(b) has adequate infrastructure to perform its functions under the Code

(c) has in employment, persons having adequate professional and other relevant experience , to enable it to perform its functions under the Code and

(d) has complied with the conditions of the certificate of registration, if he has submitted an application for renewal .

Q.11. What are the conditions on which the registration of an Insolvency Professional Agency shall be subjected to?

Ans. As per Regulation 5(2), the registration shall be subject to the conditions that the insolvency professional agency shall -

(a) abide by the Code, rules, regulations, and guidelines thereunder and its bye-laws;

(b) at all times after the grant of the certificate continue to satisfy the requirements on which the registration was provided;

(c) pay an annual fee of five lakh rupees to the Board, within fifteen days from the date of commencement of the financial year:

Provided that no annual fee shall be payable in the financial year in which an insolvency professional agency is granted registration or renewal, as the case may be.

Provided further that without prejudice to any other action which the Board may take as permissible under the Code, any delay in payment of fee by an insolvency professional agency shall attract simple interest at the rate of twelve percent per annum until paid.

(d) seek approval of the Board when a person, other than a statutory body, seeks to hold more than ten per cent, directly or indirectly, of the share capital of the insolvency professional agency;

(e) take adequate steps for redressal of grievances; and

(f) abide by such other conditions as may be specified.

Q.12. What is the term of validity of registration as an Insolvency Professional Agency?

Ans. As per Regulation 5(3), the registration granted by Insolvency and Bankruptcy Board of India to Insolvency Professional Agency shall be valid for a period of 5 years from the date of issue.

Q.13. What is the procedure and time limit to grant/ renew or not grant or not renew the application by the Board?

Ans. Under Regulation 6, it is provided that if *prima facie* the Board is of the opinion that the registration ought not be granted or renewed, or be granted or renewed with additional conditions, it shall

communicate the reasons for forming such an opinion and give the applicant an opportunity to explain why its application should be accepted, within 15 days of the receipt of the communication from the Board, to enable it to form a final opinion.

Further the communication shall be made to the applicant within 45 days of receipt of the application, excluding the time given by the Board for removing deficiencies, presenting additional documents, information or clarification, or appearing in person.

Q.14. What are the consequences if application for renewal of Registration is rejected by the Insolvency and Bankruptcy Board of India?

Ans. As per Regulation 6(4), 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 as may be specified so as to enable the enrolment of its members with another insolvency professional agency and comply with any other directions as considered appropriate.

Q.15. What are the particulars that are required to be filed by an Insolvency professional Agency for surrender of certificate of registration?

Ans. As per Regulation 7(1), an Insolvency Professional Agency may submit an application for surrender of a certificate of registration to the Board providing the following:

(i) the reasons for such surrender;

(ii) the details of all the pending or on-going engagements under the Code of the insolvency professionals enrolled with it;

(iii) details of its pending or on-going activities; and

(iv) the manner in which it seeks to wind up its affairs as an insolvency professional agency.

Q.16. Whether the Board is required to invite objections on surrender of registration by an Insolvency professional Agency?

Ans. Yes, as per Regulation 7(2**),** the Board shall within 7 days of receipt of the application publish a notice of receipt of such application on

its website and invite objections to the surrender of registration, to be submitted within 14 days of the publication of the notice.

Q.17. Under what circumstances the Board can issue show cause notice to the Insolvency professional Agency?

Ans. Yes, as per Regulation 8(1**), b**ased on the findings of an inspection or investigation, or on material otherwise available on record, if the Board is of the prima facie opinion that sufficient cause exists to take actions permissible under section 220, it shall issue a show-cause notice to the insolvency professional agency.

Q.18. Whether the show cause notice shall be in writing and what shall it state?

Ans. Yes, as per Regulation 8(2**), t**he show-cause notice shall be in writing, and shall state the following-

(a) the provisions of the Code under which it has been issued;

(b) the details of the alleged facts;

(c) the details of the evidence in support of the alleged facts;

(d) the provisions of the Code, rules, regulations or guidelines thereunder allegedly violated, or the manner in which the public interest is allegedly affected;

(e) the actions or directions that the Board proposes to take or issue if the allegations are established;

(f) the manner in which the insolvency professional agency is required to respond to the show-cause notice;

(g) consequences of failure to respond to the show-cause notice; and

(h) procedure to be followed for disposal of the show-cause notice.

Q.19. What shall be the manner in which the show cause notice shall be served?

Ans. As per Regulation 8(4**),** the show-cause notice issued shall be served on the insolvency professional agency in the following manner-

(a) by sending it to the insolvency professional agency at its the registered office, by registered post with acknowledgement due; or

(b) by an appropriate electronic means to the email address provided by the insolvency professional agency to the Board.

Q.20. What an Order of disposal of show cause notice may provide for?

Ans. As per Regulation 8(10**), t**he order in disposal of a show-cause notice may provide for-

(a) no action;

(b) warning;

(c) any of the actions under section 220(2) to (4); or

(d) a reference to the Board to take any action under section 220(5).

Q.21. Whether the Board is required to constitute a Disciplinary Committee to dispose of the show cause notice issued to the Insolvency professional Agency?

Ans. Yes, as per Regulation 8(5**),** the Board shall constitute a Disciplinary Committee for disposal of the show- cause notice. The Disciplinary committee shall endeavour to dispose of the show cause notice within a period of six months of the assignment.

Q.22. What is the redressal mechanism for such rejection?

Ans. The applicant may prefer an appeal within a period of 30 days of receipt of such impugned order in the manner prescribed in Part III of National Company Law Tribunal Rules, 2016.

Q.23. What is the term of validity of registration as an Insolvency professional Agency in case of in principle approval?

Ans. As per Regulation 10(2), in- principle approval granted by Insolvency and Bankruptcy Board of India to Insolvency professional Agency shall be valid for a period of 1 year.

Chapter 16

IBBI (Insolvency Professionals) Regulations, 2016

Q.1. Who will conduct Limited Insolvency Examination?

Ans. As per Regulation 3, the Board shall either on its own or through a designated agency conduct a 'Limited Insolvency Examination' to test the knowledge and application of knowledge of individuals in the areas of insolvency, bankruptcy and allied subjects.

Q.2. Who shall publish the syllabus and frequency of Limited Insolvency Examination?

Ans. The Board shall publish the syllabus, format, qualifying marks and frequency of the limited insolvency examination which shall be published by Board on website at least three months before the examination.

Q.3. What is the eligibility criteria to register as an Insolvency Professional?

Ans. As per Regulation 4, no individual shall be eligible to be registered as an insolvency professional if he-

(a) is a minor;

(b) is not a person resident in India;

(c) does not have the qualification and experience specified in Regulation 5 or Regulation 9, as the case may be;

(d) has been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period

of seven years or more, he shall not be eligible to be registered;

(e) he is an undischarged insolvent, or has applied to be adjudicated as an insolvent;

(f) he has been declared to be of unsound mind; or

(g) he is not a fit and proper person;

Q.4. What shall be the criteria to determine whether a person is fit and proper to register as an insolvency professional?

Ans. As per explanation to Regulation 4(g), for determining whether a person is fit and proper, the Board may take into account any consideration as it deems fit, including but not limited to the following criteria, namely: -

(i) integrity, reputation and character,

(ii) absence of convictions and restraint orders, and

(iii) competence, including financial solvency and net worth.

Q.5. What must be the Qualification and Experience to register as an Insolvency Professional

Ans. As per Regulation 5, the Insolvency And Bankruptcy Board of India has prescribed following persons to be eligible for registration as an Insolvency Professional:-

(a) Has passed the Limited Insolvency Examination within twelve months before the date of his application for enrolment with the insolvency professional agency;

(b) Has completed a pre-registration educational course, as may be required by the Board, from an insolvency professional agency after his enrolment as a professional member; and

(c) Has-

(i) Successfully completed the National Insolvency Programme, as may be approved by the Board;

(ii) Successfully completed the Graduate Insolvency Programme, as may approved by the Board;

(iii) experience of –

(a) ten years in the field of law, after receiving a Bachelor's degree in law;

(b) ten years in management, after receiving a Master's degree in Management or two-year full time Post Graduate Diploma in Management; or

(c) fifteen years in management, after receiving a Bachelor's degree,

from a university established or recognised by law or an Institute approved by All India Council of Technical Education; or

(iv) Ten years' of experience as –

(a) Chartered Accountant registered as a member of the Institute of Chartered Accountants of India,

(b) Company Secretary registered as a member of the Institute of Company Secretaries of India,

(c) Cost Accountant registered as a member of the Institute of Cost Accountants of India, or

(d) Advocate enrolled with the Bar Council of India.

Q.6. What is the procedure for registration as an Insolvency Professional?

Ans. As per Regulation 6(1), an individual enrolled with an Insolvency Professional Agency as a professional member may make an application to the Board in Form A of the Second Schedule to the Regulations along with a non-refundable application fee of ten thousand rupees to the Board.

Q.7. What are the conditions on which the registration of an Insolvency Professional subjected to?

Ans. As per Regulation 7(2), the registration shall be subject to the conditions that the insolvency professional shall -

(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;

(b) at all times continue to satisfy the requirements under Regulation 4;

(ba) undergo continuing professional education, as may be required by the Board;

(bb) not outsource any of his duties and responsibilities under the Code, except those specifically permitted by the Board.

(c) pay to the Board, a fee of ten thousand rupees, every five years after the year in which the certificate is granted and such fee shall be paid on or before the 30th April of the year it falls due;

(ca) pay to the Board, a fee calculated at the rate of 0.25 percent of the professional fee earned for the services rendered by him as an insolvency professional in the preceding financial year, on or before the 30th of April every year, along with a statement in Form E of the Second Schedule;

(d) not render services as an insolvency professional unless he becomes a partner or director of an insolvency professional entity recognised by the Board under Regulation 13, if he is not a citizen of India;

(e) take prior permission of the Board for shifting his professional membership from one insolvency professional agency to another, after receiving no objection from both the concerned insolvency professional agencies;

(f) take adequate steps for redressal of grievances;

(g) maintain records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment;

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and

(i) abide by such other conditions as may be imposed by the Board.

Judicial pronouncements with regard to Regulation 7(2)(ca) of IP Regulations

1. **CA. Venkata Siva Kumar Vs. IBBI & Ors. [W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020] HC, Madras order dt. 28.07.2020**

   The Code contains adequate safeguards to ensure that the Parliament effectively supervises all rules and regulations with the power to modify or even annul the same and that regulation 7(2)(ca) of the IP Regulations does not suffer from any constitutional infirmity on account of the absence of quid pro quo.

Q.8. How much fees is payable to the Board by the Insolvency Professional every 5 Years?

Ans. As per Regulation 7(2)(c), an Insolvency Professional shall pay to the Board, a fee of ten thousand rupees, every five years after the year in which the certificate is granted and such fee shall be paid on or before the 30th April of the year it falls due.

Q.9. Can an Insolvency Professional accept an assignment without an Authorisation for assignment?

Ans. No. As per Regulation 7A, an insolvency professional shall not accept or undertake an assignment after 31st December 2019 unless he holds a valid authorisation for assignment as on the date of such acceptance or commencement of such assignment as the case may be.

Judicial pronouncements with regard to Regulation 7A of IP Regulations and Regulation 12A of the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016

1. **CA V. Venkata Sivakumar Vs. IBBI & Ors. [WP No. 13229 of 2020] HC, Madras order dt. 03.11.2020**

   The delegation of power is not in derogation of the principles laid down by earlier jurisprudence. Further the existence of more

than one authority with regulatory or disciplinary control over a professional is per se not a ground to hold that the impugned regulations are unconstitutional The criteria mentioned under regulation 12A are clearly not unreasonable or arbitrary but appear to be germane for deciding the eligibility of an IP for such AFA, as these measures are intended to regulate the profession and not to deprive a person of the right to practice the profession.

Q.10. Whether the Board can refuse to give registration to an Insolvency Professional?

Ans. Yes, as per Regulation 8(1), if, after considering an application made by an Insolvency Professional, the Board is of the prima facie opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion and give the applicant an opportunity to explain why his application should be accepted, within fifteen days of the receipt of the communication from the Board, to enable it to form a final opinion.

Q.11. Under what circumstances the Board can issue show cause notice to the Insolvency professional?

Ans. As per Regulation 11(1**),** based on the findings of an inspection or investigation, or on material otherwise available on record, if the Board is of the prima facie opinion that sufficient cause exists to take actions permissible under section 220, it shall issue a show-cause notice to the insolvency professional.

Q.12. Whether the show cause notice shall be in writing and what shall it state?

Ans. Yes, as per Regulation 11(2**),** the show-cause notice shall be in writing, and shall state the following-

(a) the provisions of the Code under which it has been issued;

(b) the details of the alleged facts;

(c) the details of the evidence in support of the alleged facts;

(d) the provisions of the Code, rules, regulations or guidelines thereunder allegedly violated, or the manner in which the public interest is allegedly affected;

(e) the actions or directions that the Board proposes to take or issue if the allegations are established;

(f) the manner in which the insolvency professional is required to respond to the show-cause notice;

(g) consequences of failure to respond to the show-cause notice; and

(h) procedure to be followed for disposal of the show-cause notice.

Q.13. What shall be the manner in which the show cause notice shall be served?

Ans. As per Regulation 11(4**), t**he show-cause notice issued shall be served on the insolvency professional in the following manner-

(a) by sending it to the insolvency professional at the address provided by him or provided by the Insolvency Professional agency with which he is enrolled, by registered post with acknowledgement due; or

(b) by an appropriate electronic means to the email address of the insolvency professional provided by him or provided by the insolvency professional agency with which he is enrolled.

Q.14. Whether the Board is required to constitute a Disciplinary Committee to dispose of the show cause notice issued to the Insolvency professional?

Ans. Yes, as per Regulation 11(5**),** the Board shall constitute a Disciplinary Committee for disposal of the show- cause notice.

Q.15. What an Order of disposal of show cause notice may provide for?

Ans. As per Regulation 11(8**), t**he order of disposal of a show-cause notice may provide for-

(a) no action;

(b) warning;

(ba) suspension or cancellation of authorisation for assignment;

(c) any of the actions under section 220(2) to (4); or

(d) a reference to the Board to take any action under section 220(5).

Q.16. Mention the circumstances under which a company, a Registered Partnership Firm or a Limited Liability Partnership can be recognized as an Insolvency Professional Entity.

Ans. As per Regulation 12, a company, a registered partnership firm or a limited liability partnership may be recognised as an insolvency professional entity, if –

(a) The sole objective is to provide support services to insolvency professionals, ;

(b) It has a net worth of not less than one crore rupees;

(c) Majority of its equity shares is held by insolvency professionals, who are its directors, in case it is a company;

(d) Majority of capital contribution is made by insolvency professionals, who are its partners, in case it is a limited liability partnership firm or a registered partnership firm;

(e) Majority of its partners or directors, as the case may be, are insolvency professionals;

(f) Majority of its whole time directors are insolvency professionals, in case it is a company; and

(g) None of its partners or directors is a partner or a director of another insolvency professional entity.

Q.17. What shall be the minimum net worth of an Insolvency Professional Entity?

Ans. As per Regulation 12, an insolvency professional entity shall have minimum net worth of one crore rupees.

Q.18. What is the procedure for registration as an Insolvency Professional Entity?

Ans. As per Regulation 12(2), a person may make an application for recognition as an insolvency professional entity to the Board in Form C of the Second Schedule along with an application fee of fifty thousand rupees.

Q.19. What are the conditions for the recognition of Insolvency Professional Entity?

Ans. As per Regulation 13, the recognition shall be subject to the conditions that the insolvency professional entity shall-

(a) at all times continue to satisfy the requirements under Regulation 12;

(b) inform the Board, within thirty days , when an individual ceases to be its director or partner in Form F of the Second Schedule along with a fee of two thousand rupees;

(c) inform the Board, within thirty days , when an individual joins as its director or partner, in Form F of the Second Schedule along with a fee of two thousand rupees;

(ca) Pay to the Board, a fee calculated at the rate of 0.25 per cent of the turnover from the services rendered by it in the preceding financial year, on or before the 30th of April every year, along with a statement in Form G of the Second Schedule;

(cb) submit to the Board, by 15th day of October every year, a compliance certificate in Form H, for the preceeding year

(d) Abide by other conditions as may be specified.

Q.20. Whether an Insolvency Professional Entity is required to pay any fee to the Board?

Ans. Yes, as per Regulation 13, an insolvency professional entity shall pay to the Board, a fee calculated at the rate of 0.25 per cent of the turnover from the services rendered by it in the preceding financial year, on or before the 30th of April every year, along with a statement in Form G of the Second Schedule.

Q.21. What shall be payable to the Board in case of delay in payment of the fees by Insolvency Professional or Insolvency Professional Entity?

Ans. As per Regulation 15, any delay in payment of fee by Insolvency Professional or an Insolvency Professional Entity, a simple interest at the rate of 12% per annum on the amount of fee unpaid shall be paid to the Board after the last date of payment of fee under these regulations.

Q.22. What disclosures are required to be made by an Insolvency Professional as per Code of Conduct?

Ans. According to Clause 8 and 8A of Code of Conduct in First Schedule under Regulation 7(2)(h), an insolvency professional shall disclose the following:

(i) The existence of any pecuniary or personal relationship with any of the stakeholders entitled to distribution under section 53 or 178 of the Code and the concerned corporate person/ debtor as soon as he becomes aware of it, by making a declaration of the same to the applicant, committee of creditors, and the person proposing appointment, as applicable.

(ii) An insolvency professional shall disclose as to whether he was an employee of or has been in the panel of any financial creditor of the corporate debtor, to the committee of creditors and to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

Q.23. Is it mandatory by the Insolvency Professional to disclose the fee payable to him, Insolvency Professional Entity and professionals engaged by him?

Ans. Yes, as per Clause 25 A of Code of Conduct in First Schedule under Regulation 7(2)(h), an insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

Chapter 17

IBBI (Information Utilities) Regulations, 2017

Q.1. What is the meaning of the term 'application programming interface'?

Ans. As per Regulation 2(1) (a), Application Programming Interface" means a mechanism that allows a system or service to access data or functionality provided by another system or service.

Q.2. Who shall be eligible to be registered as an information utility?

Ans. As per Regulation 3, no person shall be eligible to be registered as an information utility unless it is a public company and –

- Its sole object is to provide core services and other services under these Regulations, and discharge such functions as may be necessary for providing these services;
- Its shareholding and governance is in accordance with Chapter III;
- Its bye-laws are in accordance with Chapter IV;
- It has a minimum net worth of fifty crore rupees;
- the person itself, its promoters, its directors, its key managerial personnel, and persons holding more than 5%, directly or indirectly, of its paid-up equity share capital or its total voting power, are fit and proper persons.

Q.3. What shall be the minimum net worth of an Information Utility?

Ans. As per Regulation 3, an insolvency utility shall have minimum net worth of fifty crore rupees.

Q.4. Whether an Information Utility is required to have bye laws?

Ans. Yes, as per Regulation 3, an information utility is required to have bye laws in accordance with Chapter IV of IBBI (Information Utility) Regulations, 2017. These bye-laws are provided in Regulation 15 of the IBBI (Information Utility) Regulations, 2017.

Q.5. What shall the Board consider for determining that the Information utility is a fit and proper person?

Ans. As per Regulation 3, for determining whether a person is fit and proper under these Regulations, the Board may take account of relevant considerations, including-

(a) integrity, reputation and character,

(b) absence of conviction by a court for an offence:

- A person may be considered 'fit and proper' if he has been sentenced to imprisonment for a period of less than six months;
- A person shall not be considered 'fit and proper' if he has been sentenced to imprisonment for a period (a) of not less than six months, but less than seven years and a period of five years has not elapsed from the date of expiry of the sentence, or (b) of seven years or more.

(c) absence of restraint order, in force, issued by a financial sector regulator or the Adjudicating Authority, and

(d) financial solvency.

Q.6. What is the procedure for registration as an Information Utility?

Ans. As per Regulation 4(1), a person eligible for registration shall make an application to the Insolvency and Bankruptcy Board of India in Form A of the Schedule along with non-refundable application fee of five lakh rupees. The Board has to acknowledge the application for registration within 7 days of its receipt.

Q.7. Can an Information Utility apply for renewal of certificate of registration?

Ans. As per Regulation 4(2), an information utility may apply for renewal of registration at least six months before the expiry of such registration in Form A of the Schedule along with non-refundable fees of five lakh rupees.

Q.8. What is the time limit to grant/ renew or not grant or not renew the application by the Board?

Ans. Under Regulation 5 (5), it is provided that if prima facie the Board is of the opinion that the registration ought not to be granted or renewed, or be granted or renewed with additional conditions, it must communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by the Board for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.Thereafter, the applicant is required to submit an explanation as to why its application should be accepted within 15 days of the receipt of the communication from the Board, to enable the Board to form a final opinion.

Q.9. What are the consequences if application for renewal of registration is rejected by the Insolvency and Bankruptcy Board of India?

Ans. As per Regulation 5(8), upon rejection of application of renewal, the information utility shall be required to discharge its pending obligations and shall be allowed to continue its functions till such time as may be directed, so as to enable its users to transfer information stored with it to another information utility. The information utility is also required to comply with any other directions as considered appropriate.

Q.10. What are the conditions on which the registration of an Information Utility shall be subjected to?

Ans. As per Regulation 6(2), the registration shall be subject to the conditions that the information utility shall -

(i) abide by the Code;

(ii) abide by its bye-laws;

(iii) at all times after the grant of the certificate continue to satisfy the requirements under regulation 5 (4);

(iv) pay a fee of fifty lakh rupees to the Board, within fifteen days of receipt of intimation of registration or renewal from the Board, as applicable;

(v) pay an annual fee of fifty lakh rupees to the Board, within fifteen days from the date of commencement of financial year.

(No annual fee is payable in the financial year in which an information utility is granted registration or renewal). Also, delay in payment of annual fee shall attract simple interest @ 12% p.a. until paid.;

(vi) seek prior approval of the Board for-

(a) the acquisition of shares or voting power by a person, which taken together with paid-up equity shares or voting power, if any, held by such person, entitles him to hold more than five per cent, directly or indirectly, of the paid-up equity share capital or total voting power;

(b) a change of control;

(c) a merger, amalgamation or restructuring;

(d) sale, disposal, or acquisition of the whole, or substantially the whole, of its undertaking;

(e) voluntary liquidation, dissolution, or any similar action involving the discontinuation of its business.

(vii) intimate the Board if a person holding more than five per cent, directly or indirectly, of its paid-up equity share capital or total voting power ceases to hold at least five per cent, directly or indirectly, of its paid-up equity share capital or total voting power, within fifteen days from such cessation;

(viii) take adequate steps for redressal of grievances;

(ix) take over information stored with other information utilities on the directions of and in the manner directed by the Board, and provide core services to their users; and

(x) abide by such other conditions as may be stipulated by the Board.

Q.11. What is the term of validity of registration as an Information Utility?

Ans. As per Regulation 6(1), the registration granted by Insolvency and Bankruptcy Board of India to Information Utility shall be valid for a period of 5 years from the date of issue.

Q.12. What is the term of validity of registration as an Information Utility in case of in-principle approval?

Ans. As per Regulation 7(2), in- principle approval granted by Insolvency and Bankruptcy Board of India to Information Utility shall be valid for a period of 1 year.

Q.13. Whether a person can hold more than ten percent of paid up equity share capital of an Information Utility?

Ans. No, as per Regulation 8(1), no person shall at any time, directly or indirectly, either by itself or together with persons acting in concert, acquire or hold more than ten per cent of the paid-up equity share capital or total voting power of an information utility. However, there are few exceptions to this as given under proviso to Regulation 8(1), Regulation 8(2) and Regulation 8(3).

Q.14. Who can acquire or hold upto twenty five percent of paid up equity share capital of an Information Utility?

Ans. As per Proviso to Regulation 8(1), the following persons may, acquire or hold, directly or indirectly, either by themselves or together in concert, up to twenty five per cent of the paid-up equity share capital or total voting power of an information utility-

- government company;
- stock exchange;
- depository;
- bank;
- insurance company;
- a public financial institution.

Q.15. Who can acquire or hold upto hundred percent of paid up equity share capital of an Information Utility?

Ans. As per Regulation 8(3), the following may, acquire or hold, directly or indirectly, up to hundred per cent of the paid-up equity share capital or voting power of an information utility.

- the Central Government;
- a State Government;

Q.16. What shall be the composition of the governing board?

Ans. As per Regulation 9, the Governing Board shall consist of-

(a) Managing director;

(b) Independent directors;

(c) Shareholder directors.

More than half of the directors must be citizens of India and shall be residents in India.

Managing Director shall not be considered either an independent director or a shareholder director.

The number of independent directors shall not be less than the number of shareholder directors.

Q.17. Whether an employee of an Information Utility may be appointed as a director on its Governing Board?

Ans. Yes, as per Regulation 9 (3), any employee of an Information Utility may be appointed as a director on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

Q.18. How an Independent Director of an Information Utility be appointed?

Ans. As per Regulation 9 (6), an independent director shall be nominated by the Board from amongst the list of names proposed by the Information Utility.

Q.19. What shall be term of an Independent Director of an Information Utility?

Ans. As per Regulation 9 (7), an individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy five years, whichever is earlier.

Q.20. Whether there is cooling off period for an independent director to become a shareholder director in the same or another Information Utility?

Ans. Yes, as per Regulation 9(9), a cooling off period of three years shall be applicable for an independent director to become a shareholder director in the same or another Information Utility.

Q.21. Who shall be chairperson of the Governing Board of an Information Utility?

Ans. The Chairperson of the Governing Board of an Information Utility shall be an independent director which shall be elected by directors of an Information Utility.

Q.22. How a managing director can be appointed?

Ans. As per Regulation 9A, an individual shall be selected as managing director through an open advertisement in all editions of at least one national daily newspaper.

Q.23. What should be the age of a managing director at the time of appointment?

Ans. As per Regulation 9A, an individual at the time joining as managing director shall not be above the age of fifty-five years, which may be relaxed by the Governing Board up to sixty years, after recording reasons therefore.

Q.24. What shall be the maximum age upto which a managing director shall serve?

Ans. As per Regulation 9A, an individual shall not serve as managing director after he attains the age of sixty-five years.

Q.25. What shall be the tenure of a managing director?

Ans. As per Regulation 9A, the appointment of an individual as the managing director shall be for a tenure of not less than three years but not exceeding five years.

Q.26. For how many terms a managing director can serve?

Ans. As per Regulation 9A, an individual may serve as managing director for a maximum of two terms.

Q.27. What shall be the process for appointment of managing director for second term?

Ans. As per Regulation 9A, the process of appointment for the second term of an individual as managing director shall be conducted afresh.

Q.28. Who shall approve the appointment and remuneration payable to the managing director?

Ans. As per Regulation 9A, the appointment and remuneration payable to the managing director shall be approved by a compensation committee constituted by the Governing Board.

Q.29. Who shall approve the appointment, renewal of appointment and termination of service of the managing director?

Ans. As per Regulation 9A, the appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the Board.

Q.30. Whether the managing director shall be liable for removal or termination services?

Ans. As per Regulation 9A, the managing director shall be liable for removal or termination of services by the Governing Board, with the prior approval of the Board, for failure to give effect to the directions, guidelines and other orders issued by the Governing Board or the Board, or the rules, the articles of association or bye-laws of the information utility or on the ground of misconduct or incapacity to continue in office.

Q.31. Whether an Information Utility is required to form a Regulatory Committee?

Ans. Yes, as per Regulation 10, an information utility may constitute a Regulatory Committee from amongst the independent directors.

Q.32. What shall be the purpose to form Regulatory Committee by an Information Utility?

Ans. As per Regulation 10, the Regulatory Committee, if constituted, shall oversee the information utility's compliance with the Code.

Q.33. Whether an Information Utility is required to appoint a Compliance officer?

Ans. Yes, as per Regulation 11, an information utility shall designate or appoint a compliance officer who shall be responsible for ensuring compliance with the provisions of the Code applicable to the information utility, in letter and spirit.

Q.34. Whom shall the Compliance officer report to?

Ans. As per Regulation 11, the compliance officer shall, immediately and independently, report to the Board any non-compliance of any provision of the Code observed by him.

Q.35. Whether the Compliance officer is required to submit compliance certificate?

Ans. Yes, as per Regulation 11, the compliance officer shall submit a compliance certificate to the Board annually, verifying that the information utility has complied with the requirements of the Code, and has redressed customer grievances.

Q.36. How a Compliance officer can be appointed or removed by the Governing Board?

Ans. As per Regulation 11, the Governing Board of an Information Utility shall appoint or remove a compliance officer only by means of a resolution passed at its meeting.

Q.37. Why an Information Utility is required to have a Grievance Redressal Policy?

Ans. As per Regulation 12, an information utility shall have a Grievance Redressal Policy to deal with any grievance from –

(i) any user; or

(ii) any other person or class of persons as may be provided by the Governing Board in respect of its services.

Q.38. What shall be included in the Grievance Redressal Policy of an Information Utility?

Ans. As per Regulation 12, the Grievance Redressal Policy shall provide for-

- the constitution of a Grievance Redressal Committee;
- the functions of the Grievance Redressal Committee;

- the format and manner for filing grievances;
- maximum time and format for acknowledging receipt of a grievance;
- maximum time for the disposal of the grievance by way of dismissal, resolution or the initiation of mediation;
- details of the mediation mechanism;
- provision of a report of the grievance and mediation proceedings to the parties to the grievance upon dismissal or resolution of the grievance;
- action to be taken in case of malicious or false complaints;
- maintenance of a register of grievances received and resolutions arrived at;
- disclosure of receipt and disposal of grievances to the public in the form and manner directed by the Board;
- periodic reporting of the receipt and disposal of grievances to the Governing Board; and
- periodic review of the Grievance Redressal Mechanism by the Governing Board.

Q.39. Enumerate the matters for which the Board shall lay down the Technical Standards.

Ans. As per Regulation 13, the Board may lay down the Technical Standards for all or any of the following matters-

- the Application Programming Interface;
- standard terms of service;
- registration of users;
- unique identifier for each record and each user;
- submission of information;
- identification and verification of persons;
- authentication of information;
- verification of information;

- data integrity;
- consent framework for providing access to information to third parties;
- security of the system;
- security of information;
- risk management framework;
- porting of information;
- exchange or transfer of information between information utilities;
- inter-operability among information utilities;
- preservation of information; and
- purging of information.

Q.40. What shall be the composition of Technical Committee?

Ans. As per Regulation 14, the Technical Committee shall comprise of at least three members who have special knowledge and experience in the field of law, finance, economics, information technology or data management.

Q.41. What shall the bye laws of an Information Utility provide for?

Ans. As per Regulation 15, the bye laws of an Information Utility shall provide for the following-

- All matters contained in Technical Standards; and
- the manner and process of providing core services and other services under these Regulations;
- risk management;
- minimum service quality standards, including timelines for –
- rights of users; and
- grievance redressal.

Q.42. Whether an Information Utility shall publish the bye laws on its website?

Ans. Yes, as per Regulation 15, the Information Utility shall publish its bye-laws on its website.

Q.43. Whether an Information Utility can amend its bye laws?

Ans. Yes, as per Regulation 16, the Governing Board may amend the bye-laws of the information utility by a resolution passed by votes in favor being not less than three times the number of the votes, if any, cast against the resolution, by the directors.

Q.44. What are the services to be provided by the Information Utility?

Ans. The information utility shall provide:

- core services;
- other services under these Regulations; in accordance with the Code.

Q.45. Whether the Information Utility is required to comply with the Technical Standards?

Ans. Yes, As per Regulation 17, the information utility shall comply with the applicable Technical Standards.

Q.46. For what purposes a person shall register with the Information Utility?

Ans. As per Regulation 18, a person shall register itself with an information utility for-

- submitting information to; or
- accessing information stored with any of the information utilities.

Q.47. Whether a person registered once with an Information Utility can register again with any information utility?

Ans. No, As per Regulation 18, a person registered once with an Information Utility shall not register again with any information utility.

Q.48. What are the duties of an information utility?

Ans. As per Regulation 18, an information utility shall-

(i) maintain a list of the

- registered users;
- the unique identifiers of the registered users; and
- the unique identifiers assigned to the debts under Regulation 20.

(ii) make the list available to all information utilities and the Board.

Q.49. Whether a registered user may submit information to any information utility?

Ans. Yes, as per Regulation 19, a registered user may submit information to any information utility. Different parties to the same transaction may use different information utilities to submit, or access information in respect of the same transaction.

Q.50. Whether a registered user may access information with an information utility through any information utility?

Ans. Yes, as per Regulation 19, a user may access information stored with an information utility through any information utility.

Q.51. What is the procedure for acceptance of information by an information utility?

Ans. As per Regulation 20, an information utility shall accept information submitted by a user in Form C of the Schedule.

Q.52. Explain the procedure to be followed by an information utility on receipt of information.

Ans. As per Regulation 20, on receipt of the information, the information utility shall

- assign a unique identifier to the information, including records of debt;
- acknowledge its receipt, and notify the user of-
  i. the unique identifier of the information;
  ii. the terms and conditions of authentication and verification of information; and

iii. the manner in which the information may be accessed by other parties.

Q.53. Explain the procedure to be followed by an information utility on receipt of information of default.

Ans. As per Regulation 21, on receipt of information of default, an information utility shall expeditiously undertake the processes of authentication and verification of the information as soon as it is received. For the same it shall:

a. deliver the information of default to the debtor seeking confirmation of the same within the time specified in the Technical Standards;

b. remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, allow three days each time for the debtor to respond;

c. deliver the information of default or the reminder, as the case may be, to the debtor either by hand, post or electronic means at the postal or e-mail address of the debtor-

i. registered with the information utility by him, failing which,

ii. recorded with any other statutory repository as approved by the Board, failing which,

iii. submitted in Form C of the Schedule.

On completion of the process the information utility shall record the status of authentication of information of default as indicated in the Table below:

Table

Sl. No.	Response of the Debtor	Status of Authentication	Colour of the Status
(1)	(2)	(3)	(4)
1	Debtor confirms the information of default	Authenticated	Green

2	Debtor disputes the information of default	Disputed	Red
3	Debtor does not respond even after three reminders	Deemed to be Authenticated	Yellow

Q.54. What shall an information utility do after authentication and verification of information of default?

Ans. As per Regulation 21, on completion of the processes of authentication and verification, the information utility shall communicate the information of default, and the status of authentication to registered users who are-

1. creditors of the debtor who has defaulted;
2. parties and sureties, if any, to the debt in respect of which the information of default has been received.

Q.55. Whether the information utility is required to disseminate public announcement?

Ans. As per Regulation 21A, an information utility shall disseminate every public announcement it receives or has access to, on the date of its receipt or access, as the case may be, to its registered users, who are creditors of the corporate debtor undergoing insolvency proceeding under the Code.

Q.56. Where shall an information utility store the information?

Ans. As per Regulation 22, an information utility shall store all information in a facility located in India.

The facility shall be governed by the laws of India.

Q.57. Who shall have access to the information of an information utility?

Ans. As per Regulation 23, an information utility shall allow the following persons to access information stored with it-

a. the user which has submitted the information;

b. all the parties to the debt and the host bank, if any, if the information is of the categories in section 3(13)(a), (c) and (d);

c. the corporate person and its auditor, if the information is of the categories in section 3(13)(b) and (e);

d. the insolvency professional, to the extent provided in the Code;

e. the Adjudicating Authority;

f. the Board;

g. any person authorised to access the information under any other law; and

h. any other person who the persons referred to in (a), (b) or (c) have consented to share the information with.

Q.58. What shall the information utility enable the users to view?

Ans. As per Regulation 23, an information utility shall in all cases enable the user to view-

- the date the information was last updated;
- the status of authentication; and
- the status of verification

while providing access to the information.

Q.59. Whether an Information Utility can charge fee for providing information to the Adjudicating Authority and Board?

Ans. No, as per Regulation 23, an information utility shall provide information to the Adjudicating Authority and Board free of charge.

Q.60. Whether a registered user can access information stored with other Information Utilities?

Ans. Yes, as per Regulation 24, an information utility shall provide a functionality to enable users to access information stored with any information utility, which they are entitled to access.

The functionality shall enable other information utilities to provide access to information to the user directly.

The functionality shall ensure privacy and confidentiality of information.

Q.61. Whether an Information utility is required to provide an Annual Statement?

Ans. Yes, as per Regulation 25, an information utility shall provide every user an annual statement of all information pertaining to the user, free of charge.

An information utility shall provide the user a functionality to mark information as erroneous and correct it.

Q.62. Whether a user is required to update information with Information utility?

Ans. Yes, a user, who has submitted information in Form C of the Schedule to an information utility, shall submit the information updated as on the last day of every month, in the first week of following month: Provided that information of default shall be updated within seven days of occurrence of default.

A user shall expeditiously correct information as soon as it finds it erroneous, stating the reasons, if any.

Q.63. Enumerate the duties of an Information utility.

Ans. As per Regulation 28, 29 and 30, an information utility shall-

- provide services with due and reasonable care, skill and diligence.
- hold the information as a custodian.
- provide services without discrimination in any manner.
- provide services to a user based on its explicit consent;
- guarantee protection of the rights of users;
- establish adequate procedures and facilities to ensure that its records are protected against loss or destruction;
- adopt secure systems for information flows;

- protect its data processing systems against unauthorised access, alteration, destruction, disclosure or dissemination of information; and
- transfer all the information submitted by a user, and stored with it to another information utility on the request of the user.
- not outsource the provision of core services to a third-party service provider;
- not use the information stored with it for any purpose other than providing services under these Regulations, without the prior approval of the Board;
- not seek data or details of users except as required for the provision of the services under these Regulations.

Explanation: An information utility shall not deny its services to any person on the basis of-

(a) place of residence or business; or

(b) type of personality, whether natural or artificial.

Q.64. What arrangements shall be made by an Information utility for indemnifying the users for losses?

Ans. As per Regulation 31, an information utility shall make adequate arrangements, including insurance, for indemnifying the users for losses that may be caused to them by any wrongful act, negligence or default of the information utility, its employees or any other person whose services are used for the provision of services under these Regulations.

Q.65. What shall be the provisions for charging fee by an Information utility?

Ans. As per Regulation 32, an information utility shall

- charge uniform fee for providing the same service to different users;
- disclose the fee structure for provision of services on its website; and

- disclose any proposed increase in the fees for the provision of services on its website at least three months before the increase in fees is effected.

Further, the fee charged for –

- providing services shall be a reasonable reflection of the service provided; and
- providing access to information shall not exceed the fee charged for submission of information to the information utility.

Q.66. Whether an Information utility shall establish an appropriate risk management framework?

Ans. Yes, as per Regulation 33, an information utility shall establish an appropriate risk management framework in accordance with the Technical Standards, if any, which provides for matters, including

- reliable, recoverable and secure systems;
- provision of core services during disasters and emergencies; and
- business continuity plans which shall include disaster recovery sites.

Q.67. Whether an Information utility is required to have Preservation Policy?

Ans. Yes, as per Regulation 35, an information utility shall have a Preservation Policy consistent with the Technical Standards, if any, providing for the form, manner and duration of preservation of:

- information stored with it; and
- details of the transactions of the information utility with each user in respect of the information stored with it.

Q.68. What is the information which an Information utility is required to report to the Board annually?

Ans. As per Regulation 36, an information utility shall provide a report to the Board annually, in the manner directed by the Board, stating the-

- number and types of records collected;

- number and types of users registered;
- number and types of unique debts recorded;
- number and types of security interests recorded;
- volume of debts recorded;
- volume of secured debts recorded;
- number of instances and types of defaults recorded;
- number and types of disputes recorded;
- number of times information was accessed by the Adjudicating Authority and Board; and
- any other information as may be directed by the Board.

Q.69. Explain regarding publication of statistical information by Information Utility.

Ans. As per Regulation 36A, an information utility shall publish statistics relating to debt related information in its possession, quarterly. The statistics shall provide distribution of debts in terms of currency, geography, sector, size, tenor, type, lending arrangement, and incidence of default.

Q.70. Whether an Information Utility shall have an Exit management plan?

Ans. As per Regulation 39, an information utility shall, at all times, have an exit management plan which shall include-

- mechanisms to enable users to transfer information to other information utilities expeditiously;
- mechanisms for preservation and transfer of information; and
- timelines and cost estimates of implementing the exit management plan.

An information utility shall not amend its exit management plan without the prior approval of the Board.

Q.71. What are the particulars that are required to be filed by an Information Utility for surrender of certificate of registration?

Ans. As per Regulation 40(1), an Information Utility may submit an application for surrender of its certificate of registration to the Board providing -

- the reasons for such surrender;
- details of its pending or on-going activities;
- details of how the exit management plan shall be implemented.

Q.72. What are the consequences of approval of application of surrender of registration by an Information Utility?

Ans. As per Regulation 40(4), upon approval of application of surrender of registration, an Information Utility shall be required to –

- discharge any pending obligations; or
- continue such functions till such time as may be directed.

Q.73. Under what circumstances the Board can issue show cause notice to the Information Utility?

Ans. As per Regulation 41(1**), b**ased on the findings of an inspection or investigation, or on material otherwise available on record, if the Board is of the prima facie opinion that sufficient cause exists to take actions permissible under section 220, it shall issue a show-cause notice to the information utility.

Q.74. Whether the show cause notice shall be in writing and what shall it state?

Ans. Yes, as per Regulation 41(2**), t**he show-cause notice shall be in writing, and shall state the following-

- the provisions of the Code under which it has been issued;
- the details of the alleged facts;
- the details of the evidence in support of the alleged facts;
- the provisions of the Code allegedly violated, or the manner in which the public interest has allegedly been affected;
- the actions or directions that the Board proposes to take or issue if the allegations are established;

- the manner in which the information utility is required to respond to the show-cause notice;
- consequences of failure to respond to the show-cause notice within the given time; and
- procedure to be followed for disposal of the show-cause notice.

Q.75. What shall be the manner in which the show cause notice shall be served to an information utility?

Ans. As per Regulation 41(4**), t**he show-cause notice issued shall be served on the information utility in the following manner-

(a) by sending it to the information utility at its the registered office, by registered post with acknowledgement due; and

(b) by an appropriate electronic means to the email address provided by the information utility to the Board.

Q.76. What an Order of disposal of show cause notice may provide for?

Ans. As per Regulation 41(7**), t**he order in disposal of a show-cause notice may provide for-

(a) no action;

(b) warning;

(c) any of the actions under section 220(2) to (4); or

(d) a reference to the Board to take any action under section 220(5).

Chapter 18

IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017

Q.1. What does the term "complaint" mean?

Ans. As per Regulation 2(e), "complaint" means a written expression by a stakeholder alleging contravention of any provision of the Code or rules, regulations, or guidelines made thereunder or circulars or directions issued by the Board by a service provider or any of its associated persons and includes a complaint-cum-grievance.

Q.2. With whom a grievance shall be filed?

Ans. As per Regulation 3, a stakeholder, who wishes to file a complaint, shall file it with the Board.

Q.3. What is the procedure to file complaint/grievance?

Ans. As per Regulation 3, a complaint or grievance shall be filed with the Board as follows:

- A stakeholder, who wishes to file a complaint, shall file it with the Board in Form A along with a demand draft for two thousand and five hundred rupees drawn in favour of the Insolvency and Bankruptcy Board of India payable at New Delhi or an online acknowledgement of two thousand and five hundred rupees paid to the credit of the Board towards fee.
- A grievance or a complaint shall be filed within forty-five days of the occurrence of the cause of action for the grievance or the complaint. A grievance or a complaint may be filed after the aforesaid period, if there are sufficient reasons justifying the delay, but such period shall not exceed 30 days.

Q.4. Whether a complaint/grievance can be filed online only?

Ans. No, as per Regulation 3, a grievance or a complaint can be filed with the Board online or offline until the Board provides a facility for online filing of grievances and complaints.

Q.5. State the requirements of filing a grievance by an aggrieved.

Ans. As per Regulation 3, the grievance shall state the following:

- details of identity of the aggrieved;
- details of identity of the service provider;
- details of the conduct of the service provider that has caused the suffering to the aggrieved;
- details of suffering, whether pecuniary or otherwise, the aggrieved has undergone;
- how the conduct of the service provider has caused the suffering of the aggrieved;
- details of his efforts to get the grievance redressed from the service provider and why the response, if any, of the service provider is not satisfactory; and
- how the grievance may be redressed;

Q.6. Whether a stakeholder who is filing a complaint/grievance is required to disclose its identity?

Ans. Yes, as per Regulation 4, a stakeholder who is filing a complaint/grievance is required to disclose its identity and also the identity of the authorised representative, who is authorised to file it.

However, a stakeholder filing a grievance or a complaint, as the case may be, may request the Board to keep its identity confidential and in that case the Board shall keep it confidential unless its disclosure is necessary for processing the grievance or complaint or under any law.

Q.7. Whether the Board may club a complaint or a grievance?

Ans. Yes, as per Regulation 5, where the Board is in receipt of more than one grievance or more than one complaint in the same matter, it may club such grievances or such complaints together for their disposal.

Q.8. Whether the Board is required to provide a Registration number to a complaint or a grievance?

Ans. Yes, as per Regulation 5, the Board shall assign a unique registration number to every grievance and every complaint and communicate the said registration number to the aggrieved or the complainant within a week of its receipt.

Q.9. Whether the Board is required to take cognizance of an anonymous complaint or a grievance?

Ans. No, as per Regulation 5, the Board shall not take any cognizance of any anonymous grievance or complaint.

Q.10. How the Board deals with the disposal of a Grievance?

Ans. As per Regulation 6, a grievance may be disposed of as follows:

- The Board may seek additional information and records from the aggrieved and information and records from the concerned service provider to decide if the grievance requires any redress by the service provider.
- The aggrieved and the service provider shall submit the information and records within fifteen days thereof.
- The Board shall close the grievance within forty-five days of its receipt if it does not require any redress.
- The Board shall direct the service provider to redress the grievance within forty-five days of its receipt if it requires any redress

Q.11. How the Board deals with disposal of Complaints under the Regulation?

Ans. As per Regulation 7, a compliant may be disposed of as follows:

- The Board may seek additional information and records from the complainant and information and records from the concerned service provider to form a prima facie view whether the contravention alleged in the complaint is correct.
- The complainant and the service provider shall submit the information and records within fifteen days thereof.

- The Board shall form an opinion whether there exists a prima facie case within forty-five days of the receipt of the complaint
- The Board shall close the complaint where it is of the opinion that there does not exist a prima facie case and communicate the same to the complainant.
- If the complainant is not satisfied with the decision of the Board, he may request a review of such decision.
- The Board shall dispose of the review within thirty days of the receipt of the request for review by an order with an opinion whether there exists a prima facie case.
- Where the Board is of the opinion under this regulation that there exists a prima facie case, it may order an inspection or order an investigation or issue a show cause notice as described under the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.
- Where the Board is of the opinion that the complaint is not frivolous, it shall refund the fee of two thousand five hundred rupees received.

Q.12. Whether the Board is required to disclose the statistics about receipt and disposal of grievances and complaints on its website?

Ans. As per Regulation 8, the Board shall periodically disclose summary statistics about receipt and disposal of grievances and complaints on its web site.

Chapter 19

IBBI (Inspection and Investigation) Regulations, 2017

Q.1. To whom shall IBBI (Inspection and Investigation) Regulations be applied?

Ans. These regulations shall apply to inspection and investigation of service providers *viz*. insolvency professional agency, insolvency professional, insolvency professional entity or information utility.

Q.2. Who all come under the purview of noticee under the Regulation?

Ans. As per Regulation 2 (1) (g), a "Noticee" means a service provider or an associated person who is alleged to have contravened any provision of the Code, or the rules, regulations or guidelines made thereunder.

Q.3. Define "Service Provider" under the Regulation.

Ans. As per Regulation 2 (1) (j), service provider means insolvency professional agency, insolvency professional, insolvency professional entity or information utility.

Q.4. What is the purpose for carrying out inspection of records of a service provider?

Ans. As per Regulation 3, the purposes for carrying out inspection of records of a service provider shall include the following:

- to ensure that the records are being maintained by a service provider in the manner required under the relevant regulations;
- to ascertain whether adequate internal control systems, procedures and safeguards have been established and are being followed by a service provider to fulfill its obligations under the relevant regulations;

- to ascertain whether any circumstance exists which would render a service provider unfit or ineligible;
- to ascertain whether the provisions of the Code, or the rules, regulations and guidelines made thereunder and the directions issued by the Board, if any, are being complied with:
- to inquire into the complaints received from clients or any other person on any matter having a bearing on the activities of a service provider; and
- such other purpose as may be deemed fit by the Board in furtherance of the objectives of the Code.

Q.5. What shall the order by the Board directing an Inspecting Authority to conduct an inspection of records of a service provider include?

Ans. As per Regulation 3, the order by the Board directing an Inspecting Authority to conduct an inspection of records of a service provider must include the following:

- scope of inspection;
- composition of Inspecting Authority;
- timelines for conducting the inspection;
- reporting of progress in inspection;
- submission of interim inspection report, if any; and
- submission of inspection report.

Q.6. Is it necessary to serve notice to the service provider before the commencement of the investigation and inspection of service provider?

Ans. According to Regulation 4(1) and 8(1), the Inspecting Authority/ Investigating Authority shall serve a notice of inspection/ investigation to the service provider at least 10 days prior to the commencement of the inspection or investigation.

Further, they also state that, if the Inspecting Authority/Investigating Authority is satisfied that the notice will cause undue delay in

inspection/ investigation or there is an apprehension that the records of the service provider may be destroyed, mutilated, altered, falsified or secreted, after the notice is served, it may, for reasons to be recorded in writing, dispense with such notice.

Q.7. What is the objective of interim inspection report?

Ans. As per Regulation 5, the Inspecting Authority may submit an Interim Inspection Report to the Board keeping in view the nature and progress of the inspection, if it considers appropriate to the Inspecting Authority.

The Inspecting Authority shall submit an Interim Inspection Report, if required by the Board.

If the Board is satisfied from the Interim Inspection Report that there is a gross violation of the provisions of the Code, or rules, regulations made thereunder, by the service provider and an immediate action under section 220 (2) is warranted, the Board shall refer the matter to the Disciplinary Committee for an appropriate action. Further the Disciplinary Committee may pass an interim order with specific directions to the service provider. Also, the interim order shall lapse on expiry of 90 days.

Q.8. Whom shall the Investigation Report be submitted to?

Ans. As per Regulation 10, the Investigation Report shall be submitted to the Board.

Q.9. Whether the show cause notice shall be in writing and what shall it state?

Ans. Yes, as per Regulation 12(2)**,** the show-cause notice shall be in writing, and shall state the following-

- the provisions of the Code under which it has been issued;
- the details of the alleged facts;
- the details of the evidence in support of the alleged facts;
- the provisions of the Code, or the rules, regulations or guidelines made thereunder, allegedly violated;
- the actions or directions that the Board proposes to take or issue, if the allegations are established; and

- the time within which the noticee may make written submission.

Q.10. What are the factors that the Board shall consider for allegations?

Ans. The Board shall take into account, but not limited to, the following factors: -

- the nature and seriousness of the alleged contraventions, including whether it was deliberate, reckless or negligent on the part of the noticee;
- the consequences and impact of the alleged contravention, including –
  - (i) unfair advantage gained by the noticee as a result of the alleged contravention;
  - (ii) loss caused, or likely to be caused, to clients or any other person as a result of the alleged contravention; and
  - (iii) the conduct of the noticee after the occurrence of the alleged contravention, and prior to the alleged contraventions.

Q.11. How is a show cause notice served on the noticee?

Ans. As per regulation 12 (6) a show cause notice shall be served on the noticee in the following manner:

(i) by sending it to the noticee at its registered office, by registered post with acknowledgement due; and

(ii) by an appropriate electronic form to the email address provided by the service provider to the Board;

Q.12. What is the maximum time that shall be provided to Noticee to file Written Submissions?

Ans. As per Regulation 12 (3), a show cause notice shall provide at least 21 days to the Noticee to make a written submission.

Q.13. What is the maximum time period in which a show cause notice shall be disposed of by the Disciplinary Committee?

Ans. As per Regulation 13 (2), the show cause notice shall be disposed of by the Disciplinary Committee within a period of 180 days of the issue of show cause notice.

Q.14. What shall the Order of disposal of show cause notice provide for?

Ans. As per Regulation 13 (3), the order of disposal of show cause notice shall provide for the following:

- closure of show-cause notice without any direction;
- warning;
- any of the actions under sub-sections (2), (3) and (4) of section 220;
- a reference to the Board to take any action under sub-section (5) of section 220 or sub-section (2) of section 236; or
- any other action or direction as may be considered appropriate.

Q.15. Explain the process of Restitution.

Ans. As per Regulation 14, where a direction has been issued, to any person to disgorge the amount under section 220 (4), the Board shall endeavour to realize the amount of disgorgement expeditiously.

Further, the Board shall, as soon as after the realization of the amount of disgorgement, invite claims by a public announcement from persons, who have suffered loss on account of the contravention underlying the direction under section 220 (4), seeking restitution from the disgorged amount.

The persons referred to above shall submit claims in Form A within 30 days of the public announcement.

The Board shall scrutinise the claims and prepare a list of valid claims within 30 days of the last date for receipt of claims.

The Board shall disburse such amount proportionately among the claimants within 30 days of preparation of the list of valid claims.

Chapter 20

IBBI (Procedure for Governing Board Meetings) Regulations, 2017

Q.1. What are the businesses that shall be transacted by the Governing Board?

Ans. As per Regulation 3, the Governing Board shall transact the following businesses:-

- Regulations to be made under section 240;
- Annual Accounts and Audit under section 223;
- Annual Budget under section 228;
- Annual Report under section 229;
- Delegation of Powers under section 230;
- Operations Manuals for various activities;
- Timelines for Disposal of various activities;
- Expenditures above Rs.5 crore;
- Location of Office Premises;
- Number and categories of employees and their compensation;
- Accommodation for Chairperson and Whole Time Members under Rule 12 of the IBBI (Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016;
- Any other as may be specifically required by the Governing Board from time to time;
- Any other as may be brought before the Governing Board from time to time; and
- Any other as may be required under any law for the time being in force.

Q.2. How many meetings must be held of the Governing Board?

Ans. As per Regulation 4, there shall atleast be four meetings of the Governing Board in a year and at least one meeting in each quarter.

Q.3. How many days notice shall be served for the meetings of the Governing Board?

Ans. As per Regulation 5, not less than ten days' notice shall ordinarily be given for each meeting of the Governing Board and such notice along with agenda shall be sent to every Member at his usual address in India or by e-mail, as furnished by him to the Board..

Q.4. Whether the meeting of a Governing Board can be held at a shorter notice?

Ans. Yes, as per Regulation 5 (2), if an urgent meeting of the Governing Board is required to be convened, ten days' notice may be dispensed with by the Chairperson.

Q.5. What shall be the quorum for the meetings of the Governing Board?

Ans. As per Regulation 6, quorum for transaction of the meeting of Governing board shall be:

- Five Members, if the Governing Board has eight or more Members,
- three Members, if the Governing Board has less than eight Members
- Also, all businesses which come up before any meeting of the Governing Board shall be decided by a majority vote of the Members present and voting and in the event of an equality of votes, the Chairperson, or in his absence, the Member presiding, shall have a second or casting vote.

Q.6. When a member is not allowed to participate in meetings of Governing Board?

Ans. As per Regulation 10, every Member, who is directly or indirectly concerned or interested in any business coming up for consideration at a meeting of the Governing Board, shall, as soon as possible, after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such

disclosure shall be recorded in the proceedings of the Governing Board and the Member shall not take part in any deliberation or decision of the Governing Board with respect to that business.

Q.7. Whether a member is obligated to give information of disqualification?

Ans. Yes, as per Regulation 11, a Member shall, as soon as possible, inform the Board if he becomes subject to any of the disqualifications specified in section 190 of the Code.

Further, the Board shall inform the Central Government, if it comes to the notice of the Board that any Member has attracted any of the disqualifications.

Q.8. What is the manner in which contracts are executed?

Ans. As per Regulation 13, the manner to execute contracts are as follows:

- Any contract on behalf of the Board may be made in writing signed by a Member, Officer of the Board or any other person acting under its authority, express or implied and may in the same manner be varied or discharged.
- Any document connected with any contract may be signed and verified on behalf of the Board by any Officer authorised by the Chairperson.
- All contracts made according to the provisions of this regulation shall be valid and binding on the Board.

Chapter 21

IBBI (Advisory Committee) Regulations, 2017

Q.1. What are the committees that are required to be constituted by the Board?

Ans. As per Regulation 3, the Board may constitute the following committees:-

- Advisory Committee on Service Providers;
- Advisory Committee on Corporate Insolvency and Liquidation;
- Advisory Committee on Individual Insolvency and Bankruptcy, and
- Any other subject specific Advisory Committee as the Board may consider expedient from time to time.

Q.2. What shall be the composition of the advisory committee?

Ans. As per Regulation 4, an Advisory Committee shall comprise of:-

- Professional Members, who are eminent academicians or practitioners in the relevant area, and
- General Members, who are eminent citizens not having direct involvement or interest in the area:

  Professional Members and General Members shall roughly be in the ratio of 2:1.

Q.3. What shall be the term of the member of the advisory committee?

Ans. As per Regulation 4, the term of a Member shall not exceed three years:

However, a person shall be eligible for reappointment as Member of the same or another Advisory Committee.

Q.4. Who will be designated as Chairperson and Secretary to the advisory committee?

Ans. As per Regulation 4 (4), the Board shall designate:

(a) one of the General Members of the Advisory Committee as its Chairperson; and

(b) one of its senior Officers as Secretary to the Advisory Committee and such Secretary shall have right to speak, but not vote on any issue in the meetings of the Advisory Committee.

Q.5. What is the quorum of the meeting of the advisory committee?

Ans. As per Regulation 5, fifty percent of the existing strength of the Advisory Committee shall constitute quorum for its meetings.

Q.6. Whether a member of the advisory committee shall be entitled to a fee?

Ans. Yes, as per Regulation 6, a Member of the Committee shall be entitled to a sitting fee of Rs.10,000 for a meeting of the Committee. Also, a Member of the Committee shall be entitled to reimbursement of expenses on his travel and accommodation for attending the meetings of the Committee at par with the entitlement of Secretary to Government of India.

Chapter 22

IBBI (Employees' Service) Regulations, 2017

Q.1. Define the term 'Dependent'.

Ans. As per Regulation 2 (1) (c), "dependent" means-

- parents and step parents (a female employee can have either her parents or her parents-in-law as dependent);
- sisters, widowed sister, widowed daughter, minor brother;
- children and step-children (son upto the age of 25 or till his marriage, whichever is earlier, and daughter till she gets married, and handicapped son)
- divorced / abandoned or separated sisters and divorced / abandoned or separated daughters,

  whose income from all sources doesn't exceed Rs. 10,000/- per month or such other amount, as may be decided by the Board from time to time;

Q.2. Define the term 'Duty'.

Ans. As per Regulation 2 (1) (d), duty means-

- service as a probationer;
- period during which an employee is on joining time or training authorized by the Board;
- period spent on causal leave duly authorized by the Board;

Q.3. Who shall decide the maximum number of employees in each Grade and each position?

Ans. The Board shall decide from time to time the maximum number of employees in each Grade and each position.

Q.4. What is the probation period of employees?

Ans. As per Regulation 6, an employee shall be on probation for two years on initial appointment in the Grade. The Board may, if it considers it necessary, extend the period of probation up to one year for unsatisfactory performance or reduce or dispense with period of probation for reasons to be recorded in writing.

Q.5. Whether the Board can discharge any employee on one day's notice?

Ans. Yes, as per Regulation 6 (4), an employee on initial appointment may be discharged without assigning any reason at one day's notice during the first month of his probation and at one month's notice or on payment of pay of the notice period in lieu thereof thereafter.

Q.6. When shall the Service be deemed to be commenced?

Ans. Under these Regulations, "service" of an employee shall be deemed to commence from the working day on which an employee reports for duty.

Q.7. When shall the Service be deemed to be commenced, in case he reports in the afternoon?

Ans. If an employee reports in the afternoon, his service shall commence from the next following working day.

Q.8. When shall an employee be eligible for gratuity?

Ans. As per Regulation 16, an employee shall be eligible for gratuity on –

- retirement;
- death;
- disablement rendering him unfit for further service;
- resignation after completing five years of continuous service; or
- termination of service in any other way (except by way of punishment) after completion of five years of service.

Q.9. Can a leave be admissible to an employee under suspension or against whom disciplinary proceedings are pending?

Ans. No, as per Regulation 26, leave may not be granted to an employee under suspension or against whom disciplinary proceedings are pending.

Q.10. Can an employee take active participation in politics and standing for election?

Ans. No, as per regulation 40, no employee shall take active part in politics or in any political demonstration, or stand for election as a member of a municipal council, district board or any other local body or any legislative body.

Q.11. Who is the appellate authority under these Regulations?

Ans. As per Regulation 35, "Appellate Authority" means-

- the Board, where the Chairperson is the Competent Authority,
- the Chairperson, where the Whole Time Member is the Competent Authority,
- the Whole Time Member, where Executive Director is the Competent Authority, and
- the Executive Director, where Chief General Manager (Human Resources) is the competent authority.

Chapter 23

IBBI (Engagement of Research Associates and Consultants) Regulations, 2017

Q.1. What shall be the functions of Research Associates and Consultants?

Ans. As per regulation 4, the Research Associates and Consultants engaged by the Board shall discharge such functions, as may be assigned to them by the Board.

Q.2. What shall be the Qualifications of Research Associates and Consultants?

Ans. As per regulation 5, the eligibility for Research Associates and Consultants for different disciplines shall be as given in Schedule I.

Q.3. Whether the Board can appoint Research Associates and Consultants from any other discipline not provided in schedule I?

Ans. As per regulation 5, the Board may also engage Research Associates and Consultants from any other discipline as deemed necessary to assist the Board in the discharge of its functions under the Code.

Q.4. What shall be the terms and conditions for appointment of Research Associates and Consultants?

Ans. As per regulation 8, the terms and condition of engagement are:

- A selected candidate shall be engaged as Research Associates or Consultants on contractual basis for not less than six months and not more two years.
- The engagement of a Research Associate or a Consultant may be discontinued by giving one months' notice or one month's salary in lieu of the notice, to the other party.

- A selected candidate at the time of joining the Board shall enter into a contract which details the terms and conditions of engagement, including the confidentiality, with the Executive Director acting on behalf of the Board.
- The terms and conditions of engagement may be modified, in a specific case, where the Board deems it necessary.
- The breach of agreement executed by or on behalf of any Research Associate or Consultant shall be considered a sufficient ground for termination of the engagement made under the contract and may further debar such person from future engagement by the Board.

Chapter 24
Miscellaneous

Q.1. What shall be credited to the Insolvency and Bankruptcy Fund?

Ans. As per section 224 of the Code, the following amounts shall be credited to the Fund-

(a) the grants made by the Central Government for the purposes of the Fund;

(b) the amount deposited by persons as contribution to the Fund;

(c) the amount received in the Fund from any other source; and

(d) the interest or other income received out of the investment made from the Fund.

Q.2. Can any person contribute to and withdraw from Insolvency and Bankruptcy Fund?

Ans. 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.3. What are the circumstances under which Central Government may supersede the Board?

Ans. As per Section 226 of the Code, 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.4. Is there any time period for which the Central Government may supersede the Board?

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

Q.5. To whom shall the Board place its Annual Report?

Ans. 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.6. What shall be the punishment where no specific penalty or punishment is provided in the Code?

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

Q.7. Who shall take cognizance of offences under the Code?

Ans. As per section 236 of the Code, the offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

Judicial pronouncements with regard to Section 236
Trial of offences by Special Court

1. Committee of Creditors of Amtek Auto Ltd. through Corporation Bank Vs. Dinkar T. Venkatasubramanian & Ors. [CA (AT) (Ins.) No. 219, 442 & 443 of 2019] NCLAT order dt. 16.08.2019

Before referring any matter to IBBI or the Central Government,

the AA is required to provide reasonable opportunity of hearing to the parties concerned/alleged offenders of provisions of Chapter VII of Part II and, if satisfied, may request the Central Government to investigate the matter by an Inspector or Inspectors and then to decide on such opinion whether to refer and lodge any case before the Special Judge for trial under section 236 of the Code for alleged offence under section 74(3) or any other provision under Chapter VII of Part II of the Code and for punishment under section 447 of the Companies Act, 2013.

2. **Alchemist Asset Reconstruction Co. Ltd. Vs. Hotel Gaudavan Pvt. Ltd. [CP/CA. No. (IB)23(PB)/ 2017)] NCLT, New Delhi order dt. 22.09.2017**

There is complete bar of trial of offences in the absence of filing of a complaint by IBBI as is evident from a perusal of sub-sections (1) and (2) of section 236 the Code. Therefore, a complaint by a former director with the police would not be maintainable and competent as the complaint is not lodged by IBBI.

Q.8. When can the Special Court take cognizance of offence under the Code?

Ans. 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.9. Whether the provisions of this Code override other laws?

Ans. As per section 238 of the Code, the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Judicial pronouncements with regard to Section 238: Provisions of this Code to override other laws

1. **Yogeshkumar Jashwantlal Thakkar Vs. Indian Overseas Bank and Anr. [CA (AT) (Ins.) No. 236 of 2020] NCLAT order dt. 14.09.2020**

An acknowledgement of debt interrupts the running of prescription and that it does not create a new right but only extends the period of limitation.

2. **Vijay Kumar V Iyer Vs. Bharti Airtel Ltd. and Ors. [CA (AT) (Ins.) No. 530 & 700 of 2019] NCLAT order dt. 13.07.2020**

   The accounting conventions cannot supersede any express provisions laid down in the specific law on the subject.

3. **Rajendra K. Bhutta Vs. Maharashtra Housing and Area Development Authority and Anr. [Civil Appeal No. 12248 of 2018] SC order dt. 19.02.2020**

   When it comes to any clash between the Maharashtra Housing and Area Development Act, 1976 and the Code, on the plain terms of section 238, the Code must prevail.

4. **Ajay Kumar Bishnoi Vs. Tap Engineering [Crl OP(MD) No. 34996 and Ors. of 2019] HC, Madras order dt. 09.01.2020**

   Section 238 of the Code prevails over section 421 of the Code of Criminal Procedure, 1973.

5. **Maharashtra State Electricity Transmission Co. Ltd. Vs. Sri City Pvt. Ltd. &Ors. [CA (AT) (Ins.) No. 1401 of 2019] NCLAT order dt. 03.02.2020**

   The Code will override the provisions of Maharashtra State Electricity Regulatory Commission Transmission Open Access Regulations, 2005 in terms of section 238 of the Code.

6. **Radhika Mehra Vs. Vaayu Infrastructure LLP &Ors. [CA (AT) (Ins.) No. 121 of 2020] NCLAT order dt. 30.01.2020**

   Section 61(2) of the Code will prevail over section 5 of the Limitation Act, 1963 by virtue of section 238 of the Code.

7. **Bimalkumar Manubhai Savalia Vs. Bank of India and Anr. [CA (AT) (Ins.) No. 1166 of 2019] NCLAT order dt. 05.03.2020**

   Proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 will not extend the period of limitation since those proceedings are independent and as per section 238, the Code will have overriding effect on other laws.

8. **The Deputy Director, Enforcement Directorate Vs. Axis Bank & Ors. [CRL.A.143/2018 & Crl.M.A. 2262/2018] HC, New Delhi order dt. 02.04.2019**

   The objective of PMLA, being distinct from the purposes of the Recovery of Debts and Bankruptcy Act, 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and the Code, the latter three legislations do not prevail over the former. They must co-exist, each to be construed and enforced in harmony, without one being in derogation of the other.

9. **Duncans Industries Ltd. Vs. A. J. Agrochem [Civil Appeal No. 5120 of 2019] SC order dt. 04.10.2019**

   CIRP cannot be equated with winding up proceedings and hence no prior consent of the Central Government under the Tea Act, 1953 would be required for initiation of the proceedings under section 7 or 9 of the Code as it overrides the said statute.

10. **Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 43 of 2019 and other petitions] SC order dt. 09.08.2019**

    Even by a process of harmonious construction, Real Estate (Regulation and Development) Act, 2016and the Code must be held to co-exist, and, in the event of a conflict, the Code shall prevail.

11. **Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [CA No. 8337-8338 of 2017] SC order dt. 31.08.2017**

    The Maharashtra Relief Undertakings (Special Provisions Act), 1958 cannot stand in the way of the CIRP under the Code.

12. **Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd. [SLP No. 6483/2018] SC order dt. 10.08.2018**

    Given section 238 of the Code, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-tax Act, 1961.

13. **Edelweiss Asset Reconstruction Company Ltd. Vs. Synergies Dooray Automotive Ltd. & Ors. [CA (AT) (Ins.) 169 to 173 of 2017] NCLAT order dt. 14.12.2018**

Section 238 provides overriding effect of Code over the provisions of the other Acts, if any of the provisions of an Act is in conflict with the provisions of the Code.

14. Macquarie Bank Ltd. Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 with other appeals] SC order dt. 15.12.2017

The non-obstante clause contained in section 238 of the Code will not override the Advocates Act, 1961 as there is no inconsistency between section 9 read with the AA Rules and Forms, and the Advocates Act, 1961.

15. Indian Overseas Bank Vs. Pearl Vision Pvt. Ltd. [CP No (IB)-419(PB)/2018] NCLT, New Delhi order dt.12.10.2018

Inter-se agreement between the FCs cannot override the express provisions of the Code nor can take away the right of any creditor to file application under section 7 of the Code.

16. Precision Fasteners Ltd. Vs. Employees Provident Fund Organization [MA 576 and 752/2018 in C.P.(IB) 1339(MB)/2017] NCLT, Mumbai order dt. 12.09.2018

The overriding effect of section 238 of the Code will not have any bearing over the asset of the workmen lying in the possession of the CD because that asset will not be considered as part of the liquidation estate, moreover, to apply section 238 over any other law for the time being in force, the other law must be inconsistent with the provisions of the Code.

17. K.Kishan Vs. Vijay Nirman Company Pvt. Ltd. [Civil Appeal No. 21824 & 21825 of 2017] SC order dt.14.08.2018

Section 238 of the Code will apply in case there is an inconsistency between the Code and the Arbitration and Conciliation Act, 1996.

18. Jaipur Metals & Electricals Employees Organisation Vs. Jaipur Metals & Electricals Ltd. & Ors. [Civil Appeal No. 12023 of 2018 arising out of SLP (Civil) No. 18598 of 2018] SC order dt. 12.12.2018

The company petition pending before the HC cannot be proceeded with further, in view of section 238 of the Code. The writ petitions that are pending before the HC have also to be disposed of in light

of the fact that proceedings under the Code must run their entire course.

19. Jagmohan Bajaj Vs. Shivam Fragrances Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 428 of 2018] NCLAT order dt.14.08.2018

The statutory right of an FC satisfying the requirements of section 7 of the Code to trigger CIRP cannot be made subservient to adjudication of an application under sections 241 and 242 of the Companies Act, 2013. The Code is supreme so far as triggering of CIRP and same cannot be eclipsed by taking resort to remedies available under ordinary law of the land.

20. Punjab National Bank Vs. Vindhya Cereals Pvt. Ltd. [CA (AT) (Ins.) No. 854 of 2019] NCLAT order dt. 26.02.2020

FC can proceed simultaneously under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 as well as under the Code but section 238 of the Code will prevail over any other law for the time being in force.

21. Om Prakash Agrawal, Liquidator - S. Kumars Nationwide Ltd. Vs. Chief Commissioner of Income Tax (TDS) & Anr. [CA (AT) (Ins.) No. 624 of 2020] NCLAT order dt. 08.02.2021

In regard to recovery of the Government dues (including Income Tax) from a company in liquidation under the Code, if there is inconsistency between section 194 IA of the Income-tax Act, 1961 and section 53(1)(e) of the Code, section 53(1)(e) of the Code shall have overriding effect on the provisions of the section 194 IA of the Income-tax Act, 1961 by virtue of section 238 of the Code.

22. A Navinchandra Steels Pvt. Ltd. Vs. SREI Equipment Finance Ltd. & Ors. [Civil Appeal Nos. 4230-4234 of 2020] SC order dt. 01.03.2021

The SC while dealing with an appeal involving the issue of filing of an insolvency application under the provisions of the Code when a winding up petition has already been admitted against the same company, held, that a petition either under section 7 or 9 of the Code is an independent proceeding which is unaffected by winding up proceedings that may be filed qua the same company. It observed that a discretionary jurisdiction under the fifth proviso to section 434(1)(c) of the Companies Act, 2013 cannot prevail over

the undoubted jurisdiction of the AA under the Code once the parameters under the Code are fulfilled.

23. The Directorate of Enforcement Vs. Manoj Kumar Agarwal & Ors. [CA (AT) (Ins.) No. 575 and 576 / 2019] NCLAT order dt. 09.04.2021

There is no conflict between PMLA and the Code, and even if a property has been attached in the PMLA which is belonging to the CD, if CIRP is initiated, the property should become available to fulfil objects of the Code till a resolution takes place or sale of liquidation asset occurs in terms of section 32A.

Q.10. What is the provision with regard to Limitation Act 1963 in the Code?

Ans. As per section 238A, the provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.

Judicial pronouncements with regard to Section 238A: Limitation

1. Syndicate Bank Vs. Bothra Metals and Alloys Ltd. [CP (IB) No. 2579/MB.IV/ 2019] NCLT, Mumbai order dt. 06.07.2020

Upon perusal of the documents on record it was observed that there was acknowledgement of debt in the balance sheet of the CD and that it was well-settled through various judgments of the SC that an acknowledgement in the balance sheet of the company satisfies the requirements of section 18 of the Limitation Act, 1963, leading to a fresh period of limitation commencing from each such acknowledgement.

2. Jagdish Prasad Sarada Vs. Allahabad Bank [CA (AT) (Ins.) No. 183 of 2020] NCLAT order dt. 28.08.2020

The provisions of the Limitation Act, 1963 vide section 238A of the Code will be applicable to all non-performing asset cases provided they meet the criteria of Article 137 of the Schedule to the Limitation Act, 1963 and that the extension of the period of

limitation can only be done by way of application of section 5 of the Limitation Act, 1963, if any case for condonation of delay is made out.

3. **Invent Assets Securitization and Reconstruction Pvt. Ltd. Vs. Xylon Electrotechnic Pvt. Ltd. [CA (AT) (Ins.) No. 677 of 2020] NCLAT order dt. 11.08.2020**

   The application under section 7 of the Code is governed by Article 137 of the Limitation Act, 1963 and any application filed by the FC for initiation of the CIRP beyond three years from the date of the CDs account being classified as non-performing asset, would be barred by limitation.

4. **Jayprakash Vyas Vs. Prabhat Steel Traders Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 1238 of 2019] NCLAT order dt. 24.07.2020**

   As acknowledgement of liability was made after a lapse of about five years, a fresh period of limitation will not accrue since the period of limitation was three years. Since the acknowledgement was made much later than the prescribed period of limitation, the petitioner cannot claim the benefit of section 18 of the Limitation Act, 1963, which provides a fresh period of limitation from the time when the acknowledgement was so made.

5. **Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. [Civil Appeal No. 6347 of 2019] SC order dt. 14.08.2020**

   Any application filed beyond 3 years from the date of default is barred by limitation. CIRP of the CD was set aside on the ground that the application filed under section 7 of the Code is barred by limitation, with the following observations:

   (a) the Code is a beneficial legislation intended to put the CD back on its feet and is not a mere money recovery legislation;

   (b) CIRP is not intended to be adversarial to the CD but is aimed at protecting the interests of the CD;

   (c) intention of the Code is not to give a new lease of life to debts which are time-barred;

(d) the period of limitation for an application seeking initiation of CIRP under section 7 of the Code is governed by Article 137 of the Limitation Act, 1963, and is, therefore, 3 years from the date when right to apply accrues;

(e) trigger for initiation of CIRP by a FC is default on the part of the CD, that is to say, the right to apply under the Code accrues on the date when default occurs;

(f) default referred to in the Code is that of actual non-payment by the CD when a debt has become due and payable;

(g) if default had occurred over 3 years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and

(h) an application under section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act, 1963 does not apply to the application under consideration.

6. **Bango Industries Vs. U T Ltd. [CP (IB) No. 08/KB/2018] NCLT, Kolkata order dt. 19.04.2018**

Since the CD had acknowledged the debt in 2015 in a letter sent to the OC, the application is well within the limitation period of 3 years.

7. **Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. [Civil Appeal No. 4952 of 2019] SC order dt. 18.09.2019**

An application which is filed under section 7 of the Code will fall within Article 137 instead of Article 62 of the Limitation Act, 1963.

8. **Suo Moto [CA (AT) (Ins.) No. 01 of 2020] NCLAT order dt. 30.03.2020**

The period of lockdown ordered by the Central/State Governments including the period as may be extended either in whole or part of the country, where the registered office of the CD may be located, shall be excluded for the purpose of counting of the period for CIRP under section 12 of the Code in all cases where CIRP is pending before any AA or in appeal before

NCLAT.

9. Rupesh Kumar Gupta Vs. Punjab National Bank & Anr. [CA (AT) (Ins.) No. 1119 of 2019] NCLAT order dt. 28.02.2020

From the minutes of meeting of the Board of Directors, it can be clearly stated that there was an acknowledgement of debt by the CD as on the relevant date and the application for initiating CIRP was not time barred.

10. Ishrat Ali Vs. Cosmos Cooperative Bank Ltd. & Anr. [CA (AT) (Ins.) No. 1121 of 2019]NCLAT order dt. 12.03.2020

A judgement or a decree for recovery of money by the Civil Court/Debt Recovery Tribunal cannot shift forward the date of default for the purposes of limitation. It was also held that action taken by the FC under section 13(2) or (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is not a civil proceeding or appeal or revision, and thus the period cannot be excluded for counting the limitation period.

11. Digamber Bhondwe Vs. JM Financial Asset Reconstruction Company Ltd. [CA (AT) (Ins.) No. 1379 of 2019] NCLAT order dt. 05.03.2020

The relevant date is the date of default and article 137 of the Limitation Act, 1963 is applicable, for application under section 7 or 9 of the Code. It was also clarified that though a 'decree-holder' is covered in the definition of 'creditor' under section 3(10) of the Code, he cannot initiate CIRP under section 7 and 9 as FC and OC do not include a 'decree-holder'.

12. Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 177 of 2019 & I.A. Nos. 3392 & 3542 of 2019] NCLAT order dt. 07.02.2020

The application was filed after 3 years of the cut-off period of default and there was nothing on record to suggest that there was acknowledgement of the debt within 3 years in terms of section 18 of the Limitation Act, 1963. Thus, the application was barred by limitation.

13. Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Anr. [Civil

Appeal No. 7673 of 2019] SC order dt. 30.09.2019

The date of coming into force of the Code does not and cannot form a trigger point of limitation for applications filed under the Code.

14. Speculum Plast Pvt. Ltd. Vs. PTC Techno Pvt. Ltd. [CA (AT) (Ins.) No. 47 of 2017 and other appeals] NCLAT order dt. 07.11.2017

If there is a delay of more than 3 years from the date of cause of action and no laches on the part of applicant, the applicant can explain the delay. When there is a continuing cause of action, the question of rejecting any application on the ground of delay, does not arise.

15. Neelkanth Township & Construction Pvt. Ltd. Vs. Urban Infrastructure Trustees Ltd. [CA (AT) (Ins.) No. 44 of 2017] NCLAT order dt. 11.08.2017

There is nothing on the record that Limitation Act, 1963 is applicable to the Code. The Code is not an Act for recovery of money claim rather it relates to initiation of CIRP.

16. Black Pearls Hotels Pvt. Ltd. Vs. Planet M Retail Ltd. [CA (AT) (Ins.) No. 91 of 2017] NCLAT order dt. 17.10.2017

The right to apply under the Code accrues only on the date the Code came into effect, that is, on or after 1st December, 2016 and before this date.

17. B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017] SC order dt. 11.10.2018

If the default has occurred over 3 years prior to the date of filing of the application, it would be barred under Article 137 of the Limitation Act, 1963, save and except in those cases where, in the facts of the case, section 5 of the said Limitation Act, 1963 may be applied to condone the delay in filing such application. Section 238A of the Code, being clarificatory of the law and being procedural in nature is retrospective in effect.

18. Gouri Shankar Chatterjee Vs. State Bank of India [C.O. 1257

of 2020] HC, Calcutta order dt. 15.10.2020

The HC set aside the order of admission on the ground that the AA had no jurisdiction to admit an application under section 7 of the Code, beyond the prescribed period of three years as provided in Article 137 of the Limitation Act, 1963.

19. State Bank of India Vs. Krishidhan Seeds Pvt. Ltd. [CA (AT) (Ins.) No. 972 of 2020] NCLAT order dt. 17.11.2020

The date of default would not be extended on account of acknowledgement made in the OTS proposal (One Time Settlement) of the CD.

20. A.Balakrishnan Vs. Kotak Mahindra Bank Ltd. & Anr. [CA (AT) (Ins.) No. 1406 of 2019] NCLAT order dt. 24.11.2020

The limitation under section 7 of the Code, would run from the date of declaration of the non- performing asset (NPA). The passing of decree or issue of recovery certificate, will not give a fresh right to trigger Code.

21. Bishal Jaiswal Vs. Asset Reconstruction Company (India) Ltd. & Anr. [Reference made by Three Member Bench in CA (AT) (Ins.) No. 385 of 2020] NCLAT order dt. 22.12.2020

The date of default is extendable within the ambit of section 18 of Limitation Act, 1963 based on an acknowledgement in writing made by the CD before the expiry of period of limitation.

22. Vinod Singh Negi Vs. Kiran Shah, Liquidator of ORG Informatics Ltd. [CA (AT) (Ins.) No. 1101 of 2020] NCLAT order dt. 19.01.2021

The writers of law were conscious that there could be situation where time-barred debts are claimed before the IRP or the RP. The employee submitting claim during the liquidation stage for salary of 2012, without showing as to how it is within limitation, is liable to be rejected.

23. Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. and Anr. [Civil Appeal No. 9198 of 2019] SC order dt. 22.03.2021

Section 238A of the Code makes the provisions of the Limitation Act, 1963 as far as may be, applicable to proceedings under the Code. All provisions of the Limitation Act, 1963 are applicable to proceedings in the NCLT/NCLAT to the extent feasible.

Legislature has in its wisdom chosen not to make the provisions of the Limitation Act verbatim applicable to proceedings in NCLT/NCLAT, but consciously used the words 'as far as may be'. The words 'as far as may be' are not meant to be otiose. Those words are to be understood in the sense in which they best harmonise with the subject matter of the legislation and the object which the Legislature has in view. The Courts would not give an interpretation to those words which would frustrate the purposes of making the Limitation Act, 1963 applicable to proceedings in the NCLT/NCLAT 'as far as may be'.

Section 14 of the Limitation Act, 1963 excludes the time spent in proceeding in a wrong forum, which is unable to entertain the proceedings for want of jurisdiction.

24. In Re: Cognizance for Extension of Limitation [Suo Moto Writ (Civil) No. 3 of 2020] SC order dt. 23.03.2020

The SC took suo motu cognizance of the situation arising out of COVID-19 and resultant difficulties that may be faced by litigants as to period of limitation prescribed under general law of limitation or under Special Laws (both Central and/or State). In exercise of its powers under Articles 141 and 142 of the Constitution, it ordered extension of period of limitation for all proceedings, from 15.03.2020, until further orders, and declared that the order is binding on all courts/tribunals and authorities.

25. In Re: Cognizance for extension of limitation [Suo Motu Writ Petition (Civil) No. 3 of 2020] SC order dated 08.03.2021

SC ruled that its earlier order that provided for extension of limitation period w.e.f. 15.03.2020, has served its purpose and that it should come to an end. The court issued the lowing directions:-

i. In calculating the limitation period in any suit, appeal, application or proceeding, the period from 15.03.2020 till

14.03.2021 is to be excluded, and any balance of the limitation period as on 15.03.2020 will start w.e.f. 15.03.2021.

ii. If the limitation period would have expired during the 1 year extension period, a limitation period of 90 days will be available from 15.03.2021. If the balance of the limitation period remaining on 15.03.2021 is more than 90 days, then the longer period will apply.

iii. The 1 year extension period is also to be excluded when calculating the prescribed periods under sections 23(4) and 29A of the Arbitration and Conciliation Act 1996, section 12A of the Commercial Courts Act 2015 and provisos (b) and (c) of section 138 the Negotiable Instruments Act 1881 and any other law which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

26. In Re: Cognizance for Extension of Limitation [MA No. 665 of 2021 in SMW (C) No. 3 of 2020] SC order dt. 23.09.2021

In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded.

27. Asset Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Anr. [Civil Appeal No. 323 of 2021 with other appeals] SC order dt. 15.04.2021

Acknowledgement of debt in the balance sheet extends the period of limitation under section 18 of the Limitation Act, 1963. However, it would depend on the facts of each case as to whether an entry made in a balance sheet qua any creditor is unequivocal or has been entered into with caveats, which would establish whether an acknowledgement of liability has, in fact, been made. The majority decision of the full bench of the NCLAT in V. Padmakumar Vs. Stressed Assets Stabilisation Fund, was set aside.

28. Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy

and Anr. [Civil Appeal No. 1650 of 2020] SC order dt. 04.08.2021

An application under section 7 of the Code would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the CD as NPA, if there were an acknowledgement of the debt by the CD before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

29. Ishita Halder Vs. Siba Kumar Mohapatra & Anr. [CA (AT) (Ins.) No. 282 of 2021] NCLAT order dt. 18.08.2021

An offer of one-time settlement can be relied on for the purpose of considering acknowledgement under section 18 of the Limitation Act, 1963.

30. G Eswara Rao Vs. Stressed Assets Stabilisation Fund & Anr. [CA (AT) (Ins.) No. 1097 of 2019] NCLAT order dt. 07.02.2020

A decree passed by the DRT or any suit, cannot shift the date of default. The decree passed by the DRT only suggests that debt has become due and payable.

Q.11. Who has the power to make rules under the Code?

Ans. As per Section 239 of the Code the Central Government may, by notification, make rules for carrying out the provisions of this Code.

Q.12. Who has the power to make regulations under the Code?

Ans. As per Section 240 of the Code the Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code.

Judicial pronouncements with regard to Section 240: Power to make regulations

1. Central Bank of India Vs. RP of the Sirpur Paper Mills Ltd. & Ors. [CA (AT) (Ins.) No. 526 of 2018] NCLAT order dt. 12.09.2018

IBBI may make regulations, but it should be consistent with the Code and rules made thereunder, to carry out the provisions of

the Code. The provisions made by IBBI cannot override the provisions of the Code, nor can it be inconsistent with the Code.

2. **CA. Venkata Siva Kumar Vs. IBBI & Ors. [W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020] HC, Madras order dt. 28.07.2020**

Section 240 is the general regulation making power of the IBBI and section 240(1) does not impose any restraints on the powers of the IBBI, except that regulations should be consistent with the Code and the rules thereunder and should be for the purposes of carrying out the provisions of the Code.

Q.13. What is the application of the Code with regard to Micro, Small and Medium Enterprises?

Ans. As per section 240A, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process or pre-packaged insolvency resolution process of any micro, small and medium enterprises.

However, the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—

(a) not apply to micro, small and medium enterprises; or

(b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification

For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

Judicial pronouncements with regard to Section 240A: Application of this Code to micro, small and medium enterprises

Harkirat Singh Bedi Vs. The Oriental Bank of Commerce & Ors. [CA (AT) (Ins.) No. 40 of 2020] NCLAT order dt. 12.01.2021

The exemption granted under section 240A of the Code is only in respect of clause (c) and (h) of section 29A of the Code and in the

instant case, the Appellant was declared ineligible under clause (b) of section 29A i.e., declared as a willful defaulter for which no exemption has been given to MSME. The NCLAT further held that since the date of registration of the CD as MSME was after the order of admission, the application for registration of MSME was without authorization, and hence was invalid.

Q.14. 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?

Ans. 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.15. 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?

Ans. 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.

Judicial pronouncements with regard to Section 252: Amendments of Act 1 of 2004 (The Sick Industrial Companies (Special Provisions) Repeal Act, 2003)

1. **Bank of New York Mellon London Branch Vs. Zenith Infotech Ltd. [Civil Appeal No. 3055 of 2017] SC order dt. 21.02.2017**

   It was held that the power to reject the reference, on the ground that the company is not an industrial unit, does not lie with the Registrar or the Secretary of the Board for Industrial and Financial Reconstruction. Therefore, the reference was deemed

to be pending before BIFR on 01.11.2016 (date of commencement of the Code) and the company can seek its remedies under the provisions of section 252 of the Code.

Q.16. Whether any power is given to Central Government to notify financial sector providers?

Ans. As per Section 227 of the Code Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed**.**

Judicial pronouncements with regard to Section 227 Power of Central Government to notify financial sector providers, etc.

1. **Vinay Kumar Mittal &Ors. Vs. Dewan Housing Finance Corporation Ltd. &Ors. [Civil Appeal No. 654 to 660 of 2020] SC order dt. 31.01.2020**

   The RBI filed an application under section 227 and 239 of the Code read with rule 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 for insolvency resolution of Dewan Housing Finance Corporation Ltd. (DHFL), which was admitted by NCLT, Administrator was appointed and moratorium imposed. The HC restrained DHFL from making any further payments to any unsecured creditors and secured creditors except in cases where payments are to be made on a pro-rata basis to all secured creditors out of its current and future receivables.

   The fixed deposit holders aggrieved by the orders of the HC restraining from making any payments towards their fixed deposits, challenged the order of the HC before SC. The SC held that since the depositors are being represented by the authorised representative before the CoC, they are free to raise all points and contentions before the CoC, the Administrator, and if necessary, before the AA.

Q.17. Whether any Civil Court have jurisdiction in respect of any matter under this Code?

Ans. No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code.

Judicial pronouncements with regard to Section 231
Bar of jurisdiction

1. **Liberty House Group PTE Ltd. Vs. State Bank of India & Ors. [CS (COMM) 1246 /2018 and IAs No. 16056/2018 and 16060/2018 and CS (COMM) 1247/2018 and IAs No.16061/2018 and 16065/2018] HC, New Delhi order dt. 22.02.2019**

   The jurisdiction of the HC will also be barred by section 231 of the Code which provides that no Civil Court shall have jurisdiction in respect of any matter in which the AA is empowered, by or under, the Code to pass any order.

Q.18. What is the Protection available for action taken in good faith ?

Ans. As per Section 233 of the Code, no suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government, the Chairperson, Member, officer or other employee of the Board or Insolvency Professional or Liquidator for anything which is done or intended to be done in good faith under the Code or the rules or regulations made thereunder.

Judicial pronouncements with regard to Section 233
Protection of action taken in good faith

1. **Bank of Baroda Vs. Varia Engineering work Ltd [IA/4679(AHM)2021 in CP(IB)/149 (AHM)2017] NCLT, Ahmedabad order dt. 19.07.2021**

   The liquidator is protected against any coercive action, provided his act during CIRP is bona fide.

2. Basavaraj Koujalagi& 82 Ors. Vs. Sumit Binani, Liquidator of Gujarat NRE Coke Ltd. [IA No. 865/KB/2020 in CP (IB) No. 182/KB/2017] NCLT, Kolkata order dt. 03.05.2021

Actions taken in good faith by a public servant always enjoy protection under the law, and the Code is no different, providing for the same under section 233.

Chapter 25

The Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019

Q.1. Who is an "Administrator"?

Ans. As per Rule 3(1)(a), "Administrator" means an individual appointed by the Adjudicating Authority under rule 5(a)(iii), to exercise the powers and functions of the insolvency professional, interim resolution professional, resolution professional or the liquidator for the purpose of insolvency and liquidation proceedings of a financial service provider.

Q.2. What is the process for making an application by a financial service provider ?

Ans. Till such time the rules of procedure for conduct of proceedings under the Code are notified, the application made under Rule 5(a) shall be filed before the Adjudicating Authority in accordance with rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under the provisions of the Companies Act, 2013.

An applicant under these rules shall immediately after becoming aware, notify the Adjudicating Authority of any winding-up petition presented against the financial service provider.

The application under Rule 5(a)(i) shall be made in Form 1 and accompanied by-

(a) a fee of twenty-five thousand rupees;

(b) a written consent and declaration in accordance with Form 2 from the proposed Administrator; and

(c) other documents and records as specified in Form 1.

The application and accompanying documents shall be filed in electronic form, as and when such facility is made available by the Adjudicating Authority:

Provided that till such facility is made available, the applicant may submit the accompanying documents, and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority.

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

The Adjudicating Authority may permit withdrawal of an application filed under Rule 5(a)(i) before its admission on a request made by the applicant.

Q.3. Explain provisions with respect to initiation of Corporate Insolvency Resolution Process against a financial service provider.

Ans. The provisions of the Code relating to the Corporate Insolvency Resolution Process of the corporate debtor shall, mutatis mutandis apply, to the insolvency resolution process of a financial service provider subject to the following modifications.

Initiation of Corporate Insolvency Resolution Process.-

(i) No corporate insolvency resolution process shall be initiated against a financial service provider which has committed a default under section 4, except upon an application made by the appropriate regulator in accordance with rule 6;

(ii) The application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under section 7, subject to clause (iii); and

(iii) On the admission of the application, the Adjudicating Authority shall appoint the individual proposed by the appropriate regulator in the application filed under Rule 5(a)(i), as the Administrator.

Q.4. Is there any time limit for which interim- moratorium shall be in force in case of Initiation of Corporate Insolvency Resolution Process against a financial service provider?

Ans. An interim moratorium shall commence on and from the date of filing of the application under clause (a) of rule 5 till its admission or rejection.

Q.5. What is the effect of commencement of interim- moratorium period ?

Ans. Save as provided in section 14 the license or registration which authorises the financial service provider to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the corporate insolvency resolution process.

Explanation.- For the purposes of this clause, "interim moratorium" shall have the effect of the provisions of sub-sections (1), (2) and (3) of section 14.

For removal of doubts, it is clarified that the provisions of clause (b) of rule 5 and section 14 shall not apply to any third-party assets or properties in custody or possession of the financial service provider, including any funds, securities and other assets required to be held in trust for the benefit of third parties.

The Administrator shall take control and custody of third-party assets or properties in custody or possession of the financial service provider, including any funds, securities and other assets required to be held in trust for the benefit of third parties only for the purpose of dealing with them in the manner, as may be notified by the Central Government under section 227.

Q.6. Who shall constitute the "Advisory Committee"?

Ans. "Advisory Committee" shall be constituted by the financial sector regulator.

Q.7. When the "Advisory Committee" shall be constituted by the appropriate regulator?

Ans. The appropriate regulator may, where deemed necessary, constitute an Advisory Committee, within 45 days of the insolvency

commencement date, to advise the Administrator in the operations of the financial service provider during the corporate insolvency resolution process

Q.8. What shall be the composition of the advisory committee?

Ans. The Advisory Committee shall consist of three or more Members, who shall be persons of ability, integrity and standing, and who have expertise or experience in finance, economics, accountancy, law, public policy or any other profession in the area of financial services or risk management, administration, supervision or resolution of a financial service provider. The Administrator shall chair the meetings of the Advisory Committee. The terms and conditions of the Members of the Advisory Committee and the manner of conducting meetings and observance of rules of procedure shall be such as may be determined by the appropriate regulator.

Q.9. What is the process of submitting of a resolution plan?

Ans. The provisions of the Code relating to the submission of resolution plan during Corporate Insolvency Resolution Process of the corporate debtor shall, mutatis mutandis apply, to the insolvency resolution process of a financial service provider subject to the following modifications:

(i) the resolution plan shall include a statement explaining how the resolution applicant satisfies or intends to satisfy the requirements of engaging in the business of the financial service provider, as per laws for the time being in force;

(ii) upon approval of the resolution plan by the committee of creditors under sub-section (4) of section 30, the Administrator shall seek 'no objection' of the appropriate regulator to the effect that it has no objection to the persons, who would be in control or management of the financial service provider after approval of the resolution plan under section 31;

(iii) the appropriate regulator shall without prejudice to the provisions contained in section 29A, issue 'no objection' on the basis of the 'fit and proper' criteria applicable to the business of the financial service provider;

(iv) where an appropriate regulator does not refuse 'no objection' on an application made under clause (ii) within forty-five working days of receipt of such application, it shall be deemed that 'no objection' has been granted.

Q.10. Explain the provisions relating to the liquidation process of a financial service provider.

Ans. The provisions of the Code relating to the liquidation process of the corporate debtor shall, mutatis mutandis apply, to the liquidation process of a financial service provider subject to the following modifications, namely: —

(a) the license or registration that authorises the financial service provider to engage in the business of providing financial services shall not be suspended or cancelled during the liquidation process, unless an opportunity of being heard has been provided to the liquidator;

(b) the Adjudicating Authority shall provide the appropriate regulator an opportunity of being heard before passing an order for —

(i) liquidation of the financial service provider under section 33, and

(ii) dissolution of the financial service provider under section 54.

Q.11. Explain the provisions relating to the voluntary liquidation process of a financial service provider.

Ans. The provisions of the Code relating to voluntary liquidation process of the corporate debtor shall, mutatis mutandis apply, to the voluntary liquidation process of a financial service provider subject to the following modifications, namely :-

(a) the financial service provider shall obtain prior permission of the appropriate regulator for initiating voluntary liquidation proceedings under section 59 of the Code;

(b) the affidavit referred to in clause (a) of sub-section (3) of section 59 shall include a declaration that the permission under clause (a) has been obtained;

(c) the Adjudicating Authority shall provide the appropriate regulator an opportunity of being heard before passing an order for dissolution of the financial service provider under section 59.

Q.12. Who shall act as an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be where corporate debtor is a financial service provider ?

Ans. Only an Administrator proposed by the appropriate regulator and appointed as such by the Adjudicating Authority shall act as an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be.

An Administrator shall have the same duties, functions, obligations, responsibilities, rights, and powers of an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be, while acting as such in an insolvency resolution and liquidation proceeding of a financial service provider.

Chapter 26

IBBI (Mechanism for Issuing Regulations) Regulations, 2018

Q.1. For the purposes of making Regulation, what shall the Board upload on its website for seeking public comments?

Ans. As per Regulation 4 (1), for the purpose of making regulations, the Board shall upload the following, with the approval of the Governing Board, on its website seeking comments from the public

- draft of proposed regulations;
- the specific provision of the Code under which the Board proposes regulations;
- a statement of the problem that the proposed regulation seeks to address;
- an economic analysis of the proposed regulations under regulation 5;
- a statement carrying norms advocated by international standard setting agencies and the international best practices, if any, relevant to the proposed regulation;
- the manner of implementation of the proposed regulations; and
- the manner, process and timelines for receiving comments from the public.

Q.2. How many days the Board shall allow for submission of public comments?

Ans. As per regulation 4 (2), the Board shall allow at least twenty one days for public to submit their comments.

Q.3. Under what circumstances, the Board is required to repeat the process of seeking comments?

Ans. As per regulation 4 (4), in case the Governing Board decides to approve regulations in a form substantially different from the

proposed regulations, it shall repeat the process under this regulation.

Q.4. Explain economic analysis of the proposed Regulations.

Ans. As per Regulation 5, the Board shall cause an economic analysis of the proposed regulations to be made. The economic analysis shall cover the following-

- expected costs to be incurred by, and the benefits that will accrue to, the society, economy, stakeholders and the Board, both directly and indirectly on account of the proposed regulation; and
- how the proposed regulations further strengthen the objectives of the Code.

Q.5. What shall be the frequency of review of the Regulation by the Board?

Ans. As per Regulation 7, the Board shall review each regulation every three years unless a review is warranted earlier and amend or repeal any regulation.

Q.6. Explain the process of Review of Regulations.

Ans. As per Regulation 7, the Board shall review each regulation every three years unless a review is warranted earlier and amend or repeal any regulation, keeping in view-

- its objectives;
- its outcome;
- experience of its implementation;
- experience of its enforcement and the related litigation;
- global best practices, if any;
- its relevance in the changed environment; and
- any other factor considered relevant by the Board.

Q.7. Under what circumstances, the Board can issue urgent Regulation?

Ans. As per Regulation 8, where the Board is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently, it may make regulations or amend the existing regulations, as the case may be, with the approval of Governing Board, without following the provisions of Regulations 4 and 5.

Q.8. Whether the Guidance on law provided by the Board be construed as determination of any question of fact or law?

Ans. No, the Board may provide for a scheme for general or specific clarification or guidance on the provisions of regulations made by it either on a request by a person or on its own, subject to the condition that such clarification or guidance shall not be construed as determination of any question of fact or law.

Chapter 27

Other Judical Pronouncements

Judicial pronouncements with regard to Section 255: Amendments of Act 18 of 2013 (The Companies Act, 2013)

1. **Unigreen Global Pvt. Ltd. Vs. Punjab National Bank [CA (AT) (Ins.) No. 81 of 2017] NCLAT order dt. 01.12.2017**

   In a case where a winding up proceeding has been initiated against a CD by the High Court or Tribunal or liquidation order has been passed in respect of the CD, no application under section 10 can be filed by the corporate applicant in view of the ineligibility under section 11(d) of the Code.

Judicial pronouncements with regard to Fee of IRP/IPE

1. **Bhasin Infotech and Infrastructure Pvt. Ltd. Vs. Gurpreet Singh [CA (AT) (Ins.) No. 491 of 2018] NCLAT order dt. 13.12.2018**

   For performance of duty of 27 days as IRP, a fee of Rs. 5 lakh is

   excessive. An IPE is not eligible or entitled to receive any fees or any cut or commission from the fees of the IRP.

Judicial pronouncements with regard to - Suspended management's locus standi

1. **Himanshu Prafulchandra Varia Vs. Sunil Kumar Agarwal & Ors. [IA 347 of 2020 in IA 362 of 2019 in CP(IB)No. 149/NCLT/AHM/ 2017] NCLT, Ahmedabad order dt. 22.07.2020**

   The suspended management has no locus standi to move an application to start business operations, when the CD is under the control of the liquidator. There is no statutory provision which allows the CD to run the company till it is sold as a going concern.

Judicial pronouncements with regard to –
Exemption of lockdown period

1. **Finquest Financial Solutons Pvt. Ltd. Vs. Ballarpur Industries Ltd. [IA No. 1175 of 2020 in CP(IB) No. 2915/2019] NCLT, Mumbai order dt. 15.09.2020**

   The period of CIRP during promulgation of lockdown will be exempted pursuant to the notification of the Central Government read with new amendment which took place in the CIRP Regulations of the IBBI.

2. **In the matter of Sudip Bhattacharya, RP of Reliance Naval and Engineering Ltd. [CA (AT) (Ins.) No. 858 of 2020] NCLAT order dt. 08.10.2020**

   Having considered nationwide lockdown in the wake of Covid-19 from March 23, 2020 to May 29, 2020 and extension of lockdown in Maharashtra till August 31, 2020, directed that the period of lockdown from March 25, 2020 till August 31, 2020 shall be excluded while computing the period of CIRP.

Judicial pronouncements with regard to –
Right of defaulted promoters of MSMEs

1. **Marutham Steel Rolling Mills Pvt. Ltd. [MA/1219/2019 in IBA/264/2019] NCLT, Chennai order dt. 03.07.2020**

   Since CD is an MSME, even if the promoters/directors have been declared as wilful defaulters, they can apply under the provisions of section 230 of the Companies Act, 2013 as they are exempted from section 29A of the Code.

Judicial pronouncements with regard to –
Bar of filing suits inapplicable under Code

1. **Shree Dev Chemicals Corporation Vs. Gammon India Ltd. [CP(IB)No 3637/MB.IV/2018] NCLT, Mumbai order dt. 16.07.2020**

The bar in filing of suit in terms of section 69(2) of the Indian Partnership Act, 1932 will not apply on applications filed under the Code as they are not 'suits' but are only 'proceedings'.

Judicial pronouncements with regard to –
Conflict of interest

1. **Kanakabha Ray Vs. Narayan Chandra Saha & Ors. [CA (AT) (Ins.) No. 687 of 2020] NCLAT order dt. 18.08.2020**

   The RP may not be currently in employment of the FC or drawing salary under it but the fact remains that on account of services rendered in past, an element of loyalty is there which cannot be ignored. Accordingly, there is a possibility that the RP would not be fair in his working.

Judicial pronouncements with regard to –
Power of AA to review

1. **Deepakk Kumar Vs. Phoenix ARC Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 848 of 2019] NCLAT order dt. 17.09.2020**

   The power to review is not an inherent power under rule 11 of the NCLT Rules, 2016, and hence, a review jurisdiction cannot be pressed into service as an appellate jurisdiction.

2. **Anubhav Anilkumar Agarwal Vs. Bank of India & Anr. [Review Application (AT) No. 15 of 2020 in CA (AT) (Ins.) No. 1504 of 2019] NCLAT order dt. 07.12.2020**

   The power of review has not been expressly conferred on NCLAT and the power under Rule 11 of NCLAT Rules, 2016 can only be exercised for correction of mistakes. The power of review is not an inherent power which cannot be exercised unless conferred specifically or by necessary implication.

Judicial pronouncements with regard to –
Fixation of fee of RP

1. **Devarajan Raman Vs. Bank of India Ltd. [CA (AT) (Ins.) No.646 of 2020] NCLAT order dt. 30.07.2020**

   Fixation of fee of the RP is not a business decision depending upon the commercial wisdom of the CoC.

Judicial pronouncements with regard to –
Power of HC in writ jurisdiction

1. **Atin Arora Vs. Oriental Bank of Commerce [C.O. No. 3894 of 2019 with CAN 12340 of 2019] HC, Calcutta order dt. 13.08.2020**

   There is no absolute bar on the HC to entertain an application under Article 227 of the Constitution, when a challenge is made to an order, which is otherwise amenable to be challenged by way of an appeal before the appellate forum if there is a patent error or miscarriage of justice apparent from the record.

Judicial pronouncements with regard to –
Notes on Clauses and construction of provisions

1. **Vijay Kumar Jain Vs. Standard Chartered Bank &Ors. [Civil Appeal No. 8430 of 2018 with WP (C) No.1266 of 2018] SC order dt. 31.01.2019**

   There is no doubt whatsoever that Notes on Clauses are an important aid to the construction of sections of the Code as they show what the drafting committee had in mind when such provisions were drafted.

Judicial pronouncements with regard to –
FC's obligation to meet cost of processes

1. **Reliance Commercial Finance Ltd. Vs. Noble Resourcing Business and Solution Pvt. Ltd. [(IB)-494(PB)/2017] NCLT, New Delhi order dt. 12.04.2019**

   For effective continuation of CIRP, the FC constituting the CoChas to contribute to the expenses, fee and other cost of the process, otherwise the whole process would come to a halt and cause unnecessary delay.

Judicial pronouncements with regard to –
Power of IBBI

1. **CA. Venkata Siva Kumar Vs. IBBI &Ors. [W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020] HC, Madras order dt. 28.07.2020**

   The powers of IBBI to frame regulations with regard to the fee payable by IPs and IPEs cannot be questioned if the power is used for carrying out the purposes of the Code.

Judicial pronouncements with regard to –
Ex-employee of FC becoming IRP

1. **State Bank of India Vs. Metenere Ltd. [Civil Appeal No. 2570 of 2020] SC order dt. 19.08.2020**

   Substitution of RP on the apprehension of bias was challenged before the SC on the premise that the proposed IRP was an ex-employee of the FC in service for over 39 years and was drawing pension from the FC. It was observed that the approach adopted by the NCLAT was incorrect that merely an RP who was in the service of the FC and was getting pension, was disentitled to be the IRP. However, while directing the AA to appoint a new RP, it further observed that the change of the RP shall not reflect adversely upon the integrity of the concerned RP who was replaced. It was also clarified that as the impugned order does not reflect a correct approach, the same shall not be treated as a precedent.

Judicial pronouncements with regard to –
Dispensation of justice by NCLAT

1. **Marathe Hospitality Vs. Mahesh Surekha &Ors. [SLP (C) No(s). 8139 of 2020] SC order dt. 10.07.2020**

   The NCLAT closed its functioning as one of its employees was suffering from Covid-19. On appeal, the SC observed that the doors of justice cannot be closed and that NCLAT should find out a way for online hearing in such a situation. While dismissing the appeal, it requested the NCLAT to start hearing the matter on interim stay, immediately on reopening.

Judicial pronouncements with regard to –
Common RP

1. **Edelweiss Asset Reconstruction Company Ltd. Vs. Sachet Infrastructure Pvt. Ltd. [CA (AT) (Ins.) No. 377-385 of 2019] NCLAT order dt. 20.09.2019**

   The AA will admit applications under section 7 filed against five CDs and appoint a common RP and the project will be completed in one go by initiating a consolidated resolution plan for total development.

Judicial pronouncements with regard to –
Penalty for failure to provide information of assets

1. **Asset Reconstruction Company (India) Ltd. Vs. Shivam Water Treaters Pvt. Ltd. [CP(IB) 1882(MB)/2018] NCLT, Mumbai order dt. 28.03.2019**

   The AA imposed cost of Rs. 10 lakh on the appellants because they failed to provide any information pertaining to assets, finance and operations of the CD and did not extend their cooperation to RP for taking control and custody despite directions under section 19.

Judicial pronouncements with regard to –
Consolidation of assets and liabilities

1. **State Bank of India & Anr. Vs. Videocon Industries Ltd. &Ors. [MA 1306/2018 in CP Nos. 02-2018 and other applications] NCLT, Mumbai order dt. 08.08.2019**

   The AA ordered that the assets and liabilities of the Videocon group companies should be substantively consolidated due to common control, common directors, common assets, common liabilities, interdependence, interlacing of finance, co-existence for survival, pooling of resources, intertwined accounts, interloping of debts, singleness of economics of units, common FCs and common group of CDs.

2. **Punjab National Bank Vs. KSK Mahanadi Power Company Ltd. &Ors. [IA No. 32/2020 in CP(IB) No. 492/07/HDB/2019] NCLT, Hyderabad order dt. 12.02.2021**

The concept of group insolvency is unknown to the Code. If the AA directs CoCs and RPs of different CDs to resolve insolvencies of different CDs together, there will be a chaotic situation relating to consolidation of assets and liabilities of all the CDs. The inherent jurisdiction of the AA under Rule 11 of the NCLT Rules cannot be used to create such a situation.

Judicial pronouncements with regard to –
Penalty for initiating CIRP of functional company

1. **Vinod Mittal Vs. Rays Power Experts & Anr. [CA (AT) (Ins.) No. 851 of 2019] NCLAT order dt. 18.11.2019**

   Starting of CIRP against a functional company is a serious matter and parties cannot be allowed to play hide and seek. It imposed a cost of Rs. 5 lakh on the OC and Rs. 2.5 lakh on the son of the director of the OC.

Judicial pronouncements with regard to –
Penalty for abuse of power by RP

1. **BMW India Financial Services Pvt. Ltd. Vs. SK Wheels Pvt. Ltd. [MA No. 2319/2019 in CP (IB) 4301/ 2018] NCLT, Mumbai order dt. 16.10.2019**

   The action or rather inaction by the RP in not taking a decision on the claim is his abuse of the power under the Code, and contrary to justice and public policy. The RP was directed to pay the amount claimed by him along with a cost of one lakh rupees to the applicant.

Judicial pronouncements with regard to –
Penalty for non-implementation of approved plan

1. **Ingen Capital Group LLC Vs. Ramkumar S.V. Anr. [CA (AT) (Ins.) No. 795 of 2018] NCLAT order dt. 30.04.2019**

   AA imposed a cost of Rs. 10 lakh because the appellant did not implement the resolution plan which was approved by the CoC and the AA.

Judicial pronouncements with regard to –
Penalty for non-cooperation with RP

1. **Directorate of Economic Offences Vs. Binay Kumar Singhania and Ors. [CA (AT) (Ins.) No.1361-1362 of 2019] NCLAT order dt. 05.02.2020**

   The AA slapped a cost of Rs. 5 lakh on the delinquent officer of the Directorate of Economic Offences, for not cooperating with RP as directed by the HC. The NCLAT noted that though the conduct of officer for not extending cooperation may be violative of the directions of the HC, however, the same cannot be linked with the order of liquidation. Therefore, the NCLAT observed that while passing order of liquidation, the AA exceeded its jurisdiction in slapping the appellant with liability of costs.

Annexure

List of Sections of the Insolvency and Bankruptcy Code, 2016 not yet notified till 31st December 2021[1]

Sl. No.	Section No.	Particulars
1.	Section 78	Application.
2.	Section 79	Definitions.
3.	Section 80	Eligibility for making an application.
4.	Section 81	Application for fresh start order.
5.	Section 82	Appointment of resolution professional.
6.	Section 83	Examination of application by resolution professional.
7.	Section 84	Admission or rejection of application by Adjudicating Authority.
8.	Section 85	Effect of admission of application.
9.	Section 86	Objections by creditor and their examination by resolution professional.

[1] Please note that the Ministry of Corporate Affairs *vide* Notification dated 15 November 2019 had appointed 1 December 2019 as the date on which following provisions in so far as they relate to the personal guarantors to corporate debtors, shall come into force:

(1) clause (e) of section 2;

(2) section 78 (except with regard to fresh start process) and section 79;

(3) sections 94 to 187 [both inclusive];

(4) clause (g) to clause (i) of sub-section (2) of section 239;

(5) clause (m) to clause (zc) of sub-section (2) of section 239;

(6) clause (zn) to clause (zs) of sub-section (2) of section 240; and

(7) section 249.

10.	Section 87	Application against decision of resolution professional.
11.	Section 88	General duties of debtor.
12.	Section 89	Replacement of resolution professional.
13.	Section 90	Directions for compliances of restrictions, etc.
14.	Section 91	Revocation of order admitting application..
15.	Section 92	Discharge order.
16.	Section 93	Standard of conduct.
17.	Section 94	Application by debtor to initiate insolvency resolution process.
18.	Section 95	Application by creditor to initiate insolvency resolution process.
19.	Section 96	Interim-moratorium.
20.	Section 97	Appointment of resolution professional.
21.	Section 98	Replacement of resolution professional.
22.	Section 99	Submission of report by resolution professional.
23.	Section 100	Admission or rejection of application.
24.	Section 101	Moratorium.
25.	Section 102	Public notice and claims from creditors.
26.	Section 103	Registering of claims by creditors.
27.	Section 104	Preparation of list of creditors.
28.	Section 105	Repayment plan.
29.	Section 106	Report of resolution professional on repayment plan.
30.	Section 107	Summoning of meeting of creditors.
31.	Section 108	Conduct of meeting of creditors.
32.	Section 109	Voting rights in meeting of creditors.

33.	Section 110	Rights of secured creditors in relation to repayment plan.
34.	Section 111	Approval of repayment plan by creditors.
35.	Section 112	Report of meeting of creditors on repayment plan.
36.	Section 113	Notice of decisions taken at meeting of creditors.
37.	Section 114	Order of Adjudicating Authority on repayment plan.
38.	Section 115	Effect of order of Adjudicating Authority on repayment plan.
39.	Section 116	Implementation and supervision of repayment plan.
40.	Section 117	Completion of repayment plan.
41.	Section 118	Repayment plan coming to end prematurely.
42.	Section 119	Discharge order.
43.	Section 120	Standard of conduct.
44.	Section 121	Application for bankruptcy.
45.	Section 122	Application by debtor.
46.	Section 123	Application by creditor.
47.	Section 124	Effect of application.
48.	Section 125	Appointment of insolvency professional as bankruptcy trustee.
49.	Section 126	Bankruptcy order.
50.	Section 127	Validity of bankruptcy order.
51.	Section 128	Effect of bankruptcy order.
52.	Section 129	Statement of financial position.
53.	Section 130	Public notice inviting claims from creditors.
54.	Section 131	Registration of claims.

55.	Section 132	Preparation of list of creditors.
56.	Section 133	Summoning of meeting of creditors.
57.	Section 134	Conduct of meeting of creditors.
58.	Section 135	Voting rights of creditors.
59.	Section 136	Administration and distribution of estate of bankrupt.
60.	Section 137	Completion of administration.
61.	Section 138	Discharge order.
62.	Section 139	Effect of discharge.
63.	Section 140	Disqualification of bankrupt.
64.	Section 141	Restrictions on bankrupt.
65.	Section 142	Modification or recall of bankruptcy order.
66.	Section 143	Standard of conduct.
67.	Section 144	Fees of bankruptcy trustee.
68.	Section 145	Replacement of bankruptcy trustee.
69.	Section 146	Resignation by bankruptcy trustee.
70.	Section 147	Vacancy in office of bankruptcy trustee.
71.	Section 148	Release of bankruptcy trustee.
72.	Section 149	Functions of bankruptcy trustee.
73.	Section 150	Duties of bankrupt towards bankruptcy trustee.
74.	Section 151	Rights of bankruptcy trustee.
75.	Section 152	General powers of bankruptcy trustee.
76.	Section 153	Approval of creditors for certain acts.
77.	Section 154	Vesting of estate of bankrupt in bankruptcy trustee.
78.	Section 155	Estate of bankrupt.

79.	Section 156	Delivery of property and documents to bankruptcy trustee.
80.	Section 157	Acquisition of control by bankruptcy trustee.
81.	Section 158	Restrictions on disposition of property.
82.	Section 159	After-acquired property of bankrupt.
83.	Section 160	Onerous property of bankrupt.
84.	Section 161	Notice to disclaim onerous property.
85.	Section 162	Disclaimer of leaseholds.
86.	Section 163	Challenge against disclaimed property.
87.	Section 164	Undervalued transactions.
88.	Section 165	Preference transactions.
89.	Section 166	Effect of order.
90.	Section 167	Extortionate credit transactions.
91.	Section 168	Obligations under contracts.
92.	Section 169	Continuance of proceedings on death of bankrupt.
93.	Section 170	Administration of estate of deceased bankrupt.
94.	Section 171	Proof of debt.
95.	Section 172	Proof of debt by secured creditors.
96.	Section 173	Mutual credit and set-off.
97.	Section 174	Distribution of interim dividend.
98.	Section 175	Distribution of property.
99.	Section 176	Final dividend.
100.	Section 177	Claims of creditors.
101.	Section 178	Priority of payment of debts.
102.	Section 179	Adjudicating Authority for individuals and partnership firms.

103.	Section 180	Civil court not to have jurisdiction.
104.	Section 181	Appeal to Debt Recovery Appellate Tribunal.
105.	Section 182	Appeal to Supreme Court.
106.	Section 183	Expeditious disposal of applications.
107.	Section 184	Punishment for false information, etc., by creditor in insolvency resolution process.
108.	Section 185	Punishment for contravention of provisions.
109.	Section 186	Punishment for false information, concealment, etc., by bankrupt.
110.	Section 187	Punishment for certain actions.
111.	Section 195	Power to designate financial sector regulator.
112.	Section 208 {Clauses (a), (b) and (d) of sub-section 1}	Functions and obligations of insolvency professionals.
113.	Section 216 {sub-section 2}	Rights and obligations of persons submitting financial information.
114.	Section 224	Insolvency and Bankruptcy Fund.
115.	Section 239{ (2)(g) to (zc), (zi) to (zk) and (zn)	Power to make rules
116.	Section 240 {(2)(zn) to (zs)}	Power to make regulations
117.	Section 243	Repeal of certain enactments and savings.
118.	Section 245	Amendments of Act 9 of 1932.
119.	Section 249	Amendments of Act 51 of 1993.