

Comprehensive Class
Notes for
Insolvency and
Bankruptcy Code, 2016

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New Delhi

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PART I

INTRODUCTION

As per Preamble to the Code, the purpose of this Act is as follows:—

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

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

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

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

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

Corporate Person means

- (a) a company as defined under section 2(20) of the Companies Act, 2013;
- (b) a Limited Liability Partnership as defined in 2(1)(n) of Limited Liability Act, 2008; or,
- (c) any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

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

Financial Information includes the following:—

- (a) Records of debt of the person
- (b) Records of liabilities when the person is insolvent
- (c) Records of assets of assets of the person over which security interest has been created

- (d) Records, if any, of instances of default by the person against any debt
- (e) Records of the balance sheet and cash-flow statements of the person; and
- (f) Such other information as may be specified

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.

As per Section 3(6) of the Code, Claim means a right to payment or right to remedy for breach of contract if such breach gives rise to a right to payment whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

As per Section 3(23) of the Code, a person means and includes the following:—

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

and includes a person resident outside India

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.

A transaction includes an agreement or arrangement in writing for transfer of assets, or funds, goods or services, from or to the corporate debtor.

Transfer includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. In case of property- transfer of property means transfer of any property and includes a transfer of any interest in the property and creation of any charge upon such property.

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

A creditor means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder.

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

As per Section 3(27) of the Code, property includes:—

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

PART II

INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS

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.

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

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

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

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

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

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

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

A financial creditor either itself or along with other financial creditors may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of its dues.

The financial creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also give the name of the interim resolution professional.

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

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

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

The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings. He shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.

After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

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

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

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.

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

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

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

As per Regulation 4 of Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016 where an applicant of corporate insolvency resolution is an assignee or transferee of a financial contract the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

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

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

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

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

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

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

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

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

Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

The corporate applicant shall furnish the information relating to books of account and other documents and a resolution professional shall be appointed as interim resolution professional.

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

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

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

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

As per Section 11 of the Code the following persons shall not be entitled to initiate the corporate insolvency process:—

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

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

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

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

The commencement date of the corporate insolvency resolution is the beginning of moratorium or a calm period for 180 days during which all suits and legal proceedings etc. against the Corporate Debtor are held in abeyance to give time to the entity to resolve its status.

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

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

As per Section 15 of the Code, the Public Announcement shall include the following:-

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

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.

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

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

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

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

As defined u/s 5(24) of the Code, a Related Party to whom a Corporate Debtor owes a financial debt shall not have any right of Representation, Participation or Voting in a meeting of the Committee of Creditors.

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

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

After the constitution of committee of creditors, the interim resolution professional is required to file a report certifying the constitution of the committee of creditors to the Adjudicating Authority. The report shall be filed on or before the expiry of thirty days from the date of appointment of the interim resolution professional.

A meeting of committee of creditors shall have quorum if members of the committee of creditors representing at least thirty three percent of the voting rights are present either in person or by video/audio means.

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

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 have quorum with the members of the committee attending the meeting.

As per Regulation 16 of the Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016, where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be formed comprising of following members:—

- (a) 18 largest operational creditors by value.
- (b) 1 representative elected by all workmen
- (c) 1 representative elected by all employees.

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

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

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

As per Section 22(3) of the Code, if the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall direct the interim resolution professional to continue as the resolution professional until such time as the Board confirms the Appointment of the proposed resolution professional.

The key roles of an Interim Resolution Professional are:—

- (a) Issuance of public notice of the Corporate Insolvency Resolution process
- (b) Collation of claims received
- (c) Constitution of the Committee of Creditors
- (d) Conduct of the first meeting of the Committee of Creditors

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

The public notice shall be published in following:-

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

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.

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

The Committee of Creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority and after the confirmation of the proposed insolvency resolution professional by the Board he shall be appointed in the same manner as laid down in Section 16.

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

The following are the key tasks to be performed by a resolution professional:—

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

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

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

A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency.

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

The Resolution Plan should provide for:

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

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:—

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

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

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

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

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

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

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

The NCLT shall do the following

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

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

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

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

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

- (a) Where before the expiry of the Insolvency Resolution Process or within 180 days of the initiation Insolvency Resolution, if the Adjudicating Authority does not receive the Resolution Plan.
- (b) If the Committee of Creditors before the expiry of the resolution process intimates the Adjudicating Authority, of the decision of the Committee of Creditors that they have passed an order for the liquidation of Corporate Debtor.
- (c) Where the Resolution Plan is in contravention with the interest of any person, whose interest is prejudicially affected by the contravention, may make an application to the Adjudicating Authority to pass the liquidation order.

The order of liquidator shall contain the following:-

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

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.

The 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 under Section 34(8) 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.
- (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.

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.

As per Section 45 of the Code, a transaction shall be considered undervalued where the corporate debtor:—

- (a) makes a gift to a person; or
- (b) enters into a transaction with a person which involves the transfer of one or more of the assets for a consideration which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor.

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

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

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

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

As per 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.

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

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

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

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

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

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

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.

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.

A creditor may withdraw or vary his claim within fourteen days of its submission.

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.

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

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.

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.

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

- (a) Any insolvency resolution process costs and the liquidation costs to be paid in full.
- (b) Debts which shall rank equally between and among the following -:
 - Any workmen dues outstanding for a period of twenty-four months preceding the liquidation commencement date.
 - (i) Debts which are owed to a secured creditor where such secured creditor has relinquished security.
- (c) Wages and any unpaid dues owed to employees other than the workmen for a period of twelve months preceding the liquidation commencement date.
- (d) Financial debts owed to unsecured creditors.

- (e) Also the following dues shall rank equally between and among the following:—
- (i) Any amount which is due to the Central Government and the State Government including any amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date.
 - (ii) All debts owed to a secured creditor for any amount unpaid following the enforcement of security interest.
- (f) Any remaining debts and dues.
- (g) Preference shareholders
- (h) Equity shareholders or partners

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

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

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

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.

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

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

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

- (a) A declaration from majority of the directors of the company verified by an affidavit stating
 - (i) That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
 - (ii) That the company is not being liquidated to defraud any person.
- (b) The declaration shall be accompanied with the following documents, namely:
 - (i) Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
 - (ii) A report of the valuation of the assets of the company, if any, prepared by a registered valuer.
- (c) After making the declaration the corporate debtor shall within four weeks
 - (i) Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.

- (ii) Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

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

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

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 of the Code, the Adjudicating Authority i.e., National Company Law Tribunal shall have jurisdiction to entertain or dispose of the following:-

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

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.

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

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.

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

Civil Court shall not have jurisdiction to entertain any suit or proceedings or grant injunction or any other relief in respect of any matter relating to insolvency of corporate persons on which the National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code.

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.

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.

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

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

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

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

- (i) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against or where the property of the corporate debtor
- (ii) has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor he shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

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

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

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.

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.

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.

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

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

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.

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.

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

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.

PART III

INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AND FIRMS

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.

As per Section 79(15) of the Code, excluded debt shall mean any—

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

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

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

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

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.

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

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

- (a) He shall not act as a director of any company, or directly or indirectly take part in or be concerned in promotion, formation or management of the company.
- (b) He shall not dispose off or alienate any of the assets.
- (c) He shall inform his business partners that he is undergoing a fresh start process.

- (d) He shall be required to inform prior to entering into any financial or commercial transaction of such value as maybe notified by the Central Government, either individually or jointly, that he is undergoing a fresh start process.
- (e) He shall disclose the name under which he enters into business transactions, if it is a different name then the one under the application.
- (f) He shall not travel outside India except with the permission of the Adjudicating Authority.

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

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

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

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.

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

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

If a debtor or a creditor is of the opinion that the resolution professional appointed is required to be replaced, he may apply to the Adjudicating Authority for replacement of such professional. The Adjudicating Authority within seven days of receipt of the application may make reference to the Board for Replacement of Resolution Professional.

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

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

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

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.

A repayment plan shall include the following:—

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

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.

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.

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

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(4) of the Code, rejecting the repayment plan.
- (c) Where an order has been passed by an Adjudicating Authority under Section 118(3) of the Code, where the repayment plan has not been completely implemented.

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.

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

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

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

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

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

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.

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

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

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.

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

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

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

- (a) The estate of the bankrupt shall vest in the Bankruptcy Trustee
 (b) The estate of the bankrupt shall be divided among his creditors
 (c) A creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt shall not be permitted to initiate any action against the property of the bankrupt in respect of such debt or commence any suit or other legal proceedings except with the leave of the Adjudicating Authority.

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

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

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

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

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

The workmen or employees may prove the existence of dues against the corporate debtor on the basis of:—

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

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

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.

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.

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.

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 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.

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

The Adjudicating Authority may modify or recall an Order of Bankruptcy in following circumstances:—

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

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

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.

A Bankruptcy Trustee may resign in following circumstances:-

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

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

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

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

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

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

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.

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

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.

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

The estate of the bankrupt shall not include—

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

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.

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.

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

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

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

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

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

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.

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.

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.

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

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.

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.

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

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

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

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

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.

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.

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 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.

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.

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 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.

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.

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.

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

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.

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.

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.

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.

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.

PART IV

REGULATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES

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

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

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

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

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

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.

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.

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.

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

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

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

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

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

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

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

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

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

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

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 Tribunal within 30 days of receipt of the impugned order.

An Insolvency Professional Agency shall perform following functions:

- (a) Grant membership to persons who fulfill all requirements set out in its bye-laws on payment of membership fee.
- (b) Lay down standards of professional conduct for its members.
- (c) Monitor the performance of its members.
- (d) Safeguard the rights, privileges and interests of insolvency professionals who are its members.
- (e) Suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws.

- (f) Redress the grievances of consumers against insolvency professionals who are its members.
- (g) Publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations laid down by the Board.

The following is the process for enrolment of a Professional Member by Insolvency Professional Agency:—

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

The Agency while rejecting an application shall:-

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

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

The Agency may form the following committees:—

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

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

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

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
- The Agency may initiate proceedings *suo moto*, on the basis of any information received by it

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

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

- (a) An individual who has passed the National Insolvency Examination.
- (b) An individual who has passed the Limited Insolvency Examination, and has 15 years of experience in management, after he received a Bachelor's degree from a university established or recognized by law.

- (c) An individual who has passed the Limited Insolvency Examination and has 10 years of experience as a Chartered Accountant, Company Secretary, Cost Accountant or an Advocate.

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

- (a) Accept electronic submission of financial information.
- (b) Safe and accurate recording of financial information.
- (c) Authenticating and verifying the financial information submitted by a person.
- (d) Providing access to information stored with the information utility to persons as may be specified.

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

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

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.

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

- (a) It shall create and store financial information in a universally accessible format.
- (b) It shall accept electronic submissions of financial information from persons who are under obligations to submit financial information under sub-section (1) of Section 215.
- (c) It shall accept electronic submissions of financial information from persons who intend to submit such information.
- (d) It shall meet such minimum service quality standards as may be specified by regulations.
- (e) It shall get the information received from various persons authenticated by all concerned parties before storing such information.
- (f) It shall provide access to the financial information stored by it to any person who intends to access such information.
- (g) It shall publish such statistical information as may be specified by regulations.
- (h) It shall have inter-operatability with other information utilities.

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.

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.

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

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.

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.

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.

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.

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