

WELCOME ALL MEMBERS OF NOIDA CHAPTER

**Strategy to prepare Limited Insolvency
Examination- Some Practical Aspects**

**PRESENTATION BY
J K BUDHIRAJA**

**EX-CHIEF EXECUTIVE OFFICER (CEO)
INSOLVENCY PROFESSIONAL AGENCY OF ICAI
&**

**EX-SENIOR DIRECTOR (TECHNICAL)
INSTITUTE OF COST ACCOUNTANTS OF INDIA**

LIMITED INSOLVENCY EXAMINATION

I. Syllabus for Examination w.e.f 1st January 2018

Sl. No	Coverage	Weight (%)
1.	The Insolvency and Bankruptcy Code, 2016 <u>(Entire Code)</u>	20
2.	Rules and Regulations under the Bankruptcy Code (All Rules and Regulations notified under the Code till 31st December, 2017)	20
3.	(i) The Companies Act, 2013 <ul style="list-style-type: none">Chapter III Prospectus and Allotment of Securities	10

LIMITED INSOLVENCY EXAMINATION

I. Syllabus for Examination w.e.f 1st January 2018

Sl. No	Coverage	Weight (%)
3. (Cont.)	<p>(i) The Companies Act, 2013 (Conti...)</p> <ul style="list-style-type: none">• Chapter IV Share Capital and Debentures• Chapter V Acceptance of Deposits by Companies• Chapter VI Registration of Charges• Chapter VII Management and Administration• Chapter IX Accounts of Companies• Chapter XV Compromises, Arrangements and Amalgamations• Chapter XVII Registered Valuers	10

LIMITED INSOLVENCY EXAMINATION

I. Syllabus for Examination w.e.f 1st January 2018

Sl. No	Coverage	Weight (%)
3. Conti	<p>The Companies Act, 2013 (Conti...)</p> <ul style="list-style-type: none">• Chapter XVIII Removal of names of the companies from the register of companies• Chapter XX Winding-up of the companies• Chapter XXVII NCLT and NCLAT <p>(ii) The Partnership Act, 1932, and</p> <p>(iii) The Limited Liability Partnership Act, 2008 (Nature of LLP; Partners and their Relations; Limitation of Liability; Financial Disclosures)</p>	10

LIMITED INSOLVENCY EXAMINATION

I. Syllabus for Examination w.e.f 1st January 2018

Sl. No	Coverage	Weight (%)
4.	<p>(i) The Indian Contract Act, 1872 (Voidable Contracts and Void Agreements; Contingent Contracts; Performance of Contract; Novation, Rescission and Alteration of Contracts; Agency; Consequences of breach of Contract; Indemnity and Guarantee, Surety; Bailment and Pledge; Set off)</p> <p>(ii) The Sale of Goods Act, 1930 (Sale, Condition and Warranty, Seller's Lien and Damages);</p> <p>(iii) The Transfer of Property Act, 1882.</p>	6

LIMITED INSOLVENCY EXAMINATION

Sl. No	Coverage	Weight (%)
4. Conti..	<p>(iv) Specific Relief Act, 1963.</p> <p>(v) Negotiable Instruments Act, 1881.</p>	6
5.	<p>(i) The Recovery of Debts due to Banks and Financial Institutions Act, 1993;</p> <p>(ii) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002; and</p> <p>(iii) <i>Corporate Debt Restructuring Scheme, Strategic Debt Restructuring, and Scheme for Sustainable Structuring of Stressed Assets (S4A of RBI)</i></p>	6

LIMITED INSOLVENCY EXAMINATION

I. Syllabus for Examination w.e.f 1st January 2018

Sl. No	Coverage	Weight (%)
5. Conti..	(iv) The Arbitration and Conciliation Act, 1996; (v) The Limitation Act, 1963	6
6.	General Awareness (Economy, Financial Markets, Rights of Workmen under Labour Laws and fundamental concept of Valuation)	6
7.	Finance and Accounts (Corporate Finance, and Financial Analysis, Liquidity Management, Tax Planning, GST)	6

LIMITED INSOLVENCY EXAMINATION

Sl. No	Coverage	Weight (%)
8.	<p>Case Laws- Important decisions of NCLT (List of Important NCLT cases shall be specified), Decisions of Supreme Court, High Courts and NCLAT relating to Corporate Insolvency Resolution, Corporate Liquidation, Voluntary Liquidation and Fast Track Resolution Process. (There will be five questions carrying two marks each.)</p>	10
9.	<p>Transaction analysis on Corporate Insolvency Resolution. There will one comprehension narrating the transaction. (There will be four questions based on the case carrying two marks each.)</p>	8

LIMITED INSOLVENCY EXAMINATION

Sl. No	Coverage	Weight (%)
10.	Transaction analysis on Individual Insolvency Resolution and Individual Resolution. There will one comprehension narrating the transaction. (There will be four questions based on the case carrying two marks each.)	8
	Total	100

Examination: Online (computer-based); objective multiple-choice questions.

Duration: 2 hours.

No. of questions: 87 questions for a total of 100 marks.

Marking system: Negative marking of 25%.

Passing mark: 60

Mark Sheet: temporary mark sheet on submission of examination paper

Study Material: No workbook or study material provided

LIMITED INSOLVENCY EXAMINATION

III. Frequency and other details

Examination Centres: 100 + locations in the country;

Registration: can be done without payment of fee. However, before appearing in examination the enrolment is to be made.

Enrolment for Exam: www.nism.ac.in or www.ibbi.gov.in/limited-insolvency.html Choose time, day and the examination centre

Examination Fee: Rs.1500/- online (ECS/Debit/Credit Cards) on every enrolment.

Compulsory Documents for enrolment: PAN and Aadhar.

Photo: It is also necessary for enrolment.

LIMITED INSOLVENCY EXAMINATION

Important to Note

- 1. Eligibility criteria to sit for the examination:** Anyone can appear.
However, registration as Insolvency Professional is as per Regulations.
- 2. Coverage of Case laws in the syllabus:** Cases up to 31st December, 2017.
- 3. Coverage of Regulations:** All the regulations that have been notified under the Insolvency and Bankruptcy Code, 2016 till 31st December, 2017.
- 4. Structure of the question paper:** Question paper carries 74 questions of 1 mark each and 13 questions of 2 marks each.
- 5. How many alternatives of questions given:** Each question is followed by four alternate answers. You need to select the correct answer among these. A correct answer gives you the marks assigned to the question. A wrong answer attracts a negative mark of 25% of the marks assigned to the question. You need to score 60% to pass the examination

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- ✓ Obtain complete clarity regarding the prescribed syllabus and formulate a specific study plan.
- ✓ Keep reading and re-reading the bare acts of the laws that have been covered under the syllabus. **Make notes if necessary and highlight the important portion in the bare acts.**
- ✓ Reading bare acts again and again (2-3 times) will make the subject matter clear in your mind and will be enable you to answer any question on subject matter
- ✓ Solve the sample paper released by the Insolvency and Bankruptcy Board of India in a time bound manner. **Remember sample paper should be relating to exam starting from January 2018.**
- ✓ In the notified syllabus for the LIE, maximum weightage (20%) has been given to the Code followed by the Rules and Regulations framed under the Code (20%). **So ensure that you are very thorough with the Code as well as the Rules and Regulations.**

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- ✓ After having the clarity on subject matter of IBC, now study the important case laws decided by NCLT/NCLAT (National Company Law Appellate Tribunal), Supreme Court and High Courts. This carry weightage of 10 marks in syllabus.
- ✓ Now attempt comprehension of transaction analysis on Corporate Insolvency Resolution (CIRP). You will get one comprehension narrating the transaction. This carry weightage of 8 marks in syllabus.
- ✓ Now come to transaction analysis on individual Insolvency Resolution (IRP). You will get one comprehension narrating the transaction. This carry weightage of 8 marks in syllabus. Please note Regulations on Individual Insolvency Resolution Process are yet to be notified.
- ✓ You may note IBC and its related subject carry 66 weightage of marks in syllabus (20+20+10+8+8). So you need to study thoroughly.

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- ✓ Practice as many questions as possible on IBC and its Rules and Regulations.
- ✓ Now study important chapters of Companies Act, 2013, Partnership Act, 1932 and important chapters of LLP (Limited Liability Partnership Act, 2008). **This carries weightage of 10 marks in syllabus.**
- ✓ After above, study Indian Contract Act, 1872 (**not full but only that portion which is covered in syllabus**); Sales of Goods Act, 1930; Transfer of Property Act, 1882; Specific Relief Act, 1963 and Negotiable Instruments Act, 1881. **This carry weightage of 6 marks only.** You may be having knowledge already on these subjects. Only revision once may make you perfect. **I did only Contract Act and Sales of Goods Act.**
- ✓ Read 2-3 times The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI); and The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (SARFAESI);

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- ✓ The following schemes are also in syllabus but have been scrapped by RBI recently:

Corporate Debt Restructuring Scheme, Strategic Debt Restructuring, and Scheme for Sustainable Structuring of Stressed Assets (S4A of RBI). In the comments invited by IBBI on 21.3.2018 these have been there.

- ✓ The Arbitration and Conciliation Act, 1996; and Limitation Act, 1963 are also in syllabus. You may be having knowledge on the subject. **All the above starting from RDDBFI and SARFAESI till Limitation Act, carry 6 marks only.**
- ✓ **Have the understanding on “General Awareness”** (*Economy, Financial Markets, Rights of Workmen under Labour Laws and fundamental concept of Valuation*). This carries 6 marks. Study only fundamental concepts.
- ✓ You already have understanding on **Finance and Accounts** (*Corporate Finance, and Financial Analysis, Liquidity Management, Tax Planning, GST*) only revision of subject will help you to score on this topic. **This also carry 6 marks.**

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- ✓ **Now I am again coming to IBC to give more tips on the topic.**
- ✓ Read those sections, Regulations and Rules which **prescribe specific time period** for any acts, and **amount of penalty for various offences** under Insolvency Process for Corporate Persons, Individual and Partnership Firms;
- ✓ **Memorize the minimum amount of defaults under Part-II** (CIRP- Rs. 1 lakh- Sec 4) and Part-III (Individual and Partnership- One thousand- Section 78);
- ✓ Memorize the maximum amount of default which can be prescribed by Central Government under Part-II (CIRP- **Rs. 1 crore**-Section 4) and Part-III (Individual and Partnership- **Rs. 1 lakh**- Section 78);
- ✓ Know the applicability of Insolvency and Bankruptcy Code 2016 (IBC 2016). As per Section 1 of the IBC 2016, **it extends to whole of India. However, Part-III (Individual and Partnership Firms) shall not extend to state of Jammu & Kashmir.**
- ✓ Read definitions given in Section 3 and Section 5 (**under Part-II-Insolvency Process for Corporate Persons**) and understand their intent and keep the same in mind while answering objective type questions;
- ✓ Know numbers of Parts in IBC and Chapters which each one contains.

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- ✓ Know who can initiate Corporate Insolvency Process. **Most Important**
- ✓ Read Sections 7, 8, 9, and 10 and memorize their provisions. **Don't forget. Repeat them again and again to retain these provisions in your mind.**
- ✓ After memorizing these sections then go to *“Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 notified by IBBI on 30th November 2016.* **V. Important**

*There are amendments in Insolvency and Bankruptcy Code 2016 vide Insolvency and Bankruptcy (Amendment) Act, 2018 (notified on 18.1.2018) and CIRP and Fast Track Regulations on 6th February 2018 and 7th February 2018 respectively. As mentioned in the previous slides that the Rules and Regulations covered under the syllabus are upto 31st December 2017, accordingly, amendments mentioned above will not be in syllabus. **Don't waste time on them.** However, knowledge is good treasure you may study them also.*

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- **Public Announcement** “it is immediately on his appointment as IRP (maximum 3 days);
- Applicant is required to bear the expenses on Public Announcement, which may be reimbursed by the Committee of Creditors to the extent these are ratified’
- **Remember** the expense on “Public Announcement” is reimbursement and **shall not form the part** of “*Insolvency Resolution Process Cost*”
- Period for submission of claims (**14 days from appointment as IRP**) and period for their verification (**7 days from the last date of receipt of claims**)
- See the provisions relating to Eligibility of Resolution Professional- ***CIRP Regulations***;
- Remember relevant Forms applicable to each class of Creditors (Financial, Operational, Workmen & Employees)- ***CIRP Regulations***
- Procedure for constitution of Committee of Creditors (Financial or Operational Creditors)

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- Notice Period for convening meetings of Committee of Creditors;
- Service of Notice by electronic means;
- Contents of Notice;
- Quorum for meetings;
- Conduct of meetings and participation through Video conferencing;
- Voting Procedure;
- Appointment of two Registered Valuers for determining Liquidation Value;
- Contents of Information Memorandum;
- Contents of Resolution Plan, who can submit the Resolution Plans, whether Resolution Applicant attend the meeting and vote thereat;
- ✓ Then memorize and understand Rules relating to filing of application under these sections. ***Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 notified by MCA on 30th November 2016. V. Important***
- **Read Rules again and again and retain in your memory.**

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- Memorize different Forms for filing the application with AA: Form 1 (Sec 7), Form 2 (Written Communication by proposed IRP), Form 3 (Sec 8- Demand Notice/Invoice demanding payment), Form 4 (Sec 8- Form of Notice with which Invoice to be attached), Form 5 (Sec 9), Form 6 (Sec 10);
- Memorize Rule number when application can be withdrawn by applicants **(Rule 8)**
- Under what Rule an applicant to propose IRP and obtain written Communication from IRP **(Rule 9)**, understand it is **written communication and not written consent;**
- Remember till such time Rules of procedure for conduct of proceedings under code are notified, the application for initiating corporate insolvency process is to be filed with NCLT in accordance with Rules 20, 21, 22, 23, 24 and 26 of Part III of National Company Law Tribunal Rules, 2016 **(Rule 10)**
- Memorize the Application Fee to be paid by different applicants: Rule 10 & Schedule provides for Fee – **FC & Corporate Applicant Rs. 25,000/- and OC Rs. 2,000/-**

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- ✓ Time Period of Insolvency Resolution Process both Normal and Fast Track;
- ✓ Memorize the contents of Moratorium (Section 14)
- ✓ Appointment of Interim Resolution Professional- IRP and period of his appointment (Section 16)
- ✓ Memorize the contents of Management of Affairs (Section 17)
- ✓ When the first meeting of CoC should be held (within 7 days of its constitution);
- ✓ Appointment of Resolution Professional-RP (Section 22)- Either appointment of IRP ratified, if not then some other is appointed. In this case CoC shall file application to AA for appointment of RP.
- ✓ Memorize the duties of IRP (Sec. 18) and RP (Sec. 25)
- AA to forward name to IBBI for confirmation. **IBBI to confirm within 10 days on receipt of name;**

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- Can IRP continue after 30 days? **Answer Yes.** In case of delay of confirmation by IBBI, **AA by order direct the IRP to continue to function as RP until such time IBBI confirms the name of proposed RP; [Sec. 22(5)]**
- ✓ Memorize the contents of Committee of Creditors (CoC) (Section 24) with reference to IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016;
- ✓ Memorize what actions of IRP/RP require approval of CoC (Section 28);
- ✓ Memorize the contents of Resolution Plan (Sec 30)
- ✓ Memorize to whom the ***approved Resolution Plan shall be binding (Sec 31): Corporate Debtor and its employees; members; creditors; guarantor; and other stakeholders involved in the resolution plan;***

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

- ✓ Appeal can be filed by any person aggrieved against the order of Adjudicating Authority (NCLT) within 30 days with National Company Law Appellate Tribunal (NCLAT), which can be extended on sufficient cause not exceeding 15 days (Section 61). **Remember Appeal against NCLT order is to NCLAT not to any other authority (IBBI or Court).**
- ✓ **Remember and memorize that an appeal against an order** approving a resolution plan under section 31 may be filed on the following grounds (Section 61(3):
 - (i) Approved plan is **in contravention of the provisions of any law** for the time being in force;
 - (ii) There has been **material irregularity in exercise of the powers by the resolution professional** during the corporate insolvency resolution period;
 - (iii) 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;

LIMITED INSOLVENCY EXAMINATION

Preparation Tips

(iv) Insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) Resolution plan does not comply with any other criteria specified by the Board.

Please remember that an appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order. Sec. 61(4)

STRUCTURE OF IBC 2016

Part –I	Part-II	Part-III	Part-IV	Part-V
Preliminary	Insolvency Resolution and Liquidation for Corporate Person	Insolvency Resolution and Bankruptcy for Individual and Information Utilities	Regulation of Insolvency Professionals Agencies and Information Utilities	Miscellaneous (including XI Schedule)
	Chapter-I Preliminary	Chapter-I Preliminary	Chapter-I The Insolvency and Bankruptcy Board of India	
	Chapter-II Corporate Insolvency Resolution Process	Chapter-II Fresh Start Process	Chapter-II Power and Function of the Board	
	Chapter-III Liquidation Process	Chapter-III Insolvency Resolution Process	Chapter-III Insolvency Professional Agencies	
	Chapter-IV Fast Track Corporate Insolvency Resolution Process	Chapter-IV Bankruptcy Order for Individuals and Partnership Firms	Chapter-IV Insolvency Professional	
	Chapter-V Voluntary Liquidation of Corporate Persons	Chapter-V Administration and Distribution of the Estate of the Bankrupt	Chapter-V Information Utilities	
	Chapter-VI Adjudicating Authority for Corporate Persons	Chapter-VI Adjudicating Authority for Individuals and Partnership Firms	Chapter –VI Inspections and Investigation	
	Chapter-VII Offence and Penalties	Chapter-VII Offence and Penalties	Chapter-VII Finance , Accounts & Audit	

SCOPE OF IBC 2016

Sec-1 Territory - Extends to whole of India, Provided Part-III shall not extend to State of Jammu and Kashmir.

Sec-2 Applicability - The provision of this code shall apply to –

- I. Any company;*
- II. Any other company governed by Special Act;*
- III. Any LLP;*
- IV. Such other Body corporate notify by Central Government;*
- V. Partnership Firm and Individuals.*

in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, Fresh Start Process as the case may be.

IMPORTANT DEFINITIONS

Under Section 3 of the IBC 2016

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

(8) "**corporate debtor**" means a corporate person who owes a debt to any person;

(9) "**core services**" means services rendered by an information utility for—

(a) accepting electronic submission of financial information in such form and manner as may be specified;

(b) safe and accurate recording of financial information;

(c) authenticating and verifying the financial information submitted by a person;
and

(d) providing access to information stored with the information utility to persons as may be specified;

IMPORTANT DEFINITIONS

Under Section 3 of the IBC 2016

(10) "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 **decreeholder**;

(11) "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;

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

(13) "financial information", in relation to a person, means one or more of the following categories of information, namely:—

(a) records of the debt of the person;

(b) records of liabilities when the person is solvent;

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

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

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

(f) such other information as may be specified.

IMPORTANT DEFINITIONS

Under Section 5 of the IBC 2016

(4) "constitutional document", in relation to a corporate person, **includes articles of association, memorandum of association** of a company and **incorporation document** of a Limited Liability Partnership;

(5) "corporate applicant" means—

(a) corporate debtor; or

(b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or

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

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

(6) "dispute" includes a suit or arbitration proceedings relating to—

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty;

IMPORTANT DEFINITIONS

Under Section 5 of the IBC 2016

(7) "**financial creditor**" means any person **to whom a financial debt is owed** and includes a person to whom such debt has been **legally assigned or transferred to**;

(8) "**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) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

IMPORTANT DEFINITIONS

Under Section 5 of the IBC 2016

- (e) receivables sold or discounted other than any receivables sold on nonrecourse 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 sub-clauses (a) to (h) of this clause;*

IMPORTANT DEFINITIONS

Under Section 5 of the IBC 2016

(13) "insolvency resolution process costs" means—

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

(15) "interim finance" means any financial debt raised by the resolution professional during the insolvency resolution process period;

(16) "liquidation cost" means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board;

IMPORTANT DEFINITIONS

Under Section 5 of the IBC 2016

(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "operational debt" means a claim in respect of **the provision of goods or services including employment 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;**

(22) "personal guarantor" means an individual who is the surety in a contract of guarantee to a corporate debtor;

(23) "personnel" includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor;

(25) "resolution applicant" means any person who submits a resolution plan to the resolution professional;

IMPORTANT DEFINITIONS

Under Section 5 of the IBC 2016

(26) "resolution plan" means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;

(28) "voting share" means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.

SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

1. **Code provides time bound insolvency resolution process— 180 days** after the process is initiated, plus a 90-day extension — for resolving insolvency.
2. **Code also provides for FAST TRACK INSOLVENCY RESOLUTION PROCESS— 90 days** after the process is initiated, plus a 45-day extension — for resolving insolvency in fast track mode.
3. **The following are authorities through which the Insolvency and Bankruptcy Process would be implemented under the Code:**
 - i. **Insolvency and Bankruptcy Board of India (IBBI)**
 - ii. **Insolvency Professional Agencies (IPAs)**
 - iii. **Insolvency Professionals (IPs)**
 - iv. **Information Utilities (IUs)**

SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

(v) Adjudicating Authorities

(a) For Corporate Persons (Companies & LLPs) - National Company Law Tribunal (NCLT) having territorial jurisdiction over the place **where the registered office of the corporate person is located**.

(b) For Individuals and Partnership Firms- Debt Recovery Tribunal (DRT) having territorial jurisdiction over the place **where the individual debtor actually and voluntarily resides or carries on business or personally works for gain** and can entertain an application under IBC 2016 regarding such person.

(vi) Appellate Authorities

(a) For Corporate Persons (Companies & LLPs) - National Company Law Appellate Tribunal (NCLAT), any person aggrieved by order of NCLT may file appeal to NCLAT within 30 days of such order.

(b) For Individuals and Partnership Firms- Debt Recovery Appellate Tribunal (DRAT), any person aggrieved by order of DRT may file appeal to DRAT within 30 days of such order.

SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

4. Civil court not to have jurisdiction

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which NCLT, NCLAT, DRT and DRAT has jurisdiction under this Code.

5. Appeal lies to Supreme Court

Any person aggrieved by an order of the National Company Law Appellate Tribunal or Debt Recovery Appellate Tribunal as the case may be, may file an appeal to the Supreme Court **on a question of law arising out of such order** under this Code **within forty-five days from the date of receipt of such order.**

6. Two categories of Creditors: Financial & Operational

IBC 2016 provides for two categories of Creditors: financial creditors and operational creditors. The Code provides different process for recovery of debts by these creditors from the debtors;

SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

7. Corporate Insolvency, and Individual & Partnership Firms Bankruptcy

Code deals separately for Corporate Insolvency (Part II of the Code) and Individual and Partnership Bankruptcy (Part III of the Code);

8. Some of persons not entitled to initiate IRP 1/2

Some of the persons as per section 11 of the IBC 2016 are not entitled to initiate insolvency resolution process: These are as follows:

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

SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

8. Some of persons not entitled to initiate IRP 2/2

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

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

9. AA to declare Moratorium

When Insolvency Resolution Process (IRP) starts, Adjudicating Authority (NCLT) declares “Moratorium”. Then no suit or other legal proceeding shall be instituted by or against the corporate debtor, restricts transferring the assets of corporate debtors and recovery of any property by an owner or lessor where such property is occupied or in possession of the corporate debtor. Similar process is applicable for Adjudicating Authority (DRT).

SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

10. Initiation of Liquidation Process

Where insolvency process fails, the Adjudicating Authority (NCLT) will pass an order under section 33 (*Initiation of Liquidation Process*) of the Code. Subject to section 52 (*Secured Creditors in Liquidation Proceedings*), when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor.

11. Secured Creditors in Liquidation Proceedings

Section 52 (Secured Creditors in Liquidation Proceedings) **allows the secured creditor to relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator** in the manner specified in section 53; or realise its security interest in the manner specified in this section, *read with Regulation 37 of IBBI (Liquidation Process) Regulations 2016 dated 15th December 2016.*

MORATORIUM

Section 14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period. (Electricity, water, Telecom services, IT services)

MANAGEMENT OF AFFAIRS OF CORPORATE DEBTOR BY INTERIM RESOLUTION PROFESSIONAL

- (1) From the date of appointment of the interim resolution professional,—
- (a) the **management of the affairs of the corporate debtor shall vest** in the interim resolution professional;
 - (b) **the powers of the board of directors or the partners** of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;
 - (c) the **officers and managers** of the corporate debtor **shall report to** the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;
 - (d) the **financial institutions** maintaining accounts of the corporate debtor **shall act on the instructions of the interim resolution professional** in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

MANAGEMENT OF AFFAIRS OF CORPORATE DEBTOR BY INTERIM RESOLUTION PROFESSIONAL

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

- (a) **act and execute** in the name and on behalf of the corporate debtor **all deeds, receipts, and other documents**, if any;
- (b) **take such actions**, in the manner and subject to such restrictions, as may be specified by the Board;
- (c) **have the authority to access** the electronic records of corporate debtor from information utility having financial information of the corporate debtor;
- (d) **have the authority to access the books of account**, records and other relevant documents of corporate debtor available with **government authorities, statutory auditors, accountants** and such other persons as may be specified.

TRIGGERING INSOLVENCY PROVISIONS

DEFAULT

In case of Co. & LLP

Minimum amount of Rs.1 lakh

In case of Partnership & Individual

Minimum amount of Rs. 1 thousand

Minimum amount of Rs.1 lakh & Rs.1 thousand can be increased upto Rs.1 Cr & Rs.1 lakh respectively by Central Government

Where any Company or LLP commits-

A default in paying its

Financial debt

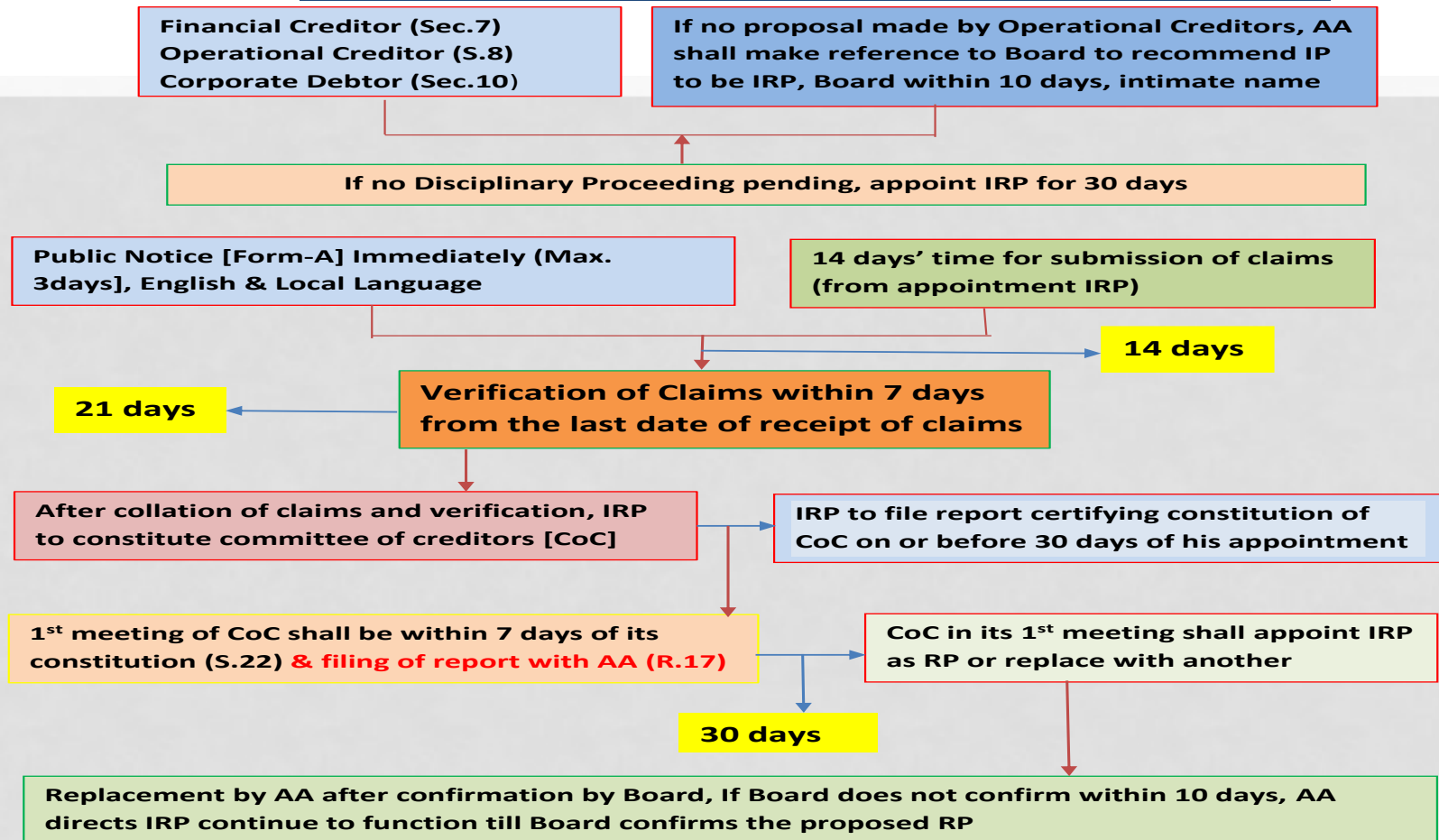
Operational debt

Then a financial creditor/ operational creditor/ Company & LLP itself

May file an application, for initiating corporate insolvency resolution process with the Adjudicating Authority.

FLOW CHART OF ACTIVITIES TO BE DONE WITHIN 1ST 30 DAYS

Flow Chart of Activities to be done within 1st 30 days



*AA means Adjudicating Authority
*IRP means Interim Resolution Professional
*RP means Resolution Professional

LIQUIDATION

Preparation Tips

- Read IBC 2016; and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, notified on 15th December 2016
- *Initiation of Liquidation: Read section 33 carefully and memorize.*
- *Appointment of liquidator and fee to be paid section 34: Read and Memorize.*
- *Powers and duties of liquidator (Sec. 35): Read and Memorize.*
- *Liquidation estate (Sec. 36): **Very important section.** Read and memorize.*

LIQUIDATION

Preparation Tips

- ***Appeal against the decision of liquidator (Sec. 42):*** A creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims **within fourteen days** of the receipt of such decision. ***Please note the appeal is to AA (NCLT) and not to NCLAT or IBBI or court. Please note the time frame.***
- ***Preferential transactions and relevant time (Sec. 43):*** Liquidator or the resolution professional, as the case may be, if is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions, he shall apply to the Adjudicating Authority ***for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.***

LIQUIDATION

Preparation Tips

Sec 43(2) A corporate debtor shall be deemed to have given a preference, if—

- (a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and*
- (b) 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.*

A preference shall not include the following transfers—

- (a) 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—*

LIQUIDATION

Preparation Tips

- (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:*

Provided that 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.

Section 43(4) A preference shall be deemed to be given at a relevant time, if—

- (a) *it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or*
- (b) *a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.*

LIQUIDATION

Preparation Tips

Avoidance of undervalued transactions (Section 45): (1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) of section 43 determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the corporate debtor—

(a) makes a gift to a person; or

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

LIQUIDATION

Preparation Tips

- **Relevant period for avoidable transactions (Sec. 46):**
 - (i) *such transaction was made with any person within the period of one year preceding the insolvency commencement date; or*
 - (ii) *such transaction was made with a related party within the period of two years preceding the insolvency commencement date.*

- **Extortionate credit transactions (Sec. 50):**

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

LIQUIDATION

Preparation Tips

(2) The Board may specify the circumstances in which a transactions which shall be covered under sub-section (1).

Explanation.—For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt **shall in no event be considered as an extortionate credit transaction.**

- **Secured creditor in liquidation proceedings (Section 52):** Read this section and memorize
- **Distribution of assets (Section 53):** *It is very important section and memorize well.*
- **Dissolution of corporate debtor (Section 54):** Please remember under section 54 (3), a copy of an order of dissolution of corporate debtor shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

DISTRIBUTION OF ASSETS

53. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—

- (a) the insolvency resolution process costs and the liquidation costs paid in full.**
- (b) the following debts which shall rank equally between and among the following :—**
 - (i) workmen's dues for the period of **twenty-four months preceding** the liquidation commencement date; and**
 - (ii) debts owed to a secured creditor in the event such secured creditor **has relinquished security** in the manner set out in section 52;**
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;**

DISTRIBUTION OF ASSETS

- (d) financial debts owed to unsecured creditors;*
 - (e) the following dues shall rank equally between and among the following:—*
 - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*
 - (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*
 - (f) any remaining debts and dues;*
 - (g) preference shareholders, if any; and*
 - (h) equity shareholders or partners, as the case may be.*
- (2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.*

DISTRIBUTION OF ASSETS

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

DISTRIBUTION OF ASSETS

Priority Distribution of Claims

Insolvency resolution process and liquidation costs

Secured creditor & workmen dues (upto 24 months)

Other employee dues (upto 12 months)

Financial debts of unsecured creditors

Government dues (upto 2 years) and unpaid secured creditors

Any remaining debts and dues

Preference shareholders, if any

Equity shareholders or partners, as the case may be

FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS

Section 55(2)

An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely:—

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

Time Period: 90 days, extendable (One time only) maximum by 45 days, Max. 135 days

Sec.58: The process for conducting a corporate insolvency resolution process under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require.

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

Section 59 (1): A corporate person who intends to liquidate itself voluntarily and **has not committed any default** may initiate voluntary liquidation proceedings under the provisions of this Chapter.

(2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.

(3) Voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:—

(a) a declaration from majority of the directors of the company verified by an affidavit stating that—

(i) they have made a full inquiry into the affairs of the company and they have formed an opinion that **either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold** in the voluntary liquidation; and

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

ii) the company is not being liquidated to defraud any person;

(c) **within four weeks of a declaration under sub-clause (a), there shall be—**

(i) **a special resolution of the members of the company in a general meeting** requiring the company to be liquidated voluntarily and **appointing an insolvency professional to act as the liquidator**; or

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

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

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

- *Section 59(5): The voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution as above.*
- *59(6) The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.*
- *59(9) A copy of an order shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.*

ADJUDICATING AUTHORITY FOR CORPORATE PERSONS

- It is National Company Law Tribunal (NCLT) having territorial jurisdiction over the place where the registered office of the corporate person is located.
- NCLT shall be vested with all the powers of the Debt Recovery Tribunal.
- NCLT shall have jurisdiction to entertain or dispose of—
 - (a) any application or proceeding by or against the corporate debtor or corporate person;
 - (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
 - (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

APPEALS AND APPELLATE AUTHORITY

- **Appellate Authority:** National Company Law Appellate Tribunal (NCLAT).

Time Period: within 30 days from the order of NCLT and within extended period of 15 days (extension on sufficient cause). The grounds of appeal have already been given earlier to this slide.

- **Appeal to Supreme Court:** Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.
- The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.

APPEALS AND APPELLATE AUTHORITY

64. (1) Where an application is not disposed of or an order is not passed within the period specified in this Code, the National Company Law Tribunal or the National Company Law Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the President of the National Company Law Tribunal or the Chairperson of the National Company Law Appellate Tribunal, as the case may be, may, after taking into account the reasons so recorded, extend the period specified in the Act but not exceeding ten days.

Sec. 65(1) Fraudulent or malicious initiation of proceedings: Initiation of insolvency resolution process or liquidation proceedings fraudulently or with malicious by any person: the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees

APPEALS AND APPELLATE AUTHORITY

Sec. 65(2) Fraudulent or malicious initiation of proceedings:(2)
Initiation of voluntary liquidation proceedings with the intent to defraud any person, the **Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.**

OFFENCES AND PENALTIES

Preparation Tips: Memorize the penalties for different offences. In maximum cases the penalties and imprisonment provisions are similar except few. But you have to memorize which offence or provision is different from others, rest you can memorize that have similar provisions. For ready reference these are given below:

1. Punishment for concealment of property [Sec. 68]: An officer of the corporate debtor shall be liable for penalty if he has within 12 months immediately preceding the insolvency commencement date wilfully concealed any property or debt due to, or from, the corporate debtor, of the value of Rs. 10,000/- (Ten thousand) or more. **[Imprisonment for a term not less than 3 years but which may extend to 5 years; or Fine not less than Rs. 1 lakh, but may extend to Rs. 1 crore or both]**

2. An officer of the corporate debtor shall be liable for penalty if he has within 12 months immediately preceding the insolvency commencement date fraudulently removed any part of the property of the corporate debtor of the value of Rs. 10000/- or more; **[imprisonment as per (1 above)]**

OFFENCES AND PENALTIES

3. Penalty for an officer of the corporate debtor if he has within 12 months immediately preceding the insolvency commencement date wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the corporate debtor or its affairs. [Imprisonment for a term not less than 3 years but which may extend to 5 years; or Fine not less than Rs. 1 lakh, but may extend to Rs. 1 crore or both]

4. Penalty for an officer of the corporate debtor or the corporate debtor who has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the corporate debtor, on or after the insolvency commencement date. [Imprisonment for a term not be less than 1 years but which may extend to 5 years, or fine not less than Rs. 1 lakh but may extend to Rs 1 crore or both]

OFFENCES AND PENALTIES

5. *Penalty for an officer of the corporate debtor or the corporate debtor who 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 on or after the insolvency commencement date. [Imprisonment for a term not be less than 1 years but which may extend to 5 years, or fine not less than Rs. 1 lakh but may extend to Rs. 1 crore or both]*

6. *If an officer of the corporate debtor does not disclose to the resolution professional all the details of property of the corporate debtor, or any such other information as the resolution professional may require on or after the insolvency commencement date, he shall be punishable with- Imprisonment for a term not be less than 3 years but which may extend to 5 years , or fine not less than Rs. 1 lakh but may extend to Rs. 1 crore or both.*

OFFENCES AND PENALTIES

7. *If an officer of the corporate debtor 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 , he shall be punishable with- Imprisonment for a term not be less than 3 years but which may extend to 5 years , or fine not less than Rs. 1 lakh but may extend to Rs. 1 crore or both.*

8. *If an officer of the corporate debtor 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, he shall be punishable with- Imprisonment for a term not be less than 3 years but which may extend to 5 years , or fine not less than Rs. 1 lakh but may extend to Rs. 1 crore or both.*

9. *If an officer of the corporate debtor fails to inform their resolution professional the information in his knowledge that a debt has been*

OFFENCES AND PENALTIES

falsely proved by any person during the corporate insolvency resolution process , he shall be punishable with- Imprisonment for a term not be less than 3 years but which may extend to 5 years , or fine not less than Rs. 1 lakh but may extend to Rs. 1 crore or both.

10. If an officer of the corporate debtor prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor, he shall be punishable with- Imprisonment for a term not be less than 3 years but which may extend to 5 years , or fine not less than Rs. 1 lakh but may extend to Rs. 1 crore or both.

11. If an insolvency professional deliberately contravenes the penal provision he shall be punishable with- Imprisonment for a term which may extend to 6 months , or with fine which shall not be less than Rs 1 lakh, but may extend to Rs. 5 lakh, or with both. [Note this is only offence which prescribes less penalty and imprisonment]

OFFENCES AND PENALTIES

12. Penalty for destroying mutilating, altering or falsifying any books, papers or securities on and after the insolvency commencement date- Imprisonment for a term not be less than 3 years but which may extend to 5 years , or fine not less than Rs. 1 lakh but may extend to Rs. 1 crore or both.

13. If an officer of the corporate debtor makes any material and wilful omission in any statement relating to the affairs of the corporate debtor, he shall be punishable with- Imprisonment for a term not be less than 3 years but which may extend to 5 years , or fine not less than Rs. 1 lakh but may extend to Rs. 1 crore or both.

OFFENCES AND PENALTIES

12. Penalty for destroying mutilating, altering or falsifying any books, papers or securities on and after the insolvency commencement date- Imprisonment for a term not be less than 3 years but which may extend to 5 years , or fine not less than Rs. 1 lakh but may extend to Rs. 1 crore or both.

13. If an officer of the corporate debtor makes any material and wilful omission in any statement relating to the affairs of the corporate debtor, he shall be punishable with- Imprisonment for a term not be less than 3 years but which may extend to 5 years , or fine not less than Rs. 1 lakh but may extend to Rs. 1 crore or both.

IBBI (INSOLVENCY PROFESSIONALS) REGULATIONS 2016

Qualifications and Experience

Regulation 5

An individual shall be eligible for registration, if he-

- (a) has passed the National Insolvency Examination;
- (b) has passed the Limited Insolvency Examination, and has ***fifteen years of experience in management***, after he received a Bachelor's degree from a university established or recognized by law; or
- (c) has passed the Limited Insolvency Examination and ***has ten years of experience as –***
 - (i) a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
 - (ii) a company secretary enrolled as a member of the Institute of Company Secretaries of India,
 - (iii) a cost accountant enrolled as a member of the Institute of Cost Accountants of India, or***
 - (iv) an advocate enrolled with a Bar Council.

Application for certificate of registration

Regulation 6

- (1) *An individual enrolled with an insolvency professional agency to make an application to the Board **in Form A of the Second Schedule** to these Regulations, along with a non-refundable application fee of ten thousand rupees to the Board.*
- (2) ***Board shall acknowledge an application made under this Regulation within seven days of its receipt.***
- (3) *Board may require the applicant to submit, within reasonable time, additional documents, information or clarification that it deems fit.*
- (4) *Board may require the applicant to appear, within reasonable time, before the Board in person, or through his authorised representative for clarifications required for processing the application.*

Certificate of registration

Regulation 7

(1) *If Board is satisfied, after such enquiry or inspection, may grant certificate of registration to the applicant to carry on the activities of an insolvency professional in Form B of the Second Schedule to these Regulations, within sixty days of receipt of the application, excluding the time given by the Board for presenting additional documents, information or clarification, or appearing in person, as the case may be.*

(2) Conditions of Registration:

(a) *at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;*

Certificate of registration

Regulation 7

- (b) at all times continue to satisfy the requirements under Regulation 4 **(Eligibility)**;*
- (c) pay a fee of ten thousand rupees to the Board, every five years after the year in which the certificate is granted;*
- (d) not render services as an insolvency professional unless he becomes a partner or director of an insolvency professional entity recognised by the Board under Regulation 13, if he is not a citizen of India;*
- (e) take prior permission of the Board for shifting his professional membership from one insolvency professional agency to another, after receiving no objection from both the concerned insolvency professional agencies;*

IBBI (INSOLVENCY PROFESSIONALS) REGULATIONS 2016

Certificate of registration

Regulation 7

- (f) take adequate steps for redressal of grievances;*
- (g) Maintains records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment;*
- (h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and*
- (i) abide by such other conditions as may be imposed by the Board.*

Refusal to grant certificate

Regulation 8: *Where Board forms a prima facie opinion that the registration ought not be granted, it shall give an opportunity to applicant to explain why his application should be accepted. Period of explanation is 15 days of communication from Board.*

IBBI (INSOLVENCY PROFESSIONALS) REGULATIONS 2016

Refusal to grant certificate

Regulation 8(2): Communication shall be made to the applicant within forty five days of receipt of the application, excluding the time given by the Board for presenting additional documents, information or clarifications, or appearing in person, as the case may be.

Reg. 8(3) After considering the explanation, if any, given by the applicant under sub-regulation (1), the Board shall communicate its decision to-

- (a) accept the application, along with the certificate of registration, or
- (b) reject the application by an order, giving reasons thereof,

within thirty days of receipt of the explanation.

Temporary surrender of registration

Regulation 10

(1) An insolvency professional agency shall inform the Board if any of its professional members has temporarily surrendered his certificate of membership or revived his certificate of membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.

(2) The Board shall take note of the information received under sub-regulation (1). **(Important: Remember it does not require approval of Board but IPA is to give only information).**

Disciplinary proceedings

Regulation 11

*(1) Based on the findings of an inspection or investigation, or on material otherwise available on record, if the Board is of the prima facie opinion that sufficient cause exists to take actions **permissible under section 220**, **it shall issue a show-cause notice to the insolvency professional.***

(2) The show-cause notice shall be in writing, and shall state-

- (a) the provisions of the Code under which it has been issued;*
- (b) the details of the alleged facts;*
- (c) the details of the evidence in support of the alleged facts;*
- (d) the provisions of the Code, rules, regulations and guidelines thereunder allegedly violated, or the manner in which the public interest is allegedly affected;*

IBBI (INSOLVENCY PROFESSIONALS) REGULATIONS 2016

Disciplinary proceedings

- (e) the actions or directions that the Board proposes to take or issue if the allegations are established;*
 - (f) the manner in which the insolvency professional is required to respond to the show-cause notice;*
 - (g) consequences of failure to respond to the show-cause notice; and*
 - (h) procedure to be followed for disposal of the show-cause notice.*
- (3) The show-cause notice shall enclose copies of documents relied upon and extracts of relevant portions from the report of investigation or inspection, or other records.*
- (4) A show-cause notice issued shall be served on the insolvency professional in the following manner- **(contents should be remember, these are on next slide)***

IBBI (INSOLVENCY PROFESSIONALS) REGULATIONS 2016

Disciplinary proceedings

- (a) *by sending it to the insolvency professional, at the address provided by him or provided by the insolvency professional agency with which he is enrolled, **by registered post with acknowledgement due**; or*
- (b) *by an appropriate electronic means to the email address of the insolvency professional, provided by him or provided by the insolvency professional agency with which he is enrolled.*

(5) The Board shall constitute a Disciplinary Committee for disposal of the show-cause notice.

(6) Disciplinary Committee shall endeavour to dispose of the show-cause notice within a period of six months of the assignment.
(Remember this period)

IBBI (INSOLVENCY PROFESSIONALS) REGULATIONS 2016

Disciplinary proceedings

(7) Disciplinary Committee shall dispose of the show-cause notice assigned under sub-regulation (5) by a reasoned order in adherence to principles of natural justice, and after considering the submissions, if any, made by the insolvency professional, the relevant material facts and circumstances, and the material on record.

(8) The order disposing of a show-cause notice may provide for-

(a) no action;

(b) warning;

(c) any of the actions under section 220(2) to (4); or

(d) a reference to the Board to take any action under section 220(5).

(9) order passed shall not become effective until thirty days have elapsed from the date of issue of the order unless the Disciplinary Committee states otherwise in the order along with the reason for the same

Disciplinary proceedings

(10) The order passed shall be issued to the *insolvency professional*, with a copy issued to the *insolvency professional agency* with which he is enrolled immediately, and be published on the website of the Board.
Please remember this provision.

Recognition of Insolvency Professional Entities

12. (1) A limited liability partnership, a registered partnership firm or a company may be recognised as an insolvency professional entity if-

- (a) **a majority** of the partners of the limited liability partnership or registered partnership firm are registered as insolvency professionals; or
- (b) **a majority** of the whole-time directors of the company are registered as insolvency professionals, as the case may be.

Recognition of Insolvency Professional Entities

(2) A person eligible under sub-regulation (1) may make an application for recognition as an insolvency professional entity to the Board in Form C of the Second Schedule to these Regulations.

Schedules

FIRST SCHEDULE [Under Regulation 7(2)(g)]: **CODE OF CONDUCT FOR INSOLVENCY PROFESSIONALS**

SECOND SCHEDULE

FORM A [Under Regulation 6 or Regulation 9 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016]

Application for registration as an insolvency professional

IBBI (INSOLVENCY PROFESSIONALS) REGULATIONS 2016

Schedules

SECOND SCHEDULE

FORM B: CERTIFICATE OF REGISTRATION

FORM C: Application for recognition as an insolvency professional entity

IBBI (INSOLVENCY PROFESSIONALS) REGULATIONS 2016

S NO	Important Dates under Regulations	Regulation	Timeline	Description
1	Particulars			
2	Application for certificate of Registration	6(1)	7 Days	Board acknowledge the application within 7 days with non-refundable fee of 10000/-
3	Certificate of Registration	7(1)	60 Days	Grant certificate of registration to the applicant in Form B, within 60 days of receipt of application
4		7(2)	5 Years	Ten thousand fee, every five year after year in which certificate is granted
5		7(2)	3 Years	Maintain Records of all assignment undertaken under the code for at least three years
6	Refusal to grant certificate	8 (2)	45 Days	Communication within 45 days of receipt of the application for registration ought not granted
7		8 (2)	15 Days	Applicant be given an opportunity to explain why his application should be accepted within fifteen days of the receipt of communication
8		8(3)	30 Days	Within 30 days of receipt of explanation
9	Registration for limited period	9(3)	6 Month	From the date of submission
10	Temporary Surrender	10(1)	7 Days	IPA shall inform the board if any of its professional members has temporarily surrender the membership
11	Disciplinary Proceedings	11(6)	6 Month	The Disciplinary Committee shall endeavour to dispose of the show-cause notice within a period of six months of the assignments
12		11(9)	30 Days	The order passed under sub-regulation (7) shall not become effective until thirty days have elapsed from the date of the issue of order unless disciplinary committee states otherwise in order along with the reason for the same

IBBI (INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

Eligibility for registration

Regulation 3: *No person shall be eligible to be registered as an insolvency professional agency unless it is a company registered under section 8 of the Companies Act, 2013, and -*

- (a) its sole object is to carry on the functions of an insolvency professional agency under the Code;*
- (b) 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;*
- (c) it has a minimum net worth of ten crore rupees;***
- (d) it has a paid-up share capital of five crore rupees;***
- (e) it is not under the control of person(s) resident outside India;*
- (f) not more than 49% of its share capital is held, directly or indirectly, by persons resident outside India; and***
- (g) it is not a subsidiary of a body corporate through more than one layer:***

IBBI (INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

Eligibility for registration

Explanation: “layer” in relation to a body corporate means its subsidiary;

(h) itself, its promoters, its directors and persons holding more than 10% of its share capital are fit and proper persons.

Application for registration or renewal thereof

4. (1) A company eligible for registration as an insolvency professional agency, may make an application to the Board in Form A of the Schedule to these Regulations, along with a non-refundable [application fee of ten lakh rupees](#).

(2) An insolvency professional agency who has been granted registration under Regulation 5, may six months before the expiry of such registration, make an application for renewal in Form A of the Schedule to these Regulations, along with a non-refundable [application fee of five lakh rupees](#).

(3) The Board shall acknowledge an application made under this Regulation within seven days of its receipt.

IBBI (INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

Application for registration or renewal thereof

(4) The Board shall examine the application, and give an opportunity to the applicant to remove the deficiencies, if any, in the application.

(5) The Board may require the applicant to submit, within reasonable time, additional documents, information or clarification that it deems fit.

(6) The Board may require the applicant to appear, within reasonable time, before the Board in person, or through its authorised representative for clarifications required for processing the application.

Grant of certificate of registration.

5. (1) If the Board is satisfied, after such inspection or inquiry as it deems necessary and having regard to the principles specified in section 200 of the Code, that the applicant:—

(a) is eligible under Regulation 3;

(b) has adequate infrastructure to perform its functions under the Code;

Grant of certificate of registration

(c) has in its employment, persons having adequate professional and other relevant experience, to enable it to perform its functions under the Code; and

(d) has complied with the conditions of the certificate of registration, if he has submitted an application for renewal under Regulation 4(2)

*Board may grant or renew a certificate of registration to the applicant to carry on the activities of an insolvency professional agency in **Form B of the Schedule** to these Regulations, **within sixty days of receipt of the application**, excluding the time given by the Board for removing the deficiencies, or presenting additional documents, information or clarification, or appearing in person, as the case may be.*

IBBI (INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

Grant of certificate of registration

The registration shall be subject to the conditions that the insolvency professional agency shall -

- (a) *abide by the Code, rules, regulations, and guidelines thereunder and its bye-laws;*
 - (b) *at all times after the grant of the certificate continue to satisfy the requirements under sub-regulation (1);*
 - (c) *pay a fee of five lakh rupees to the Board, payable every year after the year in which the certificate is granted or renewed;*
 - (d) *seek approval of the Board when a person, other than a statutory body, seeks to hold more than ten per cent, directly or indirectly, of the share capital of the insolvency professional agency;*
 - (e) *take adequate steps for redressal of grievances; and*
 - (f) *abide by such other conditions as may be specified.*
- (3) ***The certificate of registration shall be valid for a period of five years from the date of issue.***

Procedure for rejecting application

6. (1) *If the Board is of the prima facie opinion that the registration ought not be granted or renewed, or be granted or renewed with additional conditions, it shall communicate the reasons for forming such an opinion and give the applicant an opportunity to explain why its application should be accepted, within fifteen days of the receipt of the communication from the Board, to enable it to form a final opinion.*

(2) *The communication shall be made to the applicant within forty five days of receipt of the application, excluding the time given by the Board for removing the deficiencies, presenting additional documents, information or clarifications, or appearing in person, as the case may be.*

(3) *After considering the explanation, if any, given by the applicant, the Board shall communicate its decision to-*

(a) *accept the application, along with the certificate of registration, or*

(b) *reject the application by an order, giving reasons thereof within thirty days of receipt of explanation.*

Procedure for rejecting application

(4) The order rejecting an application for renewal of registration shall require the insolvency professional agency to-

- (a) discharge pending obligations;
- (b) continue its functions till such time as may be specified, to enable the enrolment of its members with another insolvency professional agency; and
- (c) comply with any other directions as considered appropriate.

Surrender of registration

7. (1) An insolvency professional agency may submit an application for surrender of a certificate of registration to the Board, providing -

- (a) the reasons for such surrender;
- (b) the details of all the pending or on-going engagements under the Code of the insolvency professionals enrolled with it;

IBBI (INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

Surrender of registration

(c) details of its pending or on-going activities; and

(d) the manner in which it seeks to wind-up its affairs as an insolvency professional agency.

(2) The Board shall within seven days of receipt of the application, **publish a notice of receipt of such application on its website and invite objections to the surrender of registration, to be submitted within fourteen days of the publication of the notice.** (V. Imp to remember)

(3) After considering the application and the objections submitted, if any, the Board may within thirty days from the last date of submission of objections, approve the application for surrender of registration subject to such conditions as it deems fit.

(4) The approval may require the insolvency professional agency to-

(a) discharge any pending obligations; or

IBBI (INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

(b) continue its functions till such time as may be specified, to enable the enrolment of its members with another insolvency professional agency.

Disciplinary proceedings

Disciplinary proceedings including the timeframe are same to Insolvency Professionals, as have been discussed in the previous slides.

Appeal (v. imp. to remember)

9. An appeal may be preferred under section 202 of the Code, within a period of thirty days of receipt the impugned order in the manner prescribed in Part III of the National Company Law Tribunal Rules, 2016. (Sec. 202 provides the appellate authority: **NCLAT** [Please remember appeal is to NCLAT and not to NCLT])

Schedules

FORM A: Application for Certificate of Registration

FORM B: Certificate of Registration No.

IBBI (INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

S. No.	Particulars	Regulation	Timeline	Description
1	Application for registration or renewal	4(3)	7 Days	The Board shall acknowledge the application within seven days
2	Grant of Registration	5(1)	60 Days	Within 60 Days of receipt of application
3		5(3)	5 Years	Valid for 5 Years
4	Surrender of Registration	7(2)	7 Days	With 7 days of receipt of the application, publish a notice of receipt of such application on its website
5			14 Days	invite objections to be submitted in 14 days
6			30 Days	The Board shall within 30 days from the last date of submission of objections approve the application
7	Disciplinary Proceedings	8(7)	6 months	Disciplinary committee shall endeavour to dispose notice within six months
8	Appeal	9	30 Days	30 Days of receipt of impugned order under Part III of NCLT Rules 2016 (NCLAT)

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

Amendment of Bye-Laws.

4. (1) *The Governing Board may amend the bye-laws by a resolution passed by votes in favour being not less than three times the number of the votes, if any, cast against the resolution, by the directors.*

(2) *A resolution passed in accordance with sub-regulation (1) shall be filed with the Board within seven days from the date of its passing, for its approval.*

(3) *The amendments to the bye-laws shall come into effect on the seventh day of the receipt of the approval, unless otherwise specified by the Board.*

(4) *The insolvency professional agency shall file a printed copy of the amended bye-laws with the Board within fifteen days from the date when such amendment is made effective.*

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

GOVERNING BOARD

Composition of the Governing Board.

5. (1) The Governing Board shall have a minimum of seven directors.
- (2) *More than half of the directors shall be persons resident in India at the time of their appointment, and at all times during their tenure as directors.*
- (3) *Not more than one fourth of the directors shall be insolvency professionals.*
- (4) *More than half of the directors shall be independent directors at the time of their appointment, and at all times during their tenure as directors:*

Provided that no meeting of the Governing Board shall be held without the presence of at least one independent director.

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

GOVERNING BOARD

(5) An independent director shall be an individual-

(a) who is a person of ability and integrity;

(b) who has expertise in the field of finance, law, management or insolvency.

(c) who is not an insolvency professional;

(d) who is not a relative of the directors of the Governing Board;

(e) who had or has no pecuniary relationship with the insolvency professional agency, or any of its directors, or any of its shareholders holding more than ten percent of its share capital, during the two immediately preceding financial years or during the current financial year;

(f) who is not a shareholder of the insolvency professional agency;

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

GOVERNING BOARD

(g) who is not a member of a governing council of any of the shareholders holding more than ten percent of the share capital of the insolvency professional agency; and

(6) The directors shall elect an independent director as the Chairperson of the Governing Board.

Explanation - For the purposes of this Regulation, any fraction contained in

- (a) 'more than half' shall be rounded off to the next higher number; and*
- (b) 'not more than one-fourth' shall be rounded down to the next lower number.*

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

V. COMMITTEES OF THE AGENCY

1. Advisory Committee of Professional Members- ONE

Other Committees of the Agency

- (a) One or more Membership Committee(s) consisting of such members as it deems fit;**
 - (b) a Monitoring Committee consisting of such members as it deems fit;**
 - (c) one or more Grievance Redressal Committee(s), with not less than three members, at least one of whom shall be a professional member of the Agency;**
 - (d) one or more Disciplinary Committee(s) consisting of at least one member nominated by the Board.**
- (2) The Chairperson of each of these Committees shall be an independent director of the Agency.**

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

VI. PROFESSIONAL MEMBERSHIP

- 1. Rejection of application if it does not satisfy the criteria for enrolment*
- 2. Rejection of the application is to be communicated to the applicant stating the reasons for such rejection, **within thirty days of the receipt of the application**, excluding the time given for removing the deficiencies or presenting additional documents or clarification by the Agency, as the case may be.*
- 3. The acceptance of the application shall be communicated to the applicant, along with a certificate of **membership in Form A of the Annexure to these bye-laws**.*
- 4. An applicant aggrieved of a decision rejecting his application **may appeal to the Membership Committee of the Agency within thirty days from the receipt of such decision**.*

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

VI. PROFESSIONAL MEMBERSHIP

5. Membership Committee shall pass an order disposing of the appeal in the manner it deems expedient, within thirty days of the receipt of the appeal.

VIII. MONITORING OF MEMBERS

The Agency is to have a Monitoring Policy to monitor the professional activities and conduct of professional members for their adherence to the provisions of the Code, rules, regulations and guidelines issued thereunder, these bye-laws, the Code of Conduct and directions given by the Governing Board.

(i) A professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional, in the manner and format specified by the Agency, at least twice a year.

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

- (i) Monitoring Committee shall review the information and records submitted by the professional members in accordance with the Monitoring Policy.*
- (ii) The Agency shall submit a report to the Board in the manner specified by the Board with information collected during monitoring, including information pertaining to -*
 - (a) the details of the appointments made under the Code,*
 - (b) the transactions conducted with stakeholders during the period of his appointment;*
 - (c) the transactions conducted with third parties during the period of his appointment; and*
 - (d) the outcome of each appointment.*

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

IX. GRIEVANCE REDRESSAL MECHANISM

1. *The Agency shall have a **Grievance Redressal Policy** providing the **procedure for receiving, processing, redressing and disclosing grievances against the Agency or any professional member of the Agency by-***
 - (a) *any professional member of the Agency;*
 - (b) *any person who has engaged the services of the concerned professional members of the Agency; or*
 - (c) *any other person or class of persons as may be provided by the Governing Board.*
2. **Grievance Redressal Committee shall refer the matter to the Disciplinary Committee, wherever the grievance warrants disciplinary action.**

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

X. DISCIPLINARY PROCEEDINGS

1. *The Agency may initiate disciplinary proceedings by issuing a show-cause notice against professional members-*
 - (a) *based on a reference made by the Grievances Redressal Committee;*
 - (b) *based on monitoring of professional members;*
 - (c) *following the directions given by the Board or any court of law; or*
 - (d) *suo moto***, *based on any information received by it.*
2. *The orders that may be passed by the Disciplinary Committee shall include-*
 - (a) *expulsion of the professional member;*
 - (b) *suspension of the professional member for a certain period of time;*
 - (c) *admonishment of the professional member;*
 - (d) *imposition of monetary penalty;*

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

X. DISCIPLINARY PROCEEDINGS

- (e) reference of the matter to the Board, which may include, in appropriate cases, recommendation of the amount of restitution or compensation that may be enforced by the Board; and
- (f) directions relating to costs.
- 3. The Disciplinary Committee may pass an order for expulsion of a professional member if it has found that the professional member has committed-**
- (a) an offence under any law for the time being in force, **punishable with imprisonment for a term exceeding six months**, or an offence involving moral turpitude;
- (b) **a gross violation of the Code**, rules, regulations and guidelines issued thereunder, bye-laws or directions given by the Governing Board which renders him not a fit and proper person to continue acting as an insolvency professional.

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

X. DISCIPLINARY PROCEEDINGS

- 4. Any order passed by the Disciplinary Committee shall be placed on the website of the Agency within seven days from passing of the said order, and a copy of the order shall be provided to each of the parties to the proceeding.**
- 5. Monetary penalty received by the Agency under the orders of the Disciplinary Committee shall be credited to the Insolvency and Bankruptcy Fund constituted under section 224 of the Code.**

Appellate Panel

- 1. The Governing Board shall constitute an Appellate Panel consisting of one independent director of the Agency, one member from amongst the persons of eminence having experience in the field of law, and one member nominated by the Board.**

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

Surrender of Professional Membership

- 1. A professional member who wishes to surrender his membership of the Agency may do so by submitting an application for surrender of his membership.*
- 2. Upon acceptance of such surrender of his membership, and completion of thirty days from the date of such acceptance, the name of the professional member shall be struck from the registers of the Agency, and the same shall be intimated to the Board.*
- 3. Any fee that is due to the Agency from a professional member surrendering his membership shall be cleared prior to his name being struck from the registers of the Agency.*
- 4. The Agency may refuse to accept the surrender of membership by any professional member if -*

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

Surrender of Professional Membership

- (a) there is any grievance or disciplinary proceeding pending against the professional member before the Agency or the Board; or*
- (b) the professional member has been appointed as a resolution professional, liquidator or bankruptcy trustee for a process under the Code, and the appointment of another insolvency professional may be detrimental to such process.*

Expulsion from Professional Membership

1. A professional member shall be expelled by the Agency –

- (a) if he becomes ineligible to be enrolled under bye-law 9;*
- (b) on expiry of thirty days from the order of the Disciplinary Committee, unless set aside or stayed by the Appellate Panel;*

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

SCHEDULE

Expulsion from Professional Membership

- (c) upon non-payment of professional membership fee despite at least two notices served in writing;*
- (d) upon the cancellation of his certificate of registration by the Board;*
- (e) upon the order of any court of law.*

ANNEXURE

FORM A: CERTIFICATE OF PROFESSIONAL MEMBERSHIP

IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS 2016

S. No.	Particulars	Regulation	Timeline	Description
1	Amendment of Bye Law	4(2)	7 Days	A resolution passed shall be filled with the Board within 7 days
2		4(3)	7 Days	The amendment to the bye law shall come into effect on seventh day of the receipt of approval unless otherwise specified by the Board
3		4(4)	15 Days	Printed copy of the amended bye law with the Board within 15 days from the date when such amendment is effective
4	Process of Enrollment to Professional Member	10(8)	30 Days	The applicant aggrieved of a decision rejecting his application may prefer appeal to membership committee within 30 days
5		10(9)	30 Days	The Membership Committee shall pass an order of disposing of appeal in the manner expedient within 30 days from the receipt of copy of final order
6	Disciplinary Proceedings	25(2)	30 Days	Any person aggrieved of an order of disciplinary committee may prefer an appeal before appellate Panel within 30 Days
7		25(3)	30 Days	The Appellate Panel shall dispose of the appeal in the manner it deems expedient within 30 days of receipt of appeal

INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 were notified by MCA on 30th November 2016. Gist of Rules are as follows:

- 1. Provides for procedure to entertain applications for initiating the corporate insolvency resolution process against a corporate debtor by financial creditors; operational creditors and corporate applicant.*
- 2. **Financial Creditors** to initiate CIRP under section 7 of the Code in Form 1 and attached all supporting documents and records as per above Rules.*
- 3. **Operational Creditors** shall send **demand notice in Form 3**; or a copy of an **invoice attached with a notice in Form 4** and **initiate CIRP under section 9 of the code in Form 5**, accompanied with documents and records required in these Rules.*
- 4. A **corporate applicant**, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 10 of the Code **in Form 6**, accompanied with documents and records required in these Rules.*

INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016

5. The applicant is required to propose appointment of an interim insolvency resolution professional, **shall obtain a written communication in Form 2** from him and enclose it with the application made under rules 4, 6 or 7, as the case may be.

6. The above application shall be **accompanied by a certificate confirming the eligibility of the proposed insolvency professional for appointment as a resolution professional** in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

IMPORTANT FORMS AS ATTACHED WITH RULES AND REGULATIONS

IBC (Application to Adjudicating Authority) Rules, 2016 (under section 239 (1),(2), (c to f) read with section 7 to 10 of IBC, 2016)	u/s 7 read with rule 4	Form -1	Application by Financial Creditor(s)
	Rule 9(1)	Form-2	Written Communication by Proposed IRP
	Rule 5(1)	Form-3	Demand Notice / Invoice Demanding Payment
	Rule 5(1)	Form-4	Notice with which Invoice demanding payment is to attached
	u/s sec 9 read with Rule 6(1)	Form-5	Application by Operational Creditor(s)
	u/s 10 read with Rule 7(1)	Form-6	Application by Corporate Applicant

IMPORTANT FORMS AS ATTACHED WITH RULES AND REGULATIONS

IBBI (Insolvency Professionals) Regulations 2016	U/ s Reg. 6 or 9	Form A	<i>Application for Registration as an Insolvency Professional/ Limited Insolvency Professional</i>
	U/ s Reg. 7	Form B	<i>Certificate of Registration</i>
	U/s Reg. 12	Form C	<i>Application for Recognition as an Insolvency Professional Entity</i>
	U/s Reg 13	Form D	<i>Certificate of Recognition</i>

IMPORTANT FORMS AS ATTACHED WITH RULES AND REGULATIONS

IBBI (Insolvency Professional Agencies) Regulations 2016	U/s Reg. 4	Form A	Application for Certificate of Registration
		Form B	Certificate of Registration
IBBI (Model Bye Laws) Regulations		Form A	Certificate of Professional Membership

IMPORTANT FORMS AS ATTACHED WITH RULES AND REGULATIONS

IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	u/s Reg.6	Form A	<i>Public Announcement</i>
	u/s Reg.7	Form B	<i>Proof of claim by Operational Creditors except workmen and employees</i>
	u/s Reg.8	Form C	<i>Proof of Claim by Financial Creditors</i>
	u/s Reg.9	Form D	<i>Proof of claim by a workmen or employees</i>
	u/s Reg.9	Form E	<i>Proof of claim by Authorised representative of workmen or employees</i>
Inserted by amendment in CIRP Regulation, 2017 dated 16.8.2017	u/s Reg. 9A	Form F	<i>Proof of claim by Creditors (Other than Financial Creditors and Operational Creditors)</i>

IMPORTANT FORMS AS ATTACHED WITH RULES AND REGULATIONS

IBBI (Liquidation Process) Regulations, 2016	u/s Reg.8	Form A	<i>Proforma for reporting consultation with stakeholders</i>
	u/s Reg.12	Form B	<i>Public Announcement</i>
	u/s Reg.17	Form C	<i>Proof of claim by Operational Creditors except workmen and employees</i>
	u/s Reg.18	Form D	<i>Proof of Claim by Financial Creditors</i>
	u/s Reg.19	Form E	<i>Proof of claim by a workmen or employees</i>
	u/s Reg.19	Form F	<i>Proof of claim by Authorised representative of workmen or employees</i>
	u/s Reg.20	Form G	<i>Proof of claim by any other stakeholder</i>

IMPORTANT FORMS AS ATTACHED WITH RULES AND REGULATIONS

IBBI (Voluntary Liquidation Process) Regulations, 2017	u/s Reg.14	Form A	<i>Public Announcement</i>
	u/s Reg.16	Form B	<i>Proof of claim by Operational Creditors except workmen and employees</i>
	u/s Reg.17	Form C	<i>Proof of Claim by Financial Creditors</i>
	u/s Reg.18	Form D	<i>Proof of claim by a workmen or employees</i>
	u/s Reg.18	Form E	<i>Proof of claim by Authorised representative of workmen or employees</i>
	u/s Reg. 19	Form F	<i>Proof of claim by Any other Stakeholder</i>

IMPORTANT FORMS AS ATTACHED WITH RULES AND REGULATIONS

IBBI (Information Utilities) Regulations 2017	U/s Reg. 4	Form A	Application for Certificate of Registration
	u/s Reg. 5	Form B	Certificate of Registration
	u/s Reg.20	Form C	Information may be accepted in this form with such modifications as the information utility deems fit

REGULATION OF INSOLVENCY PROFESSIONALS AGENCIES AND INFORMATION UTILITIES (PART-IV OF IBC 2016)

Establishment and incorporation of Board: (Sec. 188)

Vide S.O. 3110(E) dated 1st October 2016, in exercise of the powers conferred by sub-section (1) and (3) of section 188 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby appoints 1st October, 2016 as the date of establishment of Insolvency and Bankruptcy Board of India. The head office of the Insolvency and Bankruptcy Board of India shall be at New Delhi.

Constitution of Board (Sec. 189): [10 members including Chairperson]

Chairperson	1	
Ex-officio (4)	1	Not below the rank of J.S Ministry of Corporate Affairs
	1	Not below the rank of J.S Ministry of Finance
	1	Not below the rank of J.S Ministry of Law
	1	Nominated by RBI
Nominated	3	Whole time member nominated by Central Govt.
Nominated	2	Part time member nominated by Central Govt.

REGULATION OF INSOLVENCY PROFESSIONALS AGENCIES AND INFORMATION UTILITIES (PART-IV OF IBC 2016)

GOVERNING BOARD of IBBI (AS on date)

Chairperson

Dr. M. S. Sahoo

Whole-Time Members

1. Ms. Suman Saxena, WTM Research and Regulation Wing
2. Dr. Navrang Saini, WTM Registration and Monitoring Wing
3. Dr. Mukulita Vijayawargiya , WTM Administrative Law Wing

Ex-Officio Members

1. Dr. Shashank Saksena, Adviser (Capital Markets), Department of Economic Affairs, Ministry of Finance
2. Sh. Gyaneshwar Kumar Singh, Joint Secretary, Ministry of Corporate Affairs
3. Sh. G. S. Yadav, Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law
4. Sh. A Unnikrishnan, Legal Adviser, Reserve Bank of India

REGULATION OF INSOLVENCY PROFESSIONALS AGENCIES AND INFORMATION UTILITIES (PART-IV OF IBC 2016)

Appointment of the Chairperson and the members of the Board other than the appointment of an ex officio member [Sec. 189(3)]

- *On the recommendation of a selection committee consisting of—*
 - (a) *Cabinet Secretary—Chairperson;*
 - (b) *Secretary to the Government of India to be nominated by the Central Government—Member;*
 - (c) *Chairperson of the Insolvency and Bankruptcy Board of India (in case of selection of members of the Board)—Member;*
 - (d) *three experts of repute from the field of finance, law, management, insolvency and related subjects, to be nominated by the Central Government—Members.*
 - (e) *The term of office of the Chairperson and members (other than ex officio members) shall be five years or till they attain the age of sixty-five years, whichever is earlier, and they shall be eligible for reappointment.*

REGULATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES (PART-IV OF IBC 2016)

Removal of member from office. [Sec. 190]

The Central Government may remove a member from office if he—

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

Provided that no member shall be removed under clause (d) unless he has been given a reasonable opportunity of being heard in the matter.

INSOLVENCY PROFESSIONAL AGENCIES (CHAPTER III OF PART-IV OF IBC 2016)

Principles governing registration of insolvency professional agency [Sec. 200]

Board shall have regard to the following principles while registering the insolvency professional agencies under this Code, namely:—

- (a) to promote the professional development of and regulation of insolvency professionals;*
- (b) to promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified;*
- (c) to promote good professional and ethical conduct amongst insolvency professionals;*
- (d) to protect the interests of debtors, creditors and such other persons as may be specified;*
- (e) to promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code.*

INSOLVENCY PROFESSIONAL AGENCIES (CHAPTER III OF PART-IV OF IBC 2016)

- 1. Every order for rejection of application for registration of Insolvency Professional Agency by Board, shall be communicated to the applicant within a period of fifteen days.***

Provided that no order shall be made under this sub-section unless the insolvency professional agency concerned has been given a reasonable opportunity of being heard:

Provided further that no such order shall be passed by any member except whole-time members of the Board. [Remember this provision]

- 2. Appeal for rejection to NCLAT.***

- 3. Functions of Insolvency Professional Agencies [Sec. 204]: Read them.***

The provisions given in the sections under this chapter are same as are given in the IBBI (Insolvency Professionals) Regulations 2016, already discussed earlier in this presentation.

INSOLVENCY PROFESSIONALS

(CHAPTER IV OF PART-IV OF IBC 2016)

Functions and obligations of insolvency professionals [Sec. 208]

- *Where any insolvency resolution, **fresh start**, **liquidation** or **bankruptcy process** has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary.*
- *Every insolvency professional shall abide by the following code of conduct:—*
 - (a) to take reasonable care and diligence while performing his duties;*
 - (b) to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;*
 - (c) to allow the insolvency professional agency to inspect his records;*
 - (d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and*
 - (e) to perform his functions in such manner and subject to such conditions as may be specified.*

INFORMATION UTILITIES (CHAPTER V OF PART-IV OF IBC 2016)

Registration of information utility [Sec. 210]

- *Every application received by the Board for registration of information utility **shall be acknowledged within seven days of its receipt.***
- *No order for rejection of registration shall be made unless the information utility concerned has been given a reasonable opportunity of being heard:*

Provided further that no such order shall be passed by any member except whole-time members of the Board.

Appeal to National Company Law Appellate Tribunal [Sec. 211]: Any information utility which is ***aggrieved by the order of the Board made under section 210 may prefer an appeal to the National Company Law Appellate Tribunal*** in such form, within such period, and in such manner, as may be specified by regulations.

INFORMATION UTILITIES (CHAPTER V OF PART-IV OF IBC 2016)

Obligations of information utility [Sec. 214]

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

- (a) create and store financial information in a universally accessible format;***
- (b) accept electronic submissions of financial information from persons who are under obligations to submit financial information under sub-section (1) of section 215, in such form and manner as may be specified by regulations;***
- (c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;***
- (d) meet such minimum service quality standards as may be specified by regulations;***
- (e) get the information received from various persons authenticated by all concerned parties before storing such information;***

INFORMATION UTILITIES

(CHAPTER V OF PART-IV OF IBC 2016)

Obligations of information utility [Sec. 214]

- (f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;*
- (g) publish such statistical information as may be specified by regulations;*
- (h) have inter-operatability with other information utilities.***

Procedure for submission, etc., of financial information [Sec. 215]:

*- A **financial creditor** shall submit **financial information and information relating to assets in relation to which any security interest** has been created, in such form and manner as may be specified by regulations.*

*(3) An **operational creditor** may submit **financial information** to the information utility in such form and manner as may be specified.*

INFORMATION UTILITIES (CHAPTER V OF PART-IV OF IBC 2016)

Rights and obligations of persons submitting financial information [Sec. 216]

- *A person may update or modify or rectify errors in the financial information submitted under section 215, by an application to the information utility for such purpose stating reasons therefor.*
- *A person who submits financial information to an information utility **shall not provide such information to any other person, except to such extent**, under such circumstances, and in such manner, as may be specified*

INSPECTION AND INVESTIGATION (CHAPTER VI OF PART-IV OF IBC 2016)

Note: This Chapter is very important, the contents of this chapter should be memorize and retain in memory

Complaints against insolvency professional agency or its member or information utility [Sec. 217]

Any person aggrieved by the functioning of an insolvency professional agency or insolvency professional or an information utility may file a complaint to the Board in such form, within such time and in such manner as may be specified.

***Section 218(3):** The Investigating Authority may, in the course of such inspection or investigation, require any other person who is likely to have any relevant document, record or information to furnish the same, and such person shall be bound to furnish such document, record or information:*

Provided that the Investigating Authority shall provide detailed reasons to such person before requiring him to furnish such document, record or information.

INSPECTION AND INVESTIGATION (CHAPTER VI OF PART-IV OF IBC 2016)

Section 218(4): *The Investigating Authority may, in the course of its inspection or investigation, enter any building or place where they may have reasons to believe that any such document, record or information relating to the subject-matter of the inquiry may be found and may seize any such document, record or information or take extracts or copies therefrom, subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, insofar as they may be applicable.*

Section 218(5): *Investigating Authority shall keep in its custody the books, registers, other documents and records seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the concerned person from whose custody or power they were seized:*

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

INSPECTION AND INVESTIGATION (CHAPTER VI OF PART-IV OF IBC 2016)

- **Section 218(6):** *A detailed report of inspection or investigation shall be submitted **to the Board** by the Investigating Authority. [Remember investigation report is to Board not to any other agency (NCLT etc.)]*
- **Section 219** Board may on completion of inspection or investigation may issue Show cause notice to insolvency professional agency or its member or information utility.

Appointment of disciplinary committee [Section 220]

- Board shall constitute a disciplinary committee to consider the reports of the investigating Authority submitted under sub-section (6) of section 218:

Provided that the members of the disciplinary committee shall consist of whole-time members of the Board only. [Please note the composition- V. Imp.]

INSPECTION AND INVESTIGATION (CHAPTER VI OF PART-IV OF IBC 2016)

- *On the examination of the report of the Investigating Authority, if the disciplinary committee is satisfied that sufficient cause exists, it may impose penalty as specified in sub-section (3) or suspend or cancel the registration of the insolvency professional or, suspend or cancel the registration of insolvency professional agency or information utility as the case may be.*

(3) Where any insolvency professional agency or insolvency professional or an information utility has contravened any provision of this Code or rules or regulations made thereunder, the disciplinary committee may impose penalty which shall be—

- (i) three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention; or**
- (ii) three times the amount of the unlawful gain made on account of such contravention, whichever is higher:**

Provided that where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed more than one crore rupees.

INSPECTION AND INVESTIGATION (CHAPTER VI OF PART-IV OF IBC 2016)

(4) Notwithstanding anything contained in sub-section (3), the Board may direct any person who has made unlawful gain or averted loss by indulging in any activity in contravention of this Code, or the rules or regulations made thereunder, to disgorge an amount equivalent to such unlawful gain or aversion of loss.

(5) The Board may take such action as may be required to provide restitution to the person who suffered loss on account of any contravention from the amount so disgorged, if the person who suffered such loss is identifiable and the loss so suffered is directly attributable to such person.

FINANCE, ACCOUNTS AND AUDIT (CHAPTER VI OF PART-IV OF IBC 2016)

Board's Fund (Section 222)

There shall be constituted a Fund to be called the Fund of the Insolvency and Bankruptcy Board and there shall be credited thereto—

- (a) all grants, fees and charges received by the Board under this Code;*
- (b) all sums received by the Board from such other sources as may be decided upon by the Central Government;*
- (c) such other funds as may be specified by the Board or prescribed by the Central Government.*

(2) The Fund shall be applied for meeting—

- a) the salaries, allowances and other remuneration of the members, officers and other employees of the Board;*
- b) the expenses of the Board in the discharge of its functions under section 196;*
- c) the expenses on objects and for purposes authorised by this Code;*
- d) such other purposes as may be prescribed.*

FINANCE, ACCOUNTS AND AUDIT (CHAPTER VI OF PART-IV OF IBC 2016)

Accounts and audit (Section 223)

- (1) Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.*
- (2) Audit by the Comptroller and Auditor-General of India (CAG)*
- (3) The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon **shall be forwarded annually to the Central Government** and that **Government shall cause the same to be laid before each House of Parliament.***

MISCELLANEOUS (PART-V OF IBC 2016)

Insolvency and Bankruptcy Fund (Section 224)

- (1) There shall be formed a Fund to be called the Insolvency and Bankruptcy Fund (hereafter in this section referred to as the "Fund") for the purposes of insolvency resolution, liquidation and bankruptcy of persons under the Code.*
- (2) There shall be credited to the Fund the following amounts, namely—*
 - (a) the grants made by the Central Government for the purposes of the Fund;*
 - (b) the amount deposited by persons as contribution to the Fund;*
 - (c) the amount received in the Fund from any other source; and*
 - (d) the interest or other income received out of the investment made from the Fund.*

MISCELLANEOUS (PART-V OF IBC 2016)

Insolvency and Bankruptcy Fund (Section 224)

(3) A person who has contributed any amount to the Fund may,

- in the event of proceedings initiated in respect of such person under this Code before an Adjudicating Authority,*
- make an application to such Adjudicating Authority **for withdrawal of funds not exceeding the amount contributed by it,***
- for making payments to workmen, protecting the assets of such persons,*
- meeting the incidental costs during the proceedings or such other purposes as may be prescribed.*

Note: Please note the difference in two Funds e.g. (i) Fund of the Insolvency and Bankruptcy Board which is related to “**Insolvency and Bankruptcy Board of India**” (under sec. 222) and other one is “**Insolvency and Bankruptcy Fund**” (under sec. 224) . The purposes of establishing both funds are different. Don't confuse and read the provisions of both carefully.

MISCELLENEOUS (PART-V OF IBC 2016)

Bar of jurisdiction (Section 231)

No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority under this Code.

Members, officers and employees of Board to the public servants (Section 232)

Chairperson, Members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Code, to be public servants within the meaning of section 21 of the Indian Penal Code.

MISCELLANEOUS (PART-V OF IBC 2016)

Protection of action taken in good faith (Section 233)

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government, or the **Chairperson, Member, officer or other employee of the Board** or an insolvency professional or liquidator for anything which is done or intended to be done in good faith under this Code or the rules or regulations made thereunder.

Trial of offences by Special Court.(Section 235)

(1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013. ***(Note this provision and remember)***

MISCELLANEOUS (PART-V OF IBC 2016)

Appeal and revision (Section 237)

High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Provisions of this Code to override other laws (Section 238)

Provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

MISCELLANEOUS (PART-V OF IBC 2016)

Rules and regulations to be laid before Parliament (Section 241)

- *Every rule and every regulation made under this Code shall be laid before each House of Parliament, while it is in session, **for a total period of thirty days***
- ***which may be comprised in one session or in two or more successive sessions,***
- *If both Houses agree in making any modification in the rule or regulation or*
- *both Houses agree that the rule or regulation should not be made,*
- *the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be;*
- *however, **that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.***

REPEAL AND AMENDMENTS OF CERTAIN ENACTMENTS

Section 243: The following Acts have been repealed:

1. *The Presidency Towns Insolvency Act, 1909; and*
2. *The Provincial Insolvency Act, 1920.*

The following Acts have been amended (Please remember the section and schedule numbers)

3. **Section 245:** *Indian Partnership Act, 1932*, amended as per First Schedule **Section 41(a)** omitted.
4. **Section 246:** *Central Excise Act, 1944*; amended as per Second Schedule, **Section 11E** amended.
5. **Section 247:** *Income Tax Act, 1961*; amended as per Third Schedule, **Section 178(6)** amended.
6. **Section 248:** *Customs Act, 1962*; amended as per Forth Schedule, **Section 142A** amended.

REPEAL OF CERTAIN ENACTMENTS AND SAVINGS

7. **Section 249:** Recovery of Debt Due to Banks and Financial Institution Act, 1993; amended as per fifth Schedule.
 - The name has been changed to “*Recovery of Debt Due to Banks and Financial Institution Act, 1993 and insolvency resolution and bankruptcy of individuals and partnership firms*”
 - Section 1(1); 1(4); and 20(4) amended;
 - New Sections 3(1A); 8(1A); 17(1A); 17(2A) and 19A inserted.
8. **Section 250:**The Finance Act, 1994; amended as per sixth Schedule, **Section 88 amended**
9. **Section 251:***The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;* amended as per **Seventh Schedule**
10. **Section 252:**The Sick Industrial Companies (Special Provisions) Act, 1985; amended as per eighth Schedule, **Section 4(b) substituted.**

REPEAL OF CERTAIN ENACTMENTS AND SAVINGS

11. **Section 253:** *The Payment and Settlement Systems Act, 2007;* amended as per Ninth Schedule, **Section 23(4), 23(5), 23(6) and 23A(3) amended;**
12. **Section 254:** *The Limited Liability Partnership Act, 2008;* amended as per Tenth Schedule, **Section 64, Clause (c) omitted;** and
13. **Section 255:** *The Companies Act, 2013.* amended as per Eleventh Schedule: *Following amendments have been made:*
 - ***In section 2,—***
 - (i) *clause (23) substituted;*
 - (ii) *New clause (94A) inserted;*
 - ***Section 8(9) some words in section substituted.***
 - ***Section 66(8) some words in section substituted.***
 - ***Section 77(3) few additional words added.***
 - ***Section 117(3) some words substituted.***
 - ***Section 224(2) some words substituted,***

REPEAL OF CERTAIN ENACTMENTS AND SAVINGS

- *Section 230(1) and 230(6) some words substituted.*
- *Section 249(1)(e) substituted with new one.*
- *Sections 253 to 269 shall be omitted.*
- *Section 270 substituted with new one.*
- *Section 271 substituted with new one.*
- *Section 272 substituted with new one.*
- *Section 275 substituted with new one.*
- *Section 280 substituted with new one.*
- *Section 289 omitted.*
- *Sections 304 to 323 omitted.*
- *Section 325 omitted.*
- *Section 326 substituted with new one.*
- *section 327(6) substituted with new one and explanation under clause (c) of Section 327 substituted.*

REPEAL OF CERTAIN ENACTMENTS AND SAVINGS

- *Section 329 substituted with new one.*
- *Section 334 substituted with new one.*
- *Section 336 substituted with new one.*
- *Section 337 substituted with new one.*
- *Section 342, sub-sections (2), (3) and (4) omitted.*
- *Section 343 substituted with new one.*
- *Section 347 substituted with new one.*
- *Section 348 substituted with new one.*
- *Section 357 substituted with new one.*
- *Section 370 few words inserted.*
- *Section 372 few words inserted*
- *Section 419(4) substituted with new one.*
- *Section 429(1) substituted with new one.*
- *Section 434 substituted with new one.*
- *Section 468(2) substituted with new one.*
- *Schedule V, Part II, section III, clause (b) substituted with new one.*

PART-III OF IBC 2016 INSOLVENCY RESOLUTION FOR INDIVIDUALS AND PARTNERSHIP

Examination Tips

- **Please read the definitions- Section 79 and should be able to recall when the question is asked on the provision of a section;**
- **Fresh Start Process: Memorize the conditions for start process: For ready reference it is given below:**

A debtor may apply, either personally or through a resolution professional, for a fresh start under this Chapter in respect of his qualifying debts to the Adjudicating Authority if —

- (a) the gross annual income of the debtor does not exceed sixty thousand rupees;**
- (b) the aggregate value of the assets of the debtor does not exceed twenty thousand rupees;**
- (c) the aggregate value of the qualifying debts does not exceed thirty-five thousand rupees;**
- (d) he is not an undischarged bankrupt;**

PART-III OF IBC 2016 INSOLVENCY RESOLUTION FOR INDIVIDUALS AND PARTNERSHIP

Examination Tips

- (e) he does not own a dwelling unit, irrespective of whether it is encumbered or not;**
 - (f) a fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; and**
 - (g) no previous fresh start order under this Chapter has been made in relation to him in the preceding twelve months of the date of the application for fresh start.**
- Read all the provisions of Sections 80-93**
 - Read provisions relating to “Insolvency Resolution Process” Section 94- 120**
 - Read provisions relating to Bankruptcy of individuals and Partnership Section 95-148**
 - Read provisions relating to Administration and Distribution of the Estate of Bankrupts Section 149-183**

PART-III OF IBC 2016 INSOLVENCY RESOLUTION FOR INDIVIDUALS AND PARTNERSHIP

Examination Tips

- ***Read provisions of Offences and Penalties Section 184-187***
- ***Please remember as told in the beginning that study those provisions which have specific timeline and penalty.***
- ***Further, don't leave provisions of offences and penalties as these are important.***

NATIONAL COMPANY LAW TRIBUNAL (NCLT)

In the first phase the Ministry of Corporate Affairs have set up eleven Benches:

- **One Principal Bench** at New Delhi; and
- **Ten Benches** at New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.
- These Benches will be headed by the President and 16 Judicial Members and 09 Technical Members at different locations.
- *National Company Law Tribunal ('NCLT') and its appellate body, the National Company Law Appellate Tribunal ('NCLAT') have been constituted under sections 408 and 410 of the Companies Act, 2013 ('Act') with effect from June 1, 2016.*
- *NCLT has all such powers as were being exercised by the erstwhile Company Law Board ('CLB'), the High Court and the Board for Industrial and Financial Reconstruction ('BIFR'). CLB and BIFR have already been dissolved.*

NATIONAL COMPANY LAW TRIBUNAL (NCLT)

- As per Section 60 of the Code, the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.
- Under Section 61 of the Code, any person aggrieved by order of NCLT can file an Appeal within thirty days before the National Company Law Appellate Tribunal (NCLAT). NCLAT may allow an appeal after 30 days on sufficient cause for not filing the appeal but such period shall not exceed 15 days.
- Any person aggrieved by an order of NCLAT may file appeal within 45 days to the Supreme Court on a question of law arising out from such order. Supreme Court may allow appeal after 45 days, if it is satisfied that a person was prevented by sufficient cause , for further period not exceeding 15 days.

NATIONAL COMPANY LAW TRIBUNAL (NCLT)

- Corresponding to Section 10FQ of the Companies Act 1956, section 421 of Companies Act 2013. Appeal can be filed by any person aggrieved by the order of NCLT within 45 days, which may be extended for further 45 days on sufficient cause being proved.
- Section 423 of Companies Act, 2013 provides for an appeal against the order of the Appellate Tribunal to the Supreme Court within 60 days from the date of receipt of the order, on the question of law arising out of such order. The Supreme Court may extend for filing of appeal for further period of 60 days on sufficient cause being proved.

COMPANIES ACT 2013 CHAPTER XXVII NCLT & NCLAT

Qualification of President and member of NCLT

President	<i>Judge of High Court for last 5 Years</i>
Judicial Member	<i>Has been a judge of high court</i>
	<i>District Judge for last 5 Years</i>
	<i>Advocate for 10 years</i>

Qualification of Technical Member

15 Years been a member of Indian Corporate Law Service or Indian Legal service and has been holding the rank of secretary or additional secretary

Chartered Accountant for 15 years practice

Cost Accountant for 15 years practice

Company Secretary for 15 years practice

Is a person of proven ability and special knowledge and experience of not less than 15 years in industrial law, industrial management, industrial reconstruction , investment and accountancy

5 Years as Presiding officer of Labour Court Labour / National Tribunal

COMPANIES ACT 2013 CHAPTER XXVII NCLT & NCLAT

Term	President	<i>5 Years or 67 years</i>
	Member	<i>5 Years or 65 years</i>
But not below 50 years		
Bench	2 Member	<i>1 Technical , 1 Judicial</i>
Special Bench	3 or more	<i>By majority of judicial member</i>
<i>For revival, restructuring and rehabilitation</i>		
<i>Modification of order</i>		<i>Within 2 Years provided no amendment on such order filled under appeal</i>
<i>Appeal</i>		<i>45 days from the date of copy of order made available to the person so aggrieved, further extension of 45 days</i>
<i>Disposal of case</i>		<i>3 Month from the date of application or appeal, further extension 90 days</i>
<i>Status</i>		<i>Civil Court under Chapter XXVI of Code of Criminal Procedure, 1973</i>

COMPANIES ACT 2013 CHAPTER XXVII NCLT & NCLAT

NCLAT	
Chairperson	<i>Judge of Supreme Court or Chief Justice of High Court</i>
Judicial Member	<i>Has been a Judge of High Court or</i>
	<i>Judicial Member of Tribunal for 5 years</i>
Technical Member	<i>A person of proven ability and special knowledge and experience of not less than 25 years in industrial law, industrial management, industrial reconstruction, investment and accountancy</i>

COMPANIES ACT 2013 CHAPTER XXVII NCLT & NCLAT

The President of Tribunal and the Chairperson and Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India

Members of Tribunal and Technical Members of Appellate Tribunal shall be appointed on recommendation of Selection Committee of

Chairperson	<i>Chief Justice of India or his nominee</i>
Member	<i>(a) A Senior Judge of Supreme Court or Chief Justice of High Court</i>
	<i>(b) Secretary of Ministry of Corporate Affairs</i>
	<i>(c) Secretary of Ministry of Law And Justice</i>
	<i>(d) Secretary of Ministry of Corporate Affairs , he shall also be convenor and</i>
	<i>(e) Secretary in the Department of Financial Services in the Ministry of Finance</i>
Terms	
Chairperson	<i>5 Years or 70 years</i>
Member	<i>5 Years or 67 years</i>

No appointment shall be invalid merely discrepancy in constitution of committee or vacancy

COMPANIES ACT 2013: CHAPTER XVII REGISTERED VALUERS

- Section 247(2):** The valuer appointed under sub-section (1) shall,—
- (a) make an impartial, true and fair valuation of any assets which may be required to be valued;
 - (b) exercise due diligence while performing the functions as valuer;
 - (c) make the valuation in accordance with such rules as may be prescribed; and
 - (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.**

Punishment for contravention of provisions of section 247: A fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees

COMPANIES ACT 2013: CHAPTER XVII REGISTERED VALUERS

In contravention with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Section 247(4): Where a valuer has been convicted under subsection (3), he shall be liable to—

- (i) refund the remuneration received by him to the company; and*
- (ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.*

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI)

Enforceability: Occurrence of Default

Section 2(1)(j)

"default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor.

Conditions: Section 13

- The account is classified by the secured creditor as non-performing asset (NPA)*
- Written Notice for 60 days to defaulting borrower to discharge his liabilities in full*
- Where borrower fails to discharge his liability secured creditor is entitled to exercise his rights u/s 13(4) of the Act.*

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI)

SARFAESI Act does not apply in the following cases:

- *A **lien** on goods, money or security given by or under the Indian Contract Act, 1872 or the Sales of Goods Act, 1930 or any other law for the time being in force;*
- *A **pledge** of movables;*
- *Creation of **security in any aircraft and/ or vessel**;*
- *Any **conditional sale, hire-purchase or lease or any contract in which no security interest has been created**;*
- ***Unpaid seller** of the Sales of Goods Act, 1930*
- *Any properties not liable to attachment or sale under Code of Civil Procedure, 1908*
- *Any **security interest for securing repayment of any financial asset not exceeding Rs. 1 lakh***
- *Any security interest created in **agricultural land***
- *Any case in which the amount due is **less than 20%** of the principal amount and interest thereon.*

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI)

Measures available to secured creditor where borrower fails to discharge liability::

- a) Take possession of secured assets of the borrower.*
- b) Take over management of the business of the borrower.*
- c) Appoint any person to manage the secured assets the possession of which has been taken over by secured creditor.*

Where borrower pays dues before sale:

- Where the dues of the secured creditor along with costs are tendered to him at any time before the date fixed for sale or transfer;*
- The secured asset shall not be sold or transferred by the secured creditor;*
- No further step shall be taken by the creditor for transfer or sale of the secured asset;*

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI)

Measures available to secured creditor where borrower fails to discharge liability::

- a) Take possession of secured assets of the borrower.*
- b) Take over management of the business of the borrower.*
- c) Appoint any person to manage the secured assets the possession of which has been taken over by secured creditor.*

Where borrower pays dues before sale:

- Where the dues of the secured creditor along with costs are tendered to him at any time before the date fixed for sale or transfer;*
- The secured asset shall not be sold or transferred by the secured creditor;*
- No further step shall be taken by the creditor for transfer or sale of the secured asset;*

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI)

Adjudicating Authority

- *It is Debt Recovery Tribunal (DRT)*
- *Appeal from the order of DRT lies to Debt Recovery Appellate (DRAT) Tribunal*
- *Where dues of the secured creditor are not fully satisfied with the sale, a secured creditor can file an application to Adjudicating Authority for recovery of balance dues.*
- *Secured creditor shall further be entitled to proceed against the guarantors or sell the pledged assets without taking any of the measures u/s 13(4).*
- ***No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under this Act.***

RESERVE BANK OF INDIA MEASURES & OTHER MATTERS

- ~~• Read the following matters of RBI and memorize the provisions:~~
 - ~~— Corporate Debt Restructuring Scheme;~~
 - ~~— Joint Lenders Forum (JLF);~~
 - ~~— Strategic Debt Restructuring;~~
 - ~~— and Scheme for Sustainable Structuring of Stressed Assets (S4A)~~
- **Read the Reserve Bank Monetary Policy and memorise Repo rate, Reverse Repo Rate, SLR Rate, CRR, Base Rate, Call Rate, Bank Rate etc.**
- **Have the understanding of General Awareness (Constitution, Economy, Finance, Code of Conduct for Insolvency Professionals, and Rights of Workmen)**
- **Financial Ratio Analysis most importantly how to calculate EPS and diluted EPS**

RESERVE BANK OF INDIA MEASURES & OTHER MATTERS

- *See the applicability of provisions relating to Workmen in the following Acts:*

(a) *Factory Act, 1948*

(b) *Employees' Provident Fund and Miscellaneous Provisions Act, 1952*

(c) *The ESI Act 1948*

(d) *The Industrial Dispute Act, 1947*

(e) *The Contract Labour Regulation and Abolition) Act, 1970*

(f) *The Payment of Bonus Act, 1965*

Thank you

J K BUDHIRAJA

***Ex-CEO, Insolvency Professional Agency
of Institute of Cost Accountants of India
& Ex-Senior Director (Technical)
The Institute of Cost Accountants of India
New Delhi***

***Now Practising Cost Accountant
& Insolvency Professional***

Phone: 011-26277500, 9871257800

Email: budhiraja52@gmail.com