

THE INSOLVENCY AND BANKRUPTCY CODE, 2015

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Bill No. 349 of 2015

THE INSOLVENCY AND BANKRUPTCY CODE, 2015

A

BILL

to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Fund, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. (1) This Act may be called the Insolvency and Bankruptcy Code, 2015.

(2) It extends to the whole of India:

Provided that Part III of this Code shall not extend to the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Short title,
extent and
commencement.

Provided that different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

- Application. **2.** The provisions of this Code shall apply to—
- (a) any company incorporated under the Companies Act, 2013 or under any previous company law; 5 18 of 2013.
- (b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
- (c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008 ; 10 6 of 2009.
- (d) such body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and
- (e) partnership firms and individuals,
- to the extent of insolvency, liquidation or bankruptcy, as the case may be. 15
- Definitions. **3.** In this Code, unless the context otherwise requires, —
- (1) “Board” means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 188;
- (2) “bench” means a bench of the Adjudicating Authority;
- (3) “bye-laws” mean the bye-laws made by the insolvency professional agency under section 205; 20
- (4) “charge” means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;
- (5) “Chairperson” means the Chairperson of the Board; 25
- (6) “claim” means—
- (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured; 30
- (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 other law for the time being in force but shall not include any financial service provider; 35 18 of 2013. 6 of 2009.
- (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; 40
- (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;

5 (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 decree-holder;

(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;

10 (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;

15 (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; and

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

(f) such other information as may be specified;

(14) “financial institution” means—

(a) a scheduled bank;

2 of 1934. 25 (b) financial institution as defined in section 45-I of the Reserve Bank of India Act, 1934; and

(c) such other institution as the Central Government may by notification specify as a financial institution;

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

(16) “financial service” includes any of the following—

(a) acceptance of deposits;

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

(c) effecting contracts of insurance;

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

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

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

(ii) availing a financial service; or

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

(f) establishing or operating an investment scheme;

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

(h) underwriting the issuance or subscription of a financial product; or 5

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

(17) “financial service provider” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator; 10

(18) “financial sector regulator” means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government; 15

(19) “insolvency professional” means a person enrolled with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207;

(20) “insolvency professional agency” means any person registered with the Board under section 201 as an insolvency professional agency; 20

(21) “information utility” means a person who is registered with the Board as an information utility under section 210;

(22) “notification” means a notification published in the Official Gazette, and the terms “notified” and “notify” shall be construed accordingly; 25

(23) “person” includes—

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a trust; 30

(e) a partnership;

(f) a limited liability partnership; and

(g) any other entity established under a statute,

and includes a person resident outside India;

(24) “person resident in India” shall have the meaning assigned to such term in clause (v) of section 2 of the Foreign Exchange Management Act, 1999; 35

42 of 1999.

(25) “person resident outside India” means a person other than a person resident in India;

(26) “prescribed” means prescribed by rules made by the Central Government;

(27) “property” includes money, goods, actionable claims, land and every description of property situated anywhere and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property; 40

(28) “regulations” means the regulations made by the Board under this Code;

(29) “Schedule” means the Schedule annexed to this Code;

(30) “secured creditor” means a creditor in favour of whom security interest is created;

5 (31) “security interest” means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

10 Provided that security interest shall not include a performance guarantee;

(32) “specified” means specified by regulations made by the Board under this Code and the term “specify” shall be construed accordingly;

(33) “transaction” includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;

15 (34) “transfer” includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

(35) “transfer of property” means transfer of any property and includes a transfer of any interest in the property and creation of any charge upon such property;

14 of 1947. 20 (36) “workman” shall have the same meaning as assigned to it in clause (s) of section 2 of the Industrial Disputes Act, 1947;

9 of 1872.
42 of 1956.
15 of 1992.
6 of 2009.
18 of 2013. 25 (37) words and expressions used but not defined in this Code but defined in the Indian Contract Act, 1872, the Securities Contract (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts.

PART II

INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS

CHAPTER I

PRELIMINARY

30 **4.** This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the amount of the default is not less than one lakh rupees or such other amount not exceeding one crore rupees, as the Central Government may, by notification, specify. Application of this Part .

5. In this Part, unless the context otherwise requires,— Definitions.

18 of 2013. 35 (1) “Adjudicating Authority” for the purposes of this Part means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013;

XXXVIII of 1949. 40 (2) “auditor” means a chartered accountant certified to practice as such by the Institute of Chartered Accountants of India under section 6 of the Chartered Accountants Act, 1949;

(3) “Chapter” means a Chapter under this Part;

(4) “constitutional document”, in relation to a corporate person, includes articles of association or memorandum of association of a company and partnership agreement of a Limited Liability Partnership;

(5) “corporate applicant” means—

45 (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 overall operations and resources of the corporate debtor; or 5

(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 or the amount of debt;

(b) the quality of goods or service; or 10

(c) the breach of a representation or warranty;

(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 alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes— 15

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; 20

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

(e) receivables sold or discounted other than any receivables sold on non-recourse basis; 25

(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; 30

(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; 35

(9) “financial position”, in relation to any person, means the financial information of a person as on a certain date;

(10) “information memorandum” means a memorandum prepared by resolution professional under sub-section (1) of section 29; 40

(11) “initiation date” means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process;

(12) “insolvency commencement date” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10 as the case may be; 45

(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;

5 (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;

10 (14) “insolvency resolution process period” means the period of one hundred and eighty days commencing on the insolvency commencement date and ending on one hundred and eightieth day;

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

15 (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;

(17) “liquidation commencement date” means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be;

20 (18) “liquidator” means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be;

18 of 2013. 25 (19) “officer” for the purposes of Chapter VII of this Part, means an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 or a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, as the case may be;

6 of 2009.

(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 (including a person resident outside India);

30 (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;

35 (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 and designated partners and employees, if any, of the corporate debtor;

(24) “related party”, in relation to a corporate debtor, means—

40 (a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

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

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital; 5

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

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor; 10

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary; 15

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement; 20

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of— 25

(i) participation in policy making processes of the corporate debtor; or

(ii) having more than two directors in common between the corporate debtor and such person; or

(iii) interchange of managerial personnel between the corporate debtor and such person; or 30

(iv) provision of essential technical information to, or from, the corporate debtor;

(25) “resolution applicant” means any person who submits a resolution plan to the resolution professional; 35

(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;

(27) “resolution professional”, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim-resolution professional; and 40

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

CHAPTER II

CORPORATE INSOLVENCY RESOLUTION PROCESS

5 **6.** Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.

Persons who may initiate corporate insolvency resolution process.

7. (1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Initiation of corporate insolvency resolution process by financial creditor.

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

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

15 (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

20 (4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

25 (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

30 (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority before rejecting an application on the ground of incomplete application under clause (b) of sub-section (5), shall give a notice to the applicant to rectify the defect in his application within three days of receipt of such notice from the Adjudicating Authority.

35 (6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

40 (b) the order under clause (b) of sub-section (5) to the financial creditor, within two days of admission or rejection of such application, as the case may be.

Insolvency resolution by operational creditor.

8. (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form as may be prescribed, through an information utility, wherever applicable, or by registered post or courier or by such electronic mode of communication, as may be specified. 5

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor—

(a) the existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed prior to the receipt of such notice or invoice in relation to such dispute through an information utility or by registered post or courier or by such electronic mode of communication as may be specified; 10

(b) the repayment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or 15

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred. 20

Application for initiation of corporate insolvency resolution process by operational creditor.

9. (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process. 25

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor; 30

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and 35

(d) such other information or as may be specified.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order— 40

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no repayment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

5 (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

10 (b) there has been repayment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

15 (e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, prior to rejecting an application under sub-clause (a) of clause (ii) of this sub-section, shall give a notice to the applicant to rectify the defect in his application within three days of the date of receipt of such notice from the Adjudicating Authority.

20

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

25

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

Initiation of corporate insolvency resolution process by corporate applicant.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied by such fee as may be prescribed.

(3) The corporate applicant shall, along with the application furnish the information relating to—

30

(a) its books of account and such other documents relating to such period as may be specified; and

(b) the resolution professional proposed to be appointed as an interim resolution professional.

35

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4).

40

11. The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:—

Persons not entitled to make application.

(a) a corporate debtor undergoing a corporate insolvency resolution process; or

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

(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or 5

(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.

Time limit for completion of insolvency resolution process.

12.(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process. 10

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent. of the voting shares. 15

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days: 20

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

Declaration of moratorium and public announcement.

13. (1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order—

(a) declare a moratorium for the purposes referred to in section 14; 25

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

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

(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional. 30

Moratorium.

14. (1) Subject to the provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by an 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; 35

(b) the corporate debtor from transferring, encumbering, alienating or disposing of 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; 40

(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. 45

(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.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

5 (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

15. (1) The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely: –

Public announcement of corporate insolvency resolution process.

15 (a) name and address of the corporate debtor under the corporate insolvency resolution process;

(b) name of the authority with which the corporate debtor is incorporated or registered;

(c) the last date for submission of claims;

20 (d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;

(e) penalties for false or misleading claims; and

(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

25 (2) The public announcement under this section shall be made in such manner as may be specified.

16. (1) The Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date.

Appointment and tenure of interim resolution professional.

30 (2) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional.

(3) Where the application for corporate insolvency resolution process is made by an operational creditor and—

35 (a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

40 (b) operational creditor and a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional.

(4) The Board shall, within ten days of the date of receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority—

45 (a) who has the relevant expertise to act as an interim resolution professional for the proposed corporate insolvency resolution process; and

(b) against whom no disciplinary proceedings are pending.

(5) The term of the interim resolution professional shall not exceed thirty days from date of his appointment.

Management of affairs of corporate debtor by interim resolution professional.

17. (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; 5

(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 demanded by the interim resolution professional; 10

(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. 15

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

(a) do all acts 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; 20

(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. 25

Duties of interim resolution professional.

18. The interim resolution professional shall perform the following duties, namely:—

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to — 30

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified; 35

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors; 40

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including— 45

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

5 (iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

10 *Explanation.*—For the purposes of this sub-section, the term “assets” shall not include the following, namely:—

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment ;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

15 (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

20 **19. (1)** The personnel of the corporate debtor and its promoters or any person connected with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

Personnel to extend co-operation to interim resolution professional.

(2) Where any personnel of the corporate debtor or any other person required to assist or cooperate with the interim resolution professional does not so assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

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

30 **20. (1)** The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

Management of operations of corporate debtor as going concern.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority—

35 (a) to appoint accountants, legal counsel or such other professionals as may be necessary;

(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

40 (c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property;

(d) to issue instructions to its personnel as may be necessary for keeping the corporate debtor as a going concern; and

45 (e) to take all such actions as are necessary to keep the corporate debtor as a going concern.

Committee
of creditors.

21. (1) The interim resolution professional, shall, after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor: 5

Provided that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

(3) Where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them. 10

(4) Where any person is a financial creditor as well as an operational creditor,—

(a) such person shall be considered to be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor; 15

(b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

(5) Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer. 20

(6) Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility or issued as securities provide for a single trustee or agent to act for all financial creditors, each financial creditor may— 25

(a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;

(b) represent himself in the committee of creditors to the extent of his voting share;

(c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or 30

(d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

(7) The Board may specify the manner of determining the voting share in respect of financial debts issued as securities under sub-section (6). 35

(8) All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five per cent. of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and comprise of such persons to exercise such functions in such manner as may be specified by the Board. 40

(9) The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.

(10) The resolution professional shall make available any financial information so required by the committee of creditors under sub-section (9) within a period of three days of such requisition. 45

22. (1) The first meeting of the committee of creditors shall be held within three days of the constitution of the committee of creditors.

Appointment of resolution professional.

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than seventy- five per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) Where the committee of creditors resolves under sub-section (2)—

(a) to continue the interim resolution professional as resolution professional, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional.

(4) The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.

(5) Where the Board does not confirm the name of the proposed resolution professional within ten days of the date of receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

23. (1) Subject to section 26, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the insolvency resolution process period.

Resolution professional to conduct corporate insolvency resolution process.

(2) The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

(3) In case of any appointment of a resolution professional under sub-section (4) of section 22, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

24. (1) The members of the committee of creditors may meet in person or by such other electronic means as may be specified.

Meeting of committee of creditors.

(2) All meetings of the committee of creditors shall be conducted by the resolution professional.

(3) The resolution professional shall give notice of each meeting of the committee of creditors to the members of the suspended board of directors or the partners of the corporate person, as the case may be.

(4) The directors and partners as referred to in sub-section (3) may attend meetings of the committee of creditors but shall not have any right to vote in such meetings:

Provided that the absence of any such director or partner, as the case may be, shall not invalidate proceedings of such meeting.

(5) Any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor shall be borne by such creditor.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified. 5

Duties of resolution professional.

25. (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:— 10

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings; 15

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, lawyers and other advisors in the manner as specified by the Board; 20

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

(h) invite prospective lenders, investors, and any other persons to put forward resolution plans; 25

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board.

(3) The filing of an application under clause (j) of sub-section (2) by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process. 30

Replacement of resolution professional by committee of creditors.

26. (1) Where committee of creditors is of the opinion that at any time during the corporate insolvency resolution process, a resolution professional appointed under section 22 is not performing his duties in accordance with the provisions of this Chapter, it may replace him with another resolution professional. 35

(2) The committee of creditors may, at a meeting, by a vote of seventy-five per cent. of voting shares, propose to replace the resolution professional appointed by them under section 22 with another resolution professional.

(3) The committee of creditors shall forward the name of the resolution professional proposed by them to the Adjudicating Authority. 40

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and such resolution professional shall be appointed in the same manner as laid down in sub-sections (4) and (5) of section 16:

Provided that where any disciplinary proceedings are pending against the proposed resolution professional, the resolution professional appointed under section 22 shall continue for the remaining corporate insolvency resolution process period.

27. (1) A corporate debtor or any financial creditor accounting for less than seventy-five per cent. of the voting shares in the committee of creditors may, at any time during the corporate insolvency resolution process, file an application before the Adjudicating Authority to replace a resolution professional, if there is evidence to demonstrate that the resolution professional —

Replacement of resolution professional by financial creditor or corporate debtor.

(a) committed material irregularities in the conduct of any meeting of the committee of creditors; or

(b) did not provide notice of meetings of the committee of creditors to the corporate debtor; or

(c) provided incorrect information or omitted material information from the information memorandum; or

(d) supplied additional information to any resolution applicant or third party which was not provided to the committee of creditors; or

(e) managed the operations of the corporate debtor in a negligent or fraudulent manner; or

(f) failed to exercise due diligence in the performance of his powers and functions; or

(g) does not possess specialised qualification as is required; or

(h) acted in a manner where his interests conflict with the interests of the corporate debtor, creditors or other stakeholders; or

(i) exercised powers in contravention of any law for the time being in force.

(2) Within fourteen days of the receipt of the application under sub-section (1), if the Adjudicating Authority is of the opinion that there is a *prime facie* case of the commission of any of the acts mentioned in sub-section (1) by the resolution professional, it shall accept the application and direct the committee of creditors to propose another resolution professional for conducting the corporate insolvency resolution process, otherwise it shall reject the application.

(3) For the purpose of compliance with the directions of the Adjudicating Authority under sub-section (2), the committee of creditors shall propose the name of another resolution professional in the same manner as laid down in section 22.

(4) The resolution professional appointed under this section shall be entitled to exercise all the powers and perform the duties as are required to be exercised or performed under this Code.

28. (1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely:—

Approval of committee of creditors for certain actions.

(a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their first meeting;

(b) create any security interest over the assets of the corporate debtor;

(c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;

(d) record any change in the ownership interest of the corporate debtor;

(e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their first meeting;

(f) undertake any related party transaction; 5

(g) amend any constitutional documents of the corporate debtor;

(h) delegate its authority to any other person;

(i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;

(j) make any change in the management of the corporate debtor or its subsidiary; 10

(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;

(l) make changes in the appointment or terms of contract of such personnel, as specified by the committee of creditors; or

(m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor. 15

(2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).

(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of seventy-five per cent. of the voting shares. 20

(4) Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.

(5) The committee of creditors may report the actions of the resolution professional under sub-section (4) to the Board for removal of the resolution professional for undertaking such actions. 25

Preparation of information memorandum.

29. (1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes— 30

(a) to comply with the provisions of any law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and 35

(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Explanation.—For the purposes of this section, “relevant information” means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified. 40

30. (1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

Submission of resolution plan.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

5 (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

10 (b) provides for the repayment of the debts of operational creditors in such manner specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) does not contravene any of the provisions of the law for the time being in force; and

(d) confirms to such other requirements as may be specified by the Board.

15 (3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors.

20 (5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

25 31. (1) If the Adjudicating Authority is satisfied that—

Approval of resolution plan.

(a) the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30; and

30 (b) there is no material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period,

it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

35 (2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in clauses (a) and (b) of sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

40 (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

32. Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.

Appeal.

CHAPTER III

LIQUIDATION PROCESS

Initiation of
liquidation.

33. (1) Where the Adjudicating Authority,—

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or 5

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, 10

it shall —

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and 15

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in clauses (i), (ii), (iii) of sub-section (1). 20

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in clauses (i), (ii), (iii) of sub-section (1). 25

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in clauses (i), (ii), (iii) of sub-section (1). 30

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority:

Provided further that nothing in this sub-section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court. 35

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator. 40

Appointment
of liquidator
and fee to be
paid.

34. (1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4). 45

(2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

(3) The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of section 19 shall apply *mutatis mutandis* to this chapter.

(4) The Adjudicating Authority shall by order replace the resolution professional, if—

(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.

(5) For the purposes of clause (a) of sub-section (4), the Adjudicating Authority may direct the Board to propose name of another insolvency professional to be a liquidator.

(6) The Board shall propose the name of another insolvency professional within ten days of the direction issued by the Adjudicating Authority under sub-section (5).

(7) The Adjudicating Authority shall on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

(8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

35. (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—

Powers and duties of liquidator.

(a) to verify claims of all the creditors;

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;

(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining

payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities; 5

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor; 10

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator; 15

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board. 20

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board. 25

Liquidation Estate.

36. (1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors. 30

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:—

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor; 35

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable; 40

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

5 (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

10 (a) assets owned by a third party which are in possession of the corporate debtor, including —

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) contributions in respect of employee pensions;

15 (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

20 (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

(d) assets of any Indian or foreign subsidiary of the corporate debtor; or

25 (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor;

30 **37. (1)** Notwithstanding anything contained in any other law for the time being in force, the liquidator shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely:—

Powers of liquidator to access information.

(a) an information utility;

(b) credit information systems regulated under any law for the time being in force;

35 (c) any agency of the Central, State or Local Government including any registration authorities;

(d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;

40 (e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;

(f) any database maintained by the Board; and

(g) any other source as may be specified by the Board.

(2) The creditors may require the liquidator to provide them any financial information relating to the corporate debtor in such manner as may be specified.

(3) The liquidator shall provide information referred to in sub-section (2) to such creditors who have requested for such information within a period of three days from the date of such request or provide reasons for not providing such information.

Consolidation of claims.

38. (1) The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process. 5

(2) A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility:

Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner provided for the submission of claims for the operational creditor under sub-section (3). 10

(3) An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.

(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub-section (3). 15

(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

Verification of claims.

39. (1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board. 20

(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

Admission or rejection of claims.

40. (1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be: 25

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within three days of such admission or rejection of claims.

Determination of Valuation of claims.

41. The liquidator shall determine the value of claims admitted under section 40 in such manner as may be specified by the Board. 30

Appeal against the decision of liquidator.

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.

Preferential transactions and relevant time.

43. (1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), 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. 35

(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 40

(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.

5 (3) For the purposes of sub-section (2), 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—

10 (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

15 (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.

20 *Explanation.*—For the purpose of sub-section (3) of this section, “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

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

25 (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.

30 **44.** (1) The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:

Orders in case of preferential transactions.

(a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;

(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

35 (c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;

(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;

40 (e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;

45 (f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

(g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference: 5

Provided that an order under this section shall not—

(a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;

(b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional. 10

Explanation I.— For the purpose of this section, it is clarified that where a person who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference,— 15

(a) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;

(b) is a related party,

it shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown. 20

Explanation II.—A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13.

Avoidance of undervalued transactions.

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. 25

(2) A transaction shall be considered undervalued where the corporate debtor— 30

(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. 35

Relevant period for avoidable transactions.

46. (1) In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that—

(i) such transaction was made with any person within the period of one year preceding the insolvency commencement date; or 40

(ii) such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

(2) The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.

5 **47.** (1) Where an undervalued transaction has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter.

Application by creditor in cases of undervalued transactions.

(2) The Adjudicating Authority, after examination of the application made under sub-section (1), is satisfied that—

(a) undervalued transactions had occurred; and

10 (b) liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority,

it shall pass an order—

(a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48;

15 (b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

48. The order of the Adjudicating Authority under sub-section (1) of section 45 may provide for the following:—

Order in cases of undervalued transactions.

20 (a) require any property transferred as part of the transaction, to be vested in the corporate debtor;

(b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;

25 (c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or

(d) require the payment of such consideration for the transaction as may be determined by an independent expert.

30 **49.** Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—

Transactions defrauding creditors.

(a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or

(b) in order to adversely affect the interests of such a person in relation to the claim,

35 the Adjudicating Authority shall make an order—

(a) restoring the position as it existed before such transaction as if the transaction had not been entered into; and

(b) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section—

(a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

5

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

Extortionate credit transactions.

50. (1) Where the corporate debtor has been part of a 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.

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

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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.

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Orders of Adjudicating Authority in respect of extortionate credit transactions.

51. Where the Adjudicating Authority after examining the application made under sub-section (1) of section 50 is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall make an order—

(a) to restore the position as it existed prior to such transaction;

(b) set aside the whole or part of the debt created on account of the extortionate credit transaction;

25

(c) modify the terms of the transaction;

(d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or

(e) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

30

Secured creditor in liquidation proceedings.

52. (1) A secured creditor in the liquidation proceedings may—

(a) 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

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(b) realise its security interest in the manner specified in this section.

(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either –

- 5 (a) by the records of such security interest maintained by an information utility;
or
 (b) by such other means as may be specified by the Board.

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

10 (5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

15 (6) The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

20 (7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall—

- (a) account to the liquidator for such surplus; and
 (b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

25 (8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

30 (9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53.

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 as may be specified, namely:—

Distribution
of assets.

- 35 (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) debts owed to a secured creditor in the event such secured creditor
40 has relinquished security in the manner set out in section 52; and

(ii) workmen's dues for the period of twelve months preceding the liquidation commencement date;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors; 5

(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; 10

(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. 15

(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.

(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. 20

Explanation.—For the purposes of this section,—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and 25

(ii) the term “workmen's dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013. 18 of 2013.

Dissolution
of Corporate
Debtor.

54. (1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor. 30

(2) The Adjudicating Authority shall, on application filed by the liquidator under sub-section (1), order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall, within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered. 35

55. (1) A corporate insolvency resolution process carried out in accordance with this Chapter shall be called a fast track corporate insolvency resolution process.

Fast track corporate insolvency resolution process.

(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.

56. (1) Subject to sub-section (3), the fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.

Time period for completion of fast track corporate insolvency resolution process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast track corporate insolvency resolution process beyond ninety days if instructed to do so by way of a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five percent of the voting share.

(3) On an application under sub-section (2) if the Adjudicating Authority determines that the case is of such complexity that an orderly fast track corporate insolvency resolution process cannot be completed within ninety days, it may by order extend the duration of such process beyond ninety days:

Provided that any extension of the fast track corporate insolvency resolution process period granted by the Adjudicating Authority under this section shall not be beyond a period of forty five days:

Provided further that any extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once. Time period for completion of fast track corporate insolvency resolution process.

57. An application for fast track corporate insolvency resolution process may be initiated by a creditor or corporate debtor as the case may be, by furnishing:

Manner of initiating fast track corporate insolvency resolution process.

(a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and

(b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process. Manner of initiating fast track corporate insolvency resolution process.

58. The process for conducting an 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.

Applicability of Chapter II to this Chapter.

CHAPTER V

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

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.

Voluntary liquidation of corporate persons.

(2) The process for 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) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions:

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

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

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

(b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely:-

(i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is **later**;

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

(c) within four weeks of a declaration 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.**

(4) The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within two days of such resolution or the subsequent approval by the creditors, as the case may be.

(5) Subject to approval of the creditors under **sub-section (3)**, the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-section (3).

(6) The provisions of sections 35 to 53 of Chapter III and provisions of Chapter VII shall apply *mutatis mutandis* to voluntary liquidation proceedings for corporate persons under this Chapter and the reference to insolvency commencement date under any of the aforesaid sections shall be construed as the commencement date for voluntary liquidation under this Chapter.

(7) Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

(8) The Adjudicating Authority shall on application filed by the liquidator under sub-section (7) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(9) A copy of an order under sub-section (8) shall within **fourteen** days from the date of such order, be forwarded to the authority with which the corporate person is registered.

CHAPTER VI

ADJUDICATING AUTHORITY FOR CORPORATE PERSONS

60. (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and **personal guarantors thereof** shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a company is located.

Adjudicating Authority for corporate persons.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before the National Company Law Tribunal.

(3) An insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of **sub-section (2)**. Adjudicating Authority for corporate persons.

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal 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.

36 of 1963

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

18 of 2013

61. (1) Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

Appeals and Appellate Authority.

(2) Every appeal under sub-section (1) shall be filed within forty- five days before the National Company Law Appellate Tribunal:

Provided that Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on **the following** grounds, namely:—

(i) the approved resolution 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) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

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

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

(4) 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. Appeals and Appellate Authority.

Appeal to
Supreme
Court.

62. (1) 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 sixty days from the date of receipt of such order.

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within ninety days, allow the appeal to be filed within a further period not exceeding thirty days.

Civil court
not to have
jurisdiction.

63. No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code.

Expeditious
disposal of
applications.

64. (1) Notwithstanding anything contained in the Companies Act, 2013, where an application is not disposed of or 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**.

18 of 2013.

(2) No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the National Company Law Tribunal or the National Company Law Appellate Tribunal by or under this Code. Expeditious disposal of applications.

Fraudulent or
malicious
initiation of
proceedings.

65. (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, he shall be liable for a penalty which may extend to one crore rupees .

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person he shall be liable to a penalty which shall not be less than one lakh rupees and which may extend to one crore rupees

Fraudulent
trading or
wrongful
trading.

66. (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or creditors of any other person, or for any fraudulent purpose, the Adjudicating Authority on the application of the resolution professional may order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit. Fraudulent trading or wrongful trading.

(2) On an application made by a resolution professional during the conduct of a corporate insolvency resolution process, the Adjudicating Authority may order that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the

commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

Explanation. —For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

67. (1) Where the Adjudicating Authority passes an order under sub-section (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may—

Proceedings
under section
66.

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.

Explanation. – For the purposes of this section, “assignee” includes a person to whom or in whose favour, by the directions of the person (made liable under clause (a) of this sub-section), the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the declaration has been made.

(2) Where the Adjudicating Authority makes an order under sub-section (1) or (2) of section 66, as the case may be, in relation to a person who is a creditor of the corporate debtor, it may direct that the whole or any part of any debt owed by the corporate debtor to that person and any interest thereon shall rank in priority after all other debts owed by the corporate debtor and after any interest on those debts.

CHAPTER VII

OFFENCES AND PENALTIES

68. (1) Where any officer of the corporate debtor has—

(i) within the twelve months immediately preceding the insolvency commencement date—

Punishment
for
concealment
of property.

(a) wilfully concealed any property or part of such property of the corporate debtor or concealed any debt due to, or from, the corporate debtor, of the value of ten thousand rupees or more;

(b) fraudulently removed any part of the property of the corporate debtor of the value of ten thousand rupees or more; or

(c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the corporate debtor or its affairs, or

(d) wilfully made any false entry in any book or paper affecting or relating to the property of the corporate debtor or its affairs, or

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the corporate debtor or its affairs, or

(f) wilfully created any security interest over, transferred or disposed of any property of the corporate debtor which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the corporate debtor, or

(g) wilfully concealed the knowledge of the doing by others of any of the acts mentioned in clauses (c), (d) or (e); or

(ii) Where, at any time after the insolvency commencement date, committed any of the acts mentioned in sub-clause (a) to (f) of clause (i) of sub-section (1) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of clause (i) of sub-section (1); or

(iii) at any time after the insolvency commencement date, taken in pawn or pledge, or otherwise receives, the property knowing it to be so secured, transferred or disposed,

Such officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to one crore rupees:

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.

69. On or after the insolvency commencement date, if an officer of the corporate debtor or the corporate debtor-

(a) 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;

(b) has concealed or removed any part of the property of the corporate debtor since, or within two months before, the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor,

such officer of the corporate debtor or the corporate debtor, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to one crore rupees:

Provided that a person shall not be punishable under this section if the acts mentioned in clause (a) of sub-section (1) were committed more than five years before the insolvency commencement date; or if he proves that, at the time of those acts, he had no intent to defraud the creditors of the corporate debtor.

70. (1) On or after the insolvency commencement date, where an officer of the corporate debtor —

(a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or

(b) does not deliver to the resolution professional (or as he directs) all or part of the property of the corporate debtor in his control or custody, and which he is required to deliver; or

(c) 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; or

(d) fails to inform the resolution professional of his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or

Punishment for transactions defrauding creditors.

Punishment for misconduct in course of corporate insolvency resolution process.

(e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or

(f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date,

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

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.

(2) If an insolvency professional deliberately contravenes the provisions of the Act in exercising powers under this Code, he shall be punishable with imprisonment for a term which may extend to six months and he may also be liable for payment of fine not less than one lakh rupees which may extend to five lakhs rupees.

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

Punishment for falsification of books of corporate debtor.

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

Punishment for wilful and material omissions from statements relating to affairs of corporate debtor.

73. (1) Where any **officer** of the corporate debtor —

(a) on or after the insolvency commencement date, makes a false representation or commits any fraud for the purpose of obtaining the consent of the creditors of the corporate debtor or any of them to an agreement with reference to the affairs of the corporate debtor, during the corporate insolvency resolution process, or the liquidation process;

(b) prior to the insolvency commencement date, has made any false representation, or committed any fraud, for that purpose,

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

Punishment for false representations to creditors.

74. (1) Where the corporate debtor or any of its officer violates the provisions of section 14, any such officer who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

Punishment for contravention of moratorium or the resolution plan.

(2) Where any creditor violates the provisions of section 14, any person who knowingly and wilfully authorised or permitted such contravention by a creditor shall be punishable

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

(3) Where the corporate debtor, any of its officers or creditors or any person on whom a resolution plan, approved under section 31 is binding, knowingly and wilfully violates or authorises such violation, breach or contravention of any of the terms of such resolution plan, such officer, creditor or person shall be punishable with imprisonment of not less than one year but which may extend to five years and with a fine which shall not be less than one lakh rupees but which may extend to one crore rupees.

Penalties for false information furnished in application.

75. Where any person furnishes information in the application made under section 7, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material, such person shall be punishable with a fine not less than one lakh rupees but which may extend to one crore rupees.

Penalty for non-disclosure of dispute or repayment of debt by operational creditor.

76. (i) Where an operational creditor has wilfully or knowingly concealed in an application under section 9 the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final repayment of the unpaid operational debt; or

(ii) Where any person who knowingly and wilfully authorised or permitted such concealment under clause (i),

such operational creditor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to one crore rupees.

77. (i) Where a corporate debtor provides information in the application under section 10 which is false in material particulars, knowing it to be false and omits any material fact, knowing it to be material; or

(ii) Where any person who knowingly and wilfully authorised or permitted the furnishing of such information under sub-clause (i),

every officer or the corporate person or the person referred to in sub-clause (ii), as the case may be, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to one crore rupees.

Explanation.—For the purpose of this section, an application filed by the corporate debtor shall be deemed to be false in material particulars if, in case the facts mentioned or omitted in the application, if true or not omitted from the application as the case may be, would have been sufficient to determine the existence of a default under this Code.

Penalty for providing false information in application made by corporate debtor.

PART III

INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AND PARTNERSHIP FIRMS

CHAPTER I

PRELIMINARY

Application.

78. (1) This Part shall apply to the whole of India except the State of Jammu and Kashmir.

(2) The provisions of this Part shall not apply where the amount of the default is less than one thousand rupees or such other amount as the Central Government may, by notification, specify, not exceeding one lakh rupees.

(3) The Adjudicating Authority for the purposes of this Part shall be the Debt Recovery Tribunal constituted under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

79. In this Part, unless the context otherwise requires, —

Definitions.

(1) “associate” of the debtor means –

- (a) a person who belongs to the immediate family of the debtor;
- (b) a person who is a relative of the debtor or a relative of the spouse of the debtor;
- (c) a person who is in partnership with the debtor;
- (d) a person who is a spouse or a relative of any person with whom the debtor is in partnership;
- (e) a person who is employer of the debtor or employee of the debtor;
- (f) a person who is a trustee of a trust in which the beneficiaries of the trust include **a debtor**, or the terms of the trust confer a power **on the trustee which** may be exercised for the benefit of the debtor; and
- (g) a company, where the debtor or the debtor along with his associates, own more than fifty per cent of the share capital of the company or control the appointment of the board of directors of the company.

Explanation.—For the purposes of this sub-section, “relative” ,with reference to any person, means anyone who is related to another, if-

(i) they are members of a Hindu Undivided Family;

(ii) one person is related to the other in such manner as may be prescribed .

(2) “bankrupt” means –

- (a) a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126; or
- (b) each of the partners of a firm, where a bankruptcy order under section 126 has been made against a firm.

(3) “bankruptcy” means the state of being bankrupt;

(4) “bankruptcy debt”, in relation to a bankrupt, means –

- (a) any debt owed by him as on the bankruptcy commencement date;
- (b) any debt for which he may become liable after bankruptcy commencement date but before his discharge by reason of any transaction entered into before the bankruptcy commencement date; and
- (c) any interest **which is a part of the debt** under section 171;

(5) “bankruptcy commencement date” means the date on which a bankruptcy order is passed by the Adjudicating Authority under section 126;

(6) “bankruptcy order” means an order passed by an Adjudicating Authority under section 126;

(7) “bankruptcy process” means a process against a debtor under Chapters IV and V of this part;

(8) “bankruptcy trustee” means the insolvency professional appointed as a trustee for the estate of the bankrupt under section 125;

(9) “Chapter” means a chapter under this Part;

(10) “committee of creditors” means a committee constituted under section 134;

(11) “debtor” includes a judgment-debtor;

(12) “discharge order” means an order passed by the Adjudicating Authority discharging the debtor under sections 92, 119 and section 138, as the case may be;

(13) “excluded assets” for the purposes of this part includes –

(a) unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation,

(b) unencumbered furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family;

(c) any unencumbered personal ornaments of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;

(d) any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family; and

(e) an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed;

(14) “excluded debt” means –

(a) liability to pay fine imposed by a court or tribunal;

(b) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;

(c) liability to pay maintenance to any person under any law for the time being in force;

(d) liability in relation to a student loan;

(e) liability as a surety in a contract of guarantee to a corporate debtor; and

(f) any other debt as may be prescribed;

(15) “firm” means a body of individuals carrying on business in partnership and registered under section 59 of the Partnership Act, 1932;

9 of 1932.

(16) “immediate family” of the debtor means his spouse, dependent children and dependent parents;

(17) “partnership debt” means a debt for which all the partners in a firm are jointly liable;

(18) “qualifying debt” means amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time and does not include –

(a) an excluded debt;

(b) a debt to the extent it is secured; and

(c) any debt which has been incurred three months prior to the date of the application for fresh start process;

(19) “repayment plan” means a plan prepared by the debtor in consultation with the resolution professional under section 105 containing a proposal to the committee of creditors for a restructuring of his debts or affairs;

(20) “resolution professional” means an insolvency professional appointed **under this part** as a resolution professional for conducting the fresh start process or insolvency resolution process;

(21) “undischarged bankrupt” means a bankrupt who has not received a discharge order under section 138.

CHAPTER II

FRESH START PROCESS

80. (1) A debtor, who is unable to pay his debt and fulfils the conditions specified in sub-section (2), shall be entitled to make an application for a fresh start for discharge of his qualifying debt under this Chapter.

Eligibility for making an application.

(2) 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 rupees 60,000/-;

(b) the aggregate value of the assets of the debtor does not exceed rupees 20,000/-;

(c) the aggregate value of the qualifying debts does not exceed rupees 35,000/;

(d) he is not an undischarged bankrupt;

(e) he does not own a dwelling unit, irrespective of whether it is encumbered or not;

(f) a fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; and

(g) no previous fresh start order under this Chapter has been made in relation to him in the preceding twelve months of the date of the application for fresh start.

81. (1) When an application is filed under section 80 by a debtor—

Application for fresh start order.

(a) an interim-moratorium shall commence on the date of filing of said application in relation to all the debts and shall cease to have effect on the date of admission or rejection of such application, as the case may be; and

(b) during the interim-moratorium period -

(i) any pending legal action or legal proceeding in respect of any of his debts shall be deemed to have been stayed; and

(ii) no creditor shall initiate any legal action or proceedings in respect of such debt.

(2) The application under section 80 shall be in such form and manner and accompanied by such fee, as may be prescribed.

(3) The application under sub-section (2) shall contain the following information supported by an affidavit, namely:—

(a) a list of all debts owed by the debtor as on the date of the said application along with details relating to the amount of each debt, interest payable thereon and the names of the creditors to whom each debt is owed;

(b) the interest payable on the debts and the rate thereof stipulated in the contract;

(c) a list of security held in respect of any of the debts,

(d) the financial information of the debtor and his immediate family for up to two years prior to the date of the application;

(e) the particulars of the debtor's personal details, as may be prescribed;

(f) the reasons for making the application;

(g) the particulars of any legal process which, to the debtor's knowledge has been commenced against him;

(h) the confirmation that no previous fresh start order under this Chapter has been made in respect of the qualifying debts of the debtor in the **preceding** twelve months of the date of the application.

Appointment
of Resolution
Professional.

82. (1) Where an application under section 80 is filed by the debtor through a resolution professional, the Adjudicating Authority shall direct the Board within two days of the date of receipt of the application and shall seek confirmation from the Board that—

(a) there are no disciplinary proceedings against the resolution professional who has submitted the application; and

(b) such resolution professional has relevant expertise or is suitable to act as a resolution professional for the fresh start process.

(2) The Board shall communicate to the Adjudicating Authority in writing either—

(a) confirmation of the appointment of the resolution professional who filed an application under sub-section (1); or

(b) rejection of the appointment of the resolution professional who filed an application under sub-section (1) and nominate a resolution professional suitable for the fresh start process.

(3) Where an application under section 80 is filed by the debtor himself and not through the resolution professional, the Adjudicating Authority shall direct the Board within two days of the date of the receipt of an application to nominate a resolution professional for the fresh start process.

(4) The Board shall nominate a resolution professional within **ten** days of receiving the direction issued by the Adjudicating Authority under sub-section (3).

(5) The Adjudicating Authority shall by order appoint the resolution professional recommended or nominated by the Board under sub-section (2) or sub-section (4), as the case may be.

(6) A resolution professional appointed by the Adjudicating Authority under sub-section (5) shall be provided a copy of the application for fresh start.

(7) The resolution professional appointed by the Adjudicating Authority shall furnish a performance security in accordance with section 206.

Examination
of application
by resolution
professional.

83. (1) The resolution professional shall examine the application made under section 80 within **ten** days of his appointment, and submit a report to the Adjudicating Authority, either recommending acceptance or rejection of the application.

(2) The report referred to in sub-section (1) shall contain the details of the amounts mentioned in the application which in the opinion of the resolution professional are—

(a) qualifying debts; and

(b) liabilities eligible for discharge under sub-section (3) of section 92.

(3) The resolution professional may call for such further information or explanation in connection with the application as may be required from the debtor or any other person who, in the opinion of the resolution professional, may provide such information.

(4) The debtor or any other person, as the case may be, shall furnish such information or explanation within **five** days of receipt of the request under sub-section (3).

(5) The resolution professional shall presume that the debtor is unable to pay his debts at the date of the application if -

(a) in his opinion the information supplied in the application indicates that the debtor is unable to pay his debts and he has no reason to believe that the information supplied is incorrect or incomplete; and

(b) he has reason to believe that there is no change in the financial circumstances of the debtor since the date of the application enabling the debtor to pay his debts.

(6) The resolution professional shall reject the application, if in his opinion -

(a) the debtor does not satisfy the conditions specified under section 80; or

(b) the debts disclosed in the application by the debtor are not qualifying debts;
or

(c) the debtor has deliberately made a false representation or omission in the application or with respect to the documents or information submitted.

(7) The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report to the Adjudicating Authority under sub-section (1) and shall give a copy of the report to the debtor.

84. (1) The Adjudicating Authority may within fourteen days from the date of submission of the report by the resolution professional, pass an order either admitting or rejecting the application made under sub-section (1) of section 81.

Admission or rejection of application by Adjudicating Authority.

(2) The order passed under sub-section (1) accepting the application shall state the amount which has been accepted as qualifying debts by the resolution professional and other amounts eligible for discharge under section 92 for the purposes of the fresh start order.

(3) A copy of the order passed by the Adjudicating Authority under sub-section (1) along with a copy of the application shall be provided to the creditors mentioned in the application within two days of the passing of the order.

85. (1) On the date of admission of the application, the moratorium period shall commence in respect of all the debts.

Effect of admission of application.

(2) During the moratorium period -

(a) any pending legal action or legal proceeding in respect of any debt shall be deemed to have been stayed; and

(b) subject to the provisions of section 86, the creditors shall not initiate any legal action or proceedings in respect of any debt.

(3) During the moratorium period, the debtor shall -

(a) not act as a director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company;

(b) not dispose of or alienate any of his assets;

(c) inform his business partners that he is undergoing a fresh start process;

(d) be required to inform prior to entering into any financial or commercial transaction of such value as may be notified by the Central Government, either individually or jointly, that he is undergoing a fresh start process;

(e) disclose the name under which he enters into business transactions, if it is different from the name in the application admitted under section 84;

(f) travel overseas only with the permission of the Adjudicating Authority.

(3) The moratorium ceases to have effect at the end of the period of six months beginning with the date of admission unless the order admitting the application is revoked under section 91 under sub-section (2).

Objections by creditor and their examination by Resolution Professional.

86. (1) Any creditor mentioned in the order of the Adjudicating Authority under section 84 to whom a qualifying debt is owed may, within a period of ten days from the date of receipt of the order under section 84, object only on the following grounds, namely:-

(a) inclusion of a debt as a qualifying debt; or

(b) incorrectness of the details of the qualifying debt specified in the order under section 84.

(2) A creditor may file an objection under sub-section (1) by way of an application to the resolution professional.

(3) The application under sub-section (2) shall be supported by such information and documents as may be prescribed.

(4) The resolution professional shall consider every objection made under this section.

(5) The resolution professional shall examine the objections under sub-section (2) and either accept or reject the objections, within ten days of the date of the application.

(6) The resolution professional may *suo motu* examine on any matter that appears to him to be relevant to the making of a final list of qualifying debts for the purposes of section 92.

(7) On the basis of the investigations under sub-section (5) or sub-section (6), the resolution professional shall -

(a) prepare an amended list of qualifying debts for the purpose of the discharge order;

(b) make an application to the Adjudicating Authority for directions under section 90; or

(c) take any other steps in relation to the debtor.

Application against decision of resolution professional.

87. (1) The debtor or the creditor who is aggrieved by the action taken by the resolution professional under section 86, may within ten days of such decision, make an application to the Adjudicating Authority challenging such action on any of the following grounds, namely—

(a) that the resolution professional has not given an opportunity to the debtor or the creditor to make a representation; or

(b) that the resolution professional colluded with the other party in arriving at the decision; or

(c) that the resolution professional has not complied with the requirements of section 86.

(2) The Adjudicating Authority shall decide the application referred to in sub-section (1) within fourteen days of such application, and make an order as it deems fit.

(3) Where the application under sub-section (1) has been allowed by the Adjudicating Authority, it shall forward its order to the Board and the Board may take action against the resolution professional under section 219.

88. (1) The debtor shall—

(a) make available to the resolution professional all information relating to his affairs, attend meetings and comply with the requests of the resolution professional in relation to the fresh start process.

(b) inform the resolution professional as soon as reasonably possible of—

(i) any material error or omission in relation to the information or document supplied to the resolution professional; or

(ii) any change in financial circumstances after the date of application, where such change has an impact on the fresh start process.

General duties of debtor.

89. (1) The debtor or the creditor may apply to the Adjudicating Authority for the replacement of the resolution professional on any of the following grounds, namely: - professional.

Replacement of resolution professional.

(a) has acted adverse to the interests of the debtor or the creditor, as the case may be;

(b) has not given the debtor or the creditor an opportunity to make a representation, wherever required, under this Chapter;

(c) has not collected the adequate information required for the consideration of the application under this Chapter;

(d) has conducted the fresh start process in negligent or fraudulent manner;

(e) has colluded with the other party; or

(f) is not performing his functions as expeditiously or as efficiently as is reasonably practicable or has failed to exercise a reasonable standard of care expected of such professionals in the performance of his powers and functions.

(2) The Adjudicating Authority shall examine the application under sub-section (1) within fourteen days of the receipt of the application under sub-section (1).

(3) Where the Adjudicating Authority is satisfied that there exists grounds under sub-section (1) for replacement of resolution professional, it shall make a reference to the Board for replacement of the resolution professional.

(4) The Adjudicating Authority shall appoint another resolution professional for the purposes of the fresh start process on the basis of the recommendation by the Board.

(5) The Adjudicating Authority may give directions to the resolution professional replaced under sub-section (4) —

(a) to share all information with the new resolution professional in respect of the fresh start process; and

(b) to co-operate with the new resolution professional in such matters as may be required.

(6) The Board shall take action under Chapter VI of Part IV against the resolution professional against whom the application is made under sub-section (1).

90. (1) The resolution professional may apply to the Adjudicating Authority for any of the following directions, namely:—

Directions for compliances of restrictions etc.

(a) compliance of any restrictions referred to in sub-section (3) of section 85, in case of non-compliance by the debtor; or

(b) compliance of the duties of the debtor referred to in section 88, in case on non-compliance by the debtor.

(2) The resolution professional may apply to the Adjudicating Authority for directions in relation to any other matter under this Chapter for which no specific provisions have been made.

Revocation of order admitting application.

91. (1) The resolution professional may submit an application to the Adjudicating Authority seeking revocation of its order made under section 84 on the following grounds, namely :-

(a) if due to any change in the financial circumstances of the debtor, the debtor is ineligible for a fresh start process; or

(b) non-compliance by the debtor of the restrictions imposed under sub-section (3) of section 85; or

(c) if the debtor has acted in a *mala fide* manner and has wilfully failed to comply with the provisions of this Chapter.

(2) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (1), may by order admit or reject the application.

(3) On passing of the order admitting the application referred to in sub-section (1), the moratorium and the fresh start process shall cease to have effect.

(4) A copy of the order passed by the Adjudicating Authority under this section shall be provided to—

(a) the Board for the purpose of recording an entry in the register referred to in section 196; and

(b) the insolvency professional agency, for the purpose of releasing the performance security furnished by the resolution professional under section 206.

Discharge order.

92. (1) The resolution professional shall prepare a final list of qualifying debts and submit such list to the Adjudicating Authority at least five days before the moratorium period comes to an end.

(2) The Adjudicating Authority shall pass a discharge order at the end of the moratorium period for discharge of the debtor from the qualifying debts mentioned in the list under sub-section (1).

(3) Without prejudice to the provisions of sub-section (2), the Adjudicating Authority shall discharge the debtor from the following liabilities, namely:—

(a) penalties in respect of the qualifying debts from the date of application till the date of the discharge order;

(b) interest including penal interest in respect of the qualifying debts from the date of application till the date of the discharge order; and

(c) any other sums owed under any contract in respect of the qualifying debts from the date of application till the date of the discharge order.

(4) The discharge order shall not discharge the debtor from any debt not included in sub-section (2) and from any liability not included under sub-section (3).

(5) The discharge order shall be forwarded to—

(a) the Board for the purpose of recording an entry in the register referred to in section 196; and

(b) the insolvency professional agency, for the purpose of releasing the performance security furnished by the resolution professional under section 208.

(6) A discharge order under sub-section (2) shall not discharge any other person from any liability in respect of the qualifying debts.

93. The resolution professional shall perform his functions and duties in compliance with the code of conduct provided under section 208.

Standard of conduct.

CHAPTER III

INSOLVENCY RESOLUTION PROCESS

94. (1) A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.

Application by debtor to initiate insolvency resolution process.

(2) Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm unless all or a majority of the partners of the firm file the application jointly.

(3) An application under sub-section (1) shall be submitted only in respect of debts which are not excluded debts.

(4) A debtor shall not be entitled to make an application under sub-section (1) if he is—

- (a) an undischarged bankrupt;
- (b) undergoing a fresh start process;
- (c) undergoing an insolvency resolution process ; or
- (d) undergoing a bankruptcy process.

(5) A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.

95. (1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

Application by creditor to initiate insolvency resolution process.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against-

- (a) any one or more partners of the firm; or
- (b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) may be admitted by the Adjudicating Authority only if accompanied with details relating to-

- (a) the personal information regarding the debtor that the creditor has in his possession;
- (b) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;
- (c) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and
- (d) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (2) shall be such as may be specified.

Interim-moratorium.

96. (1) When an application is filed under section 94 or section 95—

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period—

(i) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

Appointment of resolution professional.

97. (1) If the application under section 94 or 95 is filed through a resolution professional, the Adjudicating Authority shall direct the Board within two days of the date of the application to confirm that—

(a) there are no disciplinary proceedings pending against resolution professional; and

(b) the resolution professional has relevant expertise or is suitable to act as a resolution professional for the insolvency resolution process.

(2) The Board shall within two days of receipt of directions under sub-section (1) communicate to the Adjudicating Authority in writing either –

(a) confirming the appointment of the resolution professional; or

(b) rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.

(3) Where an application under section 94 or 95 is filed by the debtor or the creditor himself, as the case may be, and not through the resolution professional, the Adjudicating Authority shall direct the Board, within two days of the **filing of such** application, to nominate a resolution professional for the insolvency resolution process.

(4) The Board shall nominate a resolution professional within **ten** days of receiving the direction issued by the Adjudicating Authority under sub-section (3).

(5) The Adjudicating Authority shall by order appoint the resolution professional recommended under sub-section (2) or **as** nominated by the Board under sub-section (4).

(6) A resolution professional appointed by the Adjudicating Authority under sub-section (5) shall be provided a copy of the application for insolvency resolution process.

(7) The resolution professional appointed by the Adjudicating Authority shall furnish a performance security in accordance with section 208.

98. (1) The debtor or the creditor may apply to the Adjudicating Authority for the replacement of the resolution professional on any of the following grounds, namely:—

Replacement
of resolution
professional.

(a) has acted adverse to the interests of the debtor or the creditor;

(b) has conducted the insolvency resolution process in a negligent or fraudulent manner.—

(c) has failed to

(i) submit a report under section 99 or section 106;

(ii) assist the debtor in preparing a repayment plan under section 105;

(iii) **serve** notice of the meetings of the creditors to eligible creditors under section 107;

(iv) to supervise the implementation of the repayment plan as provided in section 116;

(d) is not performing his functions as expeditiously or as efficiently as is reasonably practicable or has failed to exercise a reasonable standard of care expected of such professionals in the performance of his powers and functions.

(2) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (1) examine the application.

(3) Where the Adjudicating Authority is satisfied on examination of the application under sub-section (2), that there exist grounds for replacement of the resolution professional, it shall make a reference to the Board for replacement of the resolution professional.

(4) Without prejudice to the provisions contained in sub-section (1), the creditors may apply to the Adjudicating Authority for replacement of the resolution professional where it has been decided in the meeting of the creditors, under sub-section (6) of section 108, to replace the resolution professional with a new resolution professional for implementation of the repayment plan.

(5) Where the Adjudicating Authority admits an application made under sub-section (1) or sub-section (4), it shall direct the Board to confirm that-

(a) there are no disciplinary proceedings pending against the proposed resolution professional; and

(b) the proposed resolution professional has the required expertise for conduct of the insolvency resolution process.

(6) The Board shall send a communication within ten days of receipt of the direction under sub-section (5) either-

(a) confirming appointment of the nominated resolution professional; or

(b) rejecting appointment of the nominated resolution professional and recommend a new resolution professional.

(7) On the basis of the communication of the Board under sub-section (3) or sub-section (6), the Adjudicating Authority shall pass an order appointing a new resolution professional.

(8) The Adjudicating Authority may give directions to the resolution professional replaced under sub-section (7)—

(a) to share all information with the new resolution professional in respect of the insolvency resolution process; and

(b) to co-operate with the new resolution professional in such matters as may be required.

(9) The Board shall take an action under Chapter VI of Part IV against the resolution professional against whom the application referred to in sub-section (1) or sub-section (4) has been filed and who has been replaced with a **another** resolution professional.

Submission of report by resolution professional.

99. (1) The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.

(2) Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing -

(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;

(b) evidence of encashment of a cheque issued by the debtor; or

(c) a signed acknowledgment by the creditor accepting receipt of dues.

(3) Where the debt or the debts for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to contest the validity of the debt.

(4) For the purposes of examining an application, the resolution professional may call for such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.

(5) The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within three days of receipt of the request.

(6) The resolution professional shall examine the application and ascertain that—

(a) the application satisfies the requirements set out in section 94 or 95;

(b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).

(7) After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.

(8) Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall issue a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.

(9) The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).

(10) The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.

Admission or rejection of application.

100. (1) The Adjudicating Authority shall, within fourteen days from the date of submission of the report under section 99 pass an order either admitting or rejecting the application referred to in section 94 or 95, as the case may be.

(2) Where the Adjudicating Authority admits an application under sub-section (1), it may, on the request of the resolution professional, issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan.

(3) The Adjudicating Authority shall provide a copy of the order passed under sub-section (1) along with the report of the resolution professional and the application referred to in section 94 or 95, as the case may be, to the creditors within two days from the date of the said order.

(4) If the application referred to in section 94 or 95, as the case may be, is rejected by the Adjudicating Authority on the **basis of report submitted by** the resolution professional or that the application was made with the intention to defraud his creditors or the resolution professional, the order **under sub-section (I)** shall record that the creditor is entitled to file for a bankruptcy order under Chapter IV.

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

Moratorium.

(2) During the moratorium period-

(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt.

(3) Where an order admitting the application under section 96 has been made in relation to a firm, the moratorium under sub-section (I) shall operate against all the partners of the firm.

(4) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

102. (I) The Adjudicating Authority shall issue a public notice inviting claims from all creditors within ten days of passing the order under section 96.

Public notice and claims from creditors.

(2) The notice under sub-section (I) shall include-

(a) details of the order admitting the application;

(b) particulars of the resolution professional with whom the claims are to be registered; and

(c) the last date for filing of claims.

(3) The notice shall be—

(a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;

(b) affixed in the premises of the Adjudicating Authority; and

(c) placed on the website of the Adjudicating Authority.

103. (I) The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.

Registering of claims by creditors.

(2) In addition to the claims referred to in sub-section (I), the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

104. (I) The resolution professional shall prepare a list of creditors on the basis of—

Preparation of list of creditors.

(a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;

(b) claims received by the resolution professional under section 102.

(2) The resolution professional shall prepare the list mentioned in sub-section (I) within thirty days from the date of the notice.

Repayment plan.

105. (1) The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs.

(2) The resolution professional shall submit the repayment plan to the Adjudicating Authority within a period of twenty one days from the last date of filing of claims under section 102.

(3) The repayment plan may authorise or require the resolution professional to -

- (a) carry on the debtor's business or trade on his behalf or in his name; or
- (b) realise the assets of the debtor; or
- (c) administer or dispose of any funds of the debtor.

(4) The repayment plan shall include the following:-

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

Report of resolution professional on repayment plan.

106. (1) The repayment plan prepared under section 105 shall be submitted to the Adjudicating Authority along with a report of the resolution professional on the repayment plan under sub-section (2).

(2) The report referred in sub-section (1) shall include that—

- (a) the repayment plan is in compliance with the provisions of any law for the time being in force;
- (b) the repayment plan has a reasonable prospect of being approved and implemented; and
- (c) there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:

Provided that where the resolution professional recommends that a meeting of the creditors is not required to be summoned, reasons for the same shall be provided.

(3) The report referred to in sub-section (2) shall also specify the date on which, and the time and place at which, the meeting should be held if he is of the opinion that a meeting of the creditors should be summoned.

(4) For the purposes of sub-section (3)—

- (a) the date on which the meeting is to be held shall be not less than fourteen days and not more than twenty eight days from the date of submission of report under sub-section(1);
- (b) The resolution professional shall consider the convenience of creditors in fixing the date and venue of the meeting of the creditors.

Summoning of meeting of creditors.

107. (1) The resolution professional shall issue a notice calling the meeting of the creditors at least fourteen days before the date fixed for such meeting.

(2) The resolution professional shall send the notice of the meeting to the list of creditors prepared under section 104.

(3) The notice sent under sub-section (1) shall state the address of the Adjudicating Authority to which the repayment plan and report of the resolution professional on the repayment plan has been submitted and shall be accompanied by—

- (a) a copy of the repayment plan;

- (b) a copy of the statement of affairs of the debtor;
- (c) a copy of the said report of the resolution professional; and
- (d) forms for proxy voting

(4) The proxy voting, including electronic proxy voting shall take place in such manner and form as may be specified.

108. (1) The meeting of the creditors shall be conducted in accordance with the provisions of this section and sections 109,110 and 111.

Conduct of meeting of creditors.

(2) If for any reason the resolution professional is unable to attend the meeting of the creditors, he may nominate another person to act on his behalf.

(3) A person nominated under sub-section (3) shall be a person qualified to act as a resolution professional under this Code.

(4) In the meeting of the creditors, the creditors may decide to approve, modify or reject the repayment plan.

(5) The resolution professional shall ensure that if modifications are suggested by the creditors, consent of the debtor shall be obtained for each modification.

(6) The creditors may decide whether the proposed resolution professional should continue for the implementation of the repayment plan, or to replace him or appoint additional resolution professionals.

(7) The resolution professional may for a sufficient cause adjourn the meeting of the creditors for a period of not more than five days at a time.

109. (1) Every creditor is entitled to vote at every meeting of the creditors in respect of the repayment plan.

Voting rights in meeting of creditors.

(2) For the purposes of this section, the right to vote of a creditor shall depend on the value of the debt as on the date of the order admitting the application under section 100.

(3) A creditor shall not be entitled to vote in respect of a debt for an unliquidated amount, or any debt the value of which is not ascertained, except where the resolution professional agrees to assign an estimated value to the debt for the purpose of entitlement to vote.

(4) A creditor shall not be entitled to vote in a meeting of the creditors if he —

- (a) is not a creditor mentioned in the list of creditors under section 104; or
- (b) is an associate of the debtor.

110. (1) Secured creditors shall be entitled to participate and vote in the meetings of the creditors.

Rights of secured creditors in relation to repayment plan.

(2) A secured creditor participating in the meetings of the creditors and voting in relation to the repayment plan shall forfeit his right to enforce the security during the period of the repayment plan in accordance with the terms of the repayment plan.

(3) Where a secured creditor does not forfeit his right to enforce security, he shall submit an affidavit to the resolution professional at the meeting of the creditors stating—

- (a) that the right to vote exercised by the secured creditor is only in respect of the unsecured part of the debt; and
- (b) the estimated value of the unsecured part of the debt.

(4) In case a secured creditor participates in the voting on the repayment plan by submitting an affidavit under sub-section (3), the secured and unsecured parts of the debt shall be treated as separate debts.

(5) The concurrence of the secured creditor shall be obtained if he does not participate in the voting on repayment plan but provision of the repayment plan affects his right to enforce security.

Explanation.—For the purposes of this section, “period of the repayment plan” means the period from the date of the order passed under section 114 till the date on which the notice is given by the resolution professional under section 117 or report submitted by the resolution professional under section 118, as the case may be. Rights of secured creditors in relation to repayment plan.

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

Report of meeting of creditors.

112. (1) The resolution professional shall prepare a report of the meeting of the creditors.

(2) The report under sub-section (1) shall contain—

(a) whether the repayment plan was approved or rejected and if approved, the list the modifications, if any;

(b) the resolutions which were proposed at the meeting and the decision on such resolutions;

(c) list of the creditors who were present or represented at the meeting, and the voting records of each creditor for all meetings of the creditors; and

(d) such other information as the resolution professional thinks appropriate to make known to the Adjudicating Authority.

Notice of decisions taken at meeting of creditors.

113. (1) The resolution professional shall provide a copy of the report of the meeting of creditors prepared under section 99 to—

(a) the debtor;

(b) the creditors, including those who were not present at the meeting; and

(c) the Adjudicating Authority.

Order of Adjudicating Authority on repayment plan.

114. (1) The Adjudicating Authority shall pass an order on the basis of the report of the meeting of the creditors submitted by the resolution professional under section 112:

Provided that where a meeting of creditors is not summoned, the Adjudicating Authority shall pass an order on the basis of the report prepared by the resolution professional under section 106.

(2) The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan.

(3) The Adjudicating Authority shall not modify the repayment plan as approved in the meeting of the creditors while passing an order under this sub-section (1) :

Provided that where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution professional to re-convene a meeting of the creditors for reconsidering the repayment plan.

Effect of order of Adjudicating Authority on repayment plan.

115. (1) Where the Adjudicating Authority has passed an order under section 114, the repayment plan shall—

(a) take effect as if proposed by the debtor in the meeting; and

(b) be binding on creditors mentioned in the repayment plan and the debtor.

(2) Where the order passed by the Adjudicating Authority records the rejection of the repayment plan by the meeting of the creditors, the order shall record that both the debtor

and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.

(3) A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to -

(a) the Board, for the purpose of recording an entry in the register referred to in section 196; and

(b) the insolvency professional agency, for the purpose of releasing the performance security furnished by the resolution professional under section 208.

116. (1) The resolution professional appointed under section 97 or under section 98 shall supervise the implementation of the repayment plan.

Implementation and supervision of repayment plan.

(2) The resolution professional may apply to the Adjudicating Authority for directions, if necessary, in relation to any particular matter arising under the repayment plan.

(3) The Adjudicating Authority may issue directions to the resolution professional on the basis of an application under sub-section (2).

(4) At the meeting of the creditors under section 108, if the creditors decide to replace the resolution professional with another resolution professional or appoint a resolution professional in addition to the existing resolution professional, the Adjudicating Authority shall pass an order to give effect to such decision.

(5) The Adjudicating Authority shall before passing an order under sub-section (4), satisfy itself that there are no disciplinary proceedings pending against the resolution professional appointed under sub-section (4).

(6) The Adjudicating Authority shall pass an order under sub-section (4) within three days of the order passed under section 114.

117. (1) The resolution professional shall within fourteen days of the completion of the repayment plan, forward to the persons who are bound by the repayment plan under section 115 and the Adjudicating Authority, the following documents, namely—

Completion of repayment plan.

(a) a notice that the repayment plan has been fully implemented; and

(b) a copy of a report by the resolution professional summarising all receipts and payments made in pursuance of the repayment plan and extent of the implementation of such plan as compared with the repayment plan approved by the meeting of the creditors.

(2) The resolution professional may apply to the Adjudicating Authority to extend the time mentioned in sub-section (1) for such further period not exceeding seven days.

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

Repayment plan coming to end prematurely.

(2) Where a repayment plan comes to an end prematurely under this section, the resolution professional shall submit a report to the Adjudicating Authority which shall state—

(a) the receipts and payments made in pursuance of the repayment plan;

(b) the reasons for premature end of the repayment plan; and

(c) the details of the creditors whose claims have not been fully satisfied.

(3) The Adjudicating Authority shall pass an order on the basis of the report submitted by the resolution professional stating that—

(a) the repayment plan has not been completely implemented; and

(b) the debtor or the creditor, whose claims have not been fully satisfied, shall be entitled to apply for a bankruptcy order under Chapter IV.

(4) The Adjudicating Authority shall forward to the persons bound by the repayment plan under section 115, a copy of the -

(a) report submitted by the resolution professional to the Adjudicating Authority under sub-section (2); and

(b) order passed by the Adjudicating Authority under sub-section (3).

(5) The Adjudicating Authority shall forward a copy of the order passed under sub-section (3) to—

(a) the Board, for the purpose of recording entries in the register referred to in section 196; and

(b) the insolvency professional agency for the purpose of deciding whether the performance security furnished by the resolution professional under section 208 shall be released.

Discharge order.

119. (1) On the basis of the repayment plan, the resolution professional shall apply to the Adjudicating Authority for a discharge order in relation to the debts mentioned in the repayment plan and the Adjudicating Authority may pass such discharge order.

(2) The repayment plan may provide for—

(a) early discharge; or

(b) discharge on complete implementation of the repayment plan.

(3) The discharge order shall be forwarded to –

(a) the Board, for the purpose of recording entries in the register referred to in section 196; and

(b) the insolvency professional agency for the purpose of deciding whether the performance security furnished by the resolution professional under section 208 shall be released.

(4) The discharge order under sub-section (3) shall not discharge any other person from any liability in respect of the debts of the debtor.

Standard of conduct.

120. The resolution professional shall perform his functions and duties in compliance with the code of conduct provided under section 208.

CHAPTER IV

BANKRUPTCY ORDER FOR INDIVIDUALS AND PARTNERSHIP FIRMS

Application for bankruptcy.

121. (1) An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely;—

(a) where an order has been passed by an Adjudicating Authority under sub-section 4 of section 100; or

(b) where an order has been passed by an Adjudicating Authority under sub-section 2 of section 115; or

(c) where an order has been passed by an Adjudicating Authority under sub-section 3 of section 118.

(2) An application for bankruptcy shall be filed within a period of six months of the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1).

(3) Where the debtor is a firm, the application under sub-section (1) may be filed by any of its partners.

122. (1) The application for bankruptcy by the debtor shall be accompanied by— Application by debtor.

(a) the records of insolvency resolution process undertaken under Chapter III of Part III;

(b) the statement of affairs of the debtor in such form and manner as may be prescribed, on the date of the application for bankruptcy; and

(c) a copy of the order passed by the Adjudicating Authority under Chapter III of Part III permitting the debtor to apply for bankruptcy.

(2) The debtor may propose an insolvency professional as the bankruptcy trustee in the application for bankruptcy.

(3) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(4) An application for bankruptcy by the debtor shall not be withdrawn without the leave of the Adjudicating Authority.

123. (1) The application for bankruptcy by the creditor shall be accompanied by— Application by creditor.

(a) the records of insolvency resolution process undertaken under Chapter III;

(b) a copy of the order passed by the Adjudicating Authority under Chapter III permitting the creditor to apply for bankruptcy;

(c) details of the debts owed by the debtor to the creditor as on the date of the application for bankruptcy; and

(d) such other information as may be prescribed.

(2) An application under sub-section (1) made in respect of a debt which is secured, shall be accompanied with—

(a) a statement by the creditor having the right to enforce the security that he shall, in the event of a bankruptcy order being made, give up his security for the benefit of all the creditors of the bankrupt; or

(b) a statement by the creditor stating—

(i) that the application for bankruptcy is only in respect of the unsecured part of the debt; and

(ii) an estimated value of the unsecured part of the debt.

(3) If a secured creditor makes an application for bankruptcy and submits a statement under clause (b) of sub-section (2), the secured and unsecured parts of the debt shall be treated as separate debts.

(4) The creditor may propose an insolvency professional as the bankruptcy trustee in the application for bankruptcy.

(5) An application for bankruptcy under sub-section (1), in case of a deceased debtor, may be filed against his legal representatives.

(6) The application for bankruptcy shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) An application for bankruptcy by the creditor shall not be withdrawn without the permission of the Adjudicating Authority.

Effect of application.

124. (1) When an application is filed under sections 122 or 123—

(a) an interim-moratorium shall commence on the date of the making of the application on all actions against the properties of the debtor in respect of his debts and such moratorium shall cease to have effect on the bankruptcy commencement date; and

(b) during the interim-moratorium period—

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

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

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the making of the application.

(3) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

Appointment of insolvency Professional as bankruptcy trustee.

125. (1) If an insolvency professional is nominated as the bankruptcy trustee in the application for bankruptcy under section 122 or section 123, the Adjudicating Authority shall direct the Board within two days of receiving the application for bankruptcy and seek confirmation that—

(a) there are no disciplinary proceedings against the proposed bankruptcy trustee; and

(b) the proposed bankruptcy trustee has relevant expertise or is suitable to act as a bankruptcy trustee for the bankruptcy process.

(2) The Board shall within ten days of the receipt of the direction under sub-section (1) communicate in writing either—

(a) confirmation of the appointment of the proposed insolvency professional as the bankruptcy trustee for the bankruptcy process; or

(b) rejection of the appointment of the proposed insolvency professional as the bankruptcy trustee and nominating another bankruptcy trustee as a replacement suitable for the bankruptcy process.

(3) In case a bankruptcy trustee is not proposed by the debtor or creditor under section 122 or 123, the Adjudicating Authority shall direct the Board within two days of receiving the application to nominate a bankruptcy trustee for the bankruptcy process.

(4) The Board shall nominate a bankruptcy trustee within ten days of receiving the direction of the Adjudicating Authority under sub-section (3).

(5) The bankruptcy trustee nominated under sub-section (4) shall be appointed as the bankruptcy trustee by the Adjudicating Authority in the bankruptcy order under section 126.

(6) The bankruptcy trustee shall furnish a performance security in accordance with section 208.

126. (1) The Adjudicating Authority shall pass a bankruptcy order within fourteen days of receiving the nomination of the bankruptcy trustee under section 125.

Bankruptcy order.

(2) The Adjudicating Authority shall provide the following documents to bankrupt, creditors and the bankruptcy trustee within two days of the passing of the bankruptcy order, namely :—

(a) a copy of the application for bankruptcy; and

(b) a copy of the bankruptcy order.

127. The bankruptcy order passed by the Adjudicating Authority under section 126 shall continue to have effect till the debtor is discharged under section 138.

Validity of bankruptcy order.

128. (1) On the passing of the bankruptcy order under section 126, —

Effect of bankruptcy order.

(a) the estate of the bankrupt shall vest in the bankruptcy trustee as provided in section 154;

(b) the estate of the bankrupt shall be divided among his creditors;

(c) subject to provisions of sub-section (2), a creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt shall not—

(i) maintain any action against the property of the bankrupt in respect of such debt; or

(ii) commence any suit or other legal proceedings except with the leave of the Adjudicating Authority and on such terms as the Adjudicating Authority may impose.

(2) Subject to the provisions of section 123, the bankruptcy order shall not affect the right of any secured creditor to realize or otherwise deal with his security interest in the same manner as he would have been entitled if the bankruptcy order had not been passed:

Provided that no secured creditor shall be entitled to any interest in respect of his debt after the bankruptcy commencement date if he does not take steps to realise his security within one month from the said date.

(3) Where a bankruptcy order under section 126 has been passed against a firm, the order shall operate as if it were a bankruptcy order made against each of the individuals who, on the date of the order, is a partner in the firm.

(4) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

Statement of financial position.

129. (1) Where a bankruptcy order is passed on the application for bankruptcy by a creditor under section 123, the bankrupt shall submit his statement of financial position to the bankruptcy trustee within five days from the bankruptcy commencement date.

(2) The statement of financial position shall be submitted in the such form and manner as may be prescribed.

(3) Where the bankrupt is a firm, its partners on the date of the order shall submit a joint statement of financial position of the firm, and each partner of the firm shall submit a statement of his financial position.

(4) The bankruptcy trustee may require the bankrupt or any other person to submit in writing further information explaining or modifying any matter contained in the statement of financial position.

Public notice inviting claims from creditors.

130. (1) The Adjudicating Authority shall—

(a) send notices within ten days of the bankruptcy commencement date, to the creditors mentioned in -

(i) the statement of affairs submitted by the bankrupt under section 129; or

(ii) the application for bankruptcy submitted by the bankrupt under section 122.

(b) issue a public notice inviting claims from creditors.

(2) The public notice under clause (b) of sub-section (1) shall include the time within which the claims shall be filed and such matters and details as may be prescribed and shall be—

(a) published in at least one English and one vernacular newspaper which is in circulation in the state where the bankrupt resides;

(b) affixed on the premises of the Adjudicating Authority; and

(c) placed on the website of the Adjudicating Authority.

(3) The notice to the creditors referred to under clause (a) of sub-section (1) shall include such matters and details as may be prescribed.

131. (1) The creditors shall register claims with the bankruptcy trustee within seven days of the publication of the public notice, by sending details of the claims to the bankruptcy trustee in such manner as may be prescribed. Registration of claims.

(2) The creditor, in addition to the details of his claims, shall provide such other information and in such manner as may be prescribed. Registration of claims.

132. The bankruptcy trustee shall, within fourteen days from the bankruptcy commencement date, prepare a list of creditors of the bankrupt on the basis of— Preparation of list of creditors.

(a) the information disclosed by the bankrupt in the application for bankruptcy filed by the bankrupt under section 118 and the statement of affairs filed under section 125; and

(b) claims received by the bankruptcy trustee under sub-section (2) of section 130.

133. (1) The bankruptcy trustee shall, within sixteen days from the bankruptcy commencement date, issue a notice for calling a meeting of the creditors, to every creditor of the bankrupt as mentioned in the list prepared under section 132. Summoning of meeting of creditors.

(2) The notices issued under sub-section (1) shall—

(a) state the date of the meeting of the creditors, which shall not be later than twenty-one days from the bankruptcy commencement date;

(b) be accompanied with forms of proxy voting ;

(c) specify the form and manner in which the proxy voting may take place.

(3) The proxy voting, including electronic proxy voting shall take place in such manner and form as may be specified.

134. (1) The bankruptcy trustee shall be the convener of the meeting of the creditors summoned under section 133. Conduct of meeting of creditors.

(2) The bankruptcy trustee shall decide the quorum for the meeting of the creditors, and conduct the meeting only if the quorum is present.

(3) The following business shall be conducted in the meeting of the creditors in which regard a resolution may be passed, namely:—

(a) the establishment of a committee of creditors;

(b) any other business that the bankruptcy trustee thinks fit to be transacted.

(4) If the bankruptcy trustee is unable to attend the meeting of the creditors, he may nominate another person to attend the meeting in his place who shall be a person qualified to act as a bankruptcy trustee under this Code.

(5) The bankruptcy trustee shall cause the minutes of the meeting of the creditors to be recorded, signed and retained as a part of the records of the bankruptcy process.

(6) The bankruptcy trustee shall not adjourn the meeting of the creditors for any purpose for more than three days at a time.

135. (1) Every creditor mentioned in the list under section 132 or his proxy shall be entitled to vote in respect of the resolutions in the meeting of the creditors.

(2) For the purposes of this section, the right to vote of the creditor shall depend on the value of the debt as on the bankruptcy commencement date.

(3) A creditor shall not be entitled to vote in respect of a debt for an unliquidated amount, or any debt the value of which is not ascertainable, except where the bankruptcy trustee agrees to assign a value to such debt for the purposes of entitling the creditor to vote under sub-section (1).

(4) The following creditors shall not be entitled to vote under this section, namely :-

(a) creditors who are not mentioned in the list of creditors under section 132 and those who have not been given a notice by the bankruptcy trustee;

(b) creditors who are associates of the bankrupt.

Voting rights
of creditors.

136. The bankruptcy trustee shall conduct the administration and distribution of the estate of the bankrupt in accordance with the provisions of Chapter V. Administration and distribution of estate of bankrupt.

Completion
of
administration.

137. (1) The bankruptcy trustee shall convene a meeting of the committee of creditors on completion of the administration and distribution of the estate of the bankrupt in accordance with the provisions of Chapter V.

(2) The bankruptcy trustee shall provide the committee of creditors with a report of the administration of the estate of the bankrupt in the meeting of the said committee.

(3) The committee of creditors shall approve the report submitted by the bankruptcy trustee under sub-section (2) within seven days of the receipt of the report and determine whether the bankruptcy trustee should be released under section 148.

(4) The bankruptcy trustee shall retain sufficient sums from the estate of the bankrupt to meet the expenses of convening and conducting the meeting required under this section during the administration of the estate.

138. (1) The bankruptcy trustee shall apply to the Adjudicating Authority for a discharge order— Discharge order.

(a) on the expiry of one year from the bankruptcy commencement date; or

5 (b) within two days of the approval of the committee of creditors of the completion of administration under section 137, where the approval is prior to the period mentioned in clause (a).

(2) The Adjudicating Authority shall pass a discharge order on an application by the bankruptcy trustee under sub-section (1).

(3) A copy of the discharge order shall be provided to —

10 (a) the Board, for the purpose of recording an entry in the register referred to in section 196; and

(b) the insolvency professional agency, for the purpose of releasing the performance security provided by the bankruptcy trustee under section 208.

139. (1) The discharge order under sub-section (2) of section 138,—

15 (a) on an application under clause (a) of sub-section (1) of section 138 shall release the bankrupt from all the bankruptcy debts; Effect of discharge.

(b) on an application under clause (b) of sub-section (1) of section 138, shall release the bankrupt from the bankruptcy debts, but the discharge shall not affect—

(i) the functions of the bankruptcy trustee; or

20 (ii) the operation of the provisions of Chapters IV and V of Part III:

Provided that a discharge shall not—

(a) affect the right of the secured creditor to enforce his security for the payment of a debt from which the bankrupt is discharged;

25 (b) release the bankrupt from any debt incurred by means of fraud or breach of trust to which he was a party; or

(c) discharge the bankrupt from any excluded debt.

(2) A discharge order shall not release any person who on the bankruptcy commencement date was—

(a) partner of the bankrupt;

30 (b) co-trustee of the bankrupt;

(c) surety of the bankrupt; or

(d) jointly liable with the bankrupt.

140. (1) The bankrupt shall, from the bankruptcy commencement date, be subject to the disqualifications mentioned in this section, unless exempted by the Adjudicating Authority. Disqualification of bankrupt.

35 (2) In addition to any disqualification under any other law for the time being in force, a bankrupt shall be disqualified from—

(a) being appointed or acting as a trustee or representative in respect of any trust, estate or settlement;

(b) being appointed or acting as a public servant;

40 (c) being elected to any public office where the appointment to such office is by election; and

(e) being elected or sitting or voting as a member of any local authority.

(3) Any disqualification to which a bankrupt may be subject under this section shall cease to have effect, if—

(a) the bankruptcy order against him is annulled under section 142; or

(b) he is discharged under section 138. 5

Explanation.— For the purposes of this section, the expression “public servant” shall have the same meaning as assigned to it in section 21 of the Indian Penal Code. 45 of 1860.

Restrictions on bankrupt.

141. (1) A bankrupt, from the bankruptcy commencement date, shall,—

(a) not act as a director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company; 10

(b) without the previous sanction of the bankruptcy trustee, be prohibited from creating any charge on his estate or taking any further debt;

(c) be required to inform his business partners that he is undergoing a bankruptcy process;

(d) prior to entering into any financial or commercial transaction of such value as may be prescribed, either individually or jointly, inform all the parties involved in such transaction that he is undergoing a bankruptcy process; 15

(e) without the previous sanction of the Adjudicating Authority, be incompetent to maintain any legal action or proceedings in relation to the bankruptcy debts; and

(f) not be permitted to travel overseas without the permission of the Adjudicating Authority. 20

(2) Any restriction to which a bankrupt may be subjected to under this section shall cease to have effect, if—

(a) the bankruptcy order against him is annulled under section 142; or

(b) he is discharged under section 138. 25

Annulment of bankruptcy order.

142. (1) The Adjudicating Authority may annul a bankruptcy order, whether or not the bankrupt is discharged, if it appears to the Adjudicating Authority that—

(a) on any ground existing at the time the bankruptcy order was made, the bankruptcy order should not to have been made; or

(b) both the bankruptcy debts and the expenses of the bankruptcy have, after the making of the bankruptcy order, either been paid for or secured to the satisfaction of the Adjudicating Authority. 30

(2) Where the Adjudicating Authority annuls a bankruptcy order under this section, any sale or other disposition of property, payment made or other things duly done by the bankruptcy trustee shall be valid except that the property of the bankrupt shall vest in such person as the Adjudicating Authority may appoint or, in default of any such appointment, revert to the bankrupt on such terms as the Adjudicating Authority may direct. 35

(3) A copy of the order passed by the Adjudicating Authority under sub-section (1) shall be provided to—

(a) the Board, for the purpose of recording an entry in the register referred to in section 191; and 40

(b) the insolvency professional agency, for the purpose of releasing the performance security furnished by the insolvency professional under section 208.

(4) An annulment by the Adjudicating Authority under sub-section (1) shall bind all the creditors so far as it relates to any debts due to them which form a part of the bankruptcy.

143. The bankruptcy trustee shall perform his functions and discharged his duties in compliance with the code of conduct provided under section 208.

Code of
conduct.

5 **144.** (1) A bankruptcy trustee appointed for conducting the bankruptcy process shall charge such fees as may be specified in proportion to the value of the estate of the bankrupt.

Fees of
bankruptcy
trustee.

(2) The fees for the conduct of the bankruptcy process shall be paid to the bankruptcy trustee from the distribution of the estate of the bankrupt in the manner provided in section 178.

10 **145.** (1) Subject to the provisions of this section, the bankruptcy trustee may be replaced, on the application by the committee of the creditors if the bankruptcy trustee—

Replacement
of
bankruptcy
trustee.

(a) is acting or has acted unfairly so as to harm the interests of the creditor by conducting the bankruptcy process negligently or fraudulently as he—

15 (i) has failed to conduct the business as required under the bankruptcy process;

(ii) has failed to give the creditor an opportunity to make a representation, wherever required, under this Chapter;

(iii) conducted investigation into the affairs of the bankrupt in violation of the provisions of this Code;

20 (iv) realised the estate of the bankrupt in violation of the provisions of this Code;

(v) distributed the estate of the bankrupt in violation of the provisions of this Code;

(vi) colluded with the other party.

25 (b) is not performing his functions as expeditiously or as efficiently as is reasonably practicable or has failed to exercise a reasonable standard of care expected of such professionals in the performance of his powers and functions.

(2) The Adjudicating Authority may, *suo motu*, make an order for the replacement of the bankruptcy trustee on the grounds mentioned in sub-section (1), in accordance with the procedure provided in this section.

(3) The Adjudicating Authority shall, within fourteen days from the date of receipt of the application under sub-section (1), examine the application.

(4) Where the Adjudicating Authority is satisfied that it is necessary to replace the bankruptcy trustee, it shall direct the Board for a replacement of the bankruptcy trustee.

35 (5) The Board shall, within ten days of the direction of the Adjudicating Authority under sub-section (4) recommend a bankruptcy trustee as a replacement.

(6) The Adjudicating Authority shall appoint the bankruptcy trustee as recommended by the Board under sub-section (5) within fourteen days of receiving such recommendation.

40 (7) The earlier bankruptcy trustee shall deliver possession of the estate of the bankrupt to the bankruptcy trustee appointed under sub-section (6), on the date of his appointment.

(8) The Adjudicating Authority may give directions to the earlier bankruptcy trustee—

(a) to share all information with the new bankruptcy trustee in respect of the bankruptcy process; and

(b) to co-operate with the new bankruptcy trustee in such matters as may be required.

(9) The Board shall take action, against the bankruptcy trustee against whom the application referred to in sub-section (1) has been filed and who has been replaced with a new bankruptcy trustee, under section 219. 5

(10) The earlier bankruptcy trustee replaced under this section shall be released in accordance with the provisions of section 148.

(11) The bankruptcy trustee appointed under this section shall give a notice of his appointment to the bankrupt within two days of his appointment. 10

Resignation by bankruptcy trustee.

146. (1) A bankruptcy trustee may resign if—

(a) he intends to cease practising as an insolvency professional; or

(b) there is conflict of interest or change of personal circumstances which preclude the further discharge of his duties as a bankruptcy trustee. 15

(2) The Adjudicating Authority shall, within two days of the acceptance of the resignation of the bankruptcy trustee, direct the Board for his replacement.

(3) The Board shall, within ten days of the direction of the Adjudicating Authority under sub-section (2) recommend another bankruptcy trustee as a replacement.

(4) The Adjudicating Authority shall appoint the bankruptcy trustee recommended by the Board under sub-section (3) within fourteen days of receiving the recommendation. 20

(5) The replaced bankruptcy trustee shall deliver possession of the estate of the bankrupt to the bankruptcy trustee appointed under sub-section (4), on the date of his appointment.

(6) The Adjudicating Authority may give directions to the bankruptcy trustee who has resigned— 25

(a) to share all information with the new bankruptcy trustee in respect of the bankruptcy process; and

(b) to co-operate with the new bankruptcy trustee in such matters as may be required. 30

(7) The bankruptcy trustee appointed under this section shall give a notice of his appointment to the committee of creditors and the bankrupt within two days of his appointment.

(8) The bankruptcy trustee replaced under this section shall be released in accordance with the provisions of section 148. 35

Vacancy in office of bankruptcy trustee.

147. (1) If a vacancy occurs in the office of the bankruptcy trustee for any reason other than his replacement or resignation, the vacancy shall be filled in accordance with the provisions of this section.

(2) In the event of the occurrence of vacancy referred to in sub-section (1), the Adjudicating Authority shall direct the Board for replacement of the bankruptcy trustee. 40

(3) The Board shall, within ten days of the direction of the Adjudicating Authority under sub-section (2) recommend a bankruptcy trustee as a replacement.

(4) The Adjudicating Authority shall appoint the bankruptcy trustee recommended by the Board under sub-section (3) within fourteen days of receiving the recommendation.

(5) The earlier bankruptcy trustee shall deliver possession of the estate of the bankrupt to the bankruptcy trustee appointed under sub-section (4), on the date of his appointment.

(6) The Adjudicating Authority may give directions to the bankruptcy trustee who has vacated the office—

5 (a) to share all information with the new bankruptcy trustee in respect of the bankruptcy;

(b) to co-operate with the new bankruptcy trustee in such matters as may be required.

(7) The bankruptcy trustee appointed under sub-section (4) shall give a notice of his
10 appointment to the committee of creditors and the bankrupt within two days of his appointment.

(8) The earlier bankruptcy trustee replaced under this section shall be released in accordance with the provisions of section 148:

15 Provided that this section shall not apply if the vacancy has occurred due to temporary illness or temporary leave of the bankruptcy trustee.

148. (1) A bankruptcy trustee shall be released from his office with effect from the date on which the Adjudicating Authority passes an order appointing a new bankruptcy trustee in the event of replacement, resignation or occurrence of vacancy under sections 145, 146 or 147, as the case may be.

Release of
bankruptcy
trustee.

20 (2) Notwithstanding the release under sub-section (1), the bankruptcy trustee who has been so released, shall share all information with the new bankruptcy trustee in respect of the bankruptcy process and co-operate with the new bankruptcy trustee in such matters as may be required.

25 (3) A bankruptcy trustee who has completed the administration of the bankruptcy process shall be released of his duties with effect from the date on which the committee of creditors approves the report of the bankruptcy trustee under section 137.

CHAPTER V

ADMINISTRATION AND DISTRIBUTION OF THE ESTATE OF THE BANKRUPT

30 **149.** The bankruptcy trustee shall perform the following functions in accordance with the provisions of this Chapter—

Functions of
bankruptcy
trustee.

(a) investigate the affairs of the bankrupt;

(b) realise the estate of the bankrupt; and

(c) distribute the estate of the bankrupt.

35 **150. (1)** The bankrupt shall assist the bankruptcy trustee in carrying out his functions under this Chapter by—

Duties of
bankrupt
towards
bankruptcy
trustee.

(a) giving to the bankruptcy trustee the information of his affairs;

(b) attending on the bankruptcy trustee at such times as may be required;

(c) giving notice to the bankruptcy trustee of any of the following events which have occurred after the bankruptcy commencement date,—

40 (i) acquisition of any property by the bankrupt;

(ii) devolution of any property upon the bankrupt;

(iii) increase in the income of the bankrupt;

(d) doing all other things as may be prescribed.

(2) The bankrupt shall give notice of the increase in income or acquisition or devolution of property under clause (c) of sub-section (I) within five days of such increase, acquisition or devolution.

(3) The bankrupt shall continue to discharge the duties under sub-section (I) other than the duties under clause (c) even after the discharge under section 138. 5

Rights of
bankruptcy
trustee.

151. For the purpose of performing his functions under this Chapter, the bankruptcy trustee may, by his official name—

- (a) hold property of every description;
- (b) make contracts;
- (c) sue and be sued; 10
- (d) enter into engagements in respect of the estate of the bankrupt;
- (e) employ persons to act in his behalf;
- (f) execute any power of attorney, deed or other instrument; and
- (g) do any other act which is necessary or expedient for the purposes of or in connection with the exercise of his rights. 15

General
powers of
bankruptcy
trustee.

152. The bankruptcy trustee may while discharging his functions under this Chapter,—

- (a) sell any part of the estate of the bankrupt;
- (b) give receipts for any money received by him;
- (c) prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate; 20
- (d) where any property comprised in the estate of the bankrupt is held by any person by way of pledge or hypothecation, exercise the right of redemption in respect of any such property subject to the relevant contract by giving notice to the said person; 25
- (e) where any part of the estate of the bankrupt consists of securities in a company or any other property which is transferable in the books of a person, exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt; and
- (f) deal with any property comprised in the estate of the bankrupt to which the bankrupt is beneficially entitled in the same manner as he might have dealt with it. 30

Approval of
creditors for
certain acts.

153. (I) The bankruptcy trustee for the purposes of this Chapter may after procuring the approval of the committee of creditors,—

- (a) carry on any business of the bankrupt as far as may be necessary for winding it up beneficially; 35
- (b) bring, institute or defend any legal action or proceedings relating to the property comprised in the estate of the bankrupt;
- (c) accept as consideration for the sale of any property a sum of money due at a future time subject to certain stipulations such as security;
- (d) mortgage or pledge any property for the purpose of raising money for the payment of the debts of the bankrupt; 40
- (e) where any right, option or other power forms part of the estate of the bankrupt, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of such right, option or power;

(f) refer to arbitration or compromise on such terms as may be agreed, any debts subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt;

5 (g) make compromise or other arrangement as may be considered expedient, with the creditors;

(h) make compromise or other arrangement as he may deem expedient with respect to any claim arising out of or incidental to the bankrupt’s estate;

(i) appoint the bankrupt to—

10 (i) supervise the management of the estate of the bankrupt or any part of it;

(ii) carry on his business for the benefit of his creditors;

(iii) assist the bankruptcy trustee in administering the estate of the bankrupt.

15 (2) Where the bankruptcy trustee has done anything without the approval required under sub-section (1), the committee of creditors may ratify the actions of the bankruptcy trustee only where the bankruptcy trustee has acted due to an urgency and he has sought ratification without undue delay.

154. (1) The estate of the bankrupt shall vest in the bankruptcy trustee immediately from the date of his appointment.

Vesting of estate of bankrupt in bankruptcy trustee.

20 (2) The vesting under sub-section (1) shall take effect without any conveyance, assignment or transfer.

155. (1) The estate of the bankrupt shall include,—

Estate of bankrupt.

(a) all property belonging to or vested in the bankrupt at the bankruptcy commencement date;

25 (b) the capacity to exercise and to initiate proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the bankruptcy commencement date or before the date of the discharge order passed under section 138; and

30 (c) all property which by virtue of any of the provisions of this Chapter is comprised in the estate.

(2) The estate of the bankrupt shall not include—

(a) excluded assets;

(b) property held by the bankrupt on trust for any other person; and

35 (c) such assets as may be notified by the Central Government in consultation with any financial sector regulator.

156. The bankrupt, his banker or agent or any other person having possession of any property, books, papers or other records which bankruptcy trustee is required to take possession for the purposes of the bankruptcy process shall deliver the said property and documents to the bankruptcy trustee.

Delivery of property and documents to bankruptcy trustee.

40 **157.** (1) The bankruptcy trustee shall take possession and control of all property, books, papers and other records relating to the estate of the bankrupt or affairs of the bankrupt which belong to him or are in his possession or under his control.

Acquisition of control by bankruptcy trustee.

(2) Where any part of the estate of the bankrupt consists of things in actionable claims, they shall be deemed to have been assigned to the bankruptcy trustee without any notice of the assignment.

Restrictions on disposition of property.

158. (1) Any disposition of property made by the debtor, during the period between the date of filing of the application for bankruptcy and the bankruptcy commencement date shall be void. 5

(2) Any disposition of property made under sub-section (1) shall not give rise to any right against any person, in respect of such property, even if he has received such property before the bankruptcy commencement date in—

- (a) good faith; 10
- (b) for value; and
- (c) without notice of the filing of the application for bankruptcy.

(3) For the purposes of this section, the term “property” means all the property of the debtor, whether or not it is comprised in the estate of the bankrupt, but shall not include property held by the debtor in trust for any other person. 15

After-acquired property of bankrupt.

159. (1) The bankruptcy trustee shall be entitled to claim for the estate of the bankrupt, any after-acquired property by giving a notice to the bankrupt.

(2) A notice under sub-section (1) shall not be served in respect of—

- (a) excluded assets, or
- (b) any property which is acquired by or devolves upon the bankrupt after a discharge order is passed under section 138. 20

(3) The notice under sub-section (1) shall be given within fifteen days from the day on which the acquisition or devolution of the after-acquired property comes to the knowledge of the bankruptcy trustee.

(4) For the purposes of sub-section (3)— 25

(a) anything which comes to the knowledge of the bankruptcy trustee shall be deemed to have come to the knowledge of the successor of the bankruptcy trustee at the same time; and

(b) anything which comes to the knowledge of a person before he is appointed as a bankruptcy trustee shall be deemed to have come to his knowledge on the date of his appointment as bankruptcy trustee. 30

(5) The bankruptcy trustee shall not be entitled, by virtue of this section, to claim from any person who has acquired any right over after-acquired property, in good faith, for value and without notice of the bankruptcy.

(6) A notice may be served after the expiry of the period under sub-section (3) only with the approval of the Adjudicating Authority. 35

Explanation.—For the purposes of this section, the expression “after-acquired property” means any property which has been acquired by or has devolved upon the bankrupt after the bankruptcy commencement date.

Onerous property of bankrupt.

160. (1) The bankruptcy trustee may, by giving notice to the bankrupt or any person interested in the onerous property, disclaim any onerous property which forms a part of the estate of the bankrupt. 40

(2) The bankruptcy trustee may give the notice under sub-section (1) notwithstanding that he has taken possession of the onerous property, endeavoured to sell it or has exercised rights of ownership in relation to it.

(3) A notice of disclaimer shall—

5 (a) determine, as from the date of disclaimer, the rights, interests and liabilities of the bankrupt in respect of the onerous property disclaimed;

(b) discharge the bankruptcy trustee from all personal liability in respect of the onerous property as from the date of appointment of the bankruptcy trustee.

10 (4) A notice of disclaimer under sub-section (1) shall not be given in respect of the property which has been claimed for the estate of the bankrupt under section 155 without the permission of the committee of creditors.

15 (5) A notice of disclaimer under sub-section (1) shall not affect the rights or liabilities of any other person, and any person who sustains a loss or damage in consequence of the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the loss or damage.

Explanation.—For the purposes of this section, the expression “onerous property” means—

(i) any unprofitable contract; and

20 (ii) any other property comprised in the estate of the bankrupt which is unsaleable or not readily saleable, or is such that it may give rise to a claim.

161. (1) No notice of disclaimer under section 160 shall be necessary if—

(a) a person interested in the onerous property has applied in writing to the bankruptcy trustee or his predecessor requiring him to decide whether the onerous property should be disclaimed or not; and

25 (b) a decision under clause (a) has not been taken by the bankruptcy trustee within seven days of receipt of the notice.

(2) Any onerous property which cannot be disclaimed under sub-section (1) shall be deemed to be part of the estate of the bankrupt.

30 *Explanation.*—For the purposes of this section, an onerous property is said to be disclaimed where notice in relation to that property has been given by the bankruptcy trustee under section 160.

162.(1) The bankruptcy trustee shall not be entitled to disclaim any leasehold interest, unless a notice of disclaimer has been served on every interested person and—

35 (a) no application objecting to the disclaimer by the interested person, has been filed with respect to the leasehold interest, within fourteen days of the date on which notice was served; and

(b) where the application objecting to the disclaimer has been filed by the interested person, the Adjudicating Authority has directed under section 163 that the disclaimer shall take effect.

40 (2) Where the Adjudicating Authority gives a direction under clause (b) of sub-section (1), it may also make order with respect to fixtures, improvements by tenant and other matters arising out of the lease as it may think fit.

Notice to disclaim onerous property.

Disclaimer of leaseholds.

Challenge
against
disclaimed
property.

163. (1) An application challenging the disclaimer may be made by the following persons under this section to the Adjudicating Authority—

(a) any person who claims an interest in the disclaimed property; or

(b) any person who is under any liability in respect of the disclaimed property; or

(c) where the disclaimed property is a dwelling house, any person who on the date of application for bankruptcy was in occupation of or entitled to occupy that dwelling house. 5

(2) The Adjudicating Authority may on an application under sub-section (1) make an order for the vesting of the disclaimed property in, or for its delivery to any of the persons mentioned in sub-section (1). 10

(3) The Adjudicating Authority shall not make an order in favour of a person who has made an application under clause (b) of sub-section (1) except where it appears to the Adjudicating Authority that it would be just to do so for the purpose of compensating the person.

(4) The effect of an order under this section shall be taken into account while assessing loss or damage sustained by any person in consequence of the disclaimer under sub-section (5) of section 160. 15

(5) An order under sub-section (2) vesting property in any person need not be completed by any consequence, assignment or transfer.

Undervalued
transactions.

164. (1) The bankruptcy trustee may apply to the Adjudicating Authority for an order under this section in respect of an undervalued transaction between a bankrupt and any person. 20

(2) The undervalued transaction referred to in sub-section (1) should have—

(a) been entered into during the period of two years ending on the filing of the application for bankruptcy; and 25

(b) caused bankruptcy process to be triggered.

(3) A transaction between a bankrupt and his associate entered into during the period of two years preceding the date of making of the application for bankruptcy shall be deemed to be an undervalued transaction under this section.

(4) On the application of the bankruptcy trustee under sub-section (1), the Adjudicating Authority may— 30

(a) pass an order declaring an undervalued transaction void;

(b) pass an order requiring any property transferred as a part of an undervalued transaction to be vested with the bankruptcy trustee as a part of the estate of the bankrupt; and 35

(c) pass any other order as it thinks fit for restoring the position to what it would have been if the bankrupt had not entered into the undervalued transaction.

(5) The order under clause (a) of sub-section (4) shall not be passed if it is proved by the bankrupt that the transaction was undertaken in the ordinary course of business of the bankrupt: 40

Provided that the provisions of this sub-section shall not be applicable to undervalued transaction entered into between a bankrupt and his associate under sub-section (3).

(6) For the purposes of this section, a bankrupt enters into an undervalued transaction with any person if—

- (a) he makes a gift to that person;
- (b) no consideration has been received by that person from the bankrupt;
- (c) it is in consideration of marriage; or

5 (d) it is for a consideration, the value of which in money or money's worth is significantly less than the value in money or money's worth of the consideration provided by the bankrupt.

165. (1) The bankruptcy trustee may apply to the Adjudicating Authority for an order under this section if a bankrupt has given a preference to any person.

Preference transactions.

10 (2) The transaction giving preference to an associate of the bankrupt under sub-section (1) should have been entered into by the bankrupt with the associate during the period of two years ending on the date of the application for bankruptcy.

(3) Any transaction giving preference not covered under sub-section (2) should have been entered into by the bankrupt during the period of six months ending on the date of the application for bankruptcy.

15 (4) The transaction giving preference under sub-section (2) or under sub-section (3) should have caused the bankruptcy process to be triggered.

(5) On the application of the bankruptcy trustee under sub-section (1), the Adjudicating Authority may—

- (a) pass an order declaring a transaction giving preference void;
- 20 (b) pass an order requiring any property transferred in respect of a transaction giving preference to be vested with the bankruptcy trustee as a part of the estate of the bankrupt; and
- (c) pass any other order as it thinks fit for restoring the position to what it would have been if the bankrupt had as not entered into the transaction giving preference.

25 (6) The Adjudicating Authority shall not pass an order under sub-section (5) unless the bankrupt was influenced in his decision of giving preference to a person by a desire to produce in relation to that person an effect under clause (b) of sub-section (8).

30 (7) For the purpose of sub-section (6), if the person is an associate of the bankrupt, (otherwise than by reason only of being his employee), at the time when the preference was given, it shall be presumed that the bankrupt was influenced in his decision under that sub-section.

(8) For the purposes of this section, a bankrupt shall be deemed to have entered into a transaction giving preference to any person if—

- 35 (a) the person is the creditor or surety or guarantor for any debt of the bankrupt; and
- (b) the bankrupt does anything or suffers anything to be done which has the effect of putting that person into a position which, in the event of the debtor becoming a bankrupt, will be better than the position he would have been in, if that thing had not been done.

40 **166.** (1) Subject to the provisions of sub-section (2), an order passed by the Adjudicating Authority under section 164 or section 165 shall not—

Effect of order.

(a) give rise to a right against a person interested in the property which was acquired in an undervalued transaction or a transaction giving preference, whether or not he is the person with whom the bankrupt entered into such transaction;

45 (b) require any person to pay a sum to the bankruptcy trustee in respect of the benefit received from the undervalued transaction or a transaction giving preference, whether or not he is the person with whom the bankrupt entered into such transaction.

(2) The provisions of sub-section (1) shall apply only if the interest was acquired or the benefit was received—

(a) in good faith;

(b) for value;

(c) without notice that the bankrupt entered into the transaction at an under-value or for giving preference; 5

(d) without notice that the bankrupt has filed an application for bankruptcy or a bankruptcy order has been passed; and

(e) by any person who at the time of acquiring the interest or receiving the benefit was not an associate of the bankrupt. 10

(3) Any sum required to be paid to the bankruptcy trustee under sub-section (1) shall be included in the estate of the bankrupt.

Extortionate credit transactions.

167. (1) Subject to sub-section (6), on an application by the bankruptcy trustee, the Adjudicating Authority may make an order under this section in respect of extortionate credit transactions to which the bankrupt is or has been a party. 15

(2) The transactions under sub-section (1) should have been entered into by the bankrupt during the period of two years ending on the bankruptcy commencement date.

(3) An order of the Adjudicating Authority may—

(a) set aside the whole or part of any debt created by the transaction;

(b) vary the terms of the transaction or vary the terms on which any security for the purposes of the transaction is held; 20

(c) require any person who has been paid by the bankrupt under any transaction, to pay a sum to the bankruptcy trustee;

(d) require any person to surrender to the bankruptcy trustee any property of the bankrupt held as security for the purposes of the transaction. 25

(4) Any sum paid or any property surrendered to the bankruptcy trustee shall be included in the estate of the bankrupt.

(5) For the purposes of this section, an extortionate credit transaction is a transaction for or involving the provision of credit to the bankrupt by any person—

(a) on terms requiring the bankrupt to make exorbitant payments in respect of the credit provided; or 30

(b) is unconscionable under the principles of law relating to contracts.

(6) Any debt extended by a person regulated for the provision of financial services in compliance with the law in force in relation to such debt, shall not be considered as an extortionate credit transaction under this section. 35

Obligations under contracts.

168. (1) This section shall apply where a contract has been entered into by the bankrupt with a person before the bankruptcy commencement date.

(2) Any party to a contract, other than the bankrupt under sub-section (1), may apply to the Adjudicating Authority for—

(a) an order discharging the obligations of the applicant or the bankrupt under the contract; and 40

(b) payment of damages by the party or the bankrupt, for non-performance of the contract or otherwise.

(3) Any damages payable by the bankrupt by virtue of an order under clause (b) of sub-section (2) shall be provable as bankruptcy debt.

(4) When a bankrupt is a party to the contract under this section jointly with another person, that person may sue or be sued in respect of the contract without joinder of the bankrupt.

169. If a bankrupt dies, the bankruptcy proceedings shall, unless the Adjudicating Authority directs otherwise, be continued as if he were alive.

Continuance of proceedings on death of bankrupt.

170. (1) All the provisions of Chapter V relating to the administration and distribution of the estate of the bankrupt shall, so far as the same are applicable, apply to the administration of the estate of a deceased bankrupt.

Administration of estate of deceased bankrupt.

(2) While administering the estate of a deceased bankrupt, the bankruptcy trustee shall have regard to the claims by the legal representative of the deceased bankrupt to payment of the proper funeral and testamentary expenses incurred by him.

(3) The claims under sub-section (2) shall rank equally to the secured creditors in the priority provided under section 178.

(4) If, on the administration of the estate of a deceased bankrupt, any surplus remains in the hands of the bankruptcy trustee after payment in full of all the debts due from the deceased bankrupt, together with the costs of the administration and interest as provided under section 178, such surplus shall be paid to the legal representatives of the estate of the deceased bankrupt or dealt with in such manner as may be prescribed.

171. (1) The bankruptcy trustee shall give notice to each of the creditors to submit proof of debt within fourteen days of preparing the list of creditors under section 132.

Proof of debt.

(2) The proof of debt shall—

(a) require the creditor to give full particulars of debt, including the date on which the debt was contracted and the value at which that person assesses it;

(b) require the creditor to give full particulars of the security, including the date on which the security was given and the value at which that person assesses it;

(c) be in such form and manner as may be prescribed.

(3) In case the creditor is a decree holder against the bankrupt, a copy of the decree shall be a valid proof of debt.

(4) Where a debt bears interest, that interest shall be provable as part of the debt except insofar as it is owed in respect of any period after the bankruptcy commencement date.

(5) The bankruptcy trustee shall estimate the value of any bankruptcy debt which does not have a specific value.

(6) The value assigned by the bankruptcy trustee under sub-section (5) shall be the amount provable by the concerned creditor.

(7) A creditor may prove for a debt where payment would have become due at a date later than the bankruptcy commencement date as if it were owed presently and may receive dividends in a manner as may be prescribed.

(8) Where the bankruptcy trustee serves a notice under sub-section (1) and the person on whom the notice is served does not file a proof of security within thirty days after

the date of service of the notice, the bankruptcy trustee may, with leave of the Adjudicating Authority, sell or dispose of any property that was subject to the security, free of that security.

Proof of debt by secured creditors.

172. (1) Where a secured creditor realises his security, he may produce proof of the balance due to him. 5

(2) Where a secured creditor surrenders his security to the bankruptcy trustee for the general benefit of the creditors, he may produce proof of his whole claim.

Mutual credit and set-off.

173.(1) Where before the bankruptcy commencement date, there have been mutual dealings between the bankrupt and any creditor, the bankruptcy trustee shall—

(a) take an account of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set-off against the sums due from the other; and 10

(b) only the balance shall be provable as a bankruptcy debt or as the amount payable to the bankruptcy trustee as part of the estate of the bankrupt.

(2) Sums due from the bankrupt to another party shall not be included in the account taken by the bankruptcy trustee under sub-section (1), if that other party had notice at the time they became due that an application for bankruptcy relating to the bankrupt was pending. 15

Distribution of interim dividend.

174. (1) Whenever the bankruptcy trustee has sufficient funds in his hand, he may declare and distribute interim dividend among the creditors in respect of the bankruptcy debts which they have respectively proved. 20

(2) Where the bankruptcy trustee has declared any interim dividend, he shall give notice of such dividend and the manner in which it is proposed to be distributed.

(3) In the calculation and distribution of the interim dividend, the bankruptcy trustee shall make provision for—

(a) any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their debts; 25

(b) any bankruptcy debts which are subject of claims which have not yet been determined;

(c) disputed and claims; and 30

(d) expenses necessary for the administration of the estate of the bankrupt.

Distribution of property.

175. (1) The bankruptcy trustee may, with the approval of the committee of creditors, divide any property in its existing form amongst the creditors, according to its estimated value, which from its peculiar nature or other special circumstances cannot be readily or advantageously sold. 35

(2) An approval under sub-section (1) shall be sought by the bankruptcy trustee for each transaction, and a person dealing with the bankruptcy trustee in good faith and for value shall not be required to enquire whether any approval required under sub-section (1) has been given.

(3) Where the bankruptcy trustee has done anything without the approval of the committee of creditors, the committee may, for the purpose of enabling him to meet his expenses out of the estate of the bankrupt, ratify the act of the bankruptcy trustee. 40

(4) The committee of the creditors shall not ratify the act of the bankruptcy trustee under sub-section (3) unless it is satisfied that the bankruptcy trustee acted in a case of urgency and has sought its ratification without undue delay.

5 **176. (1)** Where the bankruptcy trustee has realised the entire estate of the bankrupt or so much of it as could be realised in the opinion of the bankruptcy trustee, he shall give notice—

Final dividend.

(a) of his intention to declare a final dividend; or

(b) that no dividend or further dividend shall be declared.

10 (2) The notice under sub-section (1) shall contain such particulars as may be prescribed and shall require all claims against the estate of the bankrupt to be established by a final date specified in the notice.

(3) The Adjudicating Authority may, on the application of any person interested in the administration of the estate of the bankrupt, postpone the final date referred to in sub-section (2).

15 (4) After the final date referred to in sub-section (2), the bankruptcy trustee shall—

(a) defray any outstanding expenses of the bankruptcy out of the estate of the bankrupt; and

20 (b) if he intends to declare a final dividend, declare and distribute that dividend among the creditors who have proved their debts, without regard to the claims of any other persons.

(5) If a surplus remains after payment in full with interest to all the creditors of the bankrupt and the payment of the expenses of the bankruptcy, the bankrupt shall be entitled to the surplus.

25 (6) Where a bankruptcy order has been passed in respect of one partner in a firm, a creditor to whom the bankrupt is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

30 **177. (1)** A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

Claims of creditors.

(a) when he has proved the debt, he shall be entitled to be paid any dividend or dividends which he has failed to receive, out of any money for the time being available for the payment of any further dividend; and

35 (b) any dividend or dividends payable to him shall be paid before that money is applied to the payment of any such further dividend.

(2) No action shall lie against the bankruptcy trustee for a dividend, but if the bankruptcy trustee refuses to pay a dividend payable under sub-section (1), the Adjudicating Authority may order him to—

(a) pay the dividend; and

40 (b) pay, out of his own money—

(i) interest on the dividend; and

(ii) the costs of the proceedings in which the order to pay has been made.

Priority of
payment of
debts.

178. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or the State Legislature for the time being in force, in the distribution of the final dividend, the following debts shall be paid in priority to all other debts—

(a) firstly, the costs and expenses incurred by the bankruptcy trustee for the bankruptcy process in full; 5

(b) secondly,—

(i) debts owed to secured creditors; and

(ii) wages and unpaid dues owed to workmen of the bankrupt for the whole or any part of the period of twelve months preceding the bankruptcy commencement date; 10

(c) thirdly, wages and unpaid dues owed to employees, other than workmen, of the bankrupt for the whole or any part of the period of twelve months preceding the bankruptcy commencement date;

(d) fourthly, amounts due to the Central Government and the State Government including the amount to be received on account of Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date; 15

(e) lastly, all other debts and dues owed by the bankrupt, including unsecured debts.

(2) The debts in each class specified in sub-section (1) shall rank in the order mentioned in that sub-section but debts of the same class shall rank equally amongst themselves, and shall be paid in full, unless the estate of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves. 20

(3) Where any creditor has given any indemnity or has made any payment of moneys by virtue of which any asset of the bankrupt has been recovered, protected or preserved, the Adjudicating Authority may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks taken by him in so doing. 25

(4) Unsecured creditors shall rank equally amongst themselves unless contractually agreed to the contrary by such creditors. 30

(5) Any surplus remaining after the payment of the debts under sub-section (1) shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the bankruptcy commencement date.

(6) Interest payments under sub-section (5) shall rank equally irrespective of the nature of the debt. 35

(7) In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

(8) Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property. 40

CHAPTER VI

ADJUDICATING AUTHORITY FOR INDIVIDUALS AND PARTNERSHIP FIRMS

5 **179.** (1) Subject to the provisions of section 60, the Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the Debt Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and may entertain an application under this Code regarding such person.

Adjudicating Authority for individuals and partnership firms.

(2) The Debt Recovery Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of —

10 (a) any suit or proceeding by or against the individual debtor;

(b) any claim made by or against the individual debtor;

(c) any question of priorities or any other question whether of law or facts, arising out of or in relation to insolvency and bankruptcy of the individual debtor or firm under this Code.

14 of 1963. 15 (3) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

20 **180.** (1) No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal has jurisdiction under this Code.

Civil court not to have jurisdiction.

(2) No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal by or under this Code.

25 **181.** (1) An appeal from an order of the Debt Recovery Tribunal under this Code shall be filed within forty-five days before the Debt Recovery Appellate Tribunal.

Appeal to Debt Recovery Appellate Tribunal.

(2) The Debt Recovery Appellate Tribunal 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 thirty days.

30 **182.** (1) An appeal from an order of the Debt Recovery Appellate Tribunal on a question of law under this Code shall be filed within ninety days before the Supreme Court.

Appeal to Supreme Court.

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within ninety days, allow the appeal to be filed within a further period not exceeding thirty days.

35 **183.** Where an application is not disposed of or order is not passed within the period specified in this Code, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the Chairperson of the Debt Recovery Appellate Tribunal, after taking into account the reasons so recorded, extend the period specified in this Code.

Expedient disposal of applications.

CHAPTER VII

OFFENCES AND PENALTIES

Punishment for false information, etc., by creditor in insolvency resolution process.	<p>184. (1) If a debtor or creditor provides information which is false in any material particulars to the resolution professional, he shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five lakh rupees. 5</p> <p>(2) If a creditor promises to vote in favour of the repayment plan dishonestly by accepting any money, property or security from the debtor, he shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to thrice the amount or its equivalent accepted by such creditor:</p> <p>Provided that where such amount is not quantifiable, the total amount of fine shall not exceed five lakh rupees. 10</p>	5
Liability of resolution professional.	<p>185. If an insolvency professional deliberately contravenes the provisions of the Act in exercising powers under this Part, he shall be punishable with imprisonment for a term which may extend to six months and he may also be liable for payment of fine not less than one lakh rupees which may extend to five lakhs rupees. 15</p>	15
Punishment for false information, concealment etc., by bankrupt.	<p>186. If the bankrupt—</p> <p>(a) knowingly makes a false representation or wilfully omits or conceals any material information while making an application for bankruptcy under section 122 or while providing any information during the bankruptcy process, he shall be punishable with imprisonment which may extend to six months and fine which may extend to five lakh rupees; 20</p> <p><i>Explanation.</i>—For the purposes of clause (a), a false representation or omission includes non-disclosure of the details of disposal of any property, which but for the disposal, would be comprised in the estate of the bankrupt, other than dispositions made in the ordinary course of business carried on by the bankrupt. 25</p> <p>(b) fraudulently has failed to provide or deliberately withheld the production of, destroyed, falsified or altered, his books of account, financial information and other records under his custody or control, he shall be punishable with imprisonment which may extend to one year and fine which may extend to five lakh rupees;</p> <p>(c) has contravened the restrictions under section 140 or the provisions of section 141, he shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to five lakh rupees; 30</p> <p>(d) has failed to deliver the possession of any property comprised in the estate of the bankrupt under his possession or control, which he is required to deliver under section 156, he shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to five lakh rupees; 35</p> <p>(e) has failed to account, without any reasonable cause or satisfactory explanation, for any loss incurred of any substantial part of his property comprised in the estate of the bankrupt from the date which is twelve months before the filing of the bankruptcy application, he shall be punishable with imprisonment for a term which may extend to two years and fine which may extend to three times of the value of the loss: 40</p> <p>Provided that where such loss is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees;</p> <p>(f) has absconded or attempts to absconds after the bankruptcy commencement date, he shall be punishable with imprisonment for a term which may extend to one year and fine which may extend to five lakh rupees; 45</p>	20 25 30 35 40 45

Explanation.—For the purposes of this clause, a bankrupt shall be deemed to have absconded if he leaves, or attempts to leave the country without delivering the possession any property which he is required to deliver to the bankruptcy trustee under section 156.

187.(1) If a bankruptcy trustee, —

5 (a) has fraudulently applied, retained or accounted for any money or property comprised in the estate of the bankrupt; or

(b) has wilfully acted in a manner that the estate of the bankrupt has suffered any loss in consequence of breach of any duty of the bankruptcy trustee in carrying out his functions under section 149,

10 he shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention:

Provided that where such loss or unlawful gain is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees:

15 Provided further that the bankruptcy trustee shall not be liable under this section if he seizes or disposes of any property which is not comprised in the estate of the bankrupt and at that time had reasonable grounds to believe that he is entitled to seize or dispose that property.

Liability of
bankruptcy
trustee.

PART IV

20 REGULATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES

CHAPTER I

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

25 **188.** (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Code, a Board by the name of the Insolvency and Bankruptcy Board of India.

Establishment
and
incorporation
of Board.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Code, to acquire, hold and dispose of property, both movable and immovable, and to contract, and
30 shall, by the said name, sue or be sued.

(3) The head office of the Board shall be at Mumbai.

(4) The Board may establish offices at other places in India.

189. (1) The Board shall consist of the following members who shall be appointed by the Central Government, namely:—

Constitution of
Board.

35 (a) a Chairperson;

(b) three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, *ex officio*;

(c) one member to be nominated by the Reserve Bank of India, *ex officio*;

40 (d) five other members to be nominated by the Central Government, of whom at least three shall be the whole-time members.

(2) The Chairperson and the other members shall be persons of ability, integrity and standing, who have shown capacity in dealing with problems relating to insolvency or bankruptcy and have special knowledge and experience in the field of law, finance, economics,
45 accountancy or administration.

(3) Every appointment other than the appointment of an *ex officio* member, under this section shall be made after obtaining the recommendation of a selection committee consisting of a chairperson and three independent experts from the field of law, finance and accountancy to be nominated by the Central Government.

(4) 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. 5

(5) The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and members (other than the *ex officio* members) shall be such as may be prescribed. 10

Removal of member from office.

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 Central Government involves moral turpitude; 15

(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.

Powers of Chairperson.

191. Save as otherwise determined by regulations, the Chairperson shall have powers of general superintendence and direction of the affairs of the Board and may also exercise such other powers as may be delegated to him by the Board. 20

Meetings of Board.

192. (1) The Board shall meet at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be determined by regulations. 25

(2) The Chairperson, or if, for any reason, the Chairperson is unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority votes of the members present and voting, and, in the event of an equality of votes, the Chairperson, or in his absence, the person presiding, shall have a second or casting vote. 30

Member not to participate in meetings in certain cases.

193. Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter. 35

Vacancies, etc., not to invalidate proceedings of Board, and Officers and employees of Board.

194. (1) No act or proceeding of the Board shall be invalid merely by reason of —

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or 40

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

(2) The Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Code.

(3)The salaries and allowances payable to, and other terms and conditions of service of, officers and employees of the Board appointed under sub-section (1) shall be such as may be specified by regulations.

5 **195.** Until the Board is established, the Central Government may by notification, designate any financial sector regulator to exercise the powers and functions of the Board under this Code.

Power to designate financial sector regulator.

CHAPTER II

POWERS AND FUNCTIONS OF THE BOARD

10 **196.** (1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely:—

Powers and functions of Board.

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;

(b) specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;

15 (c) levy fee or other charges for the registration of insolvency professional agencies, insolvency professionals and information utilities;

(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

20 (e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

25 (f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations made thereunder;

30 (h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;

(i) publish such information, data, research studies and other information as may be specified by regulations;

35 (j) specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data;

(k) collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating so such cases;

(l) constitute such committees as may be required including in particular the committees laid down in section 197;

(m) promote transparency and best practices in its governance;

40 (n) maintain websites and such other universally accessible repositories of electronic information as may be necessary;

(o) enter into memorandum of understanding with any other statutory authorities;

45 (p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;

(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations made thereunder;

(r) conduct periodic study, research and audit the functioning and performance of the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board;

(s) specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations;

(t) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code; and

(u) perform such other functions as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under this Code, the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person at any place;

(iv) issuing of commissions for the examination of witnesses or documents.

Constitution of advisory committee, executive committee or other committee.

197. The Board may, for the efficient discharge of its functions, may constitute advisory and executive committees or such other committees, as it may deem fit, consisting of a Chairperson and such other members as may be specified by regulations.

Condonation of delay.

198. Notwithstanding anything contained in this Code, where the Board does not perform any act within the period specified under this Code, the relevant Adjudicating Authority may, for reasons to be recorded in writing, condone the delay.

CHAPTER III

INSOLVENCY PROFESSIONAL AGENCIES

No person to function as insolvency professional agency without valid certificate of registration.

199. Save as otherwise provided in this Code, no person shall carry on its business as insolvency professional agencies under this Code and enrol insolvency professionals as its members except under and in accordance with a certificate of registration issued in this behalf by the Board.

Principles governing registration of insolvency professional agency.

200. The 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.

5 **201. (1)** Every application for registration shall be made to the Board in such form and manner, containing such particulars, and accompanied by such fee, as may be specified by regulations:

Registration of
insolvency
professional
agency.

Provided that every application received by the Board shall be acknowledged within seven days of its receipt.

10 (2) On receipt of the application under sub-section (1), the Board may, on being satisfied that the application conforms with all requirements specified under sub-section (1), grant a certificate of registration to the applicant or else, reject, by order, such application:

Provided that no order rejecting the application shall be made without giving an
15 opportunity of being heard to the applicant:

Provided further that every order so made shall be communicated to the applicant within a period of fifteen days.

(3) The Board may issue a certificate of registration to the applicant in such form and manner and subject to such terms and conditions as may be specified.

20 (4) The Board may renew the certificate of registration from time to time in such manner and on payment of such fee as may be specified.

(5) The Board may, by order, suspend or cancel the certificate of registration granted to an insolvency professional agency on any of the following grounds, namely:—

25 (a) that it has obtained registration by making a false statement or misrepresentation or by any other unlawful means;

(b) that it has failed to comply with the requirements of the regulations made by the Board or bye-laws made by the insolvency professional agency;

(c) that it has contravened any of the provisions of the Act or the rules or the regulations made thereunder;

30 (d) on any other ground as may be specified by regulations:

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.

35 **202.** Any insolvency professional agency which is aggrieved by the order of the Board made under section 201 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.

Appeal to
National
Company Law
Appellate
Tribunal.

40 **203. (1)**The Board may, for the purposes of ensuring that every insolvency professional agency takes into account the objectives sought to be achieved under this Code, make regulations to specify—

Governing
Board of
insolvency
professional
agency.

(a) the setting up of a governing board of an insolvency professional agency;

(b) the minimum number of independent members to be on the governing board of the insolvency professional agency; and

(c) the number of the insolvency professionals being its members who shall be on the governing board of the insolvency professional agency.

Functions of insolvency professional agencies.

204. An insolvency professional agency shall perform the following functions, namely:—

(a) grant membership to persons who fulfil all requirements set out in its bye-laws on payment of membership fee; 5

(b) lay down standards of professional conduct for its members;

(c) monitor the performance of its members;

(d) safeguard the rights, privileges and interests of insolvency professionals who are its members; 10

(e) suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws;

(f) redress the grievances of consumers against insolvency professionals who are its members; and

(g) publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations. 15

Insolvency professional Agencies to make bye-laws.

205. Subject to the provisions of this Code and any rules or regulations made thereunder and after obtaining the approval of the Board, every insolvency professional agency shall make bye-laws to provide for —

(a) the minimum standards of professional competence for its members; 20

(b) the standards for professional and ethical conduct of its members;

(c) requirements for enrolment of persons as its members which shall be non-discriminatory;

Explanation.— For the purposes of this clause, the term “non-discriminatory” means lack of discrimination on the grounds of religion, caste, gender or place of birth and such other grounds as may be specified; 25

(d) the manner of granting membership to persons who fulfil its requirement;

(e) setting up of a governing board for its internal governance and management in accordance with the regulations specified by the Board;

(f) the information required to be submitted by its members including the form and the time for submitting such information; 30

(g) the specific classes of persons to whom services shall be provided at concessional rates or for no remuneration by its members;

(h) the grounds on which penalties may be levied upon its members and the manner thereof; 35

(i) a fair and transparent mechanism for redressal of grievances against its members;

(j) the grounds under which the insolvency professionals may be expelled from its membership;

(k) the quantum of fee and the manner of collecting fee for inducting persons as its members; 40

(l) the curriculum for enrolment of persons as its members which shall not be less than the curriculum specified by the Board;

(m) the manner of conducting examination of the curriculum specified by the Board for enrolment of insolvency professionals;

(n) the manner of monitoring and reviewing the working of insolvency professionals who are its members;

5 (o) the duties and other activities to be performed by its members;

(p) the amount of registration bond and performance security to be furnished by an insolvency professional for the performance of his duties, the form and manner in which such registration bond and performance security shall be furnished to the insolvency professional agency;

10 (q) the manner of conducting disciplinary proceedings against its members and imposing penalties;

(r) the manner of utilising the amount received as registration bond or performance security in case where penalty imposed against any insolvency professional remains unpaid.

15 **206.** (1) On the commencement of an insolvency resolution process, where an insolvency professional is appointed to perform any of the functions under this Code —

Performance
bond.

(a) the insolvency professional agency where such insolvency professional is registered as a member, shall post a performance bond with the Board in the form and manner as may be specified by the Board; and

20 (b) the insolvency professional shall deposit with the insolvency professional agency a performance security of an amount and in a manner as specified by the Board.

(2) The performance bond posted under clause (a) of sub-section (1) shall provide for —

25 (a) the concerned insolvency professional agency to act as a surety for the obligations of the insolvency professional and to be jointly and severally liable for losses in relation to any person whose interests are prejudicially affected by any act of fraud or gross misconduct of the insolvency professional; and

30 (b) the payment of claims in respect of losses mentioned in clause (a), which shall be equal in amount, to at least the value of the assets of the corporate debtor or the debtor as on the insolvency commencement date or the insolvency commencement date of the debtor, as the case may be.

(3) The performance security deposited with the insolvency professional agency under clause (b) of sub-section (1) shall be used in discharging any obligations imposed on the insolvency professionals under this Code.

(4) Subject to any regulations specified by the Board under this section, each insolvency professional agency shall by its bye-laws specify the means for determining the liability of insolvency professionals who are members of such insolvency professional agency in respect of any performance bond under this section.

40

CHAPTER IV

INSOLVENCY PROFESSIONALS

207. (1) No person shall render his services as insolvency professional under this Code without being enrolled as a member of an insolvency professional agency.

Enrolment
and
registration
of insolvency
professionals.

45 (2) Every insolvency professional shall, after obtaining the membership of any insolvency professional agency, register themselves with the Board within such time, in such manner and on payment of such fee, as may be specified by regulations.

Functions and obligations of insolvency professionals.

208. (1) 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, in the following matters, namely:—

- (a) a fresh start order process under Chapter II of Part III;
- (b) individual insolvency resolution process under Chapter III of Part III; 5
- (c) corporate insolvency resolution process under Chapter II of Part II;
- (d) individual bankruptcy process under Chapter IV of Part III; and
- (e) liquidation of a corporate debtor firm under Chapter III of Part II.

(2) Every insolvency professional shall abide by the following code of conduct:—

- (a) to take reasonable care and diligence while performing his duties; 10
- (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 furnish registration bond and performance security to the insolvency professional agency before providing any service under this Code; 15
- (e) 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
- (f) to perform his functions in such manner and subject to such conditions as may be specified. 20

CHAPTER V

INFORMATION UTILITIES

No person to function as information utility without certificate of registration.

209. Save as otherwise provided in this Code, no information utility shall carry on its business under this Code except under and in accordance with a certificate of registration issued in that behalf by the Board. 25

Registration of information utility.

210. (1) Every application for registration shall be made to the Board in such form and manner, containing such particulars, and accompanied by such fee, as may be specified by regulations:

Provided that every application received by the Board shall be acknowledged within seven days of its receipt. 30

(2) On receipt of the application under sub-section (1), the Board may, on being satisfied that the application conforms with all requirements specified under sub-section (1), grant a certificate of registration to the applicant or else, reject, by order, such application:

Provided that no order rejecting the application shall be made without giving an opportunity of being heard to the applicant. 35

(3) The Board may issue a certificate of registration to the applicant in such form and manner and subject to such terms and conditions as may be specified.

(4) The Board may renew the certificate of registration from time to time in such manner and on payment of such fee as may be specified by regulations. 40

(5) The Board may, by order, suspend or cancel the certificate of registration granted to an information utility on any of the following grounds, namely:—

(a) that it has obtained registration by making a false statement or misrepresentation or any other unlawful means;

5 (b) that it has failed to comply with the requirements of the regulations made by the Board;

(c) that it has contravened any of the provisions of this code or the rules or the regulations made thereunder;

(d) on any other ground as may be specified by regulations:

10 Provided that no order shall be made under this sub-section 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.

15 **211.** Any information utility which is aggrieved by the order of the Board made under section 209 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.

Appeal to
National
Company Law
Appellate
Tribunal.

20 **212.** The Board may, for ensuring that an information utility takes into account the objectives sought to be achieved under this Code, require every information utility to set up a governing board, with such number of independent members, as may be specified by regulations.

Governing
Board of
information
utility.

213. An information utility shall provide such services as may be specified including core services to any person if such person complies with the terms and conditions as may be specified by regulations.

Core services
etc., of
information
utilities.

214. While providing core services to any person, every information utility shall —

25 (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 (2) of section 215, in such form and manner as may be specified by regulations;

30 (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;

35 (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.

Obligations of
information
utility.

40 **215. (1)** Any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fee and submit information in such form and manner as may be specified by regulations.

Procedure for
submission,
etc., of
financial
information.

(2) A financial creditor or, as the case may be, an operational 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.

Rights and obligations of persons submitting financial information.

216. (1) A person who submits financial information to an information utility shall have the following rights, namely: —

(a) to correct errors or update or modify any financial information so submitted in a manner and within such time as may be specified;

(b) to demand the information utility to remove from its records the information so submitted, with the concurrence of all counterparties to any contracts or agreements, in a manner and within such time as may be specified. 5

(2) 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. 10

CHAPTER VI

INSPECTION AND INVESTIGATION

Complaints against insolvency professional agency or its member or information utility.

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 and in such manner as may be specified by regulations. 15

Investigation of insolvency professional agency or its member or information utility.

218. (1) Where the Board, on receipt of a complaint under section 217 or *suo motu* has reasonable grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of this Code or the rules or regulations made or directions issued by the Board thereunder, it may, at any time by an order in writing, direct any person authorised in this behalf (hereinafter referred to as the Investigating Authority in this Chapter) to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility 20

(2) The inspection or investigation carried out under sub-section (1) shall be conducted within such time and in such manner as may be specified by regulations.

(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: 25

Provided that the Investigating Authority shall provide reasons to such person before requiring him to furnish such document, record or information. 30

(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. 35 2 of 1974.

(5) The 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: 40

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.

(6) A detailed report of inspection or investigation shall be submitted to the Board by the Investigating Authority. 45

5 **219.** The Board may, upon completion of an inspection or investigation under section 218, issue a show cause notice to such insolvency professional agency or insolvency professional or information utility, and carry out inspection of such insolvency professional agency or insolvency professional or information utility in such manner, giving such time for giving reply, as may be specified by regulations.

Show cause notice to insolvency professional agency or its member or information utility.

220. (1) The Board shall constitute a disciplinary committee to consider the reports of the Investigating Authority submitted under sub-section (6) of section 218:

Appointment of disciplinary committee.

Provided that the members of the disciplinary committee shall consist of whole-time members of the Board only.

10 (2) On the examination of the report of the Investigating Authority, if the disciplinary committee is satisfied that sufficient cause exists, it may impose monetary 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.

15 (3) The disciplinary committee may impose monetary penalty in the following manner, namely:—

(a) 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 maximum monetary penalty shall be the higher of —

20 (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:

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

(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.

30 (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.

(6) The Board may make regulations to specify —

35 (a) the procedure for claiming restitution under sub-section (5);

(b) the period within which such restitution may be claimed; and

(c) the manner in which restitution of amount may be made.

CHAPTER VII

FINANCE, ACCOUNTS AND AUDIT

40 **221.** The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Board grants of such sums of money as that Government may think fit for being utilised for the purposes of this Code.

Grants by Central Government.

222. (1) There shall be constituted a Fund to be called the Fund of the Insolvency and Bankruptcy Board and there shall be credited thereto —

Board's Fund.

45 (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— 5

(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. 10

Accounts
and audit.

223. (1) The 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) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India. 15

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board. 20

(4) 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. 25

PART V

MISCELLANEOUS

Insolvency and
Bankruptcy
Fund.

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 this Code. 30

(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; 35

(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.

(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 such purposes as may be prescribed. 40

(4) The Central Government shall, by notification, appoint an administrator to administer the fund in such form and manner as may be prescribed.

225. (1) Without prejudice to the foregoing provisions of this Code, the Board shall, in exercise of its powers or the performance of its functions under this Code, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Power of Central Government to issue directions.

5 Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government as to whether a question is one of policy or not shall be final.

226. (1) If at any time the Central Government is of opinion —

Power of Central Government to supersede Board.

10 (a) that on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Code; or

(b) that the Board has persistently not complied with any direction issued by the Central Government under this Code or in the discharge of the functions and duties imposed on it by or under the provisions of this Code and as a result of such non-compliance the financial position of the Board or the administration of the Board has deteriorated; or

15 (c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

20 (2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

25 (b) all the powers, functions and duties which may, by or under the provisions of this Code, be exercised or discharged by or on behalf of the Board, shall, until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

30 (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

35 (4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

40 **227.** Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed.

Power of Central Government to notify financial sector providers, etc.

45 **228.** The Board shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the Central Government.

Budget.

229. (1) The Board shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the Central Government.

Annual Report.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

Delegation.

230. The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Code (except the powers under section 217) as it may deem necessary. 5

Bar of jurisdiction.

231. No civil court shall have jurisdiction in respect of any matter which the Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board by, or under, this Code. 10

Members, officers and employees of Board to be public servants.

232. The 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. 45 of 1860.

Protection of action taken in good faith.

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. 15

Provisions of this Code to override other laws.

234. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. 20

Power to make rules.

235. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Code.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the following matters, namely:—

(a) any other instrument which shall be a financial product under clause (15) of section 3; 25

(b) other accounting standards which shall be a financial debt under clause (d) of sub-section (8) of section 5;

(c) the form, the manner and the fee for making application before the Adjudicating Authority for initiating corporate insolvency resolution process by financial creditor under sub-section (2) of section 7; 30

(d) the form in which demand notice may be made to the corporate debtor under sub-section (1) of section 8;

(e) the form, the manner and the fee for making application before the Adjudicating Authority for initiating corporate insolvency resolution process by operational creditor under sub-section (2) of section 9; 35

(f) the form, the manner and the fee for making application before the Adjudicating Authority for initiating corporate insolvency resolution process by corporate applicant under sub-section (2) of section 10;

(g) the persons who shall be relative under clause (ii) of the *Explanation* to sub-section (1) of section 79; 40

(h) the value of unencumbered single dwelling unit owned by the debtor under clause (e) of sub-section (13) of section 79;

(i) any other debt under clause (f) of sub-section (14) of section 79;

(j) the form, the manner and the fee for making application for fresh start order under sub-section (2) of section 81; 45

(k) the particulars of the debtor's personal details under clause (e) of sub-section (3) of section 81;

(l) the information and documents to support application under sub-section (3) of section 86;

5 (m) the form, the manner and the fee for making application for initiating the insolvency resolution process by the debtor under sub-section (6) of section 94;

(n) the form, the manner and the fee for making application for initiating the insolvency resolution process by the creditor under sub-section (6) of section 95;

10 (o) the particulars to be provided by the creditor to the resolution professional under sub-section (2) of section 103;

(p) the form and the manner for making application for bankruptcy by the debtor under clause (b) of sub-section (1) of section 122;

(q) the form and the manner of the statement of affairs of the debtor under sub-section (3) of section 122;

15 (r) the other information under clause (d) of sub-section (1) of section 123;

(s) the form, the manner and the fee for making application for bankruptcy under sub-section (6) of section 123;

(t) the form and the manner in which statement of financial position shall be submitted under sub-section (2) of section 129;

20 (u) the matters and the details which shall be include in the public notice under sub-section (2) of section 130;

(v) the matters and the details which shall be include in the notice to the creditors under sub-section (3) of section 130;

25 (w) the manner of sending details of the claims to the bankruptcy trustee and other information under sub-sections (1) and (2) of section 131;

(x) the value of financial or commercial transaction under clause (d) of sub-section (1) of section 141;

(y) the other things to be done by a bankrupt to assist bankruptcy trustee in carrying out his functions under clause (d) of sub-section (1) of section 150;

30 (z) the manner of dealing with the surplus under sub-section (4) of section 170;

(za) the form and the manner of proof of debt under clause (c) of sub-section (2) of section 171;

(zb) the manner of receiving dividends under sub-section (7) of section 171;

35 (zc) the particulars which the notice shall contain under sub-section (2) of section 176;

(zd) the salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and members of the Board under sub-section (5) of section 189;

40 (ze) the other functions of the Board under clause (u) of sub-section (1) of section 196;

(zf) the other funds under clause (c) of sub-section (1) of section 222;

(zg) the other purposes for which the fund shall be applied under clause (d) of sub-section (2) of section 222;

(zh) the form in which annual statement of accounts shall be prepared under sub-section (1) of section 223;

(zi) the purpose for which application for withdrawal of funds may be made, under sub-section (3) of section 224;

(zj) the manner of administering the fund under sub-section (4) of section 224; 5

(zk) the manner of conducting insolvency and liquidation proceedings under section 227;

(zl) the form and the time for preparing budget by the Board under section 228;

(zm) the form and the time for preparing annual report under sub-section (1) of section 229; 10

(zn) the time upto which a person appointed to any office shall continue to hold such office under clause (vi) of sub-section (2) of section 239.

Power to
make
regulations.

236. (1) The Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:— 15

(a) the form and the manner of accepting electronic submission of financial information under sub-clause (a) of clause (9) of section 3;

(b) the persons to whom access to information stored with the information utility may be provided under sub-clause (d) of clause (9) of section 3; 20

(c) the other information under sub-clause (f) of clause (13) of section 3;

(d) the other costs under clause (e) of sub-section (13) of section 5;

(e) the cost incurred by the liquidator during the period of liquidation which shall be liquidation cost under sub-section (16) of section 5;

(f) the other record or evidence of default under clause (a), and any other information under clause (c), of sub-section (3) of section 7; 25

(g) the electronic mode of communication under sub-section (1), and clause (a) of sub-section (2), of section 8;

(h) the other information under clause (d) of sub-section (3) of section 9;

(i) the period under clause (a) of sub-section (3) of section 10; 30

(j) the supply of essential goods or services to the corporate debtor under sub-section (2) of section 14;

(k) the manner of making public announcement under sub-section (2) of section 15;

(l) the manner of taking action and the restrictions thereof under clause (b) of sub-section (2) of section 17; 35

(m) the other persons under clause (d) of sub-section (2) of section 17;

(n) the other matters under clause (d) of sub-section (2) of section 17;

(o) the other matters under sub-clause (iv) of clause (a), and the other duties to be performed by the interim resolution professional under clause (g), of section 18; 40

(p) the persons who shall comprise the committee of creditors, the functions to be exercised such committee and the manner in which functions shall be exercised under the proviso to sub-section (8) of section 21;

(q) the other electronic means by which the members of the committee of creditors may meet under sub-section (1) of section 24;

(r) the manner of assigning voting share to each creditor under sub-section (7) of section 24;

5 (s) the manner of conducting the meetings of the committee of creditors under sub-section (8) of section 24;

(t) the manner of appointing accountants, lawyers and other advisors under clause (d) of sub-section (2) of section 25;

(u) the other actions under clause (k) of sub-section (2) of section 25;

10 (v) the form and the manner in which an information memorandum shall be prepared by the resolution professional sub-section (1) of section 29;

(w) the other matter pertaining to the corporate debtor under the Explanation to sub-section (2) of section 29;

15 (x) the manner of making payment of insolvency resolution process costs under clause (a), the manner of repayment of debts of operational creditors under clause (b), and the other requirements to which a resolution plan shall conform to under clause (d), of sub-section (2) of section 30;

(y) the fee for the conduct of the liquidation proceedings and proportion to the value of the liquidation estate assets under sub-section (8) of section 34;

20 (z) the manner of evaluating the assets and property of the corporate debtor under clause (c), the manner of selling property in parcels under clause (f), the manner of reporting progress of the liquidation process under clause (n), and the other functions to be performed under clause (o), of sub-section (1) of section 35;

25 (za) the manner of making the records available to other stakeholders under sub-section (2) of section 35;

(zb) the other means under clause (a) of sub-section (3) of section 36;

(zc) the other assets under clause (e) of sub-section (4) of section 36;

(zd) the other source under clause (g) of sub-section (1) of section 37;

30 (ze) the manner of providing financial information relating to the corporate debtor under sub-section (2) of section 37;

(zf) the form, the manner and the supporting documents to be submitted by operational creditor to prove the claim under sub-section (3) of section 38;

(zg) the time within which the liquidator shall verify the claims under sub-section (1) of section 39;

35 (zh) the manner of determining the value of claims under section 41;

(zi) the manner of relinquishing security interest to the liquidation estate and receiving proceeds from the sale of assets by the liquidator under clause (a), and the manner of realising security interest under clause (b) of sub-section (1) of section 52;

(zj) the other means under clause (b) of sub-section (3) of section 52;

40 (zk) the manner in which secured creditor shall be paid by the liquidator under sub-section (9) of section 52;

(zl) the period under sub-section (1) of section 53;

(zm) the other means under clause (a) and the other information under clause (b) of section 57;

- (zn) the conditions and procedural requirements under sub-section (2) of section 59;
- (zo) the details and the documents required to be submitted under sub-section (7) of section 95;
- (zp) the other matters under clause (c) of sub-section (4) of section 105; 5
- (zq) the manner and form of proxy voting under sub-section (4) of section 107;
- (zr) the manner and form of proxy voting under sub-section (3) of section 133;
- (zs) the fee to be charged under sub-section (1) of section 144;
- (zt) the salaries and allowances payable to, and other terms and conditions of service of, officers and employees of the Board under sub-section (3) of section 194; 10
- (zu) the other information under clause (i) of sub-section (1) of section 196;
- (zv) the intervals in which the periodic study, research and audit of the functioning and performance of the insolvency professional agencies, insolvency professionals and information utilities under clause (r) of sub-section (1) of section 196;
- (zw) the place and the time for discovery and production of books of account and other documents under clause (i) of sub-section (3) of section 196; 15
- (zx) the other committees to be constituted by the Board and the other members of such committees under section 197;
- (zy) the other persons under clause (b) and clause (d) of section 200;
- (zz) the form and the manner of application for registration, the particulars to be contained therein and the fee it shall accompany under sub-section (1) of section 201; 20
- (zza) the form and manner of issuing a certificate of registration and the terms and conditions thereof, under sub-section (3) of section 201;
- (zzb) the manner of renewal of the certificate of registration and the fee therefor, under sub-section (4) of section 201; 25
- (zzc) the other ground under clause (d) of sub-section (5) of section 201;
- (zzd) the form of appeal to the National Company Law Appellate Tribunal, the period within which it shall be filed under section 202;
- (zze) the other information under clause (g) of section 204;
- (zzf) the other grounds under Explanation to section 205; 30
- (zzg) the setting up of a governing board for its internal governance and management under clause (e), the curriculum under clause (l), the manner of conducting examination under clause (m), of section 205;
- (zzh) the form and manner of posting performance bond with the Board under clause (a), and the amount of performance security and the manner of depositing of performance security under clause (b), of sub-section (1) of section 206; 35
- (zzi) the means for determining the liability of insolvency professionals under sub-section (4) of section 206;
- (zzj) the time within which, the manner in which, and the fee for registration of insolvency professional under sub-section (2) of section 207; 40
- (zzk) the manner and the conditions subject to which the insolvency professional shall perform his function under clause (f) of sub-section (2) of section 208;
- (zxl) the form and manner in which, and the fee for registration of information utility under sub-section (1) of section 210;

(*zzm*) the form and manner for issuing certificate of registration and the terms and conditions thereof, under sub-section (3) of section 210;

(*zzn*) the manner of renewal of the certificate of registration and the fee therefor, under sub-section (4) of section 210;

5 (*zzo*) the other ground under clause (d) of sub-section (5) of section 210;

(*zzp*) the form, the period and the manner of filing appeal to the National Company Law Appellate Tribunal under section 211;

(*zzq*) the number of independent members under section 212;

10 (*zzr*) the services to be provided by information utility and the terms and conditions under section 213;

(*zzw*) the form and manner of accepting electronic submissions of financial information under clause (b) and clause (c) of section 214;

(*zzt*) the minimum service quality standards under clause (d) of section 214;

15 (*zzu*) the information to be accessed and the manner of accessing such information under clause (f) of section 214;

(*zzv*) the statistical information to be published under clause (g) of section 214;

(*zzw*) the form, the fee and the manner for submitting or accessing information under sub-section (I) of section 215;

20 (*zzx*) the form and manner for submitting financial information and information relating to assets under sub-section (2) of section 215;

(*zzy*) the manner and the time within which errors may be corrected, updated or modified under clause (a) of sub-section (I) of section 216;

(*zzz*) the extent, the circumstances and the manner for providing information under sub-section (2) of section 216;

25 (*zzza*) the form and manner of filing complaint under section 217;

(*zzzb*) the time and manner of carrying out inspection or investigation under sub-section (2) of section 218;

30 (*zzzc*) the manner of carrying out inspection of insolvency professional agency or insolvency professional or information utility and the time for giving reply under section 219;

(*zzzd*) the other funds of clause (c) of sub-section (I) of section 222;

3. The matters in respect of which rules may be made or notification issued are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

35 **237.** Every rule, every regulation and every bye-law made under this Code shall be laid, as soon as may be after it is made, 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification
40 in the rule, regulation or bye-law or both Houses agree that the rule, regulation or bye-law should not be made, the rule, regulation or bye-law shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or bye-law.

Rules,
regulations and
bye-laws to be
laid before
Parliament.

Power to
remove
difficulties.

238. (1) If any difficulty arises in giving effect to the provisions of this Code, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Code. 5

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal of
certain
enactments
and savings.

239. (1) The Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 are hereby repealed. 3 of 1909.

10 5 of
1920.

(2) Notwithstanding the repeal under sub-sections (1)—

(i) all proceedings pending under and relating to the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act 1920, immediately before the commencement of this Code shall continue to be governed under the aforementioned Acts and be heard and disposed of by the concerned courts or tribunals, as if the aforementioned Acts have not been repealed; 3 of 1909.
5 of 1920.

15

(ii) any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Code, continue to be in force, and shall have effect as if the aforementioned Acts have not been repealed; 20

(iii) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall be deemed valid; 25

(iv) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments; 30

(v) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Code before any court or tribunal shall, subject to the provisions of this Code, continue to be heard and disposed of by the concerned court or tribunal; 35

(vi) any person appointed to any office under or by virtue of any repealed enactment shall continue to hold such office until such time as may be prescribed; and

(vii) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored. 40

10 of 1897.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal of the repealed enactments or provisions of the enactments mentioned in the Schedule. 40

2 of 1974. 18 of 2013.	<p>240. Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under Part II and offences by any insolvency professional under Part III of this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.</p>	Special Court.
5	<p>241. (1) Until the Board is constituted or a financial sector regulator is designated under section 195, as the case may be, the powers and functions of the Board or such designated financial sector regulator, including its power to make regulations, shall be exercised by the Central Government.</p>	Transitional provisions.
	<p>(2) Without prejudice to the generality of the power under sub-section (1), the Central Government may by regulations provide for the following matters, namely:—</p>	
10	<p>(a) recognition of persons, categories of professionals and persons having such qualifications and experience in the field of finance, law, management or insolvency as it deems necessary, as insolvency professionals and insolvency professional agencies under this Code;</p>	
15	<p>(b) recognition of persons with technological, statistical, and data protection capability as it deems necessary, as information utilities under this Code; and</p>	
	<p>(c) conduct of the corporate insolvency resolution process, insolvency resolution process, liquidation process, fresh start process and bankruptcy process under this Code.</p>	
20	<p>242. The Indian Partnership Act, 1932 shall be amended in the manner specified in the First Schedule.</p>	Amendments of Act IX of 1932.
	<p>243. The Central Excise Act, 1944 shall be amended in the manner specified in the Second Schedule.</p>	Amendments of Act 1 of 1944.
	<p>244. The Income-tax Act, 1961 shall be amended in the manner specified in the Third Schedule.</p>	Amendments of Act 43 of 1961.
25	<p>245. The Customs Act, 1962 shall be amended in the manner specified in the Fourth Schedule.</p>	Amendments of Act 52 of 1962.
	<p>246. The Recovery of Debts due to Banks and Financial Institutions Act, 1993 shall be amended in the manner specified in the Fifth Schedule.</p>	Amendments of Act 51 of 1993.
30	<p>247. The Finance Act, 1994 shall be amended in the manner specified in the Sixth Schedule.</p>	Amendments of Act 32 of 1994.
	<p>248. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 shall be amended in the manner specified in the Seventh Schedule.</p>	Amendments of Act 54 of 2002.
	<p>249. The Sick Industrial Companies (Special Provisions) Repeal Act, 2003 shall be amended in the manner specified in the Eighth Schedule.</p>	Amendments of Act 1 of 2004.
35	<p>250. The Payment and Settlement Systems Act, 2007 shall be amended in the manner specified in the Ninth Schedule.</p>	Amendments of Act 51 of 2007.
	<p>251. The Limited Liability Partnership Act, 2008 shall be amended in the manner specified in the Tenth Schedule.</p>	Amendments of Act 6 of 2009.
40	<p>252. The Companies Act, 2013 shall be amended in the manner specified in the Eleventh Schedule.</p>	Amendments of Act 18 of 2013.

THE FIRST SCHEDULE

(See section 242)

AMENDMENT TO THE INDIAN PARTNERSHIP ACT, 1932

(IX OF 1932)

1. In section 41, clause (a) shall be omitted. 5

THE SECOND SCHEDULE

(See section 243)

AMENDMENT OF THE CENTRAL EXCISE ACT, 1944

(1 OF 1944)

1. In section 11E, for the words, figures and brackets “and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002)”, the words, figures and brackets “the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) and the Insolvency and Bankruptcy Code, 2015” shall be substituted. 10

THE THIRD SCHEDULE 15

(See section 244)

AMENDMENT TO THE INCOME-TAX ACT, 1961

(43 OF 1961)

In sub-section (6) of section 178, after the words “for the time being in force”, the words and figures “except the provisions of the Insolvency and Bankruptcy Code, 2015” shall be inserted. 20

THE FOURTH SCHEDULE

(See section 245)

AMENDMENT TO THE CUSTOMS ACT, 1962

(52 OF 1962)

In section 142A, for the words and figures “and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002”, the words and figures “the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2015” shall be substituted. 25 30

THE FIFTH SCHEDULE

(See section 246)

AMENDMENT TO THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

(51 OF 1993)

1. In the long title, after the words “financial institutions”, the words “, insolvency resolution and bankruptcy of individuals and partnership firms” shall be inserted, namely:—

2. In section 1,—

(a) in sub-section (1), for the words “Due to Banks and Financial Institutions”, the words “and Bankruptcy” shall be substituted; 40

(b) in sub-section (4), for the words “The provisions of this Act”, the words “Save as otherwise provided, the provisions of this Act”, shall be substituted.

3. In section 3, after sub-section (I), the following sub-section shall be inserted, namely:—

“(IA) The Central Government shall by notification establish such number of Debts Recovery Tribunals and its benches as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under the Insolvency and Bankruptcy Code, 2015”.

4. In section 8, after sub-section (I), the following section shall be inserted, namely:—

“(IA) The Central Government shall, by notification, establish such number of Debt Recovery Appellate Tribunals to exercise jurisdiction, powers and authority to entertain appeal against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2015”.

5. In section 17,—

(i) after sub-section (I), the following sub-section shall be inserted, namely:—

“(IA) Without prejudice to sub-section (I),—

(a) the Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain and decide applications under Part III of the Insolvency and Bankruptcy Code, 2015.

(b) the Tribunal shall have circuit sittings in all district headquarters.”.

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Without prejudice to sub-section (2), the Appellate Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2015.”.

6. After section 19, the following section shall be inserted, namely:—

“19A. The application made to Tribunal for exercising the powers of the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2015 shall be dealt with in the manner as provided under that Code.”.

7. In section 20, in sub-section (4), after the word, brackets and figure “sub-section (I)”, the words, brackets and figures “or under sub-section (I) of section 181 of the Insolvency and Bankruptcy Code, 2015” shall be inserted.

THE SIXTH SCHEDULE

(See section 247)

AMENDMENT TO THE FINANCE ACT, 1994

(32 of 1994)

In section 88, for the words and figures “and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002”, the words and figures “the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2015” shall be substituted.

THE SEVENTH SCHEDULE

(See section 248)

AMENDMENT TO THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

(54 OF 2002)

5

In section 13, in sub-section (9), for the words “In the case of”, the words and figures “Subject to the provisions of the Insolvency and Bankruptcy Code, 2015, in the case of” shall be substituted.

THE EIGHTH SCHEDULE

(See section 249)

10

AMENDMENT TO THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) REPEAL ACT, 2003

(1 OF 2004)

In section 4, for sub-clause (b), the following sub-clause shall be substituted, namely:—

“(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 shall stand abated:

15

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2015 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2015 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2015:

20

Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2015 by a company whose appeal or reference or inquiry stands abated under this clause.”.

25

THE NINTH SCHEDULE

(See section 250)

AMENDMENT TO THE PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007

(51 OF 2007)

30

In section 23, in sub-section (4), after the words and figures “the Banking Regulation Act, 1949”, the words and figures “or the Insolvency and Bankruptcy Code, 2015” shall be inserted.

THE TENTH SCHEDULE

(See section 251)

35

AMENDMENT TO THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

(6 OF 2009)

In section 64, Clause (c) shall be omitted.

THE ELEVENTH SCHEDULE

(See section 252)

AMENDMENTS TO THE COMPANIES ACT, 2013

(18 OF 2013)

5 In Section 2,—

(a) for clause (23) the following clause shall be substituted, namely:—

'(23) "Company Liquidator", means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 of this Act for the winding up of a company under this Act.'

10 (b) after Clause (94) the following Clause shall be inserted, namely:—

"(94A) "winding up" means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2015, as applicable."

2. In sub-section (9) of section 8, for the words "the Rehabilitation and Insolvency Fund formed under section 269", the words "Insolvency and bankruptcy Fund for used under section 224 of the Insolvency and Bankruptcy Code, 2015" shall be substituted.

3. In sub-section (8) of section 66, for the words, brackets and figures "the company is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim," the words and figures "a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2015, has occurred on his debt or claim," shall be substituted.

20 4. In sections 77 and 230, after the words "the liquidator", wherever they occur, the words and figures "under this Act or the Insolvency and Bankruptcy Code, 2015, as the case may be," shall be inserted.

5. In clause (f) of sub-section (3) of section 117, for the words and figures "section 304", the words and figures "section 56 of the Insolvency and Bankruptcy Code, 2015" shall be substituted.

6. In sub-section (2) of section 224, after the words "wound up under this Act", the words and figures "or the Insolvency and Bankruptcy Code, 2015" shall be inserted.

7. For clause (e) of sub-section (1) of section 249, the following clause shall be substituted, namely:—

30 "(e) is being wound up under Chapter XX of this Act or the Insolvency and Bankruptcy Code, 2015."

8. Sections 253 to 268 shall be omitted.

9. Section 269 shall be omitted.

10. For section 270, the following section shall be substituted, namely:—

35 "270. The provisions of this Act with respect to winding up shall apply to the winding up of a company by the Tribunal under this Act."

11. For section 271, the following section shall be substituted, namely:—

"271. A company may, on a petition under section 272, be wound up by the Tribunal,—

40 (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

45 (c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been

Circumstances in which company may be wound up by Tribunal.

guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

(e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.”.

12. For section 272, the following section shall be substituted, namely:—

Petition for winding up.

“272. (1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

(a) the company;

(b) any contributory or contributories;

(c) all or any of the persons specified in clauses (a) and (b) together;

(d) the Registrar;

(e) any person authorised by the Central Government in that behalf; or

(f) in a case falling under clause (b) of section 271, by the Central Government or a State Government.

(2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(3) The Registrar shall be entitled to present a petition for winding up under section 271, except on any of the grounds specified in except on the grounds specified in clause (a) or clause (e) of that sub-section:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided also that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

(4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

(5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.”.

13. In section 275,—

(a) for sub-section (2) the following sub-section shall be substituted, namely:—

“(2) The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2015.”.

(b) sub-section (4) shall be omitted.

14. For section 280, the following section shall be substituted, namely:—

“280. The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,— Jurisdiction of Tribunal.

(a) any suit or proceeding by or against the company;

5 (b) any claim made by or against the company, including claims by or against any of its branches in India;

(c) any application made under section 233;

(d) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company,

10 whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.”

15 15. Section 289 shall be omitted.

16. Sections 304 to 323 shall be omitted.

17. Section 325 shall be omitted.

18. For section 326, the following section shall be substituted, namely:—

20 “326. (1) In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts: Overriding preferential payments.

(a) workmen’s dues; and

(b) where a secured creditor has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen’s portion in his security (if payable under the law), whichever is less, *pari passu* with the workmen’s dues:

30 Provided that in case of the winding up of a company, the sums referred to in sub-clauses (i) and (ii) of clause (b) of the *Explanation*, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that sub-section shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

Explanation.—For the purposes of this section, and section 327—

(a) “workmen”, in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947;

(b) “workmen’s dues”, in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947;

(ii) all accrued holiday remuneration becoming payable to any workman

or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.

Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000."

In section 327,—

(a) after sub-section (6), the following sub-section shall be inserted, namely:—

"(7) Sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code 2015."

(b) in the *Explanation* for clause (c), the following clause shall be substituted, namely:—

'(c) the expression "relevant date" means in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date under the Insolvency and Bankruptcy Code 2015.'

20. For section 329, the following section shall be substituted, namely:—

Transfers not
in good faith
to be void.

"329. Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal under this Act shall be void against the Company Liquidator."

21. For section 334, the following section shall be substituted, namely:—

Transfer, etc.,
after
commencement
of winding up
to be void.

"334. In the case of a winding up by the Tribunal, any disposition of the property, including actionable claims, of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Tribunal otherwise orders, be void."

22. In sub-section (1) of section 336,—

(a) for the words " , whether by the Tribunal or voluntarily, " , the words "by the Tribunal under this Act"; shall be substituted;

(b) for the words “or which subsequently passes a resolution for voluntary winding up,”, the words “under this Act”, shall be substituted.

23. In section 337, for the words “or which subsequently passes a resolution for voluntary winding up,”, the words “under this Act”, shall be substituted.

5 24. Sub-sections (2), (3) and (4) of section 342 shall be omitted.

25. For sub-section (1) of section 343, the following sub-section shall be substituted, namely:—

“(1) The Company Liquidator may, with the sanction of the Tribunal, when the company is being wound up by the Tribunal—

10 (i) pay any class of creditors in full;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or

15 (iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.”.

26. For sub-section (1) of section 347, the following sub-section shall be substituted, 25 namely:—

“(1) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the Company Liquidator may be disposed of in such manner as the Tribunal directs.”.

27. For sub-section (1) of section 348, the following sub-section shall be substituted, 30 namely:—

“(1) If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, with the Tribunal:

40 Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply.”.

28. For section 357, the following section shall be substituted, namely:—

“357. The winding up of a company by the Tribunal under this Act shall be deemed to commence at the time of the presentation of the petition for the winding up.”.

Commencement
of Winding
up by
Tribunal.

45 29. In section 370, in the proviso, after the words “obtained for the winding up the company”, the words “in accordance with the provisions of this Act or of the Insolvency and Bankruptcy Code, 2015” shall be inserted.

30. In section 372, after the words “The provisions of this Act”, the words “or the Insolvency and Bankruptcy Code, 2015, as applicable” shall be inserted.

31. In clause (b) of sub-section (3) of section 375, for the words “is unable to pay its debts”, the words “has defaulted on its debts, within the meaning of the Insolvency and Bankruptcy Code, 2015” shall be inserted. 5

32. Sub-section (4) of section 375 shall be omitted.

33. In sub-section (1) of section 377, after the words “winding up of companies by the Tribunal”, the words “, or the provisions of the Insolvency and Bankruptcy Code, 2015” shall be inserted.

34. For sub-section (4) of section 419, the following sub-section shall be substituted, namely— 10

“(4) The Central Government shall by notification establish such number of benches of the Tribunal as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under Part II of the Insolvency and Bankruptcy Code, 2015: 15

Provided a bench of the Tribunal established under this sub-section shall have at least one judicial member.”.

35. In sub-section (1) of section 424,—

(i) after the words, “other provisions of this Act”, the words “or the Insolvency and Bankruptcy Code, 2015” shall be inserted; 20

(ii) after the words, “under this Act”, the words “or the Insolvency and Bankruptcy Code, 2015” shall be inserted.

36. In sub-section (1) of section 429,—

(i) for the words “relating to a sick company or winding up of any other company”, the words “under the Insolvency and Bankruptcy Code, 2015 or winding up of a company under this Act” shall be substituted; 25

(ii) for the words “of such sick or other company”, the words “of the relevant legal person” shall be substituted.

37. For section 434, the following section shall be substituted, namely:—

“434. (1) On such date as may be notified by the Central Government in this behalf,— 30

(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act; 35

(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order: 40

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and

(c) all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or 45

Transfer of
certain
pending
proceedings.

High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:

Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.

5 (2) The Central Government may make rules consistent with the provisions of this Code to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.”.

38. For sub-section (2) of section 468, the following section shall be substituted, namely:—

10 “(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) as to the mode of proceedings to be held for winding up of a company by the Tribunal under this Act;

15 (ii) for the holding of meetings of creditors and members in connection with proceedings under section 230;

(iii) for giving effect to the provisions of this Act as to the reduction of the capital;

(iv) generally for all applications to be made to the Tribunal under the provisions of this Act;

20 (v) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(vi) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;

25 (vii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(viii) the making of calls; and

(ix) the fixing of a time within which debts and claims shall be proved.”.

39. For clause (b) of section III of Schedule V, the following clause shall be substituted, namely:—

30 “(b) where the company—

(i) is a newly incorporated company, for a period of seven years from the date of its incorporation; or

35 (ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction for a period of five years from the date of sanction of scheme of revival;

(iii) is a company in relation to which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2015 for a period of five years from the date of such approval,

it may pay remuneration up to two times the amount permissible under section II.”.

STATEMENT OF OBJECTS AND REASONS

There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the Courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation.

2. The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

3. The Code seeks to provide for designating the NCLT and DRT as the Adjudicating Authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects. The Code also seeks to provide for establishment of the Insolvency and Bankruptcy Board of India (Board) for regulation of insolvency professionals, insolvency professional agencies and information utilities. Till the Board is established, the Central Government shall exercise all powers of the Board or designate any financial sector regulator to exercise the powers and functions of the Board. Insolvency professionals will assist in completion of insolvency resolution, liquidation and bankruptcy proceedings envisaged in the Code. Information Utilities would collect, collate, authenticate and disseminate financial information to facilitate such proceedings. The Code also proposes to establish a fund to be called the Insolvency and Bankruptcy Fund of India for the purposes specified in the Code.

4. The Code seeks to provide for amendments in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, Income-Tax Act, 1961, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013.

5. The Code seeks to achieve the above objectives.

NEW DELHI;
The 17th December, 2015.

ARUN JAITLEY

Notes on clauses

Clause 1 provides for the short title of the Bill as the Insolvency and Bankruptcy Code, 2015, extent and commencement of Code, and for enforcement of the various sections of the Code on different dates.

Clause 2 specifies the applicability of the Code to companies, limited liability partnerships, partnership firms, individuals and such bodies incorporated under any law for the time being in force, as the Central Government may notify.

Clause 3 defines relevant expressions used in the Code such corporate persons, corporate debtor, default, insolvency professional, and insolvency agency.

Clause 4 specifies that Part II of the Insolvency and Bankruptcy Code, 2015 shall deal with all matters relating to the insolvency and liquidation of corporate persons. This part of the Code proposes to deal with insolvency resolution and liquidation of 'corporate persons' defined as companies, limited liability partnerships, or any other person incorporated with limited liability under any law for the time being in force (subject to the provisions of any special act under which such person is incorporated). Insolvency resolution and liquidation of financial service providers is excluded from the scope of Code. This is because such entities require a special insolvency regime that is specialised. Given the interconnectedness between such entities and the systemic risk implications for the economy the insolvency resolution and liquidation process of such entities must take into account the interest of the financial system and the economy. The provisions of this part shall not apply where the amount of the default is less than rupees one lakh or such other amount as may be specified by the Central Government not exceeding rupees one crore.

Clause 5 sets out various definitions used in Part II of the Code, which deals with insolvency resolution and liquidation of corporate persons.

Clause 6 provides that where a corporate debtor has defaulted in paying a debt that has become due and payable but not repaid, the corporate insolvency resolution process under Part II may be initiated in respect of such corporate debtor by a financial creditor, an operational creditor or the corporate debtor itself.

Early recognition of financial distress is very important for timely resolution of insolvency. A default based test for entry into the insolvency resolution process permits early intervention such that insolvency resolution proceedings can be initiated at an early stage when the corporate debtor shows early signs of financial distress rather than at the point where it would be difficult to revive it effectively. It also provides a simple test to initiate resolution process.

This clause permits any financial creditor to initiate the corporate insolvency resolution process where the corporate debtor has defaulted in paying a debt that has become due and payable but not repaid. Financial creditors are those creditors to whom a financial debt (i.e., a debt where the creditor is compensated for the time value of the money lent) is owed.

Further, the Code also permits the corporate debtor itself to initiate the insolvency resolution process once it has defaulted on a debt. Additionally, operational creditors (i.e., creditors to whom a sum of money is owed for the provision of goods or services or the Central/State Government or local authorities in respect of payments due to them) are also permitted to initiate the insolvency resolution process. This will bring the law in line with international practices, which permit unsecured creditors (including employees, suppliers etc. who fall under the definition of operational creditors) to file for the initiation of insolvency resolution proceedings.

Clause 7 lays down the procedure for the initiation of the corporate insolvency

resolution process by a financial creditor or two or more financial creditors jointly. The financial creditor can file an application before the National Company Law Tribunal along with proof of default and the name of a resolution professional proposed to act as the interim resolution professional in respect of the corporate debtor. The requirement to provide proof of default ensures that financial creditors do not file frivolous applications or applications which prematurely put the corporate debtor into insolvency resolution proceedings for extraneous considerations. The adjudicating authority/ Tribunal can, within fourteen days from the date of receipt of the application, ascertain the existence of a default from the records of a regulated information utility. A default may also be proved in such manner as may be specified by the Insolvency and Bankruptcy Board of India.

Once the adjudicating authority/Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application. It is important that parties are not allowed to abuse the legal process by using delaying tactics at the admissions stage.

Clause 8 lays down the procedure for the initiation of the corporate insolvency resolution process by an operational creditor. This procedure differs from the procedure applicable to financial creditors as operational debts (such as trade debts, salary or wage claims) tend to be small amounts (in comparison to financial debts) or are recurring in nature and may not be accurately reflected on the records of information utilities at all times. The possibility of disputed debts in relation to operational creditors is also higher in comparison to financial creditors such as banks and financial institutions. Accordingly, the process for initiation of the insolvency resolution process differs for an operational creditor.

Once a default has occurred, the operational creditor has to deliver a demand notice or a copy of an invoice demanding payment of the debt in default to the corporate debtor. The corporate debtor has a period of ten days from the receipt of the demand notice or invoice to inform the operational creditor of the existence of a dispute regarding the debt claim or of the repayment of the debt. This ensures that operational creditors, whose debt claims are usually smaller, are not able to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It may also facilitate informal negotiations between such creditors and the corporate debtor, which may result in a restructuring of the debt outside the formal proceedings.

Clause 9 On the expiry of the period of ten days from the date of receipt of the invoice or demand notice under Clause 8, if the operational creditor does not receive either the payment of the debt or a notice of existence of dispute in relation to the debt claim from the corporate debtor, he can file an application with the adjudicating authority for initiating the insolvency resolution process in respect of such debtor. He also has to furnish proof of default and proof of non-payment of the debt along with an affidavit verifying that there has been no notice regarding the existence of a dispute in relation to the debt claim. Within fourteen days from the receipt of the application, if the adjudicating authority/Tribunal is satisfied as to (a) the existence of a default, and (b) the other criteria laid down in clause 9(5) being met, it shall admit the application. The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application. It is important that parties are not allowed to abuse the legal process by using delaying tactics at the admissions stage.

Clause 10 provides for the initiation of corporate insolvency resolution process by the corporate debtor itself. A corporate applicant (defined as a specific set of persons linked to the corporate debtor) may make an application to the adjudicating authority along with the corporate debtor's books of accounts and such other documents (as may be specified), and the name of a person proposed to be appointed as the interim resolution professional. The adjudicating authority shall admit the application within fourteen days from the date of receipt of the application if it is complete. Since the management of the corporate debtor (and other persons covered in the definition of a corporate applicant) are likely to have the best

information about the financial affairs of the corporate debtor, permitting such applicants to initiate the corporate insolvency resolution process would ensure timely intervention that is crucial for any corporate insolvency resolution process to succeed. In such cases, the management would have sufficient incentives to cooperate with the resolution professional and the creditors and agree on a resolution plan swiftly and efficiently.

Since the corporate applicant can only initiate the corporate insolvency resolution process upon the occurrence of a default and not on mere likelihood of inability to pay debts, the corporate applicant cannot trigger the corporate insolvency resolution process prematurely to (potentially) abuse the moratorium provisions. Further, given the displacement of the management of the corporate debtor during the insolvency resolution process, as envisaged under the Code (which can also be permanent, depending on the outcome of the resolution process), corporate applicants (for instance, the controlling promoters) would be deterred from initiating the insolvency resolution process for extraneous considerations.

Clause 11 lists out the persons who are not eligible to make an application to initiate the corporate insolvency resolution process. A corporate debtor which is undergoing a corporate insolvency resolution process (at the time of such application) or has completed a corporate insolvency resolution process in the preceding twelve months is not entitled to file an application for initiating the corporate insolvency resolution process. This ensures that corporate debtors cannot have repeated recourse to the corporate insolvency resolution process in order to delay repayment of debts due or to keep assets out of the reach of creditors.

A corporate debtor or a financial creditor who has violated any of the terms of the resolution plan that was approved twelve months before making an application for initiating the process is also not entitled to make an application for initiating the corporate insolvency resolution process again. In addition to ensuring compliance with the terms of the resolution plan, this would also ensure that corporate debtors or financial creditors do not abuse the corporate insolvency resolution process for extraneous considerations.

Lastly, a corporate debtor in respect of which a liquidation order has been passed is not allowed to initiate the insolvency resolution process again. This is to ensure finality of the liquidation order.

Clause 12 prescribes a time limit of 180 days, extendable by a further 90 days, for the completion of corporate insolvency resolution process. The application for the extension can only be made by the resolution professional and has to be supported by a resolution passed at a meeting of the committee of creditors by a majority of 75 per cent of the voting shares (defined as shares of voting rights of financial creditors based on the proportion of financial debt owed to such financial creditors in relation to the overall financial debt). No other person is entitled to seek such an extension of time. The adjudicating authority/Tribunal shall have no discretion to extend these time-lines.

The well-defined time limits would help the system to avoid many of the problems faced under the Sick Industrial Companies (Special Provisions) Act, 1985. It would ensure that commercially unviable corporate debtors are not kept in the resolution process for long periods (as was very common for proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985) and are liquidated based on decision taken by the financial creditors at the earliest opportunity. The time limits would reduce the cost to creditors and other stakeholders (including employees and workmen) of a long-drawn out procedure. Long-drawn-out proceedings cause depletion in value of the corporate debtor's business, diminish returns to creditors and other stakeholders and lock capital, which could have otherwise been redeployed elsewhere for the benefit of the larger economy.

This would also enable promoters of failed businesses to exit the venture swiftly and restart through a different entity.

Clause 13 lists the actions that the adjudicating authority shall take once an application

for initiating the corporate insolvency resolution process has been admitted. The adjudicating authority shall (a) declare a moratorium in accordance with Clause 14, (b) cause a public announcement of the initiation of corporate insolvency resolution process with respect to the corporate debtor to be made and call for claims in the manner laid down in Clause 15, and (c) appoint the interim resolution professional for the corporate debtor in accordance with Clause 16.

Clause 14 describes the effect of the moratorium. The purposes of the moratorium include keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the company may continue as a going concern while the creditors take a view on resolution of default. This also ensures that multiple proceedings are not taking place simultaneously and helps obviate the possibility of potentially conflicting outcomes of related proceedings. This also ensures that the resolution process is a collective one.

The order under this Clause 14 *inter alia*, prohibits the institution or continuation of suits or any legal proceedings against the corporate debtor, the disposal of any assets of the corporate debtor and debt enforcement actions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The moratorium on initiation and continuation of legal proceedings, including debt enforcement action ensures a stand-still period during which creditors cannot resort to individual enforcement action which may frustrate the object of the corporate insolvency resolution process. The prohibition on disposal of the corporate debtor's assets would ensure that the corporate debtor or its management is not able to transfer its assets, thereby stripping the corporate debtor of value during the corporate insolvency resolution process. The moratorium also extends to recovery of any property occupied by or in possession of the corporate debtor. It also prevents the termination of a contract that provides for supply of such essential goods and services as may be specified. Access to certain goods and services during the insolvency resolution process may be important for ensuring orderly completion of the proceedings. However, the costs for such goods or services will have to be paid in priority to other costs as part of a resolution plan or during distribution of assets, in case the corporate debtor goes into liquidation.

Clause 14 also prescribes the period for which the moratorium will be in effect. The moratorium will continue to be in effect till the completion of the corporate insolvency resolution process or the approval of a resolution plan by the adjudicating authority or the resolution of the committee of creditors to liquidate the corporate debtor, whichever is earlier.

The Central Government has been given the power to notify transactions (in consultation with the appropriate financial sector regulators), which will be exempted from the moratorium in the interest of smooth functioning of the financial markets.

Clause 15 lists the particulars that a public announcement of the initiation of the corporate insolvency resolution process for the corporate debtor shall contain. In particular, the public announcement shall include information relevant to creditors such as the last date for the submission of claims and details of the interim resolution professional responsible for receiving claims.

Clause 16 provides for the appointment of the interim resolution professional by the adjudicating authority within fourteen days from the date of admission of the application under Clauses 7, 9 or 10. Where the corporate insolvency resolution process has been initiated in respect of a corporate debtor on an application by a financial creditor or the corporate debtor itself, the insolvency professional whose name has been proposed in the application shall be appointed by the adjudicating authority. Where the corporate insolvency resolution process has been initiated on an application by an operational creditor and no resolution professional has been proposed, then the adjudicating authority shall make a reference to the Insolvency and Bankruptcy Board of India for recommending the name of a

person to be appointed as the interim resolution professional. If the operational creditor proposes a resolution professional, the adjudicating authority may appoint such professional as the interim resolution professional subject to compliance with necessary conditions. The Board shall recommend the name of a resolution professional who meets the criteria stipulated in Clause 16(3) within ten days from the receipt of the reference.

The interim resolution professional is a significant actor in the corporate insolvency resolution process. He performs various functions such as the collection of claims, the collection of information about the corporate debtor, the constitution of the committee of creditors and the interim management of the company's affairs and monitoring of the company's assets till a resolution professional is appointed. The interim resolution professional is appointed for a period of thirty days from the date of his appointment.

Clause 17 provides that once the interim resolution professional has been appointed, the management of the corporate debtor is taken over by him. The powers of the board of directors or the partners of the corporate debtor, as the case may be, are suspended. The officers and managers of the corporate debtor shall report to the interim resolution professional and cooperate with him in providing access to documents and records of the corporate debtor.

This provision has been inserted keeping in mind the experience under the Sick Industrial Companies (Special Provisions) Act, 1985 of a debtor-in-possession regime. Various committee reports, which studied the regime under the Sick Industrial Companies (Special Provisions) Act, 1985 pointed towards the debtor-in-possession regime as one of its fatal flaws. A debtor-in-possession regime allows the existing management to remain in possession of the entity during the resolution process. Past experience suggests that a debtor-in-possession regime gives incentives to the management to propose and implement risky rescue measures, as the costs of failure (leading to liquidation) would largely be borne by creditors. Further, given the informational advantage that existing managers (who are typically under control of controlling promoters) have over other stakeholders, giving them control over the corporate debtor during the corporate insolvency resolution process may result in them proposing risky measures or worse, siphoning off assets or resorting to delaying tactics to extract concessions from creditors.

Clause 17(2) also lists out the various powers that an interim resolution professional shall have, including the power to do all acts and execute documents in the name of the corporate debtor. These powers are important for effectively discharging his responsibilities.

Clause 18 lists out the various duties of an interim resolution professional. These include collection of all financial information relating to the corporate debtor, receipt and collation of debt claims, constitution of a committee of creditors, taking control over and monitoring the assets of the corporate debtor and filing the information collected with an information utility, if required. Clause 18 also specifies the assets that cannot be taken over. These duties have to be discharged by the interim resolution professional within a short timeframe, given that his appointment is only for a period of thirty days. This will significantly speed up the corporate insolvency resolution process.

Clause 19 imposes an obligation on the personnel and promoters of the corporate debtor to extend all assistance and cooperation required by the interim resolution professional in the management of the affairs of the corporate debtor. Personnel is defined to mean the employees, directors, managers, key managerial personnel and designated partners, if any of the corporate debtor. This is required to help the interim resolution professional to effectively discharge his duties.

Where the personnel of the corporate debtor or any other person required to co-operate with the interim resolution professional (such other person may include a contractual counterparty, supplier, service provider, and auditor) do not extend cooperation or assistance to the interim resolution professional, the interim resolution professional may apply to the adjudicating authority for an order. The adjudicating authority may, by order,

direct the person to comply with the instructions of the interim resolution professional or to provide information to the interim resolution professional.

Clause 20 lays down that the interim resolution professional has to manage the operations of the corporate debtor as a going concern to enable him to protect and preserve the value of the property of the corporate debtor. These include the power to appoint accountants, legal counsel or such other professionals who may provide specialist advice to the interim resolution professional. Such professionals may include turnaround specialists and management experts. Additionally, the interim resolution professional has the power to raise interim finance and to enter into, amend or modify contracts on behalf of the corporate debtor. However, any interim finance raised by providing security of an encumbered property of the corporate debtor will require prior permission of the concerned creditor. If a financially distressed corporate debtor is to be able to successfully pull itself out of insolvency resolution proceedings, continued trading during the course of proceedings is to be facilitated. For this purpose, such a debtor often needs access to external finance. However, once a company enters the insolvency resolution proceedings, it may find it extremely difficult to obtain credit, as few lenders would be willing to lend to a troubled debtor. One of the primary issues which lead to the breakup of economically valuable businesses in financial distress is the debt overhang problem which entails that any fresh capital (which is needed to bolster the working capital needs of the distressed debtor and kick start its recovery) is not forthcoming as it will almost entirely be used up in debt payments to the existing creditors. In order to address this issue, such interim finance is to be treated as part of the insolvency resolution costs and repaid in priority to other debt as part of resolution plan. Such priority also applies in distribution of assets in case the corporate debtor goes into liquidation.

Clause 21 provides for the constitution of a committee of creditors by the interim resolution professional. The committee of creditors are composed of all the financial creditors of the corporate debtor, excluding related parties of the corporate debtor.

The committee has to be composed of members who have the capability to assess the commercial viability of the corporate debtor and who are willing to modify the terms of the debt contracts in negotiations between the creditors and the corporate debtor. Operational creditors are typically not able to decide on matters relating to commercial viability of the corporate debtor, nor are they typically willing to take the risk of restructuring their debts in order to make the corporate debtor a going concern. Similarly, financial creditors who are also operational creditors will be given representation on the committee of creditors only to the extent of their financial debts. Nevertheless, in order to ensure that the financial creditors do not treat the operational creditors unfairly, any resolution plan must ensure that the operational creditors receive an amount not less than the liquidation value of their debt (assuming the corporate debtor were to be liquidated).

All decisions of the Committee shall be taken by a vote of not less than seventy-five per cent of the voting share. In the event there are no financial creditors for a corporate debtor, the composition and decision-making processes of the corporate debtor shall be specified by the Insolvency and Bankruptcy Board. The Committee shall also have the power to call for information from the resolution professional.

Clause 22 provides that one of the main functions of the committee of creditors is the appointment of the resolution professional. Clause 22 provides that at the first meeting of the committee of creditors, the committee may decide, by a majority of 75 per cent of voting share of the financial creditors to appoint the interim resolution professional as the resolution professional or propose the name of another insolvency professional to be appointed as the resolution professional. Where the committee of creditors decides to not appoint the interim resolution professional as the resolution professional, it has to file an application with the adjudicating authority for the appointment of the proposed resolution professional. The adjudicating authority shall, upon receipt of a confirmation from the Insolvency and Bankruptcy Board of India, appoint the proposed insolvency resolution professional as the resolution professional. Where no confirmation is received from the Insolvency and

Bankruptcy Board of India, the interim resolution professional is to continue as the resolution professional until the receipt of the confirmation.

This Clause also provides for involvement of the financial creditor in the appointment of the resolution professional. The committee of creditors are likely to be most incentivised to select the person who is best suited for the task - as the fees payable to the resolution professional will in all probability be taken out of the company's assets (which will eventually affect the final repayment to the creditors), they will often choose a person who is familiar with the company's business, its activities or assets or has skills, knowledge or experience in handling the particular circumstances of a case.

Clause 23 provides that the resolution professional shall be responsible for carrying out the entire corporate insolvency resolution process and managing the operations of the corporate debtor during such process. For this purpose, he shall have the same powers and shall perform the same duties as the interim resolution professional. The Clause also provides that where the interim resolution professional has not been appointed as the resolution professional, the interim resolution professional shall provide all information, documents and records relating to the corporate debtor to the resolution professional to facilitate a smooth transition.

Clause 24 prescribes the modalities for the meeting of the committee of creditors. The meetings are conducted by the resolution professional and may be attended by the members of the board directors or partners of the corporate debtor. This gives an opportunity for the committee of creditors and the resolution professional to seek information that they may require to assess the financial position of the corporate debtor and prepare a resolution plan.

Clause 25 sets out the duty of resolution professional to preserve and protect the assets of the corporate debtor and lays down the functions he may perform for the same. Keeping in with the wider role that the resolution professional plays as compared to the interim resolution professional, he has the duty to, inter alia, invite prospective lenders, investor and other persons to put forward resolution plans, present such plan to the committee of creditors and file applications for the avoidance of specified transactions in accordance with Chapter III of the Code. The resolution professional is also empowered to raise interim finance (whether secured or unsecured), with the prior approval of the committee of creditors. The interim finance raised under this Clause would also be covered as part of the insolvency resolution costs.

Clause 26 states that a resolution professional may be replaced at any time during the corporate insolvency resolution process by the committee of creditors by a 75 per cent majority of voting shares. This power is particularly relevant where a corporate debtor may have initiated the corporate insolvency resolution process and may have appointed a resolution professional of their choice. The committee of creditors have the right to replace such resolution professional, should they suspect collusion between the resolution professional and management.

The committee of creditors shall then forward the name of the insolvency professional proposed to be appointed as the resolution professional to the adjudicating authority. The adjudicating authority shall appoint the proposed insolvency professional as the resolution professional after receipt of a confirmation from the Insolvency and Bankruptcy Board of India regarding the appointment. This provision, like Clause 22, provides for creditor involvement in the replacement of the resolution professional.

Clause 27 provides for the removal of the resolution professional by any financial creditor (below the threshold prescribed in Clause 26) or a corporate debtor under specific circumstances set out in the Clause 27(1) including the conduct of operations of the corporate debtor in a grossly negligent or fraudulent manner and conflicts of interests with the interests of the corporate debtor, creditors or other stakeholders. The financial creditor or corporate debtor has to file an application with the adjudicating authority. Within fourteen days of the receipt of the application, if the adjudicating authority is of the opinion that there is a

prima facie case that the resolution professional is guilty of committing any of the acts set out in Clause 27(1), it shall direct the committee of creditors to propose the name of an insolvency professional to be appointed as the resolution professional. Such insolvency professional shall be appointed following the procedure set out in Clause 22. Thus, the committee of creditors are given a very significant role in the appointment of resolution professionals.

Clause 28 lists out certain actions that may be taken by the resolution professional only with prior the approval of the committee of creditors by a 75 per cent majority of voting shares. The aim of this provision is to seek consent of the committee of creditors for specific matters as (a) their rights may be adversely affected by some of these actions or (b) the capital structure, ownership or management of the corporate debtor may be significantly altered by some of these actions. Where the resolution professional takes any of the actions listed in Clause 28(1) without obtaining the consent of the committee of creditors, such action shall be void. The resolution professional may also be liable to be replaced.

Clause 29 lays down one of the main functions of the resolution professional—preparation of an information memorandum, which shall enable a resolution applicant to prepare a resolution plan. Such an information memorandum is envisaged to be prepared in order for the market participants (resolution applicants) to provide solutions for resolving the insolvency of the corporate debtor. To this end, the resolution professional is also required to provide access to all relevant information about the corporate debtor to the resolution applicant, subject to the resolution applicant complying with certain restrictions relating to confidentiality and compliance with law.

Clause 30 provides for the manner in which a resolution plan may be submitted by a resolution applicant. It may be noted that there are no restrictions on who can be a resolution applicant, subject to compliance with all applicable laws. This may even include promoters of the corporate debtor. This provision would facilitate proposals from persons interested in commercially viable but insolvent businesses to rescue such entities, creating value for all stakeholders in the process.

The resolution professional shall submit each resolution plan, which conforms to the criteria in Clause 30(2) to the committee of creditors who shall approve a resolution plan by a 75 per cent majority of voting shares. The plan must provide for payment of insolvency resolution process costs in priority to other debt, repayment of operational creditors, compliance with applicable law and meet such other conditions as may be specified by the Insolvency and Bankruptcy Board of India.

Once the resolution plan has been approved by the committee of creditors, it is then presented to the adjudicating authority for its approval.

Clause 31 provides that the adjudicating authority is required to review the resolution plan sanctioned by the committee of creditors for ensuring that the resolution plan (a) meets the criteria set out in Clause 30(2), (b) provides for the repayment to operational creditors of at least the amount which they would have been entitled to if the corporate debtor were to be liquidated and (c) satisfies such other conditions as may be prescribed by the Insolvency and Bankruptcy Board of India. Criterion (b) set out above is intended to provide protection to operational creditors (as they are not represented on the committee of creditors). Although a resolution plan may provide for any proposal for its insolvency resolution (including sale of the business as a going concern, takeover of the corporate debtor by another entity, reorganising or retiring debt etc. — all in compliance with law). The Adjudicatory Authority is also required to ensure that there were no material irregularities in the exercise by the resolution professional of his powers during the course of the corporate insolvency resolution period. Where the resolution plan meets the criteria set out in Clause 31(1), the adjudicating authority shall sanction the plan. The plan shall be binding on the corporate debtors, its creditors, employees, shareholders, guarantors and other stakeholders. Further, the moratorium imposed under section 14 ceases to have effect upon approval of the plan. However, it is important to note that the plan is binding on all the relevant stakeholders. Therefore, if a plan

requires stakeholders to do or not do certain actions for the successful implementation of a plan, it shall be binding on all the affected parties who shall be bound to undertake the actions set out in the plan. The resolution professional is also required to forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Insolvency and Bankruptcy Board of India to be kept as part of its record-keeping function.

Clause 32 deals with appeals from an order approving the resolution plan.

Clause 33 provides for the liquidation of the corporate debtor in four scenarios — (a) where the adjudicating authority is of the opinion that the resolution plan does not meet the criteria set out in Clause 30(2); (b) where the adjudicating authority does not receive a resolution plan on or before the expiry of the maximum period permitted for the completion of the insolvency resolution plan; (c) where, at any time before the confirmation of a resolution plan, the committee of creditors resolve by a 75 per cent. majority of voting shares that the corporate debtor is to be liquidated; or (d) where the corporate debtor violates the terms of the resolution plan and on an application by a person (other than the corporate debtor) whose interests are adversely affected by such violation, the adjudicating authority determines that the corporate debtor has violated the terms of the resolution plan. Thus, the Code prescribes clear triggers for initiating the liquidation process.

The liquidation order shall result in a moratorium on the initiation or continuation of any suit or legal proceeding by or against the corporate debtor except proceedings pending in appeal before the Supreme Court or the High Court. However, a liquidator may initiate a suit or legal proceeding on behalf of the corporate debtor with the prior permission of the adjudicating authority. However, this moratorium shall not prevent a secured creditor from realising its security in accordance with Clause 52.

The liquidation order shall also be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor except when the business of the corporate debtor is continued.

Further, on the appointment of a liquidator, the powers of the board of directors, key managerial personnel or partners of the corporate debtor will be vested in the liquidator. The personnel of the corporate debtor are also required to provide all cooperation and assistance to the liquidator in managing the affairs of the corporate debtor.

Clause 34 provides for the resolution professional of the corporate debtor to be appointed as the liquidator unless replaced by the adjudicating authority following the procedure laid down in Clauses 34(3)-(6). This will ensure that a person who is well acquainted with the financial position and affairs of the corporate debtor is appointed as the liquidator bringing in time efficiencies into the liquidation process. The fee that a liquidator may charge will be subject to regulations issued by the Insolvency and Bankruptcy Board of India.

Clause 35 provides a non-exhaustive list of powers and duties of the liquidator to ensure orderly completion of the liquidation proceedings. These powers include the power to appoint any professional to assist the liquidator in discharge of his duties. The liquidator also has the power to consult stakeholders entitled to distribution of assets of the corporate debtor. The adjudicating authority may also prescribe certain duties, which the liquidators must discharge.

Clause 36(1) provides for the creation of an estate comprising the assets of the corporate debtor set out in Clause 36(3). This Clause also prescribes the assets, which are to be excluded from the liquidation estate. The liquidator holds the assets of the corporate debtor for the benefit of all the creditors of the corporate debtor and shall be the fiduciary of the liquidation estate.

The Central Government has been given the power to notify assets (in consultation with the appropriate financial sector regulators), which will be excluded from the estate in the interest of efficient functioning of the financial markets.

Clause 37 provides that the liquidator shall have the power to access any information system for the purpose of admission and proof of claims and identification of assets to be held in the liquidation estate. This power shall ensure that the liquidator is able to access information held over a wide range of credit information systems including agencies of the Central, State or local government authorities and shall assist in the easier verification of claims and identification of assets and liabilities of the corporate debtor. This Clause also empowers the creditors to call for financial information of the corporate debtor from the liquidator.

Clause 38 stipulates a time period of thirty days for the collection of claims by the liquidator. It also specifies the methods by which different categories of creditors can submit and prove their claims. Notably, financial creditors can prove their claims by providing the record of the claim as stored in an information utility.

Clause 39 lays down the procedure to be followed for the verification of claims by the liquidator.

Clause 40 lays down the procedure for the admission and rejection of claims.

Clause 41 seeks to provide that according to this Clause, the liquidator shall have the responsibility of valuing the claims admitted under Clause 40 in accordance with the criteria specified for the same by the Insolvency and Bankruptcy Board of India.

Clause 42 provides a right to a creditor whose claim has been rejected to appeal to the adjudicating authority.

Clause 43 provides for the avoidance of preferences given by the corporate debtor in the run up to insolvency. This provision is intended to strike at transactions which disturb the *pari passu* distribution of assets in the liquidation of a corporate debtor. Thus, subject to the exceptions provided in this Clause 42, it invalidates any transfers of property or an interest thereof given during the relevant time to a person for the benefit of a creditor, surety or guarantor on account of antecedent debt or other liabilities which have the effect of putting such creditor, surety or guarantor in a better position than the position which he would have been in if such transfer had not been made.

It also prescribes the relevant time for avoidance of transactions, which may amount to preferences. The preference must have been given during the two years preceding the insolvency commencement date if given to related parties and one year preceding the insolvency commencement date if given to all other persons. Providing longer time periods for preferences given to related parties would be important for avoiding such transactions as a number of transactions diminishing creditor wealth entered into with related parties occur not only in the 'zone of insolvency' but as soon as early signals of trouble are visible. Related parties often have superior information of the corporate debtor's financial affairs and may collude with the corporate debtor to siphon off assets with the knowledge that the corporate debtor may become insolvent in the near future.

Clause 44 specifies the orders that may be passed in relation to the avoidance of a preferential transaction. The orders are aimed at reversing the effects of the preferential transaction and requiring the person to whom the preference is granted to pay back any gains he may have made as a result of such preference.

Clause 45 provides for the avoidance of transactions at undervalue such as (a) gifts, or (b) transactions where the value of the consideration received by the corporate debtor is significantly less than the value provided by such corporate debtor. This Clause aims to prevent the siphoning away of corporate assets by the management of the corporate debtor, which has knowledge of the corporate debtor's poor financial condition and may enter into such transactions in the vicinity of insolvency.

Clause 46 prescribes the relevant period during which a transaction must be entered into for it to be challenged as a transaction at undervalue. The relevant period is prescribed

as two years preceding the insolvency commencement date for undervalued transactions entered into with related parties and one year preceding the insolvency commencement date for undervalued transactions entered into with all other persons. The rationale for the same is that the management of the corporate debtor which has better knowledge of the corporate debtor's financial affairs may enter into transactions with related parties to strip the corporate debtor of value upon receiving early signals of financial trouble.

Clause 47 permits creditors, shareholders or partners of the corporate debtor to make an application to the adjudicating authority to set aside a transaction at undervalue where the liquidator or resolution professional has not reported such transaction to the adjudicating authority. This provision gives more teeth to Clause 45 as creditors who are incentivised to seek avoidance of such transactions are permitted to file for the same where the liquidator or resolution professional do not report the undervalued transaction.

Clause 48, similar to Clause 44, sets out the orders that may be passed by the adjudicating authority setting aside the transaction at undervalue. The orders that may be given are aimed at reversing the effect of the undervalued transaction and requiring the person who benefits from such transaction to pay back any gains he may have made as a result of such transaction.

Clause 49 strikes at transactions entered into with the intention of putting the assets of the corporate debtor beyond the reach of, or otherwise prejudicing the interests of a person who is making or may make a claim against the corporate debtor. Unlike the other avoidance provisions in the Code, Clause 49 does not set any time limit during which the transaction must have been entered into for it to be challenged as a transaction defrauding creditors.

Clause 50 strikes at extortionate credit transactions entered into by the corporate debtor in the period of two years preceding the insolvency commencement date. This provision shall enable the liquidator or the resolution professional to apply to court for credit transactions to be set aside or modified in circumstances where the corporate debtor has been required to make exorbitant payments to the lender of such credit. The provision also clarifies that any debt extended by a regulated financial service provider in compliance with law shall not be treated as an extortionate credit transaction.

Clause 51 prescribes the orders that may be passed by the adjudicating authority setting aside extortionate credit transactions. These may include restoring the position prior to such transaction, setting aside the transaction wholly or in part and modifying the terms of the transaction.

Clause 52 provides that in a liquidation proceeding, the secured creditor may choose to relinquish its security interest and participate in the distribution of assets or realise its security interest outside the liquidation proceedings. If a secured creditor decides to realise its security, the amount of insolvency resolution process costs payable by the secured creditor shall be deducted from the realised proceeds. Where there is a surplus realised from the enforcement of a security interest, the secured creditor has to account for the same to the liquidator. Similarly, if the proceeds of the realisation of the secured assets are not sufficient to repay the debts owed to the secured creditor, he may claim in accordance with the priority of payments under Clause 53 for such unpaid portion.

Clause 53 deals with distribution of assets in liquidation. Under this Clause, the costs of insolvency resolution process (including any interim finance) and liquidation costs have first priority, followed by debts owed to a secured creditor (where such creditor has relinquished his security interests) and workmen's dues for a period of twelve months preceding the liquidation commencement date. Next, wages and unpaid dues for a period of twelve months preceding the liquidation commencement date owed to employees (other than workmen) are paid. After such payment, financial debts owed to unsecured creditors are repaid. Next, any amount due to the State Government and the Central Government in respect of the whole or any part of the period of two years before the liquidation commencement date (including any amount to be received on account of the Consolidated Fund of India and the

Consolidated Fund of the State, if any) and the amount of unpaid debt owing to a secured creditor following the enforcement of security interest are repaid. Next, any remaining debts and dues are repaid and finally, surplus, if any is distributed to the shareholders or partners of the corporate debtor, as the case may be.

It may be noted that unsecured financial creditors shall be paid before the Government. This is intended to promote alternative sources of finance and the consequent development of bond markets in India.

Clause 54 provides that once the affairs of the corporate debtor have been wound up and its assets completely liquidated, the liquidator shall make an application to the adjudicating authority for the dissolution of the corporate debtor. It may be noted that this Clause also states that the distribution of assets shall be completed within such period as may be specified by the Insolvency and Bankruptcy Board of India.

Clause 55 provides for a fast track insolvency resolution process, to be completed within a period of 90 days (subject to an extension for a maximum period of forty five days) for certain categories of corporate debtors. This process will provide a speedy insolvency resolution process for corporate debtors with assets or income below a prescribed level or corporate debtors with a prescribed class of creditors or prescribed amount of debt.

Clause 56 provides for the time period within which the fast track corporate insolvency resolution process should be completed.

Clause 57 lays down the procedure for initiation of the fast track insolvency resolution process by the corporate debtor or the creditor. The corporate debtor or creditor may file an application along with proof of existence of default as recorded by an information utility along with information substantiating the eligibility of the corporate debtor for the fast track process.

Clause 58 provides that the fast track corporate insolvency resolution process shall be conducted in the same manner as the corporate insolvency resolution process under Chapter II. The provisions relating to offences and penalties under Chapter VII shall apply in the same manner to the fast track corporate insolvency resolution process.

Clause 59 provides for the initiation of voluntary liquidation proceedings by the corporate debtor which has not defaulted on any debt due to any person.

A corporate debtor being a company may choose to be wound up voluntarily under several circumstances including winding up as a result of expiry of period of operation fixed in its constitutional documents or occurrence of an event provided in its constitutional documents for its dissolution.

While the procedure to be followed for voluntary liquidation proceedings is largely similar to the procedure to be followed for insolvent liquidation, there are some differences. To initiate voluntary liquidation proceedings, where the corporate debtor is a company, the directors have to provide a declaration of solvency and a declaration that the company is not being liquidated to defraud any person. The declarations have to be accompanied by (a) the audited financial statements of the company and (b) a record of its business operations for the previous two years or the period since its incorporation. Further, a report of the valuation of the assets of the company prepared by a registered valuer has to be provided. Within four weeks of the declarations, a member's resolution in favour of the voluntary winding up of the company and appointment of an insolvency professional as the liquidator has to be passed. Further, where the corporate debtor is a company, creditors representing two-thirds in value of the debt owed to the company have to support the resolution within a specified period. The company also has to notify the Registrar of Companies and the Insolvency and Bankruptcy Board of India of the passage of the resolution and subsequent approval by the creditors.

Once the affairs of the corporate debtor have been wound up and its assets completely liquidated, the liquidator shall make an application to the adjudicating authority for the

dissolution of the corporate debtor and the corporate debtor shall be dissolved by the order of the adjudicating authority.

Other procedural details relating to voluntary liquidation shall be prescribed by the Insolvency and Bankruptcy Board of India.

Clause 60 provides that the National Company Law Tribunal shall be the adjudicating authority for insolvency resolution and liquidation of corporate debtors and also lays down the criteria for establishing the territorial jurisdiction of the Tribunal. This Clause also provides that the insolvency resolution or bankruptcy proceedings relating to a personal guarantor of a corporate debtor (in whose respect an insolvency resolution or liquidation proceeding is pending before the National Company Law Tribunal) shall also be filed before the National Company Law Tribunal.

Clause 61 provides that the appellate authority for filing an appeal from a final order of the National Company Law Tribunal shall be National Company Law Appellate Tribunal.

Clause 62 This Clause also provides that an appeal from the order of National Company Law Appellate Tribunal on a question of law shall lie before the Supreme Court. Such appeal shall be filed within a period of ninety days.

Clause 63 excludes the jurisdiction of the civil court for matters for which the National Company Law Tribunal or the National Company Law Appellate Tribunal has the jurisdiction under the Code.

Clause 64 requires the National Company Law Tribunal or the National Company Law Appellate Tribunal to record in writing the reasons for delay, in case an order is not passed within the statutory timelines.

Clause 65 prescribes penalties for fraudulent or malicious initiation of proceedings. These penalties can be imposed by the adjudicating authority.

Clause 66 Sub-clause (1) of this Clause provides for certain orders that the adjudicating authority can pass if it is found that any person has carried on the business of a corporate debtor with the intent to defraud its creditors or the creditors of another person (fraudulent trading). Such persons can be directed to make contributions to the assets of the corporate debtor. Sub-clause (2) of this Clause subjects directors or partners of corporate debtors to personal liability if they fail to take reasonable steps to minimize the potential loss to the creditors when there is no possibility of avoiding the commencement of corporate insolvency resolution process. Such directors or partners may be liable to make contributions to the assets of the corporate debtor on orders of the adjudicating authority.

Clause 67 provides for certain additional orders, which may be made in proceedings under Clause 66.

Clause 68 describes the offence of concealment of property in anticipation of insolvency and lays down the punishment for such acts.

Clause 69 describes the offence of transactions defrauding creditors and lays down the punishment for such acts.

Clause 70 prescribes punishment for misconduct by the officer of a corporate debtor during the corporate insolvency resolution process. It also prescribes punishment for deliberate misconduct by the insolvency professional.

Clause 71 prescribes punishment for falsification of books of the corporate debtor.

Clause 72 prescribes punishment for wilful and material omissions made by an officer of a corporate debtor in statements relating to affairs of the corporate debtor.

Clause 73 prescribes punishment for officers of the corporate debtor who make false representations to the creditors for obtaining their consent for any agreement in relation to the corporate debtor.

Clause 74 prescribes punishment for violating the terms of the moratorium order made under Clause 14.

Clause 75 prescribes fines for knowingly furnishing false information or knowingly not disclosing material information as part of an application under Clause 7.

Clause 76 prescribes punishment for knowingly not disclosing a dispute or repayment of debt at the time of making an application under Clause 9.

Clause 77 prescribes punishment for knowingly furnishing false information or knowingly not disclosing material information as part of an application under Clause 10.

Clause 78 of the Code sets out the applicability of Part III of the Code, the threshold of default and the authority responsible for adjudicating the matters thereunder. Part III of the Code applies to the whole of India, except the state of Jammu & Kashmir and the adjudicating authority for this part of the Code is the Debt Recovery Tribunal constituted under Recovery of Debts and Bankruptcy Act, 1993. The provisions of this part shall not apply where the amount of the default is less than rupees one thousand or such other amount as may be specified by the Central Government not exceeding rupees one lakh.

Clause 79 sets out the definitions of certain terms for the purposes of Part III of the Code.

Clause 80 lays down the eligibility criteria for the debtor that needs to be satisfied for the purposes of making an application for a fresh start process. The proposed outcome of an application for fresh start is a discharge from the *qualifying debts* (as defined) i.e. the debtor shall not be required to pay the amount comprising of the qualifying debts for which a discharge order has been made under Clause 92, and thus get a fresh start in respect of his financial affairs. This process has been conceptualized for persons who owe relatively less amount of money and have little or no income or assets to repay what they owe. The prescribed threshold limits may be revised from time to time, as per the evolving economic scenario of the country. There is a presumption that the debtor is "*unable to pay his debts*" if the conditions of Clause 83(5) are satisfied.

Clause 81 proposes that the filing of an application for fresh start shall, firstly, have a deeming effect of staying any pending legal action or proceeding in respect of the debts of the debtor and secondly, impose an embargo on the creditors of the debtor, on the commencement of any legal action or proceeding in respect of the debts of the debtor. The purpose of this interim moratorium is to provide a conducive environment for the debtor to initiate a fresh start process, and the possibility of misuse is addressed by providing for appropriate punishment and penalties. The above mentioned stand still or moratorium provisions shall have effect from the date of filing of such application upto the date on which such application is admitted by the adjudicating authority. Clause 81 also sets out the information required to be provided for the application for fresh start.

Clause 82 discusses that an application for fresh start may be made by the debtor either personally or through a resolution professional. In the former case, the regulatory board nominates a resolution professional for the process, on being directed by the adjudicating authority and in the latter case, the adjudicating authority directs the regulatory board to do a background check on the resolution professional who has filed the application. A resolution professional needs to be appointed, as he is indispensable to the fresh start process as he manoeuvres the entire process and has a substantive role to play. In both cases, the final appointment of the resolution professional is done through an order of the adjudicating authority, and on such appointment, the resolution professional is required to deposit a certain amount of performance security.

Clause 83 proposes the manner in which the resolution professional should make a report either recommending acceptance or rejection of the application for fresh start. The resolution professional shall necessarily recommend rejection of the application if any of the conditions mentioned in sub-Clause 6 are present. However, if any other condition apart

from those mentioned in sub-Clause 6 exists, the resolution professional shall exercise his discretion in recommending acceptance or rejection of such application.

Clause 84 proposes that the adjudicating authority shall make an order either accepting or rejecting the application for fresh start. The order should also mention the debts eligible for discharge under Clause 92.

Clause 85 provides that an order admitting an application for fresh start has the effect of a fresh moratorium from the date of such admission for a period of six months, or upto the date on which the order admitting such application is revoked under Clause 91, as the case may be. On the passing of such order, irrespective of the acceptance or rejection of the application, the interim moratorium under Clause 81 comes to an end. The standstill or moratorium provisions under this Clause firstly, have a deeming effect of staying any pending legal action or proceeding in respect of the debts of the debtor and secondly, impose an embargo on the creditors of the debtor on the commencement of any legal action or proceeding in respect of the debts of the debtor. The possibility of misuse of the moratorium is low for the reason that if the process is successful, though it provides debt relief, the fact that the debtor underwent a fresh start process would get etched in his publicly available financial records for a substantial period of time, which will be available to his future creditors. Additionally, in view of the fresh start process being undertaken to provide debt relief to the debtor, sub-Clause 3 sets out certain requirements to be mandatorily complied by the debtor, during the moratorium period.

Clause 86 gives the creditors a right to object to the inclusion of their debt as a qualifying debt for discharge or object to any material inconsistency in the details of such debt, by filing an application to the resolution professional for carrying out the relevant examination in this regard. The purpose is to provide at least one hearing opportunity, albeit on limited grounds, to the creditors in respect of their debts which may be written off. The resolution professional may on his own initiative, based on relevant information which may have come to his knowledge, carry out such examination as well. On the basis of the hearing, the resolution professional *inter alia* prepares an amended list of qualifying debts for the purposes of discharge under Clause 92.

Clause 87 sets out the grounds on which an aggrieved creditor or debtor may make an application to the adjudicating authority challenging the action of the resolution professional taken under Clause 86 in respect of the qualifying debts. The grounds for challenge relate only to the functioning of the resolution professional, and thus, frivolous challenges will be pre-empted.

Clause 88 sets out the duties of the debtor, which he needs to necessarily comply with, in light of the relief that he has applied for, which include providing all information in relation to his affairs, attending meetings and complying with the requests of the resolution professional. The debtor is required *inter alia* to inform the resolution professional of any material errors or omissions in any information provided by him in respect of the fresh start process, and most importantly, inform the resolution professional if his financial circumstances change, in whichever manner, to enable him to pay his debts, either partly or fully.

Clause 89 provides for the grounds and the manner in which a resolution professional can be replaced with another resolution professional in a fresh start process. If *prima facie*, as per the adjudicating authority, any of the grounds for replacement exist, a reference for initiation of the replacement process will be made to the regulatory board and in parallel, the adjudicating authority will appoint another resolution professional, on the recommendation of the regulatory board, to carry on the fresh start process. The intent is to make the process efficient and reduce the delay that may be caused due to the commencement of the replacement proceedings. If the resolution professional who has been replaced is found to have malfunctioned, the regulatory board shall take the appropriate action. However, if it is concluded that the application for replacement was frivolous, or that the grounds for replacement do not in fact exist, the resolution professional may be

compensated, and the replacement proceedings will not be noted as a part of the resolution professional's records.

Clause 90 provides that the resolution professional can apply to the adjudicating authority for directions in relation to any matter in the fresh start process, to bring about compliance with the provisions of the Code.

Clause 91 sets out the grounds on which the fresh start process can be revoked. The object of this Clause is to provide for rescinding the fresh start process when the debtor acts in violation of certain provisions of the Code or where the financial circumstances of the debtor change such that he becomes ineligible for the fresh start process.

Clause 92 proposes that at the end of the moratorium period, the adjudicating authority shall pass a discharge order, discharging the debtor of the qualifying debts mentioned in the final list prepared by the resolution professional close to the end of the moratorium period. Further, the discharge order shall also provide for the discharge of penalties, penal interest and other sums owed under any contract, in respect of the qualifying debts, from the date of the application for fresh start to the date of the discharge order. A discharge order discharges the debtor alone, and is recorded in the financial history of the debtor.

Clause 93 requires that the resolution professional adheres to the prescribed code of conduct.

Clause 94 lays down the eligibility criteria for the debtor who has committed a default for filing an application for insolvency resolution process i.e. for payment of debts (which are not excluded debts) in accordance with a negotiated repayment plan. The debtor can file an application for debts of any amount, provided the eligibility criteria mentioned is fulfilled. Where the debtor is an unlimited liability partnership firm, an application can be filed only if it is consented to by all or majority of the partners in number. The application under this Clause may be filed by the debtor personally, or through the resolution professional.

Clause 95 provides for an insolvency resolution process application to be made by the creditor(s) in a prescribed form along with certain documents and information. In relation to a partnership debt owed to the creditor, the creditor may file an application against the firm or one or more of the partners, provided that separate applications made against partners of the same firm shall be consolidated and heard together. The application under this Clause may be filed by the creditor(s) personally, or through the resolution professional.

Clause 96 proposes that the filing of an insolvency resolution process application shall firstly, have a deeming effect of staying any pending legal action or proceeding in respect of the debts of the debtor and secondly, impose an embargo on the creditors of the debtor on the commencement of any legal action or proceeding in respect of the debts of the debtor. The purpose of this interim moratorium is to provide a facilitative environment for the debtor to initiate the process, and the possibility of misuse is addressed by providing for punishment under the Code. The abovementioned standstill or moratorium provisions shall have effect from the date of filing of such application upto the date on which such application is admitted by the adjudicating authority. Where an application is filed against the debtor which is an unlimited liability partnership firm, the moratorium will apply to all the partners of such firm.

The Central Government has been given the power to notify transactions (in consultation with the appropriate financial sector regulators), which will be exempted from the moratorium in the interest of smooth functioning of the financial markets.

Clause 97 discusses that an application for insolvency resolution process may be made by the debtor either personally or through a resolution professional. In the former case, the regulatory board nominates a resolution professional for the process, on being directed by the adjudicating authority and in the latter case, the adjudicating authority directs the regulatory board to do a background check on the resolution professional. A resolution professional needs to be appointed, as he is indispensable in the insolvency resolution

process as he manoeuvres the entire process and has a substantive role to play. In both cases, the final appointment of the resolution professional is done through an order of the adjudicating authority, and on such appointment, the resolution professional is required to deposit a certain amount of performance security.

Clause 98 provides for the grounds and the manner in which a resolution professional can be replaced with another resolution professional in an insolvency resolution process. If *prima facie*, as per the adjudicating authority, any of the grounds for replacement exist, a reference for initiation of the replacement process will be made to the regulatory board and in parallel, the adjudicating authority will appoint another resolution professional, on the recommendation of the regulatory board, to carry on the process. The intent is to make the process efficient and reduce the delay that may be caused due to the commencement of the replacement proceedings. However, a slightly separate process for replacement operates if the creditors committee proposes a new resolution professional while seeking to replace the existing one. The regulatory board undertakes a background check of the proposed resolution professional and makes a recommendation, on the basis of which the adjudicating authority passes an order for appointment. If the resolution professional who has been replaced is found to have malfunctioned, the regulatory board shall take the appropriate action. However, if it is concluded that the application for replacement was frivolous, or that the grounds for replacement do not in fact exist, the resolution professional will be compensated, and the replacement proceedings will not be noted as a part of the resolution professional's records.

Clause 99 proposes the manner in which the resolution professional should make a report either recommending acceptance or rejection of the application for insolvency resolution process. In relation to the debt, its validity cannot be contested by the debtor if the debt is registered with the information utility, however, the debtor has the right to prove the repayment of any debt by presenting evidence to the resolution professional.

Clause 100 requires the adjudicating authority to pass an order either accepting or rejecting the application for insolvency resolution process within the prescribed time limit. The processes under Part III of the Code are proposed to be linear, and thus, failure of the insolvency resolution process on any of the three grounds contemplated in Clause 121 entitles the creditor to file for bankruptcy of the debtor under chapter IV of Part III of the Code. One of the grounds is as mentioned in this Clause i.e. failure to initiate the insolvency resolution process due to rejection of the application on account of the grounds mentioned in sub-Clause 4.

Clause 101 provides that an order admitting an application for insolvency resolution has the effect of a fresh moratorium from the date of such admission for a period of 180 days, or upto the date on which an order approving the repayment plan is passed by the adjudicating authority, whichever is earlier. On the passing of such order, irrespective of the acceptance or rejection of the application, the interim moratorium under Clause 96 comes to an end. The standstill or moratorium provisions under this Clause firstly, have a deeming effect of staying any pending legal action or proceeding in respect of the debts of the debtor and secondly, impose an embargo on the creditors of the debtor on the commencement of any legal action or proceeding in respect of the debts of the debtor. The possibility for misuse of the moratorium is low due to provision for punishment and also due to the fact of records of the debtor undergoing this process in his financial history, available to the public at large. The purpose of providing a moratorium is to cushion the insolvency resolution process from any disruptions from the creditor or the debtor or the pending proceedings. This Clause does not provide for restrictions on the debtor (as provided in the fresh start and the bankruptcy process), as unlike in the aforementioned processes in this process the debtor undertakes a positive obligation to repay his debts.

The Central Government has been given the power to notify transactions (in consultation with the appropriate financial sector regulators), which will be exempted from the moratorium in the interest of smooth functioning of the financial markets.

Clause 102 requires the issuance of a public notice by the adjudicating authority inviting claims from the creditors of the debtor, so that every creditor has an opportunity to be a part of the repayment plan for the payment of the debts by the debtor.

Clause 103 requires the creditors to register their claims with the concerned resolution professional by providing the relevant information. At this stage, where the debt for which the claim has been filed by the creditor is registered with an information utility, such registration is conclusive evidence of the validity of the debt and the debtor is precluded from contesting such debt. However, in the event of the debt not being registered with an information utility, the resolution professional undertakes a preliminary examination of the claims to determine their validity and genuineness, and the debtor may dispute the validity thereof.

Clause 104 proposes that the resolution professional will prepare a list of creditors on the basis of the information available from the application for initiating insolvency resolution process and the claims received and registered under Clause 103. Such a list is required for the purposes of calling creditors meetings and for matters relating to the repayment plan.

Clause 105 proposes that the debtor shall prepare a repayment plan in consultation with the resolution professional. The repayment plan will contain terms as per which the debtor will repay his debts to his creditors and it will also provide the manner in which the affairs of the debtor will be carried on. Since the creditors are not involved in the preparation of the repayment plan, the repayment plan will contain the reasons why the creditors may be expected to agree to the plan.

Clause 106 provides for the resolution professional to prepare a report on the repayment plan, to be submitted to the adjudicating authority, along with the repayment plan. If as per the report, there is a reasonable prospect of the repayment plan being approved and implemented, a meeting of the creditors will be summoned by the resolution professional. However, when there is a considerable likelihood of the plan not being approved and implemented by the creditors for any reason, the resolution professional will note the reasons therefor.

Clause 107 discusses that the notice for the creditors meeting will be issued by the resolution professional to the creditors mentioned in the list prepared by the resolution professional under Clause 104.

Clause 108 proposes that the creditor meeting will be conducted by the resolution professional, wherein the creditors may decide to approve, modify or reject the repayment plan and also decide whether to continue with the existing resolution professional, if required. Any modification of the plan prepared by the debtor, has to be consented to by the debtor.

Clause 109 provides a voting right to every creditor present in the creditors meeting, except for the creditors mentioned in sub-Clause 4, as there is a possibility that the creditors mentioned in sub sub-Clause (b) of the said sub-section may function under the influence of the debtor. The weightage of the vote shall depend on the value of the debt on the date of admission of the application for insolvency resolution process under Clause 100.

Clause 110 sets out the rights of the secured creditors in a repayment plan prepared under this chapter of the Code. A secured creditor may or may not intend to give up on his right to enforce security during the period of implementation of the repayment plan. A secured creditor who intends to vote for the approval of the repayment plan will be required to give up his right to enforce his security, as he will be considered to be participating exclusively as a creditor under the repayment plan. However, in the event the secured creditor does not intend to give up his right to enforce his security, he may vote on the repayment plan in respect of his unsecured debt, and his consent will be required if any term of the repayment plan affects his right to enforce security.

Clause 111 proposes that a 75% majority in value of the creditors who vote is required for the approval of the repayment plan or any modification thereof.

Clause 112 requires the resolution professional to prepare a report on the proceedings of the creditors meeting containing the information envisaged under sub-Clause 2, for the purposes of Clause 114.

Clause 113 mandates the resolution professional to provide a copy of the report prepared as per Clause 112, to all the stakeholders *i.e.* debtor, creditors and the adjudicating authority.

Clause 114 proposes that the adjudicating authority shall pass an order approving the repayment plan, without any modification, on the basis of the report of the creditors meeting prepared by the resolution professional under Clause 112. However, if at all any modification is required as per the adjudicating authority, a creditors committee meeting shall have to be re-convened. In the event a meeting of the creditors has not been summoned, the adjudicating authority shall pass an order on the basis of the report of the resolution professional prepared under clause 106.

Clause 115 proposes that a repayment plan approved by the adjudicating authority is binding on all the creditors mentioned in the repayment plan, whereas a plan rejected by the adjudicating authority results in the failure of the insolvency resolution process and entitles the debtor or the creditor(s) to file for bankruptcy of the debtor under chapter IV of Part III of the Code.

Clause 116 requires the resolution professional to supervise the implementation of the approved repayment plan, and for this purpose, the resolution professional may also apply to the adjudicating authority for appropriate directions.

Clause 117 provides for the issuance of notice of completion of the repayment plan to the persons bound by it as per Clause 115 along with a report on the implementation of the plan vis-à-vis the plan approved by the creditors. The time period for the completion of the repayment plan will be as per the terms of the plan itself.

Clause 118 proposes that when the time period for the validity of the repayment plan (as mentioned in the plan itself) comes to an end, and the terms of the plan are not fully implemented, it results in the plan coming to a premature end. The resolution professional is required to provide a report on such a plan, and the adjudicating authority shall pass an order stating that the plan has not been completely implemented and the debtor or the creditor whose claims have not been satisfied are entitled to file for bankruptcy of the debtor under chapter IV of Part III of the Code. The time period for the completion of the implementation of the repayment plan cannot be extended, and thus the participants are required to act in the most efficient manner for its implementation to be completed, to avoid going into the bankruptcy process. The debtor is unlikely to delay the implementation for the fear of being pushed into the bankruptcy process, however, any dilatory tactics undertaken by the creditor or the resolution professional to unreasonably delay the completion of the implementation of the plan may be addressed through penalties under criminal law and other relevant Clauses under chapter VII of the Code.

Clause 119 provides for the resolution professional applying for a discharge order for the debtor in respect of the debts mentioned in the repayment plan, as per the terms of the plan itself. The plan may provide for a discharge on the completion of the implementation of the repayment plan or for an early discharge *i.e.* discharge before the completion of the implementation of the repayment plan. Early discharge results in the legal recognition by the adjudicating authority of the successful compliance by the debtor with the terms of the repayment plan *i.e.* repayment of his debts and also, that he is no longer considered to be undergoing an insolvency resolution process.

Clause 120 proposes that the resolution professional must adhere to the prescribed code of conduct.

Clause 121 lays down three grounds on which an application for bankruptcy may be filed by the debtor or the creditor, all of which relate to the failure of the insolvency resolution

process. The initiation of a bankruptcy process on failure of the insolvency resolution process is not automatic, and an application needs to be filed within the prescribed time. The reason being that the label of bankruptcy creates a social stigma and the bankruptcy process for an individual has serious implications on his reputation and financial and personal status, and is also recorded permanently in his financial history, and may also be available to the public at large, including creditors. In relation to a debtor which is an unlimited liability partnership firm, the application under this Clause may be filed by any of the partners of the firm.

Clause 122 provides for the debtor to make an application for his own bankruptcy and lays down the information to be provided along with the application. The debtor may propose an insolvency professional to act as a bankruptcy trustee for the bankruptcy process.

Clause 123 provides for the creditor to make an application for the bankruptcy of the debtor and lays down the information to be provided along with the application. In the filing of the required information, the secured creditors shall state that if the bankruptcy order is made, they shall give up their right to enforce security, as without such declaration, the bankruptcy process may not be successful. However, if the secured creditor does not intend to give up his right to enforce security, the bankruptcy process will only deal with his unsecured debt. The creditor may propose an insolvency professional to act as a bankruptcy trustee for the bankruptcy process.

Clause 124 proposes that the filing of application for bankruptcy shall, firstly, have a deeming effect of staying any pending legal action or proceeding against any property in respect of the debts of the debtor and secondly, impose an embargo on the creditors of the debtor on the commencement of any legal action or proceeding against any property in respect of the debts of the debtor. The purpose of the interim moratorium is to provide a facilitative environment for initiation of the bankruptcy process, and the possibility of misuse is addressed by providing for punishments. The abovementioned standstill or moratorium provisions shall have effect from the date of filing of such application upto the date on which a bankruptcy order is passed by the adjudicating authority. In respect of an unlimited liability partnership firm, the moratorium shall operate against all the partners of the firm.

The Central Government has been given the power to notify transactions (in consultation with the appropriate financial sector regulators), which will be exempted from the moratorium in the interest of smooth functioning of the financial markets.

Clause 125 discusses that the applicant for the bankruptcy process may or may not propose an insolvency professional to be appointed as the bankruptcy trustee. The proposed bankruptcy trustee may also have assisted the applicant in making the application for bankruptcy. In the former case *i.e.* when the application does not contain a proposal for a bankruptcy trustee, the regulatory board nominates one for the process, on being directed by the adjudicating authority and in the latter case, the adjudicating authority directs the regulatory board to do a background check on the proposed insolvency professional. In both cases, the final appointment of the bankruptcy trustee is done through an order of the adjudicating authority, and on such appointment, the bankruptcy trustee is required to deposit a certain amount of performance security. An insolvency professional needs to be appointed as a bankruptcy trustee as he is indispensable in a bankruptcy process, as he takes over the affairs and estate of the debtor for its administration and distribution amongst the creditors.

Clause 126 proposes that the adjudicating authority shall admit an application for bankruptcy by passing an order, termed as the 'bankruptcy order', which marks the commencement of the bankruptcy process. Once the bankruptcy order is made, the debtor is referred to as the bankrupt. The adjudicating authority is not required to undertake a detailed examination for the admission of the application for the passing of the bankruptcy order, as the application for bankruptcy can be filed only on the grounds of an order passed by the adjudicating authority recording failure of the insolvency resolution process under the

Clauses mentioned in Clause 121, and each of the orders entitles the debtor or the creditor to file for bankruptcy. On the passing of the bankruptcy order, the interim moratorium under Clause 124 comes to an end.

Clause 127 lays down the period of validity of the bankruptcy order passed under Clause 126, and sets the end of such period as the date of the discharge order under Clause 138.

Clause 128 proposes that on the passing of a bankruptcy order by the adjudicating authority, the estate of the bankrupt as defined in Clause 155 shall automatically vest in the bankruptcy trustee. This Clause also clarifies that a bankruptcy order does not affect the right of a secured creditors to enforce its security interest (subject to Clause 123). In respect of an unlimited liability partnership firm, the bankruptcy order against the firm operates as an order against each of the individuals who were partners of the firm at the time of the passing of bankruptcy order.

Clause 129 requires the bankrupt to submit his statement of financial affairs to the bankruptcy trustee, to enable the trustee to prepare a list of the creditors of the bankrupt for the distribution of the estate of the bankrupt.

Clause 130 proposes that in addition to a public notice, a notice shall also be issued by the adjudicating authority to the creditors of the bankrupt emergent from the application for bankruptcy and the statement of affairs, for the purpose of providing the creditors a right to file their claims against the bankrupt with the bankruptcy trustee.

Clause 131 requires the bankruptcy trustee to register the claims received from the creditors.

Clause 132 proposes that the bankruptcy trustee shall prepare a list of creditors on the basis of all the information available to the trustee, for the purposes of calling a creditors meeting and establishing a creditors committee, which would approve or take certain decisions in relation to the bankruptcy process. At this stage, the trustee is required to undertake only a preliminary examination in respect of the validity of the debts, as the detailed examination takes place under Clause 171 of the Code, fourteen days after the preparation of the said list of creditors. A detailed examination at this stage is not feasible, as it would be time consuming and may result in the process itself getting stuck in litigation, and thus issues relating to validity of debt are postponed to be dealt at a later stage, and necessary modifications may be made to the composition of the creditors committee, as may be required.

Clause 133 requires the bankruptcy trustee to issue a notice calling for the creditors meeting, to every creditor mentioned in the list prepared under Clause 132.

Clause 134 proposes that the bankruptcy trustee will be the convener of the creditors meeting, which will *inter alia* establish a creditors committee.

Clause 135 provides a voting right to every creditor present in the creditors meeting, except for the creditors mentioned in sub-Clause 3 and sub-Clause 4. There is a possibility that the creditors mentioned in (b) of sub-Clause 4 may function under the influence of the debtor, and thus are excluded from voting. The weightage of the vote of the creditor shall depend on the value of the debt on the date of passing of the bankruptcy order under Clause 126.

Clause 136 provides that the administration and distribution of the estate of the bankrupt shall be conducted as per chapter V of Part III of the Code.

Clause 137 requires the bankruptcy trustee to prepare a report on the administration and distribution of the estate of the bankrupt, and on the completion thereof, to be presented to the creditors committee for their approval. Once the report is approved, the bankruptcy trustee can apply for a discharge order for the bankrupt.

Clause 138 provides that the bankruptcy trustee may apply to the adjudicating authority for a discharge order either on the expiry of one year from the passing of the bankruptcy

order or within two days of the approval of the report on the completion of the administration and distribution of the estate of the bankrupt under Clause 137, whichever is earlier. The effect of a discharge order is that the debtor is freed from the tag of a 'bankrupt' and the restrictions and qualifications on the bankrupt under Clause 140 and Clause 141 of the Code are no longer applicable, thus facilitating the bankrupt to resume a normal life.

Clause 139 sets out the effect of a discharge order *i.e.* release of the bankrupt from the bankruptcy debts, even if the administration and distribution of the estate of the bankrupt is not complete. However, for all practical purposes, the bankruptcy trustee continues carrying out his functions as he is not released from his office under Clause 148(3) till the actual completion of the administration and distribution of the estate of the bankrupt. Certain exceptions to the release of the bankrupt from the bankruptcy debts are also provided therein.

Clause 140 sets out the posts or positions, which the bankrupt is disqualified from holding from the bankruptcy commencement date, which are in addition to disqualifications under any other law of the land. The disqualifications are applicable, unless exempted by the adjudicating authority and cease to have effect on annulment of the bankruptcy order or the passing of a discharge order.

Clause 141 sets out the restrictions applicable on the bankrupt from the bankruptcy commencement date till the annulment of the bankruptcy order or the passing of a discharge order.

Clause 142 provides for circumstances in which a bankruptcy order may be annulled, notwithstanding a discharge order being passed.

Clause 143 provides that the bankruptcy trustee adheres to the prescribed code of conduct.

Clause 144 proposes that the fees of the bankruptcy trustee be paid from the distribution of the estate of the bankrupt, in proportion to the value thereof. The fee shall be subject to regulations made by the Insolvency and Bankruptcy Board of India.

Clause 145 provides for the grounds and the manner in which a bankruptcy trustee can be replaced with another bankruptcy trustee. An application may be filed by the creditors committee or the replacement process may be commenced by the adjudicating authority *suo motu*. A debtor is not permitted to file an application for replacement. The application is examined by the adjudicating authority, and it seeks a recommendation from the regulatory board for the appointment of a new bankruptcy trustee, and appoints such bankruptcy trustee by passing an order.

Clause 146 provides for the grounds and the manner in which a bankruptcy trustee can resign by making an application to the adjudicating authority. On the acceptance of the resignation, the adjudicating authority seeks a recommendation from the regulatory board for the appointment of a new bankruptcy trustee, and appoints such bankruptcy trustee by passing an order.

Clause 147 provides for the appointment of a bankruptcy trustee on the creation of a vacancy in the office of the trustee, not being due to resignation, replacement or temporary illness or leave. On the occurrence of the vacancy, the adjudicating authority seeks a recommendation from the regulatory board for the appointment of a new bankruptcy trustee, and appoints such bankruptcy trustee by passing an order.

Clause 148 provides for the release of the bankruptcy trustee from his office, which occurs when a new bankruptcy trustee is appointed in the event of a replacement, resignation or occurrence of vacancy under previous Clauses, or when the report on the completion of the administration and distribution of the estate of the bankrupt is approved under Clause 137. A released bankruptcy trustee is required to co-operate effectively with the incoming bankruptcy trustee for facilitating the smooth functioning of the bankruptcy process.

Clause 149 sets out the functions of the bankruptcy trustee which are required to be performed by him during the bankruptcy process.

Clause 150 sets out the duties of the bankrupt towards the bankruptcy trustee during the bankruptcy process, which include, most importantly, the duty to give notice of increase of income or property.

Clause 151 lays down the rights of the bankruptcy trustee *i.e.* the acts he can undertake in his official name.

Clause 152 proposes the powers of the bankruptcy trustee in relation to the estate and the debts of the bankrupt.

Clause 153 proposes certain acts which can be undertaken by the bankruptcy trustee only after obtaining the approval of the creditors committee. However, if the bankruptcy trustee does any such act without the approval of the creditors committee, the Clause provides for a *post facto* ratification only if the act was undertaken due to urgency and the ratification was sought without delay. The determination of whether urgent circumstances existed would be a decision of the creditors committee and thus, would depend on the facts and circumstances of a given case.

Clause 154 proposes that the vesting of the estate of the bankrupt would occur on the appointment of the bankruptcy trustee, with no requirement of any further act.

Clause 155 proposes the components of the estate of the bankrupt. It is an inclusive definition and includes property, movable and immovable, belonging to or vesting in the bankrupt, as on the bankruptcy commencement date. Any reference to property also includes the power exercisable by the bankrupt in relation to a property as might have been exercised by him for his own benefit at the commencement of his bankruptcy or before his discharge. The estate, however, excludes property held by the bankrupt on trust for any other person and the property comprised in the definition of excluded assets.

The Central Government has been given the power to notify assets (in consultation with the appropriate financial sector regulators), which will be excluded from the estate in the interest of efficient functioning of the financial markets.

Clause 156 places the obligation on the bankrupt, his banker or agent or any other person, who is in possession of the property or financial records, of delivering possession of property and financial records to the bankruptcy trustee.

Clause 157 requires the bankruptcy trustee to take control of the property and financial records of the bankrupt.

Clause 158 restricts the bankrupt from disposing off any property in the time period between the filing of the application for bankruptcy and the bankruptcy commencement date, and any such disposition would be void. The purpose of this Clause is to prevent the bankrupt from siphoning away property, which may be used for distribution amongst the creditors, and to also prevent the bankrupt from disposing any other property which may be an excluded asset. Since a moratorium is imposed on the creditors during this period, this restriction is imposed on the debtor during the same period. Purchases made in good faith, or in other words, *bona fide* purchasers are protected under this Clause.

Clause 159 sets out the treatment of after-acquired property, which has been defined in this Clause. Any property which can be categorized as an after acquired property may be claimed by the bankruptcy trustee for the estate, by issuing a notice to the bankrupt. In case the said notice is sought to be issued after the expiry of the prescribed time period, the approval of the adjudicating authority is required. *Bona-fide* purchasers are protected under this Clause.

Clause 160 sets out the treatment of onerous property, which has been defined in this Clause. The bankruptcy trustee is entitled to disclaim onerous property from the estate of the

bankrupt, to prevent the reduction in the value of the estate. The notice for disclaimer shall be issued to the bankrupt by the bankruptcy trustee, and on the issuance of such notice to the bankrupt, the onerous property is deemed to have been disclaimed.

Clause 161 provides that the bankruptcy trustee will not issue a notice under the previous Clause to disclaim any onerous property from the estate of the bankrupt if a decision on an application by an interested person in relation to whether an onerous property should be disclaimed or not, is pending. Therefore, any property which cannot be disclaimed due to non-issuance of a notice due to such an application, will be deemed to be a part of the estate of the bankrupt.

Clause 162 provides for a slightly different process for disclaimer of leasehold interest in an onerous property. A notice of disclaimer for such interest is required to be served on every interested person, and if no objection is received from such person, then the bankruptcy trustee is entitled to disclaim the leasehold interest in an onerous property. However, if an application of objection is received, the disclaimer will take effect only if the adjudicating authority has directed so under Clause 163.

Clause 163 accords a right of hearing to persons whose rights may get jeopardized due to the disclaimer of the onerous property.

Clause 164 sets out the treatment of undervalued transactions, which have been defined in this Clause. The bankruptcy trustee can make an application for obtaining an order in respect of an undervalued transaction, *inter alia* for declaring it void and vesting it with him as a part of the estate of the bankrupt, where such a transaction causes or leads to the commencement of the bankruptcy process. There is no requirement to show that the transaction was carried out with the intention to put assets out of the reach of creditors, and it is sufficient to show that the transaction was, in fact, a transaction at an undervalue. The undervalued transaction is required to have been undertaken in a specified time period and should not be in the ordinary course of business of the bankrupt, for it to be covered under this Clause. However, if an undervalued transaction is made in the ordinary course of business with an associate of the bankrupt, the exception provided under sub-clause 5 will not be available, as an associate is presumed to be aware of the financial circumstances and motives of the bankrupt.

Clause 165 sets out the treatment of transactions giving preference, which have been defined under the Clause. The bankruptcy trustee can make an application for obtaining an order in respect of a transaction giving preference, *inter alia* for declaring it void and vesting it with him as a part of the estate of the bankrupt, where such a transaction causes or leads to the commencement of the bankruptcy process. The Clause requires the transaction to have been undertaken within a specified period of time and also requires the presence of intention on the part of the bankrupt to give such a preference. Such intention is presumed if the person to whom the preference is given is an associate of the bankrupt.

Clause 166 provides for protection to the *bona fide* purchasers in relation to undervalued transactions and transactions giving preference. The protection is extended to the direct as well as indirect purchasers of the bankrupt, and protects their interest in the property acquired by virtue of such transactions, and exempts them from payment of any sum to the bankruptcy trustee in relation to any benefit received on account of such transactions.

Clause 167 sets out the treatment of extortionate credit transactions, as have been defined in this Clause. The bankruptcy trustee may apply to the adjudicating authority for obtaining an order under sub-Clause 3, *inter alia* for avoiding or varying the debts created by such transactions, such that the debts do not form part of the bankruptcy debts. Any property surrendered under this Clause shall be included in the estate of the bankrupt. An exception to such transactions is a transaction under which any debt is extended by a person regulated for the provision of financial services in compliance with the law in force in relation to such debt.

Clause 168 sets out the treatment of contracts entered into by a bankrupt with any person, prior to the bankruptcy commencement date. The party, other than the bankrupt can apply to the adjudicating authority to exempt either or both the parties from the performance of the contract along with payment of damages, and payment of such damages by the bankrupt are provable as bankruptcy debt.

Clause 169 provides that in the event of the death of the bankrupt, the bankruptcy proceeding will not abate and the bankruptcy trustee will continue with the administration and distribution of the estate.

Clause 170 provides that the administration of a deceased bankrupt shall be carried out as per the provisions of chapter V of Part III of the Code, as far as they are applicable. Any surplus, after the payment of all the debts of the bankrupt, shall be distributed amongst the legal representatives. This Clause provides that the funeral and testamentary expenses incurred shall rank equally as the secured creditors' debts under Clause 178.

Clause 171 lays down the detailed procedure for proof of debts of the creditors, to be undertaken after fourteen days of preparation of the list of creditors under Clause 132.

Clause 172 provides that a secured creditor may either realize his security or surrender his security in the bankruptcy process. In case he does the former, and any balance debt is still due, he may prove the balance debt under Clause 171, however if he does the latter, he will prove his entire debt under Clause 171.

Clause 173 provisions for setting off of certain amounts under mutual dealings between the bankrupt and the creditor, which have occurred prior to the bankruptcy commencement date. However, the set off will not be done if the creditor was aware of the pending bankruptcy application, at the time the sums became due.

Clause 174 proposes the declaration and distribution of interim dividends amongst the creditors, which have been proved, in the priority envisaged under Clause 178. However, the bankruptcy trustee is required to take into consideration the debts mentioned under sub-Clause 3 and provision for them, before declaring and distributing the interim dividend. In the event that any debt under sub-Clause 3 is not ascertainable, then the bankruptcy trustee may assign an estimated value to the sum.

Clause 175 provides for the manner of distribution of property, which by its very nature cannot be readily or advantageously sold. The distribution of such property is subject to approval by the creditors committee.

Clause 176 proposes that the bankruptcy trustee shall give a notice to the creditors of his intention to declare the final dividend, or that no further dividend will be declared (in case of interim dividend being sufficient), on realization of the entire estate of the bankrupt. The manner of distribution is set out in Clause 3, 4 and 6. Any surplus after the completion of the distribution shall be given to the bankrupt.

Clause 177 -proposes that a creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb the distribution of that dividend or any other dividend declared before his debt was proved. However, if he has not been paid dividend to which he is entitled, he shall be entitled to receive them in priority out of the money available for the payment of any further dividend. This Clause also provides that an action can lie against the bankruptcy trustee if he refuses to pay a dividend which is payable.

Clause 178 sets out the priority in which the debts of the bankrupt shall be repaid to the creditors and other stakeholders. The interests on all the debts laid down in sub-Clause 1 shall be paid out of the surplus after the payments under sub-Clause 1 have been made, and rank equally, irrespective of the nature of the debt. In case of distribution of payment of partnership debts, the partnership property will be applied in the first instance and then the separate property of the partners may be applied, whereas, in the payment of separate debts of the partners, their separate property will be applied in the first instance, and then the partnership property will be applied.

Clause 179 provides that the Debt Recovery Tribunal shall be the adjudicating authority for insolvency resolution and bankruptcy of individuals and unlimited liability partnership firms and also lays down the criteria for establishing the territorial jurisdiction of the tribunal.

Clause 180 excludes the jurisdiction of the civil court for matters for which the Debt Recovery Tribunal has the jurisdiction under *Clause 179*.

Clause 181 provides that the appellate authority for filing an appeal from a final order of the Debt Recovery Tribunal will be the Debt Recovery Appellate Tribunal.

Clause 182 proposes that the appellate authority for an appeal on a question of law against a final order of the Debt Recovery Appellate Tribunal shall be the Supreme Court.

Clause 183 requires the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal to record in writing the reasons for delay, in case an order is not passed within the specified timelines.

Clause 184 is the first offence for Part III of the Code, and proposes to punish the creditor or the debtor for providing false information during the insolvency resolution process. It also proposes to punish any creditor who promised to vote in favour of the repayment plan by accepting money, property or security from the debtor.

Clause 185 makes the resolution professional liable for imprisonment and payment of compensation, in the event he contravenes the provisions of Part III.

Clause 186 lays down offences, which if committed by the bankrupt during the bankruptcy process will render him punishable with imprisonment or fine or both.

Clause 187 makes the bankruptcy trustee liable for imprisonment and fine, in the event he fraudulently misapplied or retained or became accountable for any money or property comprised in the estate of the bankrupt or where he willfully acted so as to cause loss to the estate of the bankrupt.

Clause 188 establishes the Insolvency and Bankruptcy Board of India. It provides that the board will be a body corporate having perpetual succession and a common seal. The Board will have its head office in Mumbai, and have the power to establish offices within and outside India.

Clause 189 provides for the composition of the Insolvency and Bankruptcy Board. It provides that the Board shall consist of members who shall be appointed by the Central Government. It will have one chairperson, three *ex-officio* members from the Central Government (one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and the Ministry of Law), one member nominated by the RBI (*ex officio*), and five other members of whom at least three shall be whole time members.

It further provides that every appointment made under this Clause (other than for the *ex officio* members) shall be made after the recommendation of a selection committee. 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. The salaries and allowance, and the terms of conditions of service of all members other than the *ex-officio* members may be prescribed.

Clause 190 provides for grounds for removal of a member from office. A member may be removed from office if he (a) is an undischarged bankrupt as defined under Part III; (b) has become physically or mentally incapable; (c) has been convicted of an offence which in the opinion of the Central Government involves moral turpitude; (d) has abused his position.

It further provides that no member shall be removed from office without being given an opportunity of being heard.

Clause 191 provides that the Chairperson shall have powers of general superintendence and direction of the affairs of the board unless provided otherwise in regulations. The Chairperson may also exercise such other powers as may be delegated to him.

Clause 192 provides for the meetings of the Board. It provides that the rules of procedure in regard to transaction of business at its meeting may be issued by regulations. It further provides that in the absence of a Chairman, any other member chosen by the members shall preside over the meetings. Questions to be decided by the Board shall be decided on the basis of a majority vote. The Chairman, or the member presiding, shall have the power to cast a second or a casting vote in the event of a tie.

Clause 193 provides for a situation where a director of a company has a direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board. The director is required to disclose the nature of such interest. The interest disclosed must be recorded in the proceedings of the Board. This Clause also provides that such member shall not take part in any deliberation or decision of the Board with respect to that matter.

Clause 194 provides that no act or proceeding of the Board shall be invalid merely by reason of a) any vacancy in, or any defect in the constitution of the Board; or b) any defect in the appointment of a person acting as a member of the Board; or c) any irregularity in the procedure of the Board not affecting the merits of the case.

This Clause also provides that the Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Code. It further provides that the salaries and allowances payable to, and other terms and conditions of service of the officers and employees of the Board appointed under this Clause shall be specified by regulations.

Clause 195 states that the Central Government may by notification designate a financial sector regulator to exercise the powers and functions of the Board under this Code.

Clause 196 lays down the general powers and functions of the Board.

It further provides that the Board will have the powers of a civil court under the Code of Civil Procedure, 1908, in respect of the following matters: a) the discovery and production of books of account and other documents, at such place and time as may be specified; b) summoning and enforcing the attendance of persons and examining them on oath; c) inspection of any books, registers and other documents of any person at any place; d) issuing of commissions for the examination of witnesses or documents.

Clause 197 provides for constitution of committees as may be specified by regulations. Each committee will have a Chairperson and such other members as may be specified.

Clause 198 provides that, notwithstanding anything contained in the Code, if the Board does not perform any act within the period specified in this Code, the relevant adjudicating authority may condone the delay. The reasons for condonation of delay must be recorded in writing.

Clause 199 prohibits any person from carrying on its business as an insolvency professional agency and enroll insolvency professionals as its members except in accordance with a certificate of registration granted in this behalf by the Board.

Clause 200 lays down the principles of governing registration of insolvency professional agencies. It provides that the Board must have regard to the following principles: 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.

Clause 201 provides that the form and manner of an application for registration of an insolvency professional agency may be specified. It puts a time limit of 7 days for

acknowledgement of the application. On receipt of the application, the Board may, grant a certificate of registration to the applicant or reject, by order, such application. It provides that no order rejecting the application shall be made without giving the applicant an opportunity of being heard, and that every such order shall be communicated to the applicant within a period of fifteen days. If the application is accepted, the Board may issue a certificate of registration to the applicant in such form and manner and subject to such terms and conditions as may be specified. The Board may renew such certificate from time to time in such manner and on payment of such fee as may be specified.

It further provides that the Board may, by order, suspend or cancel the certificate of registration granted to an insolvency professional agency on any of the following grounds: (a) if it has obtained registration by making a false statement or misrepresentation or by any other unlawful means; (b) that it has failed to comply with the requirements of the regulations made by the Board or bye-laws made by the insolvency professional agency; (c) that it has contravened any of the provisions of the Code or the rules or the registration made thereunder; (d) on any other ground as may be specified. It provides that no order shall be made under this sub-section without giving the insolvency professional agency concerned a reasonable opportunity of being heard. It also provides that no such order shall be passed by any member except whole-time members of the Board.

Clause 202 provides that any insolvency professional agency which is aggrieved by the order of the Board under Clause 201 may prefer an appeal to the National Company Law Appellate Tribunal in such form and manner and within such time as may be specified.

Clause 203 provides that the Board may make regulations to specify (a) the setting up of a governing board of an insolvency professional agency; (b) the minimum number of independent members to be on the governing board of the insolvency professional agency; and (c) the number of insolvency professionals being its members who shall be on the governing board of the insolvency professional agency.

Clause 204 provides that an insolvency professional agency must perform the following functions: (a) grant membership to persons who fulfill all requirements set out in its bye-laws on payment of membership fee; (b) lay down standards of professional conduct for its members; (c) monitor the performance of its members; (d) safeguard the rights, privileges and interests of insolvency professionals who are its members; (e) suspend or cancel the member of insolvency professionals who are its members on the grounds set out in its bye-laws; (f) redress the grievances of consumers against insolvency professionals who are its members; and (g) publish information about its functions, list of its members, performance of its members and such other information as may be specified.

Clause 205 provides for the subject matter of the bye-laws of insolvency professional agencies. It states that every insolvency professional agency, after obtaining the approval of the Board, shall make bye-laws to provide for (a) the minimum standards of professional competence for its members; (b) the standards for professional and ethical conduct of its members; (c) requirements for enrolment of persons as its member which shall be non-discriminatory; (d) the manner of granting membership to persons who fulfill its requirement; (e) setting up for a governing board for its internal governance and management in accordance with the regulations specified by the Board; (f) the information required to be submitted by its members including the form and time for submitting such information; (g) the specific classes of persons to whom services shall be provided at concessional rates or for no remuneration by its members; (h) the grounds on which penalties may be levied upon its members and the manner thereof; (i) a fair and transparent mechanism for redressal of grievances against its members; (j) the grounds under which the insolvency professionals may be expelled from its membership; (k) the quantum of fee and the manner of collecting fee for inducting persons as its members; (l) the curriculum for enrolment of persons as its members which shall not be less than the curriculum specified by the Board; (m) the manner

of conducting examination of the curriculum specified by the Board for enrolment of insolvency professionals; (n) the manner of monitoring and reviewing the working of insolvency professionals who are its members; (o) the duties and other activities to be performed by its members; (p) the amount of registration bond and performance security to be furnished by an insolvency professional for the performance of his duties, the form and manner in which such registration bond and performance security shall be furnished to the insolvency professional agency; (q) the manner of conducting disciplinary proceedings against its members and imposing penalties; (r) the manner of utilising the amount received as registration bond or performance security in case where penalty imposed against any insolvency professional remains unpaid.

Clause 206 provides for posting of a performance bond. It states that on the commencement of an insolvency resolution process, where an insolvency resolution professional is appointed: (a) the insolvency professional agency where such insolvency professional is registered as a member, shall post a performance bond with the Board in such form and manner as may be specified; and (b) the insolvency professional shall deposit with the insolvency professional agency a performance security of an amount and in a manner as specified. The performance bond so posted shall provide for (a) the concerned insolvency professional agency to act as a surety for the obligations of the insolvency professional and to be jointly and severally liable for losses in relation to any person whose interests are prejudicially affected by any act of fraud or gross misconduct of the insolvency professional; and (b) the payment of claims in respect of losses mentioned in (a), which shall be equal in amount, to at least the value of the assets of the corporate debtor or the debtor as on the insolvency commencement date or the insolvency commencement date of the debtor, as the case may be.

It further provides that the performance security deposited with the insolvency professional agency under Clause (b) of sub-section (1) shall be used in discharging any obligations imposed on the insolvency professionals under this Code. It also provides that each insolvency professional agency shall by its bye-laws specify the means for determining the liability of insolvency professionals who are members of such insolvency professional agency in respect of any performance bond under this Clause.

Clause 207 prohibits any person from rendering his services as an insolvency professional under this Code without being enrolled as a member of an insolvency professional agency. It states that every insolvency professional shall, after obtaining the membership of any insolvency professional agency, register themselves with the Board within such time, in such manner and on payment of such fee, as may be specified.

Clause 208 lays down the functions and obligations of insolvency professionals. An insolvency professional must take action with respect to the following matters: (a) a fresh start process under Chapter II of Part III; (b) individual insolvency resolution process under Chapter III of Part III; (c) corporate insolvency resolution process under Chapter II of Part II; (d) individual bankruptcy process under Chapter IV of Part III; and (e) liquidation of a corporate debtor firm under Chapter III of Part II.

It also provides that every insolvency professional shall have the following obligations (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 furnish registration bond and performance security to the insolvency professional agency before providing any service under this Code; (e) 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 (f), to perform his functions in such manner and subject to such conditions as may be specified by the Insolvency and Bankruptcy Board of India..

Clause 209 prohibits any person from carrying on its business as an information utility except in accordance with a certificate of registration issued by the Board.

Clause 210 provides that the form and manner of an application for registration of an information utility may be specified. It puts a time limit of 7 days for acknowledgement of the application. On receipt of the application, the Board may, grant a certificate of registration to the applicant or reject, by order, such application. It provides that no order rejecting the application shall be made without giving the applicant an opportunity of being heard, and that every such order shall be communicated to the applicant within a period of fifteen days. If the application is accepted, the Board may issue a certificate of registration to the applicant in such form and manner and subject to such terms and conditions as may be specified. The Board may renew such certificate from time to time in such manner and on payment of such fee as may be specified.

It further provides that the Board may, by order, suspend or cancel the certificate of registration granted to an information utility on any of the following grounds: (a) if it has obtained registration by making a false statement or misrepresentation or by any other unlawful means; (b) that it has failed to comply with the requirements of the regulations made by the Board; (c) that it has contravened any of the provisions of the Code or the rules or the registration made thereunder; (d) on any other ground as may be specified. It provides that no order shall be made under this sub-section without giving the information utility concerned a reasonable opportunity of being heard. It also provides that no such order shall be passed by any member except whole-time members of the Board.

Clause 211 provides that any information utility which is aggrieved by the order of the Board under Clause 201 may prefer an appeal to the National Company Law Appellate Tribunal in such form and manner and within as may be specified.

Clause 212 provides that the Board may require every information utility to set up a governing board with such number of independent members as may be specified.

Clause 213 provides that an information utility shall provide such service as may be specified, including core services to any person if such person complies with the terms and conditions as may be specified.

Clause 214 provides that an information utility has the following obligations: (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 (2) of Clause 215, in such form and manner as may be specified; (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; (e) get the information received from various persons authenticated by all concerned parties before storing such information; (f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified; (g) publish such statistical information as may be specified.

Clause 215 provides that any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fee and submit information in such form and manner as may be specified. It also provides that a financial creditor or, as the case may be, an operational creditor shall submit financial information and information relating to secured assets in such form and manner as may be specified.

Clause 216 provides for the rights of persons submitting financial information to an information utility. They shall have the following rights: (a) to correct errors or update or modify any financial information so submitted in a manner and within such time as may be specified; and (b) to demand the information utility to remove from its records the information so submitted, with the concurrence of all counterparties to any contracts or agreements, in a manner and within such time as may be specified.

It further provides that 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.

Clause 217 provides that 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 and manner as may be specified.

Clause 218 provides for the investigation of an insolvency professional agency or its member or an information utility. It states that the Board, on receipt of a complaint under *Clause 217* or *suo motu*, has reason to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may by an order in writing, direct any person or persons authorized in this behalf (hereinafter referred to as the Investigating Authority in this Chapter) to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility. The time and manner of carrying out such inspection or investigation may be specified. 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. It may do so only after providing detailed reasons to such person. 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. The Investigating Authority shall keep in its custody the books, registers, other documents and records seized under this Clause 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. It provides that the Investigation Authority may, before returning the aforesaid documents, place identification marks on them. It also provides for submission of a detailed report of inspection or investigation to be submitted to the Board.

Clause 219 provides that the Board may, upon completion of an inspection or investigation under *Clause 218*, issue a show cause notice to such insolvency professional agency or insolvency professional or information utility, and carry out inspection of such insolvency professional agency or insolvency professional or information utility in such manner, giving such time for giving reply, as may be specified.

Clause 220 provides for the constitution of a disciplinary committee to consider the reports of the Investigating Authority submitted under sub-section (6) of *Clause 218*. The members of the disciplinary committee shall consist of whole-time members of the Board only. It also provides that on the examination of the report of the Investigating Authority, if the disciplinary committee is satisfied that sufficient cause exists, it may impose monetary penalty as specified in subsection (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. It provides that such monetary penalty must be imposed in the following manner: 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 maximum monetary penalty shall be the higher of — (a) three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention; or (b) three times the amount of the unlawful gain made on account of such contravention. In case where such loss or unlawful gain is not quantifiable, the total amount of monetary penalty imposed shall not exceed more than one crore rupees.

It also provides that, notwithstanding anything contained in the 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. 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.

It further provides that the Board may specify the following: (a) the procedure for claiming restitution under sub-section (5); (b) the period within which such restitution may be claimed; and (c) the manner in which restitution of amount may be made.

Clause 221 provides that the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Board grants of such sums of money as that Government may think fit for being utilised for the purposes of this Code.

Clause 222 provides for the establishment of the Fund of the Insolvency and Bankruptcy Board. The following shall be credited to it: (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.

The Fund so established shall be applied for meeting: 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 Clause 196; (c) the expenses on objects and for purposes authorised by this Code; and (d) such other purposes as may be prescribed.

Clause 223 provides that the 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. The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India. The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board. 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.

Clause 224 proposes to establish an Insolvency and Bankruptcy Fund for the purposes of insolvency resolution, liquidation and bankruptcy of persons covered under the Code.

Clause 225 provides that the Board shall be bound by directions on questions of policy issued by the Central Government. It shall be given, as far as practicable, an opportunity to express its views before any direction is given under sub-section (1). The decision of the Central Government on whether or not an issue is a question of policy or not shall be final.

Clause 226 provides that the Central Government has the power to supersede the Board for a period not exceeding six months as may be specified in the notification, if it is of the opinion that: (a) on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Code; or (b) the Board has persistently not complied with any direction issued by the Central Government under this Code or in the discharge of the functions and duties imposed on it by or under the provisions of this Code and as a result of such non-compliance the financial position of the Board or the administration of the Board has deteriorated; or (c) circumstances exist which render it necessary in the public interest so to do.

It also provides that upon the publication of a notification under sub-section (1) superseding the Board, — (a) all the members shall, as from the date of supersession, vacate their offices as such; (b) all the powers, functions and duties which may, by or under the provisions of this Code, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and (c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

It further provides that on the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under Clause (a) of sub-section (2), shall not be deemed disqualified for appointment. The Central Government may, at any time, before the expiration of the period of supersession, take action under sub-section (3). The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under Clause 225 and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Clause 227 Although financial service providers are excluded from the definition of corporate persons under the proposed Code, this clause allows the Central Government to recognise financial service providers or categories of financial service providers in consultation with the respective financial sector regulators and allow the insolvency resolution and liquidation proceedings of such entities to be conducted as per the process laid down in the proposed Code notwithstanding anything to the contrary contained in the Code or any other law.

Clause 228 provides that the Board shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the Central Government.

Clause 229 provides that the Board shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the Central Government. A copy of the report received shall be laid, as soon as may be after it is received, before each House of Parliament.

Clause 230 provides that the Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Code (except the powers under Clause 217) as it may deem necessary.

Clause 231 bars the jurisdiction of any civil court in respect of any matter which the Board is empowered by, or under, this Code to pass any order. It also provides that 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 the Board by, or under, this Code.

Clause 232 provides that members, officers and other employees of the Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code when acting or purporting to act in pursuance of any of the provisions of this Code.

Clause 233 provides that 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 in done or intended to be done in good faith under the Code or the rules or regulations made thereunder.

Clause 234 states that the provisions of the 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.

Clause 235 empowers the Central Government for making rules for carrying out the purposes of the Code.

Clause 236 empowers the Insolvency and Bankruptcy Board of India to make regulations for carrying out the purposes of the Code.

Clause 237 provides that every rule, regulation and bye-law made under the Code is required to be laid before each House of Parliament for a period of thirty days as soon as possible. It also empowers both Houses to make amendments to or annul such rules, regulations and bye-laws.

Clause 238 seeks to empower Central Government to remove difficulty by publishing order in the Official Gazette in case of any difficulty arises in giving effect to the provision of this Code before the expiry of five years from the date of commencement of this Code. The clause further provides that every order made to be laid before each House of Parliament as soon as possible.

Clause 239 repeals the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. It also provides that such repeal will not affect any proceedings pending before courts or tribunals under the said enactments at the time of repeal and such proceedings will be disposed of as if the said enactments have not been repealed.

Clause 240 specifies that all offences under Part II of the Code and offences relating to insolvency professionals under Part III of the Code shall be tried by Special Courts established under the Companies Act, 2013.

Clause 241 deals with transitional provisions. It provides that until the Insolvency and Bankruptcy Board is constituted or a financial sector regulator is designated under clause 195, its powers shall be exercised by the Central Government. It also authorises the Central Government to issue regulations for recognition of persons as insolvency professionals, insolvency professional agencies, and information utilities under the Code.

Clause 242 provides for amendments to the Indian Partnership Act, 1932.

Clause 243 provides for amendments to the Central Excise Act, 1961.

Clause 244 provides for amendments to the Income-Tax Act, 1961.

Clause 245 provides for amendments to the Customs Act, 1962.

Clause 246 provides for amendments to the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

Clause 247 provides for amendments to the Finance Act, 1994.

Clause 248 provides for amendments to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Clause 249 provides for amendments to the Sick Industrial Companies (Special Provisions) Repeal Act, 2003.

Clause 250 provides for amendments to the Payment and Settlement Systems Act, 2007.

Clause 251 provides for amendments to the Limited Liability Partnership Act, 2008.

Clause 252 provides for amendments to the Companies Act, 2013.

FINANCIAL MEMORANDUM

Clause 53 of the Bill seeks to revise the priority of Government dues at the time of liquidation of a corporate person.

2. Clause 178 of the Bill seeks to revise the priority of Government dues at the time of Bankruptcy of an individual or of a partnership firm.

3. Sub-clause (1) of clause 188 provides for the establishment of Insolvency and Bankruptcy Board of India consisting of a Chairperson and nine other members including three *ex officio* members.

4. Sub-clause (5) of clause 189 provides that the salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and members (other than *ex officio* members) shall be such as may be prescribed.

5. Sub-clause (2) of clause 194 provides that the Board may appoint such officers and employees as it considers necessary for efficient discharge of its functions.

6. Clause 224 of the Insolvency and Bankruptcy Code seeks to constitute an Insolvency and Bankruptcy Fund for the purposes of insolvency resolution, liquidation and bankruptcy of persons in which the Central Government shall contribute in the form of grants.

7. Paragraph 3 of the Fifth Schedule to the Code relates to amendment of section 3 of the Recovery of Debts due to the Banks and Financial Institutions Act, 1993 to insert therein sub-section (1A) to provide that the Central Government shall by notification establish such number of Debts Recovery Tribunals and its branches as it may consider necessary to exercise the powers of Adjudicating Authority under the Code.

8. Second, Third, Fourth and Sixth Schedules of the Insolvency and Bankruptcy Code seek to propose appropriate changes in the provisions of the Central Excise Act, 1994, Income-Tax 1961, Customs Act, 1962 and the Finance Act, 1994, respectively, in so far as they relate to the priority of payout in respect of tax dues payable to the Government.

9. Paragraph 4 of the Fifth Schedule to the Code relates to amendment of section 8 of the Recovery of Debts due to the Banks and Financial Institutions Act, 1993 to insert therein sub-section (1A) to provide that the Central Government shall, by notification, establish such number of Debts Recovery Appellate Tribunals to entertain appeals against the orders of the Adjudicating Authority under the Code.

10. Paragraph 34 of the Eleventh Schedule to the Code relates to amendment of section 419 of the Companies Act, 2013 to substitute sub-section (4) of section 419 of the Companies Act, 2013 to provide that the Central Government shall by notification establish such number of benches of the Tribunal as it may consider necessary to exercise the powers of Adjudicating Authority under the Code.

11. The expenditure on account of the aforesaid provisions would be incurred, but at present it is not practicable to make an estimate of the financial implication to the Consolidated Fund of India arising from this legislative proposal. In case of expenditure, to be incurred, the Department of Expenditure would be approached in accordance with the rules on the matter.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 235 of the Bill empowers the Central Government to make rules in respect of the following matters, namely:—

(a) any other instrument which shall be a financial product under clause (15) of section 3;

(b) other accounting standards which shall be a financial debt under clause (d) of sub-section (8) of section 5;

(c) the form, the manner and the fee for making application before the Adjudicating Authority for initiating corporate insolvency resolution process by financial creditor under sub-section (2) of section 7;

(d) the form in which demand notice may be made to the corporate debtor under sub-section (1) of section 8;

(e) the form, the manner and the fee for making application before the Adjudicating Authority for initiating corporate insolvency resolution process by operational creditor under sub-section (2) of section 9;

(f) the form, the manner and the fee for making application before the Adjudicating Authority for initiating corporate insolvency resolution process by corporate applicant under sub-section (2) of section 10;

(g) the persons who shall be relative under clause (ii) of the Explanation to sub-section (1) of section 79;

(h) the value of unencumbered single dwelling unit owned by the debtor under clause (e) of sub-section (13) of section 79;

(i) any other debt under clause (f) of sub-section (14) of section 79;

(j) the form, the manner and the fee for making application for fresh start order under sub-section (2) of section 81;

(k) the particulars of the debtor's personal details under clause (e) of sub-section (3) of section 81;

(l) the information and documents to support application under sub-section (3) of section 86;

(m) the form, the manner and the fee for making application for initiating the insolvency resolution process by the debtor under sub-section (6) of section 94;

(n) the form, the manner and the fee for making application for initiating the insolvency resolution process by the creditor under sub-section (6) of section 95;

(o) the particulars to be provided by the creditor to the resolution professional under sub-section (2) of section 103;

(p) the form and the manner for making application for bankruptcy by the debtor under clause (b) of sub-section (1) of section 122;

(q) the form and the manner of the statement of affairs of the debtor under sub-section (3) of section 122;

(r) the other information under clause (d) of sub-section (1) of section 123;

(s) the form, the manner and the fee for making application for bankruptcy under sub-section (6) of section 123;

(t) the form and the manner in which statement of financial position shall be submitted under sub-section (2) of section 129;

(u) the matters and the details which shall be include in the public notice under sub-section (2) of section 130;

(v) the matters and the details which shall be include in the notice to the creditors under sub-section (3) of section 130;

(w) the manner of sending details of the claims to the bankruptcy trustee and other information under sub-sections (1) and (2) of section 131;

(x) the value of financial or commercial transaction under clause (d) of sub-section (1) of section 141;

(y) the other things to be done by a bankrupt to assist bankruptcy trustee in carrying out his functions under clause (d) of sub-section (1) of section 150;

(z) the manner of dealing with the surplus under sub-section (4) of section 170;

(za) the form and the manner of proof of debt under clause (c) of sub-section (2) of section 171;

(zb) the manner of receiving dividends under sub-section (7) of section 171;

(zc) the particulars which the notice shall contain under sub-section (2) of section 176;

(zd) the salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and members of the Board under sub-section (5) of section 189;

(ze) the other functions of the Board under clause (u) of sub-section (1) of section 196;

(zf) the other funds under clause (c) of sub-section (1) of section 222;

(zg) the other purposes for which the fund shall be applied under clause (d) of sub-section (2) of section 222;

(zh) the form in which annual statement of accounts shall be prepared under sub-section (1) of section 223;

(zi) the purpose for which application for withdrawal of funds may be made, under sub-section (3) of section 224;

(zj) the manner of administering the fund under sub-section (4) of section 224;

(zk) the manner of conducting insolvency and liquidation proceedings under section 227;

(zl) the form and the time for preparing budget by the Board under section 228;

(zm) the form and the time for preparing annual report under sub-section (1) of section 229;

(zn) the time upto which a person appointed to any office shall continue to hold such office under clause (vi) of sub-section (2) of section 239.

Clause 236 of the Bill empowers the Board to make regulations in respect of the following matters, namely:—

(a) the form and the manner of accepting electronic submission of financial information under sub-clause (a) of clause (9) of section 3;

(b) the persons to whom access to information stored with the information utility may be provided under sub-clause (d) of clause (9) of section 3;

(c) the other information under sub-clause (f) of clause (13) of section 3;

(d) the other costs under clause (e) of sub-section (13) of section 5;

- (e) the cost incurred by the liquidator during the period of liquidation which shall be liquidation cost under sub-section (16) of section 5;
- (f) the other record or evidence of default under clause (a), and any other information under clause (c), of sub-section (3) of section 7;
- (g) the electronic mode of communication under sub-section (1), and clause (a) of sub-section (2), of section 8;
- (h) the other information under clause (d) of sub-section (3) of section 9;
- (i) the period under clause (a) of sub-section (3) of section 10;
- (j) the supply of essential goods or services to the corporate debtor under sub-section (2) of section 14;
- (k) the manner of making public announcement under sub-section (2) of section 15;
- (l) the manner of taking action and the restrictions thereof under clause (b) of sub-section (2) of section 17;
- (m) the other persons under clause (d) of sub-section (2) of section 17;
- (n) the other matters under clause (d) of sub-section (2) of section 17;
- (o) the other matters under sub-clause (iv) of clause (a), and the other duties to be performed by the interim resolution professional under clause (g), of section 18;
- (p) the persons who shall comprise the committee of creditors, the functions to be exercised such committee and the manner in which functions shall be exercised under the proviso to sub-section (8) of section 21;
- (q) the other electronic means by which the members of the committee of creditors may meet under sub-section (1) of section 24;
- (r) the manner of assigning voting share to each creditor under sub-section (7) of section 24;
- (s) the manner of conducting the meetings of the committee of creditors under sub-section (8) of section 24;
- (t) the manner of appointing accountants, lawyers and other advisors under clause (d) of sub-section (2) of section 25;
- (u) the other actions under clause (k) of sub-section (2) of section 25;
- (v) the form and the manner in which an information memorandum shall be prepared by the resolution professional sub-section (1) of section 29;
- (w) the other matter pertaining to the corporate debtor under the *Explanation* to sub-section (2) of section 29;
- (x) the manner of making payment of insolvency resolution process costs under clause (a), the manner of repayment of debts of operational creditors under clause (b), and the other requirements to which a resolution plan shall conform to under clause (d), of sub-section (2) of section 30;
- (y) the fee for the conduct of the liquidation proceedings and proportion to the value of the liquidation estate assets under sub-section (8) of section 34;
- (z) the manner of evaluating the assets and property of the corporate debtor under clause (c), the manner of selling property in parcels under clause (f), the manner of reporting progress of the liquidation process under clause (n), and the other functions to be performed under clause (o), of sub-section (1) of section 35;
- (za) the manner of making the records available to other stakeholders under sub-section (2) of section 35;

- (zb) the other means under clause (a) of sub-section (3) of section 36;
- (zc) the other assets under clause (e) of sub-section (4) of section 36;
- (zd) the other source under clause (g) of sub-section (1) of section 37;
- (ze) the manner of providing financial information relating to the corporate debtor under sub-section (2) of section 37;
- (zf) the form, the manner and the supporting documents to be submitted by operational creditor to prove the claim under sub-section (3) of section 38;
- (zg) the time within which the liquidator shall verify the claims under sub-section (1) of section 39;
- (zh) the manner of determining the value of claims under section 41;
- (zi) the manner of relinquishing security interest to the liquidation estate and receiving proceeds from the sale of assets by the liquidator under clause (a), and the manner of realising security interest under clause (b) of sub-section (1) of section 52;
- (zj) the other means under clause (b) of sub-section (3) of section 52;
- (zk) the manner in which secured creditor shall be paid by the liquidator under sub-section (9) of section 52;
- (zl) the period under sub-section (1) of section 53;
- (zm) the other means under clause (a) and the other information under clause (b) of section 57;
- (zn) the conditions and procedural requirements under sub-section (2) of section 59;
- (zo) the details and the documents required to be submitted under sub-section (7) of section 95;
- (zp) the other matters under clause (c) of sub-section (4) of section 105;
- (zq) the manner and form of proxy voting under sub-section (4) of section 107;
- (zr) the manner and form of proxy voting under sub-section (3) of section 133;
- (zs) the fee to be charged under sub-section (1) of section 144;
- (zt) the salaries and allowances payable to, and other terms and conditions of service of, officers and employees of the Board under sub-section (3) of section 194;
- (zu) the other information under clause (i) of sub-section (1) of section 196;
- (zv) the intervals in which the periodic study, research and audit of the functioning and performance of the insolvency professional agencies, insolvency professionals and information utilities under clause (r) of sub-section (1) of section 196;
- (zw) the place and the time for discovery and production of books of account and other documents under clause (i) of sub-section (3) of section 196;
- (zx) the other committees to be constituted by the Board and the other members of such committees under section 197;
- (zy) the other persons under clause (b) and clause (d) of section 200;
- (zz) the form and the manner of application for registration, the particulars to be contained therein and the fee it shall accompany under sub-section (1) of section 201;
- (zza) the form and manner of issuing a certificate of registration and the terms and conditions thereof, under sub-section (3) of section 201;
- (zzb) the manner of renewal of the certificate of registration and the fee therefor, under sub-section (4) of section 201;

(zzc) the other ground under clause (d) of sub-section (5) of section 201;

(zzd) the form of appeal to the National Company Law Appellate Tribunal, the period within which it shall be filed under section 202;

(zze) the other information under clause (g) of section 204;

(zzf) the other grounds under Explanation to section 205;

(zzg) the setting up of a governing board for its internal governance and management under clause (e), the curriculum under clause (l), the manner of conducting examination under clause (m), of section 205;

(zzh) the form and manner of posting performance bond with the Board under clause (a), and the amount of performance security and the manner of depositing of performance security under clause (b), of sub-section (1) of section 206;

(zzi) the means for determining the liability of insolvency professionals under sub-section (4) of section 206;

(zzj) the time within which, the manner in which, and the fee for registration of insolvency professional under sub-section (2) of section 207;

(zzk) the manner and the conditions subject to which the insolvency professional shall perform his function under clause (f) of sub-section (2) of section 208;

(zzl) the form and manner in which, and the fee for registration of information utility under sub-section (1) of section 210;

(zzm) the form and manner for issuing certificate of registration and the terms and conditions thereof, under sub-section (3) of section 210;

(zzn) the manner of renewal of the certificate of registration and the fee therefor, under sub-section (4) of section 210;

(zzo) the other ground under clause (d) of sub-section (5) of section 210;

(zzp) the form, the period and the manner of filing appeal to the National Company Law Appellate Tribunal under section 211;

(zzq) the number of independent members under section 212;

(zzr) the services to be provided by information utility and the terms and conditions under section 213;

(zzs) the form and manner of accepting electronic submissions of financial information under clause (b) and clause (c) of section 214;

(zzt) the minimum service quality standards under clause (d) of section 214;

(zzu) the information to be accessed and the manner of accessing such information under clause (f) of section 214;

(zzv) the statistical information to be published under clause (g) of section 214;

(zzw) the form, the fee and the manner for submitting or accessing information under sub-section (1) of section 215;

(zzx) the form and manner for submitting financial information and information relating to assets under sub-section (2) of section 215;

(zzy) the manner and the time within which errors may be corrected, updated or modified under clause (a) of sub-section (1) of section 2016;

(zzz) the extent, the circumstances and the manner for providing information under sub-section (2) of section 216;

(zzza) the form and manner of filing complaint under section 217;

(zzzb) the time and manner of carrying out inspection or investigation under sub-section (2) of section 218;

(zzzc) the manner of carrying out inspection of insolvency professional agency or insolvency professional or information utility and the time for giving reply under section 219;

(zzzd) the other funds of clause (c) of sub-section (1) of section 222;

3. The matters in respect of which rules may be made or notification issued are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Fund, and for matters connected therewith or incidental thereto.

*(Shri Arun Jaitley, Minister of Finance, Corporate Affairs and
Information & Broadcasting)*