

THE INSOLVENCY AND BANKRUPTCY CODE 2016

A dawn of new era

S Dhanapal
Sr. Partner

S Dhanapal & Associates

Practising Company Secretaries
Chennai



THE INSOLVENCY AND BANKRUPTCY CODE 2016

(An insight on notified provisions)

A CODE THAT PROMISES VIVID FUTURE TO DEBT RECOVERY

POSITION ON INSOLVENCY BEFORE INTRODUCTION OF THIS CODE

The Existing insolvency laws and laws relating to recovery of loans enacted for the purpose of companies and banks namely the Sick Industrial Companies Act, The Recovery of Debt Due to Banks & Financial Institutions Act, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Companies Act 2013/Companies Act 1956 etc are not providing speedy remedy to recover the loans and debts due from debtors and in a way it has failed to improve the recovery position and possibility from debtor by the creditor.

The position remain the same in case of Individuals, sole proprietorships and partnership firms where the laws governing the insolvency namely The Presidency Towns Insolvency Act, 1909 and The Provincial Insolvency act, 1920 were not providing proper solution to recover the loans and debts due from individual and partnership debtors.

Therefore, it is felt by the Government that there is a need to have a consolidated law or code to govern and regulate the matters of recovery of money from debtors who have borrowed and failed to repay debts even after it becomes due more particularly when those debts are not secured.

If we look at the provisions in the Constitution of India, the item "Bankruptcy & Insolvency" is stated as Entry 9 in List III - Concurrent List, (Article 246–Seventh Schedule to the Constitution) that is to say both Central and State Governments can make laws relating to this subject.

It appears as follows:

LEGISLATIVE AUTHORITY UNDER CONSTITUTION OF INDIA RELATING TO REGULATION, WINDING UP OF CORPORATIONS AND INSOLVENCY & BANKRUPTCY		
Entry 43	List I	Regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies
Entry 44	List I	Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.
Entry 32	List II	Incorporation, regulation and winding up of corporations, other than those specified in List I
Entry 9	List III	Bankruptcy & Insolvency

From the above it can be seen that, laws relating to Insolvency and Bankruptcy can be legislated by both Central & State Governments. Whereas, since laws relating to regulation and winding up of companies / corporations / Banking are coming in List I, it appears laws can be legislated only by Central Government leaving laws relating to regulation and winding up of corporations, other than those specified in List I to State Governments' Legislative Power.

THE INSOLVENCY AND BANKRUPTCY CODE, 2015 – LEGISLATIVE HISTORY

The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha on 21 December, 2015 and the same was referred to Joint Committee on The Insolvency and Bankruptcy Code, 2015 for examination. The report of the Joint committee was presented in Lok Sabha and was laid down in Rajya Sabha on April 28, 2016. The code has been passed by Lok Sabha on May 05, 2016 and by Rajya Sabha on May 11, 2016.

POSITION ON INSOLVENCY AFTER INTRODUCTION OF THIS CODE

It is stated in the preamble of the Code that the law is enacted 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. Therefore upon the code becoming into force, various remedies as stated under the following laws will be coming under one roof:

- a) SICA, 1985
- b) Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- c) SARFAESI Act, 2002; and
- d) Companies Act, 2013

The Code seeks to amend the following 11 enactments while repealing Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920;

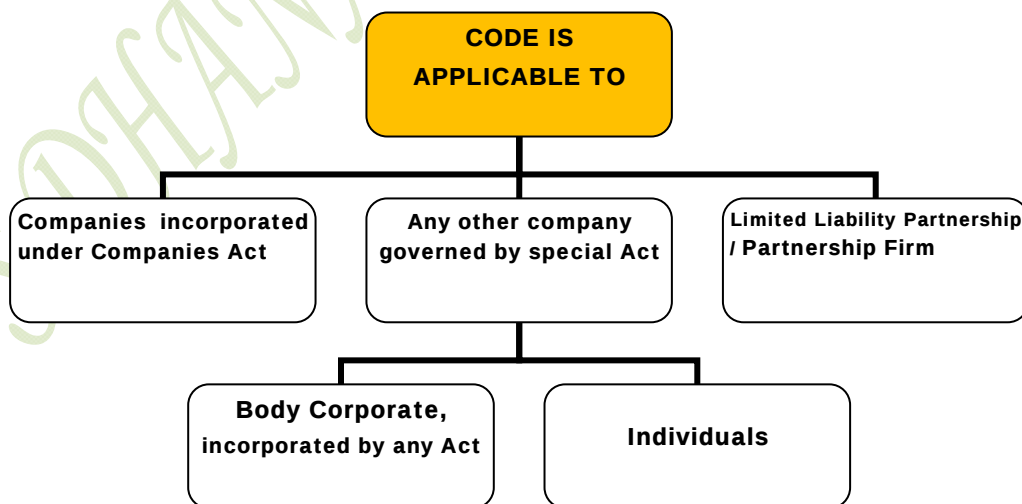
- The Indian Partnership Act 1932
- The Central Excise Act 1944
- The Income Tax Act 1961
- The Customs Act. 1962
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- The Finance Act 1994
- The Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002
- Sick Industrial Companies (Special Provisions) Repeal Act, 2003
- The payment and Settlement Systems Act 2007
- The Limited Liability Partnership Act 2008
- Companies Act, 2013 / 1956

It is stated in the Press information released by Ministry of Finance dated 11th May 2016 that the objective of this new law is to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders by consolidating

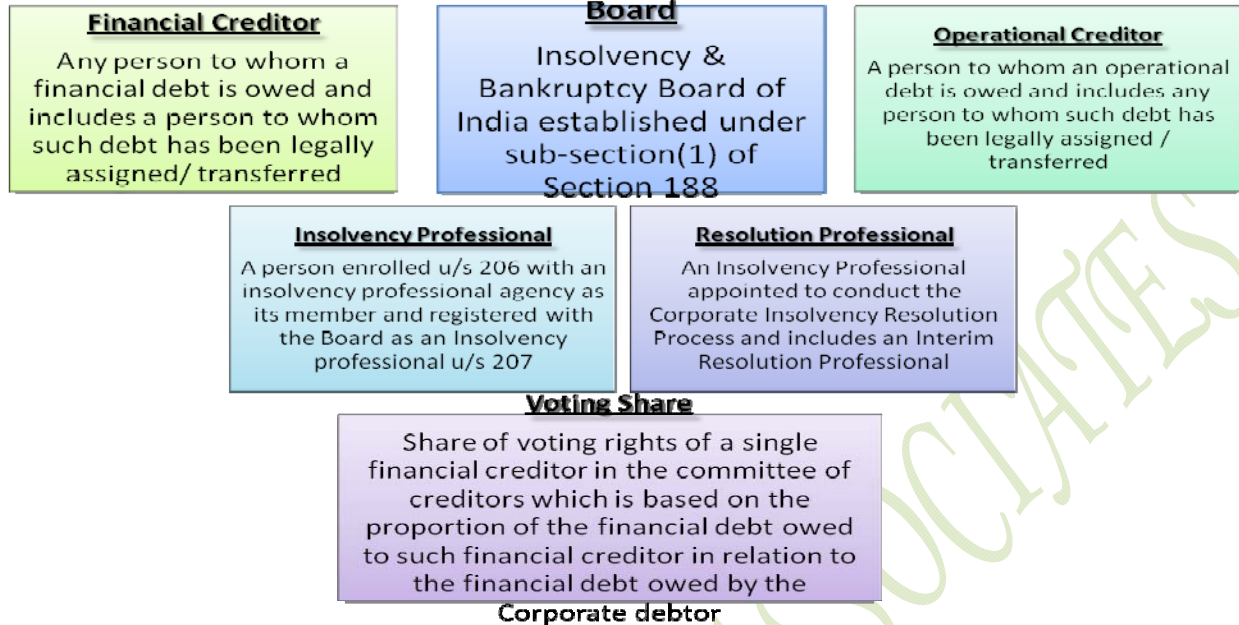
and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner and for maximization of value of assets of such persons and matters connected therewith or incidental thereto and the salient features of the law are as follows:

- i- Clear, coherent and speedy process for early identification of financial distress and resolution of companies and limited liability entities if the underlying business is found to be viable.
- ii- Two distinct processes for resolution of individuals, namely- “Fresh Start” and “Insolvency Resolution”.
- iii- Debt Recovery Tribunal and National Company Law Tribunal to act as Adjudicating Authority and deal with the cases related to insolvency, liquidation and bankruptcy process in respect of individuals and unlimited partnership firms and in respect of companies and limited liabilities entities respectively.
- iv- Establishment of an Insolvency and Bankruptcy Board of India to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.
- v- Insolvency professionals would handle the commercial aspects of insolvency resolution process. Insolvency professional agencies will develop professional standards, code of ethics and be first level regulator for insolvency professionals members leading to development of a competitive industry for such professionals.
- vi- Information utilities would collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.
- vii- Enabling provisions to deal with cross border insolvency.

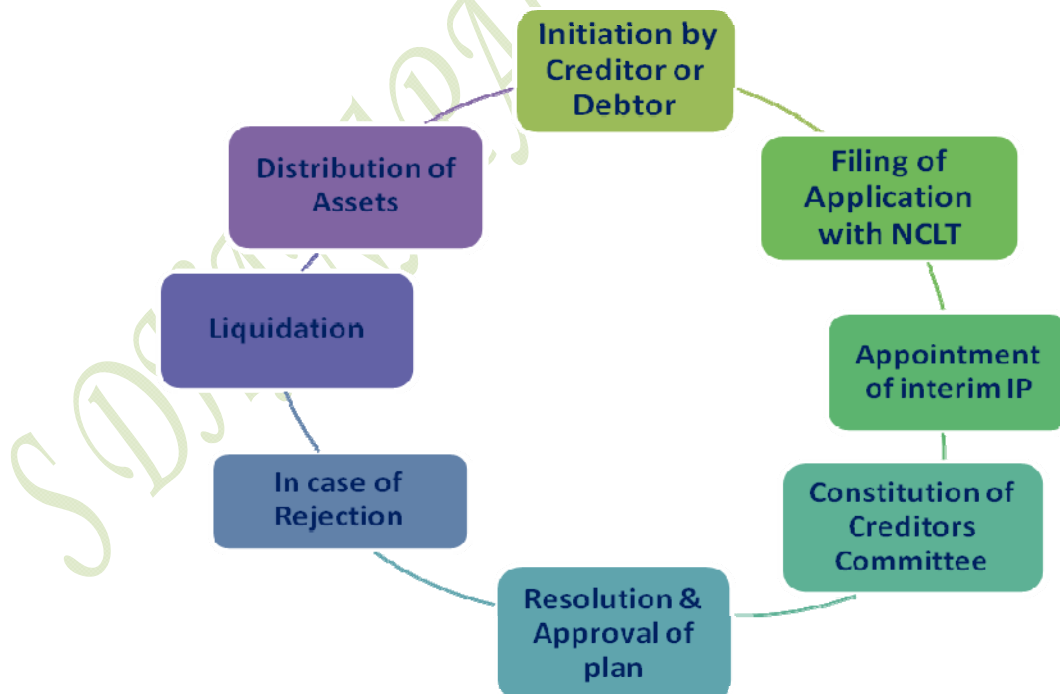
The Insolvency and Bankruptcy Code, 2016, is divided into 5 parts. It consists of 238 clauses and 1 schedule. Part I – Preliminary Part II – Insolvency Resolution and Liquidation for Corporate Persons Part III – Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms Part IV – Regulation of Insolvency Professionals, Agencies and Information Utilities Part V – Miscellaneous Code and this code extends to the whole of India, but Part III i.e. insolvency Resolution and Bankruptcy for individuals and Partnership Firms will not extend to Jammu & Kashmir.



FEW IMPORTANT DEFINITIONS UNDER THE CODE FOR CORPORATE INSOLVENCY



Key Steps of Insolvency Code



TIMELINES (AS STIPULATED IN THE CODE)

Particulars	Timelines(days)
Filing of Insolvency application – Details of what needs to be mentioned in the application has been specified	X
Adjudicating Authority- admission or rejection of application - Before rejecting an application, the Adjudicating Authority shall give a notice to the applicant to rectify the defect in the application within 7 days. If admitted, Adjudicating Authority to declare moratorium upon admission.	X+14
Insolvency Resolution Professional appointment	(X+14) + 14
Constitution of Committee of Creditors Appointment of final resolution professional	(X+14) + 14 + 10
Submission of Resolution plan If approved- Moratorium ceases to have effect If rejected- Initiation of Liquidation Insolvency Resolution Process Completion	(X+14) + 180
Insolvency Resolution Process Extension	(X+14) + 180 +90

NOTIFICATION OF FEW PROVISIONS OF THE CODE RECENTLY BY MINISTRY OF CORPORATE AFFAIRS;

Ministry of Corporate Affairs has recently notified on 5th of August, 2016 the provisions of sections 188 to 194 (both inclusive). Sections 188 to 194 (both inclusive) of the Insolvency and Bankruptcy Code, 2016 and these sections fall under Chapter I of Part IV (Regulation of Insolvency Professionals, Agencies and Information Utilities) of the Code and relate to the establishment, incorporation and constitution of The Insolvency and Bankruptcy Board of India ("Board"), and include provisions relating to powers of the chairman of the Board and meetings of the Board and also on 19th August 2016 following sections of the said Code shall come into force:—

SECTIONS NOTIFIED on 19th August 2016

Section 3 -	section 221;	sub-section (1) and clause (zd) of sub-section(2)
(i) clause (1);	section 222;	of sec 239;
(ii) clause (5);	section 225;	
(iii) clause (22);	section 226;	sub-section (1) and clause (zt) of sub-section (2)
(iv) clause (26);	section 230;	of section 240;
(v) clause (28);	section 232;	
(vi) clause (37);	section 233;.	section 241; and section 242

SECTION NO.	HEADING	PROVISIONS OF SECTION	EFFECTIVE DATE
3(1)	DEFINITIONS	"Board" means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 188	19 th August 2016
3(5)	DEFINITIONS	"Chairperson" means the Chairperson of the Board	19 th August 2016
3(22)	DEFINITIONS	"notification" means a notification published in the Official Gazette, and the terms "notified" and "notify" shall be construed accordingly	19 th August 2016
3(26)	DEFINITIONS	"prescribed" means prescribed by rules made by the Central Government	19 th August 2016
3(28)	DEFINITIONS	"regulations" means the regulations made by the Board under this Code	19 th August 2016
3(37)	DEFINITIONS	words and expressions used but not defined in this Code but defined in the Indian Contract Act, 1872, the Indian Partnership Act, 1932, the Securities Contract (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts.	19 th August 2016
188	ESTABLISHMENT AND INCORPORATION OF BOARD	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. (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 shall, by the said name, sue or be sued. (3) The head office of the Board shall be at such place in the National Capital Region, as the Central Government may, by notification, specify.	5 th August 2016

		Explanation.—For the purposes of this section, the expression "National Capital Region" shall have the same meaning as assigned to it in clause (f) of section 2 of the National Capital Region Planning Board Act, 1985. (4) The Board may establish offices at other places in India.	
189	CONSTITUTION OF BOARD.	189. (1) The Board shall consist of the following members who shall be appointed by the Central Government, namely:— (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; (d) five other members to be nominated by the Central Government, of whom at least three shall be the whole-time members. <i>*(Recently the Ministry of Corporate Affairs issued advertisement inviting application for the post of Chairperson and three whole time Members)</i> (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, accountancy or administration. (3) The appointment of the Chairperson and the members of the Board 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) Cabinet Secretary—Chairperson; (b) Secretary to the Government of India to be nominated by the Central Government—Member; (c) Chairperson of the Insolvency and Bankruptcy Board of India (in case of selection of members of the Board)—Member; (d) three experts of repute from the field of finance, law, management, insolvency and related subjects, to be nominated by the Central Government—Members (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) 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. <i>*(The Ministry of Corporate Affairs has recently released the Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and Members) Rules, 2016.</i>	5 th August 2016
190	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 the Central Government involves moral turpitude; (d) has, so abused his position as to render his continuation in office detrimental to the public interest: Provided that no member shall be removed under clause (d) unless he has been given a reasonable opportunity of being heard in the matter.	5 th August 2016

191	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. .	5 th August 2016
192	MEETINGS OF BOARD.	(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. (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.	5 th August 2016
193	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.	5 th August 2016
194	VACANCIES, ETC., NOT TO INVALIDATE PROCEEDINGS OF BOARD, 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 (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 in such manner as may be specified. (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 (2) shall be such as may be specified by regulations.	5 th August 2016
221	GRANTS BY CENTRAL GOVERNMENT	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.	19 th August 2016
222	BOARD'S FUND	(1) There shall be constituted a Fund to be called the Fund of the Insolvency and Bankruptcy Board and there shall be credited thereto— (a) all grants, fees and charges received by the Board under this Code; (b) all sums received by the Board from such other sources as may be decided upon by the Central Government; (c) such other funds as may be specified by the Board or prescribed by the Central Government. (2) The Fund shall be applied for meeting— (a) the salaries, allowances and other remuneration of the members, officers and other employees of the Board; (b) the expenses of the Board in the discharge of its functions under section 196;	19 th August 2016

		(c) the expenses on objects and for purposes authorised by this Code; (d) such other purposes as may be prescribed.	
225	POWER OF CENTRAL GOVERNMENT TO ISSUE DIRECTIONS.	(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: 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.	19 th August 2016
226	POWER OF CENTRAL GOVERNMENT TO SUPERSEDE BOARD.	(1) If at any time the Central Government is of opinion— (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 noncompliance the financial position of the Board or the administration of the Board has deteriorated; or (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. (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; (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. (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. (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.	19 th August 2016

230	DELEGATION	The Board may, by general or special order in writing delegate to any member or officer of the Board 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 240 as it may deem necessary.	19 th August 2016
232	MEMBERS, OFFICERS AND EMPLOYEES OF BOARD TO THE PUBLIC SERVANTS.	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.	19 th August 2016
233	PROTECTION OF ACTION TAKEN IN GOOD FAITH	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 this Code or the rules or regulations made thereunder.	19 th August 2016
239(1)	POWER TO MAKE RULES	(1) The Central Government may, by notification, make rules for carrying out the provisions of this Code.	19 th August 2016
239(2)(zd)		(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;	19 th August 2016
240(1)	POWER TO MAKE REGULATIONS.	(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.	19 th August 2016
240(2)(zt)		(zt) the appointment of other officers and employees under sub-section (2), and the salaries and allowances payable to, and other terms and conditions of service of, such officers and employees of the Board under sub-section (3), of section 194;	19 th August 2016
241	RULES AND REGULATIONS TO BE LAID BEFORE PARLIAMENT.	Every rule and every regulation 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 in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.	19 th August 2016
242	POWER TO REMOVE DIFFICULTIES.	(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. (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.	19 th August 2016

CHART CONSISTING OF EXISTING PROVISIONS OF COMPANIES ACT 2013 TO BE AMENDED / REPLACED WITH THE PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE (IBC) 2016 ON NOTIFICATION AS FOLLOWS:

Sl	Inserted /Amended Sections of Companies Act, 2013	Impact in the provisions of the Companies Act 2013 which stands modified as per Provisions of Eleventh Schedule of Insolvency and Bankruptcy Code 2016	Existing provisions of Companies Act, 2013	Provisions of Eleventh Schedule of Insolvency Code amend Companies Act 2013 as under.
1	2(23)	Definition of Company Liquidator – Clause 23 is getting substituted	Liquidator can be appointed by the Tribunal in case of winding up by tribunal or the Company / creditors in case of voluntary winding up	Liquidator can be appointed only by the Tribunal in accordance with Section 275
2	2(94A)	New clause 94A inserted in the Companies Act 2013 as per the Eleventh Schedule of The Insolvency and Bankruptcy Code 2016 to bring liquidation under IBC, 2016 also within the meaning of Winding up under Companies Act 2013.	Originally winding up only was covered under Companies Act, 2013	Winding up also includes liquidation under IBC, 2016 as per new clause 2(94A) which stand inserted in CA 2013.
3	8(9)	Transfer of excess assets of Section 8 Company, in case of winding up / dissolution. For the words “the Rehabilitation & Insolvency Fund formed u/s 269”, the words “Insolvency & Bankruptcy Fund formed u/s 224 of the IBC, 2016” is Substituted	“the Rehabilitation & Insolvency Fund formed u/s 269”,	the words “Insolvency & Bankruptcy Fund formed u/s 224 of IBC, 2016” stand inserted in Section 8(9) of Companies Act 2013.
4	66(8)	Reduction of Share Capital: For the words “is unable, within the meaning of section 271(2), to pay the amount of his debt or claim” the words “Commits default, within the meaning of section 6 of the IBC, 2016, in respect of the amount of his debt or claims” is substituted	Section 66(8) triggers only when commission of default in payment of debt / claim of a creditor occurs.	the words “Commits default, within the meaning of section 6 of the IBC, 2016, in respect of the amount of his debt or claims” stand inserted in Section 66(8) of CA 2013.
5	77(3)	Duty to Register Charges etc After the words “the liquidator” the words “appointed under this Act or the IBC, 2016” is inserted	Unregistered charges shall not be considered by the liquidator appointed under Companies Act, 2013	Unregistered charges shall not be considered by the liquidator appointed under CA, 2013 as well as the liquidator appointed under the IBC, 2016
6	117 (3)(f)	Resolutions & agreements to be filed: For the words “section 304” the words “section 59 of the IBC, 2016” is substituted as Chapter XX, Part II containing section 304 to 323 dealing with voluntary	section 304 provided for circumstances where a company can wound up voluntarily	The words “section 59 of the IBC, 2016” stand inserted in Sec 117 (3)(f) of CA 2013 in place of words “section 304” as

		winding up is fully omitted.		Section 59 of IBC, 2016 provides for Voluntary liquidation of companies.
7	224(2)	<u>Winding up in pursuance to the Inspectors Report:</u> After the words “wound up under this Act” the words “or under the IBC, 2016” is substituted	Section 224(2) provides for <u>Winding up in pursuance to the Inspectors Report under this Act</u>	The words “or under the IBC, 2016” stand inserted in Section 224(2) of CA 2013 in place of “wound up under this Act”
8	230(1)&(6)	<u>Power to compromise or make arrangements with creditors and members</u> Everywhere after the word “Liquidator” the words “appointed under this Act or under the IBC, 2016” is inserted.	Section 230(1)&(6) provides for <u>Power to compromise or make arrangements with creditors and members.</u>	The words “appointed under this Act or under the IBC, 2016” stand inserted in Section 230 (1) & (6) of CA 2013.
9	249 (1)(e)	<u>Restriction on making application u/s 248 in certain situations, for removal of name of the Company</u> For the word “is being wound up under Chapter XX, whether voluntarily or by the Tribunal” the words “is being wound up under Chapter XX of this Act or under the IBC, 2016” is substituted	Section 249 (1) (e) envisages Restriction on making application u/s 248 in certain situations, for removal of name of the Company is being wound up under Chapter XX, whether voluntarily or by the Tribunal	the words “is being wound up under Chapter XX of this Act or under the IBC, 2016” stand inserted in Section 249 (1)(e) of CA 2013 to replace the words “is being wound up under Chapter XX, whether voluntarily or by the Tribunal”
10	253-269	<u>Chapter XIX – fully omitted</u>	CHAPTER XIX comprising Section 253 – 269 deals with Revival & rehabilitation of Sick Companies.	Chapter XIX of CA 2013 stands fully omitted as equivalent provisions were got incorporated in the Code.
11	270	<u>Modes of winding up</u> Fully substituted as follows; "270. The provisions of Part I shall apply to the winding up of a company by the Tribunal under this Act."	Provisions of the Section 270 envisage as under; Winding up: 1. By Tribunal 2. Voluntary	The new provisions of Section 270 enable winding up of a company only by the Tribunal by bringing out the scope of Voluntary Winding up outside the purview of Companies Act 2013.
12	271	<u>PART I.—Winding up by the Tribunal</u> Circumstances in which company may be wound up by Tribunal – (a) if the company is unable to pay its debts; (b) the company by special resolution (c) if the company has acted against the interests of	Circumstances specified under Clause (b) (c) (e) (f) and Clause (g) in which company may be wound up by Tribunal under Section 271 of CA 2013 are retained.	Circumstances specified under Clause (a) and Clause (d) in which company may be wound up by Tribunal Under Section 271 of CA 2013 was removed by virtue of

		the sovereignty and integrity of India etc.... (d) winding up of the company under Chapter XIX; (e) application by the Registrar or the Tribunal (f) default in filing its financial statements or annual returns for preceding five years; or (g) just and equitable that the company		amendments brought out by IBC 2016
13	272	Section 272 - Petition for winding up by– (a) the company; (b) any creditor or creditors, (c) any contributory or contributories; (d) all or any of the above together; (e) the Registrar; (f) any person authorised by the Central Government (g) in a case falling under clause (c) of sub-section (1) of section 271, by the Central or State.	Persons specified under Clause (a) (c) (e) (f) and Clause (g) of Section 272 of CA 2013 who were earlier entitled to present petition for the company to be wound up by Tribunal under Section 271 of CA 2013 are permitted to enjoy the same privilege.	Persons specified under Clause b of Section 272 of CA 2013 who was earlier entitled to present petition for the company to be wound up by Tribunal under Section 271 of CA 2013 is now permitted to enjoy the such privilege ONLY under IBC 2016.
14	275(2)	<u>Appointment of Liquidator Section 275(2)</u> <i>Sub section (2) is substituted which enable appointment of</i> Liquidator by the Tribunal only from amongst the Insolvency Professional Agency under the IBC, 2016.	Section 275(2) envisages Appointments of Liquidator and permit such appointment only from panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants.	Section 275(2) is substituted enabling appointment of Liquidator by the Tribunal only from amongst the Insolvency Professional Agency to be constituted under the IBC, 2016.
15	275(4)	Removal of liquidator by Central government - Section 275(4) Removal of name of any person by Central Government from the panel of liquidators on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence.	Lifted the right of removal of liquidator by Central government who earlier has authority to remove the name of any person from the panel of liquidators on grounds of misconduct etc	The Code contemplates Establishment of an Insolvency and Bankruptcy Board of India to exercise regulatory oversight over insolvency professionals, insolvency professional agencies who in turn will develop professional standards, code of ethics for insolvency professionals,
16	280	Jurisdiction of Tribunal (Section 280) (a) any suit or proceeding by or against the	Section 280 originally envisaged Tribunal also to	IBC 2016 has introduced changes such a way any

		company; (b) any claim made by or against the company, (c) any application made under section 233; (d) any scheme submitted under section 262; (e) any question of priorities or any other question (Fully substituted with same provisions and removed clause (d) alone in Sec 280)	have Jurisdiction on the matters relating to scheme to be submitted u/s 262 (now removed clause (d) outside purview of Tribunal under CA 2013	scheme submitted under section 262 falls outside purview of Tribunal under CA 2013 u/s 262– <i>as the entire chapter XIX relating to revival & rehabilitation of sick companies is omitted.</i>
17	289	<u>Power of tribunal on application for stay of winding up (Section 289) Fully Omitted</u> It was contemplated that the Tribunal can entertain in case any application is filed by promoter or shareholder for rehabilitation of company after winding order is passed.	Power of Tribunal on application for stay of winding up is now removed as provisions of Section 289 of the CA 2013 is fully omitted.	IBC 2016 has introduced changes such a way Power of Tribunal on application for stay of winding up falls outside purview of Tribunal under CA 2013 <i>as matter relating to rehabilitation is covered under IBC 2016.</i>
18	304-323	<u>Chapter XX, Part II containing section 304 to 323 dealing with voluntary winding up is fully omitted.</u> It was contemplated that the Tribunal can entertain in case any matters of <u>voluntary winding up</u> as per provisions of Section 304-323 of the CA 2013. But after advent of Insolvency code 2016, the matters pertaining <u>voluntary winding up appears to be dealt with under the provisions of IBC 2016 and there hence omitted under CA 2013..</u>	Power of Tribunal to entertain matters of <u>voluntary winding up</u> as per provisions of Section 304-323 of the CA 2013 is now removed as fully omitted.	IBC 2016 has introduced changes to ensure <u>voluntary winding up</u> falls outside purview of Tribunal under CA 2013 <i>as matter relating to liquidation is covered under IBC 2016.</i>
19	325	<u>Section 325 - Application of Insolvency Rules in winding up of insolvent companies (fully omitted)</u> It was contemplated to follow <u>Application of Insolvency Rules in winding up of insolvent companies</u> as per provisions of Section 325 of the CA 2013. But after advent of Insolvency code 2016, the matters pertaining voluntary winding up appears to be dealt with under the provisions of IBC 2016 and there hence omitted under CA 2013.	<u>Application of Insolvency Rules in winding up of insolvent companies</u> as per provisions of Section 325 of the CA 2013 is now removed as fully omitted.	IBC 2016 has introduced changes to ensure <u>Application of Insolvency Rules in winding up of insolvent companies</u> as per provisions of Section 325 of the CA 2013 to fall outside purview <i>as matter relating to liquidation is covered under IBC 2016.</i>
20	326	<u>Section 326 - Overriding preferential payments (fully substituted)</u> A new set of <u>Provisions for Section 326</u> of the CA 2013 stands substituted with those provisions restricting applicability of section 326 only to the winding up of the Company within the purview of the Companies Act 2013 as after advent of Insolvency	<u>Provisions of Section 326 before amendment:</u> Notwithstanding anything contained in this Act or any other law for the time being in force, in the winding up of a company,— (a) workmen's dues; and (b) debts due to secured creditors to the extent such	<u>Provisions of Section 326 after amendment:</u> "326. (1) In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts: (a) workmen's dues; and; (b) where a secured creditor has realised a secured asset, so much of the debts due to such

		code 2016, the matters pertaining <u>voluntary winding up appears to be dealt with under the provisions of IBC 2016 and there hence omitted under CA 2013.</u>	debts rank under clause (iii) of the proviso to sub-section (1) of section 325 pari passu with such dues, shall be paid in priority to all other debts	secured creditor as could not be realised by him or the amount of the workmen's portion in his security, whichever is less, pari passu with the workmen's dues:
21	327	<u>Preferential Payments</u> New clause 7 inserted New Sub section 7 is introduced in Section 327 of the CA 2013 which mandating the applicability of section 326 which deals with overriding preferential payments and sec 327 which deals with Preferential Payments only to the winding up of the Company within the meaning and purview of the Companies Act 2013 as after introduction of Insolvency Code 2016, the matters pertaining <u>to those preferential payments appears</u> not to be applicable in the event of liquidation under the IBC, 2016	Under the Companies Act 2013 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, 2016.";	New clause inserting provisions that section 326 & 327 shall not be applicable in the event of liquidation under the IBC, 2016 as sub section 7 in Section 327 of the CA 2013 to exclude the applicability of provisions of section 326 and sec 327 of CA 2013 in the case of Liquidation under and within the ambit of IBC 2016.
22	327	<u>Preferential Payments</u> Explanation for "relevant date" is substituted to provide for voluntary winding up under IBC, 2016 (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,2016;"	Section 327 of the Companies Act 2013 has amended by inserting a new provisions in replacement to the existing explanation after sub section 7 as clause c to the explanation and therefore the explanation of relevant date stands modified with the new provisions	Meaning of relevant date has got changes to bring reference of voluntary winding up under IBC 2016 to replace the reference of voluntary winding up under Companies Act 2013. Accordingly the clause c to the explanation after sub section 7 of section 327 of the companies act stands altered.
23	329	<u>Transfers not in good faith to be void</u> New section 329 is substituted to replace the present provisions of Section 329 as follows; (Fully substituted) 329. Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal under this Act shall be void against the Company Liquidator."	Entire provisions of section 329 is substituted to replace the existing provisions of Section 329 to exclude voluntary winding up within the purview of and for the purpose of section 329 of the Companies Act 2013;	To replace the reference of voluntary winding up under section 329 under Companies Act 2013. Accordingly the clause c to the explanation after sub section 7 of section 327 of the companies act stands altered.

24	334	<u>Transfers etc., after commencement of winding up to be void</u> Fully substituted to remove reference to voluntary winding up under CA, 2013. Following provisions stands substituted by virtue of the new amendments; "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."	<i>Following provisions stands removed by virtue of the new amendments;</i> <i>334. (1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the Company Liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void</i>	IBC 2016 has introduced changes to ensure <u>voluntary winding up</u> falls outside purview of section 334 under CA 2013 as matter relating to <u>voluntary winding up</u> is covered under IBC 2016. Accordingly provisions of section 334 substituted to ensure only the case relating to a winding up by the Tribunal is covered within the provisions of the section 334 of CA 2013.
25	336(1)	<u>Section 336 - Offences by officers of companies in liquidation</u> Sub section 1 of Section 336 stands altered, to enable and ensure current provisions of Sub section 1 of Section 336 are not overlapped with the provisions of the IBC 2016, in the following manner; Clause (1) is substituted to remove reference to voluntary winding up under CA, 2013	<i>The provisions of section 336 substituted /altered to ensure only the cases relating to a winding up by the Tribunal are covered within the provisions of the section 336 of CA 2013.</i>	IBC 2016 has introduced changes to ensure <u>voluntary winding up</u> falls outside purview of section 336 under CA 2013 as matter relating to <u>voluntary winding up</u> is covered under IBC 2016.
26	337	<u>Section 337 - Penalty for frauds by officers</u> Section 337 stands altered, to enable and ensure current provisions of Section 337 are not overlapped with the provisions of the IBC 2016, in the following manner; substituted to remove reference to voluntary winding up under CA, 2013	<i>The provisions of section 337 substituted /altered to ensure only the cases relating to a winding up by the Tribunal are covered within the provisions of the section 337 of CA 2013.</i>	IBC 2016 has introduced changes to ensure <u>voluntary winding up</u> falls outside purview of section 337 under CA 2013 as matter relating to <u>voluntary winding up /liquidation</u> is covered under IBC 2016.
27	342(2), (3), (4)	<u>Section 342 - Prosecution of delinquent officers and members of company:-</u> Section 342 stands altered, to enable and ensure current provisions of Section 342 are not overlapped with the provisions of the IBC 2016, in the following manner; Sub section (2), (3) & (4) is fully omitted to remove reference to voluntary winding up under CA, 2013	<i>The provisions of section 342 substituted /altered to ensure only the cases relating to a winding up by the Tribunal are covered within the provisions of the section 342 of CA 2013.</i>	IBC 2016 has introduced changes to ensure <u>voluntary winding up</u> falls outside purview of section 342 under CA 2013 as matter relating to <u>voluntary winding up</u> is covered under IBC 2016.

28	343(1)	<u>Section 343(1) - Company Liquidator to exercise certain powers subject to sanction;</u> <u>Section 343(1) stands altered, to enable and ensure</u> current provisions of Section 343(1) are not overlapped with the provisions of the IBC 2016, in the following manner; <i>fully substituted</i> to remove reference to voluntary winding up under CA, 2013	The provisions of section <u>343(1)</u> substituted /altered to ensure only the cases relating to a winding up by the Tribunal are covered within the provisions of the section <u>343(1)</u> of CA 2013.	IBC 2016 has introduced changes to ensure <u>voluntary winding up</u> falls outside purview of section <u>343(1)</u> under CA 2013 as matter relating to <u>voluntary winding up</u> is covered under IBC 2016.
29	347(1)	<u>Section 347(1)- Disposal of books and papers of company</u> Section 347(1) stands altered, to enable and ensure current provisions of Section 343(1) are not overlapped with the provisions of the IBC 2016, in the following manner; Sub section (1) is <i>substituted</i> to remove reference to voluntary winding up under CA, 2013.	The provisions of section <u>347(1)</u> substituted /altered to ensure only the cases relating to a winding up by the Tribunal are covered within the provisions of the section <u>347(1)</u> of CA 2013.	IBC 2016 has introduced changes to ensure <u>voluntary winding up</u> falls outside purview of section <u>347(1)</u> under CA 2013 as matter relating to <u>voluntary winding up</u> is covered under IBC 2016.
30	348(1)	<u>Section 348(1) - Information as to pending litigation</u> Section 348(1) stands altered, to enable and ensure current provisions of Section 348(1) are not overlapped with the provisions of the IBC 2016, in the following manner; Sub section (1) is <i>substituted</i> to remove reference to voluntary winding up under CA, 2013	The provisions of section <u>348(1)</u> substituted /altered to ensure only the cases relating to a winding up by the Tribunal are covered within the provisions of the section <u>348(1)</u> of CA 2013.	IBC 2016 has introduced changes to ensure <u>voluntary winding up</u> falls outside purview of section <u>348(1)</u> under CA 2013 as matter relating to <u>voluntary winding up</u> is covered under IBC 2016.
31	357	<u>Section 357 - Commencement of Winding up of Tribunal</u> <i>Fully substituted</i> with the following provisions: "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." With the above change reference to voluntary winding up got removed and date of commencement provided as the date of submission of petition in casae of winding up by Tribunal.	The provisions of section <u>357</u> substituted /altered to ensure only the cases relating to a winding up by the Tribunal are covered within the provisions of the section <u>357</u> of CA 2013.	IBC 2016 has introduced changes to ensure <u>voluntary winding up</u> falls outside purview of section <u>357</u> under CA 2013 as matter relating to <u>voluntary winding up</u> is covered under IBC 2016.
32	370	<u>Section 370 - Continuation of pending legal proceedings - Amended to give reference to the IBC, 2016 as follows:</u> In section 370, in the proviso, after the words "obtained for the winding up the company", the words "in accordance with the provisions of this Act or of the Insolvency and Bankruptcy Code, 2016" shall be inserted.	Few provisions in section <u>370</u> stand inserted /altered to ensure the cases relating to a winding up covered within the provisions of the section <u>370</u> of CA 2013 and also of the Insolvency and Bankruptcy Code, 2016 covered.	IBC 2016 has introduced changes to ensure <u>winding up</u> within purview of section <u>370</u> under CA 2013 and as well as <u>winding up in accordance with the provisions of IBC 2016</u> is also covered under section <u>370</u>

33	372	<u>Section 372 - Power of court to stay or restrain proceedings- Amended to give reference to the IBC, 2016;</u> <i>In section 372, after the words "The provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted.</i>	<i>Few provisions in section <u>372</u> <u>stand</u> inserted /altered to ensure the cases relating to a winding up covered within the provisions of the section <u>372</u> of CA 2013 and also Insolvency and Bankruptcy Code, 2016 covered.</i>	IBC 2016 has introduced changes to ensure <u>winding up</u> within purview of CA 2013 and as well as <u>winding up in accordance with the provisions of IBC 2016</u> is also covered under section <u>372</u>
34	419	<u>Section 419- Benches of Tribunal</u> <u>Fully substituted with the following provisions:</u> <i>In section 419, for sub-section (4), the following sub-section shall be substituted, namely:—</i> "(4) The Central Government shall, by notification, establish such number of benches of the Tribunal, as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under Part II of the Insolvency and Bankruptcy Code, 2016.	<i>Provisions in sub-section (4), of section 419 <u>stand</u> inserted / altered to ensure establishment such number of benches of the Tribunal to exercise the jurisdiction, under IBC Code, 2016 covered.</i>	Amended to remove reference to rehabilitation of companies and provide for establishment of benches of Tribunal TO exercise the jurisdiction, under IBC Code, 2016
35	424(1)	<u>Section 424 - Procedure before Tribunal & Appellate Tribunal - Amended to give reference to the IBC, 2016 as follows:</u> In section 424,— (i) in sub-section (1), after the words, "other provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016" shall be inserted; (ii) in sub-section (2), after the words, "under this Act", the words "or under the Insolvency and Bankruptcy Code, 2016" shall be inserted.	<i>Provisions in sub-section (1) and sub-section (2), of section 424 <u>stand</u> inserted / altered to ensure Tribunal is empowered also to regulate their procedure to exercise the jurisdiction, of and under IBC Code, 2016.</i>	Amendment Provisions of the IBC 2016 attempt to introduce changes to ensure Tribunal is empowered to regulate their own procedure to exercise the jurisdiction, of and under IBC Code, 2016 in relation to matters filed before it.
36	429(1)	<u>Section 429(1) - Power to seek assistance of chief metropolitan magistrate etc. –</u> <u>Amended to remove reference to sick companies and provide reference to the IBC, 2016" as follows</u> In section 429, for sub-section (1), the following sub-section shall be substituted, namely:— (1) The Tribunal may, in any proceedings for winding up of a company under this Act or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector.....	<u>Power to seek assistance of chief Metropolitan Magistrate etc under section 429(1).</u> Amended to remove reference to sick companies and provide reference to the IBC, 2016	Amended to remove reference to sick companies and provide reference to the provisions of IBC, 2016 in connection with seeking assistance of Chief Metropolitan Magistrate and more particularly <u>amended to give reference to the IBC, 2016;</u>

37	434	<u>Section 434 - Transfer of certain pending proceedings</u> Amended to give reference to the provisions relating to and matters to be dealt with under IBC, 2016 as follows; Fully substituted A newly inserted proviso to Sub section 1 of Section 434 is as under: <i>"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."</i>	Provisos to clause d of sub section 1 of Section 434 have been removed and a proviso to Clause c of Sub section 1 of Section 434 has been inserted and to give effect this change, IBC 2016 attempts to substitute the entire provisions of section 434 of the Companies Act 2013 .	The reference made relating to BIFR and corresponding provisions removed; new proviso inserted which provides that <i>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.</i>
38	468(2)	<u>Section 486 (2) Powers of Central Government to make rules relating to winding up</u> Amended to remove reference to voluntary winding up and provide reference to IBC, 2016 Removed provisions stated in clause ii of Sub Section 2 of Section 468 of the Companies Act 2013 is as under: (ii) for the voluntary winding up of companies, whether by members or by creditors;	Provisos to clause d of sub section 1 of Section 434 have been removed and a proviso to Clause c of Sub section 1 of Section 434 has been inserted and to give effect this change, IBC 2016 attempts to substitute the entire provisions of section 434 of the Companies Act 2013.	The reference made relating to (ii) for the voluntary winding up of companies, whether by members or by creditors; has been removed in sub section 2 of Section 468 of the Companies act 2013.
39	Schedule V, in Part II, in section III	In Schedule V, in Part II, in section III, for clause (b), the following clause shall be substituted namely: "(b) where the company- (i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or (ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial & Financial Reconstruction for a period of five years from the date of sanction of scheme of revival, or (iii) is a company in which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval, it may pay remuneration up to two times the amount permissible under section II."	The following provisions introduced vide amendment through IBC 2016 which enables to pay remuneration up to two times the amount permissible under section II in Part II Schedule V " iii) is a company in which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval,	Special privilege is to pay remuneration up to two times the amount permissible under section II in Part II Schedule V is given in case of resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016

ROLE OF NCLT AND PROCESS OF INSOLVENCY RESOLUTION UNDER INSOLVENCY AND BANKRUPTCY CODE

THE SIMPLIFIED OUTLINE OF THE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 IS AS BELOW:

1. When Loan Default occurs:

Either the borrower / the lender approach the adjudicating authority which is the NATIONAL COMPANY LAW TRIBUNAL (NCLT - in case of Company's & LLP's) or the Debt Recovery Tribunal (DRT – in case of individuals or partnership firms) for initiating the resolution process.

2. Appointment of Interim Insolvency Professional (IP)

An Interim Insolvency Professional will be appointed by the Creditors to take control of the debtor's assets and company's operations, collect financial information of the debtor from the information utilities, ascertain the claim and to constitute a creditor's committee.

3. Decision of the Creditor's Committee

Every item that requires the approval of the creditors in their committee meeting needs to be passed with a voting share percentage of 75%.

4. Restructuring Process:

Upon passing of the resolution by the creditors committee, the committee shall decide on the restructuring process that could either be a revised repayment plan for the company or liquidation of the assets of the company. If no such decision is taken by the creditors in their meeting then, the debtor's assets will be liquidated to repay the debt.

5. Approval of the Tribunal / Liquidation

The resolution plan shall be sent to the NCLT for its approval and implementation thereafter. If the NCLT does not approve the resolution plan, then the liquidation process shall begin.

NATIONAL COMPANY LAW TRIBUNAL **VERSUS** COMPANY LAW BOARD

Sl. No.	Particulars	CLB	NCLT
1.	Benches	5 Benches sit across length and breadth of our country	11 Benches sit across length and breadth of our country as of now and few more Benches are expected in near future
2.	Jurisdiction	Limited powers	Matters pertaining to the CLB, BIFR, AAIFR and also matters relating to winding up, mergers, restructuring & other such provisions which is originally being vested with High Courts.
3.	Contempt power	No such powers	Vested with Contempt power
4.	Representation by Professionals	Advocate, CS, CA, CWA will have representation rights	Advocate, CS, CA, CWA and Other professionals also may be allowed to represent their clients in matters pertaining to mergers / winding ups etc
5.	Class Action Suits	Only members with requisite nos are allowed to file Oppression & mismanagement suits	Members & deposit holders permitted u/s 245 against company, statutory appointees, audit firms and other independent consultants
6.	Online portal	Limited usage	Dedicated Online Portal through which all parties, Central or State Government agencies and local government bodies may electronically send & receive documents to or from NCLT & make required payments (www.nclt.gov.in)
7.	Electronic Filing	No such rules	Electronic filing & serving of tribunals documents shall be mandatory
8.	Members of Technical Committee & Selection Committee	Did not have a selection committee	Officers holding ranks of Secretaries or additional secretaries can be considered for appointment as technical members. Selection committee includes Chief Justice of India, who will have a casting vote.
9.	Appeals	CLB then High Court then Supreme Court	NCLT then NCLAT then Supreme Court
10.	Ousting of Civil Court Jurisdiction	No such provision	Section 430 ousts the jurisdiction of civil courts.

Wrap up

The current legal framework governing the winding-up of companies is contained in the Companies Act, 1956. The provisions contained in Chapter XX of the Companies Act, 2013 relating to winding up of companies have not been notified yet. The winding up proceedings under the 1956 Act are carried out voluntarily (members'voluntary liquidation, which is a liquidation procedure for solvent companies, and creditors'voluntary liquidation), or compulsorily by the High Court. It may be noted that insolvency of a company is only one of the grounds for compulsory winding up a company. The important objective of The Insolvency and Bankruptcy Code 2016 is to provide a specialised and quick resolution mechanism for debt recovery. The Code attempts to provide one stop solution by amending various laws relating to insolvency and reorganisation of corporate persons, partnership firms and individuals in a time bound manner and for providing rehabilitation opportunity to persons who are unable to repay their debts and for maximization of value of the assets of such persons and matters connected therewith or incidental thereto. Further the primary objective of the National Company Law Tribunal is to provide a specialised and quick dispute resolution mechanism for Indian Companies. Also all the pending suits before the Company Law Board, BIFR etc is expected to be resolved by the NCLT. The constitution and functioning of NCLT is also providing a wider scope for professionals in their practice areas including appearance before the Tribunal. Therefore, it is high time to all professionals to equip themselves and become conversant and be acquainted in this new area to appear before NCLT for orders.

PROFESSIONAL LIFE –

ENDLESS POSSIBILITIES

WITH

BORDERLESS SUCCESSES

Copyright 2016 © With Author

All rights are reserved. No part of this article may be reproduced, stored in a retrieval system or transmitted, in any form or by any means, mechanical, photocopying, recording or otherwise, without prior written permission of the author. These contents will form part of a book being authored by the Author. Any breach of these rights or conditions will entitle civil and criminal action without further notice.

Post your reflections to

S. DHANAPAL

FCS, B.Com, B.A.B.L.

Senior Partner,

S Dhanapal & Associates

(A firm of Practising Company Secretaries)

Suite No.103, First Floor, Kaveri Complex,

96/104, Nungambakkam High Road,

(Next to NABARD & ICICI Bank),

Nungambakkam, Chennai - 600 034.

Land-line 044 - 4553 0256 / 0257

Dir- 42652127 Cell-9677022712

Email Id. csdhanapal@gmail.com

Website:www.csdhanapal.com