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Corporate and Economic Laws

CA-Final(New) **Revision Notes** for NOV., 2019

Economic Laws

- ✓ *Covers entire Economic Laws Syllabus^^ excluding removed topics*
- ✓ *Compiled for exam time revision*
- ✓ *No lengthy explanations or examples*
- ✓ *Updated with all relevant amendments*
- ✓ *Print Friendly*

For Part A: COMPANY LAW
(Complete Notes)

Visit: https://www.caclubindia.com/share_files/details.asp?mod_id=78113

For Part B: SECURITIES LAWS
(Complete Notes)

Visit: https://www.caclubindia.com/share_files/ca-final-securities-laws-notes-for-nov-19-78498.asp

*These notes are best compatible to be viewed in **Adobe Acrobat Reader**, please visit the following link to download it: www.adobe.com/products/acrobat/readstep2.html

Important Instructions:

1. Several topics have recently been excluded by BOS, ICAI from the scope of syllabus of CA-Final (New course) in Paper: 4 Corporate and Economic Laws w.e.f. Nov., 2019 Examination. The official notification for the same with can be seen at https://resource.cdn.icai.org/55778bos45147fnew.pdf. The excluded topics have already been removed from these notes and hence **EVERYTHING IN THESE NOTES ARE PART OF SYLLABUS FOR NOV., 2019** and nothing is to be further excluded.

2. These notes are meant for REVISION only and therefore suggested to be referred by only those who have either read and understand the provisions of concerned laws in detail from ICAI Study Material or any other Study Material/Classes.

3. At least two reading of these notes is **suggested**, **one before beginning of exams** (in which student may put markings in these notes as per his/her convenience) **and second** in days just before the Paper.

4. Interpretation/Analysis (i.e. simplified version) of provisions has not been included in these notes at most places as the same would have defeated the purpose of these notes making them lengthy and difficult to cover in entirety**. However, necessary effects such as underlining or making the font Bold have been made at appropriate places for easy interpretation and highlighting importance.** **(Light coloured text may be skipped in last day revision)**

5. AMENDMENTS
These notes are fully updated as per the amended provisions of Concerned Laws effective on 30/04/2019 which is cut-off date for Nov., 2019 Exams. ***Font of recent amendments has been made in Italics at relevant places***.

6. Whether all "Sections/Rules/Regulations/Schedules" covered?
All **relevant** Sections/Rules/Regulations/Schedules/Circulars have been covered in these notes to the extent made part of syllabus by BOS, ICAI.

^^However, certain chapters which do not have any amendment or have minimal amendment(s) [in Part- C Notes only] as per RTP are not covered in these notes **and are advised to be referred from that Study Material only (Link for Soft Copy of same has been provided)**.
Further these chapters will also be covered in Notes from May, 2020 onwards, irrespective of amendments.

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7. What if there is any error/ discrepancy in any part of these notes?
Although due care has been taken while preparing these notes, still if, in case, any error/discrepancy is noticed by you, then you may bring the same into my notice at https://forms.gle/xTY4exeVoHLAAzmdA, so that same could be rectified/ updated in next notes.

Disclaimer: In case of any inadvertent error in notes, students themselves will be responsible for referring to the correct provision of Law and the author of these notes shall not be responsible for any loss, if any, incurred.

Note: These Notes are part of **free self study resources and can be freely shared amongst students, but without any modification**.

You may give your valuable SUGGESTIONS/FEEDBACK/REVIEWS at https://forms.gle/LWAheiNqYZ7juPHP6.

ECONOMIC LAWS

The Prevention of Money Laundering Act, 2002 (PMLA, 2002)

QUICK INTRODUCTION

As per the preamble of PMLA, 2002, It is an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.
PMLA,2002 mandates that the investigation of the offence of money laundering be linked to the Scheduled Offences investigated by the concerned Central or State Law Enforcement Agencies.

The Directorate of Enforcement (commonly known as **ED**) in the Department of Revenue, Ministry of Finance is responsible for investigating the cases of offence of money laundering under PMLA, 2002.

Note: PMLA Act also extends to the whole of India. (No exception to J&K, even before abrogation of Article 370**)**

Relevant Definitions
Sec 2(1)(p) "**money-laundering**" has the meaning assigned to it in section 3. As per **section 3**, Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use **and** projecting or claiming it as **untainted property** shall be guilty of offence of money-laundering.
Sec 2(1)(n) "intermediary" means,- (i) a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered u/s 12 of SEBI Act, 1992. (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or (iv) a recognised stock exchange referred to in clause (f) of section 2 of SCRA, 1956
Sec 2(1)(ra) "offence of cross border implications", means- (i) any conduct by a person at a place outside India which constitutes an offence at that place **and** which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person transfers in any manner] the proceeds of such conduct or part thereof to India; **OR** (ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India **and** the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.
Sec 2(1)(rb)"payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. Explanation.--For the purposes of this clause, "payment system" includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.
Sec 2(1)(s) "person" includes-- (i) an individual, (ii) a HUF, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses.

Sec 2(1)(u)"<u>proceeds of crime</u>" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country ***or abroad.***

Sec 2(1)(v)"property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, **wherever located**;
Explanation.--For the removal of doubts, it is hereby clarified that the term "property" **includes** property of any kind used in the commission of an offence under this Act or any of the scheduled offences.

Sec 2(1)(wa) "reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

Sec 2(1)(fa)"beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person.

Sec 2(1)(y) "<u>scheduled offence</u>" means--
(i) the offences specified under Part A of the Schedule; or
(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is **<u>one crore rupees</u>** or more; or
(iii) the offences specified under Part C of the Schedule

[SPECIAL AMENDMENT NOTE: <u>Recently "Offences u/s 447 of Companies Act, 2013 i.e Punishment for Fraud" has been made a "scheduled offence" under Para 29 of Part A of Schedule of PMLA, 2002]</u>

Sec 2(1)(za) "transfer" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

Sec 2(1) (zb) "value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

Sec 2(1)(rc) "payment system operator" means a person who operates a payment system and such person includes his overseas principal.
<u>Explanation</u>.--For the purposes of this clause, "**overseas principal**" means,--
(A) **in the case of a person, being an individual**, such individual **residing outside India**, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
(B) **in the case of a HUF, Karta** of such HUF **residing outside India** who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
(C) in **the case of a company, a firm, an association of persons, a BOI, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, BOI, artificial juridical person incorporated or registered outside India or existing as such and** which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

Sec 2(1) (sa) "person carrying on designated business or profession" means,--

(i) a **person carrying on activities for playing games of chance** for cash or kind, **and includes** such activities associated with casino;
(ii) a **Registrar or Sub-Registrar** appointed u/s 6 of the Registration Act, 1908, as may be notified by the CG;
(iii) **real estate agent**, as may be notified by the CG;
(iv) **dealer in precious metals**, precious stones and other high value goods, as may be notified by the CG
(v) **person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons**, as may be notified by the CG; or
(vi) **person carrying on such other activities as the CG may, by notification, so designate**, from time to time

Sec 2(1)(w) "**records**" **include** the records maintained in the form of books or stored in a computer or such other form as may be prescribed.

Section 4 Punishment For Money Laundering [V. IMPORTANT]
Whoever commits the offence of money-laundering shall be punishable with **rigorous imprisonment** for a term which shall **not be less than 3 years** but which may **extend to 7 years** **and** shall also be liable to **fine** Provided that where the proceeds of crime involved in money-laundering relates to any offence **specified under paragraph 2 of Part A of the Schedule**, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to **ten years**" had been substituted. [**Paragraph 2 of Part A of the Schedule** specifies OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985, which mainly includes following offences: Contravention in relation to poppy straw,.**coca plant and coca leaves** Contravention in relation to **prepared opium**, **opium poppy and opium.** **Embezzlement of opium by cultivator**. Contravention in relation to **cannabis plant** and cannabis. Contravention in relation to manufactured drugs and preparations. Contravention in relation to **psychotropic substances**. **Illegal import** into India, **export** from India or **transhipment of narcotic drugs and psychotropic substances**.]

CONCEPT BASED QUESTIONS:

- **What is Money laundering?**
  The goal of a large number of criminal activities is to generate profit for an individual or a group. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. Illegal arms sales, smuggling, and other organized crime, including drug trafficking and prostitution rings, can generate huge amounts of money. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to "legitimize" the ill-gotten gains through money laundering. The money so generated is tainted and is in the nature of 'dirty money'. Money Laundering is the process of conversion of such proceeds of crime, the 'dirty money', to make it appear as 'legitimate' money.
  In the PMLA, 2002, money laundering has been defined as "any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use **and** projecting or claiming it as untainted property".

- **How does Money Laundering actually take place?**
  The process of Money Laundering generally involves the following **three stages (in sequence)**:
  (a) Placement:- The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial systems. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.

  (b) Layering:- The second stage of Money Laundering is layering. In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti Money Laundering investigations.

  (c) Integration:- Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc.

- **What are the <u>possible actions which can be taken against persons / properties involved in Money Laundering?</u>**
  Following actions can be taken against the persons involved in Money Laundering:-
  (a) **Attachment** of property under Section 5, seizure/ freezing of property and records u/s 17 or 18. Property also includes property of any kind used in the commission of an offence under PMLA, 2002 or any of the scheduled offences.
  (b) Persons found guilty of an offence of Money Laundering are punishable with **imprisonment** for a term which shall not be less than 3 years but may extend up to 7 years and shall also be liable to **fine [Section 4**].
  (c) When the scheduled offence committed is under the Narcotics and Psychotropic substances Act, 1985 the punishment shall be **imprisonment** for a term which shall not be less than 3 years but which may extend up to **10 years** and shall also be liable to **fine [Section 4**].
  (d) The **prosecution or conviction** of any legal juridical person <u>is not contingent</u> on the prosecution or conviction of any individual.

- **What are the powers available to the Investigating Officers under the Act?**
  The Investigating Officers have the powers:-
  (a) to provisionally attach any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [Section 5];
  (b) to conduct survey of a place [Section 16];
  (c) to conduct search of building, place, vessel, vehicle or aircraft & seize/freeze records & property [Section 17];
  (d) to conduct personal search [Section 18];
  (e) to arrest persons accused of committing the offence of Money Laundering [Section 19];
  (f) to summon and record the statements of persons concerned [Section 50].

- **What is the time limit for retention of records or property seized during search & seizure? What is the time limit for continuation of the order of freezing of property/records frozen during search and seizure?**
  The property / record may, if seized be retained or if frozen may continue to remain frozen for a period not exceeding 180 days from the day on which such property or record were seized or frozen, unless the Adjudicating Authority under PMLA permits retention of such record or property beyond the period of 180 days [Sections 20 & 21].

- **What is <u>burden of proof</u> in any proceedings relating to proceeds of crime under PMLA, 2002?**
  (a) In the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
  (b) In the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering [Section 24].

- **What are the <u>circumstances under which properties can be provisionally attached and related procedure after such attachment</u> under PMLA?**
  <u>Circumstances:</u>
  (i) Where the Director, or any other officer not below the rank of Deputy Director authorised by the Director has reasons to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—
  (a) any person is in possession of any proceeds of crime and
  (b) such proceeds of crime or likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime
  he may, by an order in writing, provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.
  (ii) No such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorized to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be or a similar report or complaint has been made or filed under the corresponding law of any other country.
  (iii) Further any property of any person may be attached, if the Director or any other officer not below the rank of

Deputy Director authorized by him has reason to believe (reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money laundering is not attached immediately the non-attachment of the property is likely to frustrate any proceedings under this Act
*(iv) Further it has also been provided that for the purposes of computing the period 180 days, the period during which the proceedings under this section is stayed by the HC, shall be excluded and a further period not exceeding 30 days from the date of order of vacation of such stay order shall be counted **[Section 5]**.*

Procedure After Provisional Attachment:
1. The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.
2. Every order of provisional attachment shall cease to have effect after 180 days from the date of the order, if no order is passed by the Adjudicating Authority under PMLA that the said property is involved in Money laundering. However, within said 180 days, if the Adjudicating Authority, by an order, records a finding that properties are not involved in money laundering, the order of provisional attachment shall cease to have effect from the date of such order of the Adjudicating Authority
3) The persons claiming or entitled to claim any interest in the enjoyment of immovable property **can enjoy** the property during the period of provisional attachment.
4) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of 30 days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority. **[Section 5].**

SECTION 8 ADJUDICATION [IMP.]
(1) On receipt of a complaint u/s 5(5), or applications made u/s 17(4) or u/s 18(10), if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than 30 days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached u/s 5(1), or, seized or frozen u/s 17 or 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the CG: Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.
(2) The Adjudicating Authority shall, after-- (a) considering the reply, if any, to the notice issued under sub-section (1); (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and (c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.
(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made u/s 5(1) or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall-- (a) continue *during investigation for a period not exceeding **365 days**** or* the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and (b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or

section 58B or sub-section (2A) of section 60 by the Special Court; ~~*Explanation.--For the purposes of computing the period of 365 days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.*~~
(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed: Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.
(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the CG.
(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.
(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.
(8) Where a property stands confiscated to the CG under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the CG to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering: Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering: *Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.* **[**SPECIAL NOTE:** In Section 8(3), the words “365 days” has been substituted in place of “90 days” w.e.f. 20/03/2019 and the ‘Explanation’ to section 8(3) was also added on said date only, BUT this amendment has not been covered by ICAI in RTP for Nov.,2019**, HENCE IT IS RECOMMENDED TO ANSWER IT AS “90 Days” in Exams, if asked to be on safer side (alternatively you may answer it as “365 days”, but then with proper explanatory note).]**

- **What will happen if the Adjudicating Authority records the finding that all or any of the attached/seized/ frozen properties <u>are not involved</u> in money laundering?**
  In such cases, the Adjudicating Authority **shall direct the release of all properties other than the properties involved in money-laundering** to the person from whom such properties were seized or the person entitled to receive it [Section 20(5)].
  However, the Director or any other officer authorized by him in this behalf **may withhold the release of any such property for a period of 90 days** if he (Director of Enforcement) is of the opinion that such property is relevant for the appeal proceedings under this Act [Section 20(6)].

- **What will happen to the seized/frozen records <u>after confiscation of property involved in money laundering</u> or used for the commission of the offence of the money laundering u/s 8 of PMLA?**
  After an order of **confiscation of properties** u/s 8 has been passed, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized. However, the Director or any other officer authorized by him in this behalf, may withhold the release of any such record for a period of 90 days if he (Director of Enforcement) is of the opinion that such property is relevant for the appeal proceedings under this Act [Section 21(5 & 6)].

- **What will happen to the attached properties after conclusion of Trial for the offence of money laundering?**
  (i) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of **money-laundering has been committed**, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering **shall stand confiscated to the CG**.
  (ii) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has **not taken place** or the properties not involved in money-laundering, **it may order release** of such property to the person entitled to receive it.
  (iii) Where the trial under this Act **cannot be conducted**, **by reason of the death** of the accused **or** the **accused having been declared a proclaimed offender** or for any other reason or having commenced but could not be concluded, the Special Court, **on an application moved by the Director or a person claiming to be entitled to possession** of a property in respect of which an order has been issued by the Adjudicating Authority confirming the provisional attachment of the property, **pass appropriate orders** regarding confiscation or release of the property, as the case may be, after having regard to the material before it [Sub-sections (5) (6) & (7) of Section 8].
  (iv) **After an order of confiscation**, all the rights and title in such property shall vest absolutely in **the CG free from all encumbrances. [Section 9]**

- **What are the obligations of REPORTING ENTITY in terms of the provisions of PMLA, 2002?**
  (i) Every **reporting entity have to maintain a record of all transactions** covered as per the nature and value of which may be prescribed, in such manner as to enable it to reconstruct individual transactions;
  (ii) They **shall furnish to the Director** within such time as may be prescribed information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
  (iii) They **shall verify the identity of its clients** in such manner and subject to such conditions as may be prescribed;
  (iv) They **shall identify the beneficial owner**, if any, of such of its clients, as may be prescribed;
  (v) They **shall maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence** relating to its clients for a period of **five years** in case of record and information relating to transactions; and
  (vi) They shall **maintain the same for a period of <u>five years</u> after the business relationship** between a client and the reporting entity has ended or the account has been closed, whichever is later.
  (vii) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, **shall be kept confidential** by the reporting entity [**Section 12].**

- **What are powers of Director regarding Access to information from Reporting Entity?**
  (1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.
  (2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.
  (3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential. **[Section 12A]**

- **What are the penalties that can be imposed on reporting entity by the Director and in what cases?**

Section 13 provides for the **Power of Director to impose penalty** on reporting entity which is as follows:
(1) The Director may, either of his own motion or on an application made by any authority, officer or person, make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter.
(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the CG for this purpose.
(1B)The expenses of, and incidental to, any audit under sub-section (1A) shall be borne by the CG.
(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may-- (a) issue a warning in writing; or (b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or (c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or (d) **by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than Rs. 10,000/- but may extend to Rs. 1 Lakh for each failure.**
(3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section. Explanation.--For the purpose of this section, "accountant" shall mean a CA within the meaning of the Chartered Accountants Act, 1949.

Section 14. No civil or criminal proceedings against reporting entity, its directors and employees in certain cases.—
Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information u/s 12(1)(b) [viz. information furnished to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed].

Section 19 Power to Arrest

(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the CG by general or special order, has on the basis of material in his possession, **reason to believe (the reason for such belief to be recorded in writing) that <u>any person has been guilty of an offence punishable under this Act</u>**, he may **arrest such person** and shall, as soon as may be, **inform him of the grounds** for such arrest.
(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), <u>forward a copy of the order along with the material in his possession</u>, referred to in that sub-section, <u>to the Adjudicating Authority in a sealed envelope</u>, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.
(3) Every person arrested under sub-section (1) shall, within 24 hours, be taken to a *Special Court or* Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of 24 hours shall exclude the time necessary for the journey from the place of arrest to the *Special Court or* Magistrate's Court.

APPEALS

(Sec 26 and 42)

- **Who is the appellate authority <u>against the order passed by Director</u>?**
  Any **<u>reporting entity</u>** aggrieved by any order of the Director made under sub-section (2) of section 13 [PENALTY], may prefer an appeal to the **Appellate Tribunal [Section 26].**

- **Which is the Appellate Authority <u>against the order passed by Adjudicating Authority</u> and what is the time limit to file appeal? [important]**
  <u>The Director or any person aggrieved</u> by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of **45 days** from the date of receipt of a copy of the order made by the Adjudicating Authority. Appellate Tribunal may entertain an appeal after the expiry of the period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period **[Section 26].**

- **Which is the Appellate Authority <u>against the order passed by Appellate Tribunal</u> and what is the time limit to file appeal? [important]**
  <u>Any person</u> aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the HC within **60 days** from the date of communication of the decision or order of the Appellate Tribunal to him ON ANY QUESTION OF LAW OR FACT arising out of such order.
  HC may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days. **[SECTION 42]**

- **THERE IS <u>NO OPTION OF APPEAL AGAINST HC ORDER TO APPEAL BEFORE SC</u> IN PMLA,2002. [HOWEVER THERE CAN BE FILED WRIT PETITION IN THIS CASE]**

- **Section 45 Offences to be cognizable and non- bailable [V. Important]**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, **<u>no person</u>** accused of an offence *under this Act* shall be **<u>released on BAIL or on his own bond unless</u>**--
(i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and
(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the **age of sixteen years**, or is a **woman** or is **sick** or **infirm**, *or is accused either on his own or along with other co-accused of money-laundering a sum of* ***less than 1 crore*** *rupees* may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by--
(i) the Director; or
(ii) any officer of the CG or a SG authorised in writing in this behalf by the CG by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, **no police officer shall investigate into an offence under this Act unless specifically authorised**, by the CG by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure or any other law for the time being in force on granting of bail.

Section 25 Appellate Tribunal
The Appellate Tribunal constituted u/s 12(1) of of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

Section 35 Procedures and Powers of Appellate Tribunal

(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other Provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.
(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, 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:-- (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office; (e) issuing commissions for the examination of witnesses or documents; (f) reviewing its decisions; (g) dismissing a representation for default or deciding it ex parte; (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and (i) any other matter, which may be, prescribed by the CG.
(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.
(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.
(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973

Section 38 Decisions to be taken by Majority

If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by third Member of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Section 41 Civil Court not to have Jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine 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 power conferred by or under this Act.

Section 43 Special Courts

(1) The CG, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts or such area or areas or for such case or class or group of cases as may be specified in the notification. **Explanation**.--In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.
(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial

Section 44 Offences Triable By Special Court

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,-- (a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed: Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or; (b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial; (c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed. (d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 as it applies to a trial before a Court of Session.
(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43

Section 46 Application of Code of Criminal Procedure, 1973 to proceedings before Special Court

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor: **Provided** that the CG may also appoint for any case or class or group of cases a Special Public Prosecutor.
(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.
(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

Section 47 Appeal and Revision

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

Section 48 Authorities under Act

There shall be the following classes of authorities for the purposes of this Act, namely:-- (a) Director or Additional Director or Joint Director, (b) Deputy Director, (c) Assistant Director, and (d) such other class of officers as may be appointed for the purposes of this Act.

Section 50 Powers of Authorities regarding summons, production of documents and to give evidences, etc

(1) The Director shall, for the purposes of section 13, 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:-- (a) discovery and inspection; (b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath; (c) compelling the production of records; (d) receiving evidence on affidavits; (e) issuing commissions for examination of witnesses and documents; and (f) any other matter which may be prescribed.
(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.
(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.
(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.
(5) Subject to any rules made in this behalf by the CG, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act: Provided that an Assistant Director or a Deputy Director shall not-- (a) impound any records without recording his reasons for so doing; or (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director.

Chapter X: RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

Section 55 Definitions

In this Chapter, unless the context otherwise requires,--
(a) "**contracting State**" means any country or place outside India in respect of which arrangements have been made by the CG with the Government of such country through a treaty or otherwise;
(b) "**identifying**" includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3;
(c) "**tracing**" means determining the nature, source, disposition, movement, title or ownership of property.

Section 56 Agreements with Foreign Countries

(1) The CG may enter into an agreement with the Government of any country outside India for-- (a) enforcing the provisions of this Act; (b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.
(2) The CG may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

Section 57 Letter of Request to a Contracting State in certain cases

1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to-- (i) examine facts and circumstances of the case, (ii) take such steps as the Special Court may specify in such letter of request, and (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.
(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.
(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation.

Section 58 Assistance to contracting State in certain cases

Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or, as the case may be, any other law for the time being in force.

Section 62 Punishment for Vexatious Search

Any authority or officer exercising powers under this Act or any rules made thereunder, who, without reasons recorded in writing,--

(a) searches or causes to be searched any building or place; or
(b) detains or searches or arrests any person,

shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to Rs. 50,000/- or both.

Section 63 Punishment for false information or failure to give information etc.

(I) **Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.**

(2) If any person,--
(a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or
(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or
(c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty is proposed to be imposed is given an **opportunity of being heard** in the matter by such authority.

(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.

Section 64 Cognizance of Offences

(1) No court shall take cognizance of any offence under section 62 or sub-section (1) of section 63 except with the previous sanction of the CG.

(2) The CG shall, by an order, either give sanction or refuse to give sanction within 90 days of the receipt of the request in this behalf.

Section 65 Code of Criminal Procedure 1973 to apply

The provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation investigation, prosecution and all other proceedings under this Act.

Section 66 Disclosure of Information

(1) The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to-- (i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985; or (ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify, by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.
(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.

Section 67 Bar on Suits in Civil Courts No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.

Section 69 Recovery of fine or penalty.—

Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

Section 70 Offences by Companies

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: **Provided** that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.
(**2**) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly . **Explanation** 1.--For the purposes of this section,-- (i) "company" means any body corporate and includes a firm or other association of individuals; and (ii) "director", in relation to a firm, means a partner in the firm. **Explanation** 2.--For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.

Section 71 Act to have Overriding Effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Section 72 Continuation of Proceeding in event of death or insolvency

(1) Where-- (a) any property of a persons has been attached under section 8 and no appeal against the order attaching such property has been preferred; or (b) any appeal has been preferred to the Appellate Tribunal, and-- (i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or (ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal, then, it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 26 shall, so far as may be, apply, or continue to apply, to such appeal.
(2) Where--
(a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High court under section 42; or (b) any such appeal has been preferred to the High Court,-- then-- (i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or (ii) in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court, then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provisions of section 42 shall, so far as may be, apply, or continue to apply, to such appeal.
(3) The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be.

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The Insolvency and Bankruptcy Code, 2016

QUICK INTRODUCTION

As per the preamble of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**"), it is an Act 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 Board of India, and for matters connected therewith** or incidental thereto.

Note:
IBC, 2016 extends to the whole of India;
Provided that Part III of this Code shall not extend to the State of Jammu and Kashmir.
(This position is applicable for Nov., 2019 exam and abrogation of Article 370 as of now has no impact on its applicability**)**

Structure of Code:

The Act is structured into 5 Parts, but only Part I (Preliminary) and Part II (INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS) has been made applicable bi ICAI for CA-Final Course as of now. Further Part II covers section 4 to 77, but Syllabus only covers section 4 to 59.

[Since this chapter has undergone major amendments as compared to the one given in ICAI Study Material for Nov., 2019, the whole chapter is in *italics*]

PART - I

Section 2 Application

*The provisions of this **Code** shall apply to--*
(a) any company incorporated under the Companies Act, 2013 or under any previous company law;
(b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
(c) any LLP incorporated under the Limited Liability Partnership Act, 2008;
(d) such other body incorporated under any law for the time being in force, as the CG may, by notification, specify in this behalf;
(e) personal guarantors to corporate debtors;
(f) partnership firms and proprietorship firms; and
(g) individuals, other than persons referred to in clause (e),

Section 3 ***Definitions [Applicable for whole IBC, 2016]***

***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;
*(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;
*(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;*
*(7) "**corporate person**" means a company as defined in clause (20) of section 2 of the Companies Act, 2013 , a LLP, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;*
*(8) "**corporate debtor**" means a <u>corporate person</u> who owes a debt to any person;*
*(9) "**core services**" means services rendered by an information utility for--* *(a) accepting electronic submission of financial information in such form and manner as may be specified;* *(b) safe and accurate recording of financial information;* *(c) authenticating and verifying the financial information submitted by a person; and* *(d) providing access to information stored with the information utility to persons as may be specified;*
*(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;*
*(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 paid by the debtor or the corporate debtor, as the case may be;*
(13) "financial information", in relation to a person, means one or more of the following categories of information, namely:-- *(a) records of the debt of the person;* *(b) records of liabilities when the person is solvent;* *(c) records of assets of person over which security interest has been created;* *(d) records, if any, of instances of default by the person against any debt;* *(e) records of the balance sheet and cash-flow statements of the person; and* *(f) such other information as may be specified;*
*(14) "**financial institution**" means--* *(a) a scheduled bank;* *(b) financial institution as defined in section 45-I of the Reserve Bank of India Act, 1934 [i.e. NBFC];* *(c) public financial institution as defined in clause (72) of section 2 of the Companies Act, 2013; and* *(d) such other institution as the CG may by notification specify as a financial institution;*
(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 services, namely:* *(a) accepting of deposits;* *(b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;* *(c) effecting contracts of insurance;* *(d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;* *(e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of--* *(i) buying, selling, or subscribing to, a financial product;* *(ii) availing a financial service; or* *(iii) exercisfing any right associated with a financial product or financial service;*

(f) establishing or operating an investment scheme;
(g) maintaining or transferring records of ownership of a financial product;
(h) underwriting the issuance or subscription of a financial product; or
(i) selling, providing, or issuing stored value or payment instruments or providing payment services;

(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;

(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 RBI, SEBI, IRDA, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the CG;

(19) "**insolvency professional**" means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207;

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

(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;

(23) "**person**" includes--
(a) an individual;
(b) a HUF;
(c) a company;
(d) a trust;
(e) a partnership;
(f) a LLP; 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 as assigned to such term in clause (v) of section 2 of the Foreign Exchange Management Act, 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 CG;

(27) "property" includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property;

(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;

(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:
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 a agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;

(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;

(36) "workman" shall have the same meaning as assigned to it in section 2(s) of the Industrial Disputes Act, 1947

(37) words and expressions used but not defined in this Code but defined in the Indian Contract Act, 1872, the Indian Partnership Act, 1932, SCRA, 1956, SEBI Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the LLP Act, 2008 and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts.

PART - II

Section 4 Application of this Part

*This Part shall apply to matters relating to the **insolvency and liquidation** of **<u>corporate debtors</u>** where the **minimum amount of the default is <u>one lakh rupees</u>**:* *Provided that the CG may, by notification, specify the minimum amount of default of higher value which **shall not be more than one crore rupees.***

Section 5 Definitions [Applicable for Part-II of Code Only]

In this Part, unless the context otherwise requires,--
*(1) **Adjudicating Authority**", for the purposes of this Part, means **National Company Law Tribunal** constituted under section 408 of the Companies Act, 2013;*
(2) "auditor" means a CA certified to practice as such by ICAI 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, memorandum of association of a company and incorporation document of a LLP;
*(5) "**corporate applicant**" means--* *(a) corporate debtor; or* *(b) a member or partner of the corporate debtor who is authorised to make an application for the <u>corporate insolvency resolution process</u> **[CIRP]** under the constitutional document of the corporate debtor; or* *(c) an individual who is in charge of managing the operations and resources of the corporate debtor; or* *(d) a person who has the control and supervision over the financial affairs of the corporate debtor;*
*(5A) "**corporate guarantor**" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;*
*(6) "**dispute**" includes a suit or arbitration proceedings relating to--* *(a) the existence of the amount of debt;* *(b) the quality of goods or service; or* *(c) the breach of a representation or warranty;*
*(7) "**financial creditor**" means any person to whom a <u>financial debt</u> is owed and includes a person to whom such debt has been legally assigned or transferred to;*
*(8) "**financial debt**" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes--* *(a) money borrowed against the payment of interest;* *(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;* *(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;* *(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Ind AS or such other accounting standards as may be prescribed;* *(e) receivables sold or discounted other than any receivables sold on non-recourse basis;* ***(f)** any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;* *Explanation.-- For the purposes of this sub-clause,--* ***(i) any amount raised from an allottee under a real estate project <u>shall be deemed to be an amount having the commercial effect of a borrowing</u>; and*** ***(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016**;]* ***(g)** any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;* ***(h)** any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;
(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 u/s 29(1);*
*(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 [CIRP];*
*(12) **insolvency commencement date** means the **date of admission of an application** for initiating CIRP by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be;* *Provided that **where** the interim resolution professional is **not appointed** in the order admitting application under section 7, 9 or section 10, the insolvency commencement date **shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority**;*
(13) "insolvency resolution process costs" means-- *(a) the amount of any interim finance and the costs incurred in raising such finance;* *(b) the fees payable to any person acting as a resolution professional;* *(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;* *(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and* *(e) any other costs as may be specified by the Board;*
*(14) "**insolvency resolution process period**" means the period of **180 days beginning from the insolvency commencement date** and ending on 180th day;*
(15) "interim finance" means any financial debt raised by the resolution professional during the insolvency resolution process period;
(16) "liquidation cost" means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board;
*(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;*
*(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;*
(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 LLP Act, 2008, as the case may be;
*(20) "**operational creditor**" means a person to whom an operational debt is owed **and includes** any person to whom such debt has been legally assigned or transferred;*
*(21) "**operational debt**" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the CG, any SG or any local authority;*
*(22) **personal guarantor** means an individual who is the surety in a contract of guarantee to a corporate debtor;*
*(23) **personnel** includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor;*
*(24) "**related party**", **in relation to a corporate debtor**, means--* *(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;* *(b) a KMP of the corporate debtor or a relative of a KMP of the corporate debtor;* *(c) a LLP 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;* *(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;* *(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;* *(j) any person who controls more than 20 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;*
*(**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--*
(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
(iv) provision of essential technical information to, or from, the corporate debtor;

*(24A) "**related party**", **in relation to an <u>individual</u>**, means--*
(a) a person who is a relative of the individual or a relative of the spouse of the individual;
(b) a partner of a LLP, or a LLP or a partnership firm, in which the individual is a partner;
(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
(d) a private company in which the individual is a director and holds along with his relatives, more than 2 per cent. of its share capital;
(e) a public company in which the individual is a director and holds along with relatives, more than 2 per cent. of its paid-up share capital;
(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
(g) any LLP or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
(h) a person on whose advice, directions or instructions, the individual is accustomed to act;
(i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

***Explanation**.-- For the purposes of this clause,--*
(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:--
(i) members of a HUF,
(ii) husband,
(iii) wife,
(iv) father,
(v) mother,
(vi) son,
(vii) daughter,
(viii) son's daughter and son,
(ix) daughters daughter and son,
(x) grandson's daughter and son,
(xi) granddaughters daughter and son,
(xii) brother,
(xiii) sister,
(xiv) brother's son and daughter,
(xv) sister's son and daughter,
(xvi) father's father and mother,
(xvii) mother's father and mother,
(xviii) father's brother and sister,
(xix) mother's brother and sister, and
(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;.

*(25) "**resolution applicant**" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25];*

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

~~*Explanation.-- For the removal of doubts, it is hereby clarified that a **resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;***~~

*(27) "**resolution professional**", for the purposes of this Part, means an **insolvency professional appointed to conduct the corporate insolvency resolution process [CIRP] and includes** an interim resolution professional; and*

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

Section 6 Person who may initiate CIRP (Corporate Insolvency Resolution Process) [IMPORTANT]

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

Section 7 Initiation of CIRP by Financial Creditor [IMPORTANT]

*(1) A **financial creditor either by itself or jointly with other financial creditors**, **or any other person on behalf of the financial creditor, as may be notified by the CG**, may file an application for initiating CIRP against a corporate debtor before the Adjudicating Authority when a default has occurred.*

***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.*

*[**MCA notification dt. 27/02/2019 S.O. 1091(E)***
*In exercise of the powers conferred by sub-section (1) of section 7 of the IBC, 2016, the CG hereby notifies **following persons who may file an application** for initiating CIRP against a corporate debtor before the Adjudicating Authority, **on behalf of the financial creditor: -***
(i) a guardian;
(ii) an executor or administrator of an estate of a financial creditor;
(iii) a trustee (including a debenture trustee); and
(v) a person duly authorised by the BOD of a Company.]

(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**--*
(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.

*(4) The Adjudicating Authority shall, within **14 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).*

~~***Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.***~~

(5) Where the Adjudicating Authority is satisfied that--

*(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*

*(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 **shall**, **before rejecting the application** under clause (b) of sub-section (5), **give a notice to the applicant to rectify** the defect in his application **within 7 days** of receipt of such notice from the Adjudicating Authority.*

*(6) The **CIRP 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**;* *(b) the **order** under **clause (b)** of sub-section (5) to the **financial creditor**,* *within **7 days of admission or rejection** of such application, as the case may be.*

Section 8 Insolvency Resolution <u>by Operational Debtor</u>

*(1) An operational <u>creditor</u> may, on **the occurrence of a default**, **<u>deliver a demand notice</u>** of unpaid operational debtor **copy of an invoice demanding payment** of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*
*(2) The corporate <u>debtor</u> shall, within a period of **10 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) existence of a dispute**, if any, **<u>or</u> record of the pendency** of the suit or arbitration proceedings **filed before** the receipt of such notice or invoice in relation to such dispute;* ***(b)** the **payment** 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* *(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 payment of the operational debt in respect of which the default has occurred.*

Section 9 Application for <u>initiation of CIRP by Operational Creditor</u>

(1) After the expiry of the period of 10 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 CIRP.*
(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;* *(b) an **<u>affidavit</u> to the effect that there is <u>no notice</u> given by the corporate debtor <u>relating to a dispute</u>** 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; **<u>if available</u>**;* *(d) a **copy of any record with information utility** confirming **that there is no payment** of an unpaid operational debt by the corporate debtor, **<u>if available</u>**; and* *(e) **any other proof confirming that there is no payment of an unpaid operational debt** by the corporate debtor or such other information, as may be prescribed.*
*(4) An operational creditor initiating a CIRP under this section **<u>may</u> propose** a **resolution professional <u>to act as</u>** an **interim resolution professional**.*

9(5) The Adjudicating Authority shall, within **14 days of the receipt of the application** under sub-section (2), by an order
(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 payment 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**
(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**;
(b) **there has been payment** 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
(e) **any disciplinary proceeding** is **pending** against any proposed resolution professional:

Provided that Adjudicating Authority, **shall** before rejecting an application under sub-clause (a) of clause (ii) **give a notice to the applicant to rectify** the defect in his application **within 7 days** of the date of receipt of such notice from the Adjudicating Authority.

(6) The **CIRP shall commence from the date of admission of the application** under sub-section (5) of this section.

Section 10 Initiation of CIRP by Corporate Applicant

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

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

(3) The corporate applicant **shall**, along with the application **furnish** the information relating to--
(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.
(c) the **SR passed by shareholders** of the corporate debtor **or** the resolution passed by **at least three-fourth of the total number of partners** of the corporate debtor, as the case may be, **approving filing of the application**.]

(4) The Adjudicating Authority **shall**, within a **period of 14 days of the receipt** of the application, by an order--
(a) **admit** the application, **if** it is **complete**; **and no disciplinary proceeding is pending** against the proposed resolution professional; or
(b) **reject** the application, **if** it is **incomplete**; or any **disciplinary proceeding is pending** against the proposed resolution professional:
Provided that Adjudicating Authority **shall**, before rejecting an application, **give a notice to the applicant** to **rectify the defects in his application within 7 days** from the date of receipt of such notice from the Adjudicating Authority.

(5) **The CIRP shall commence from the date of admission of the application** under sub-section (4) of this section.

Section 11 Persons not entitled to make an application

*The **following persons shall not be entitled to make an application to initiate CIRP** under this Chapter, namely:--* *(a) a corporate debtor undergoing a CIRP; or* *(b) a corporate debtor having completed CIRP 12 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* *(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.***

Section 12 <u>Time Limit</u> for completion of Insolvency Resolution Process

*(1) Subject to sub-section (2), the CIRP **shall be completed within a period of 180 days** from the date of admission of the application to initiate such process.*
*(2) The **resolution professional shall file** an application to the Adjudicating Authority **to extend the period of the CIRP** beyond 180 days, **if instructed to do so by a resolution passed at a meeting of the <u>committee of creditors</u>** by a vote of **<u>66</u>** per cent of the voting shares.*
*(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 CIRP cannot be completed within 180 days, it **may by order extend** the duration of such process beyond 180 days by such further period as it thinks fit**, but not exceeding 90 days**:* *Provided that any extension of the period of CIRP under this section shall not be granted more than once.*

Section 12A <u>Withdrawal of Application</u> admitted u/s 7,9 or 10
*The Adjudicating Authority **<u>may allow</u>** the withdrawal of application admitted u/s 7 or section 9 or section 10, **on an application made by the applicant** with **<u>the approval of 90 per cent. voting share of the committee of creditors</u>**, in such manner as may be specified.*

Section 13 Declaration of Moratorium and Public Announcement

*(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;* *(b) **cause a public announcement** of the initiation of CIRP and call for the submission of claims u/s 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) s**hall be made immediately after the appointment of the interim resolution professional**.*

Section 14 Moratorium

*(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, **the Adjudicating Authority shall by order declare moratorium for <u>prohibiting all</u> of the following**, namely: —* *(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;* *(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under SARFAESI Act, 2002; *(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
(2) The ***supply of essential goods or services to the corporate debtor*** *as may be specified* ***shall <u>not be terminated or suspended or interrupted</u>*** *during moratorium period.*
(3) The ***provisions of sub-section (1) shall not apply to*** *—* *(a) such transaction as may be notified by the CG in consultation with any financial regulator;* *(b) a surety in a contract of guarantee to a corporate debtor.*
(4) The order of moratorium ***shall have effect from the date of such order till the completion of the CIRP****:* *Provided that where at any time during the CIRP 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,* ***<u>the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be</u>****.*

Section 15 Public Announcement of CIRP

(1) The ***public announcement*** *of the CIRP under the order referred to in section 13* ***shall contain the following*** *information, namely:—* *(a) name and address of the corporate debtor under the CIRP;* *(b) name of the authority with which the corporate debtor is incorporated or registered;* *(c) the last date for submission of claims, as may be specified;* *(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 CIRP shall close, which shall be the one hundred and eightieth day from the date of the admission of the application u/s 7, 9 or 10, as the case may be.*
(2) The public announcement under this section shall be made in such manner as may be specified.

Section 16 Appointment and Tenure of Interim Resolution Professional

(1) The Adjudicating Authority shall appoint an interim resolution professional within 14 days from the insolvency commencement date.
(2) Where the application for CIRP 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, if no disciplinary proceedings are pending against him.
(3) Where the application for CIRP is made by an operational creditor and-- *(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;* *(b) 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, if no disciplinary proceedings are pending against him.*
(4) The Board shall, within 10 days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.
(5) The ***term*** *of the interim resolution professional* ***<u>shall continue till the date of appointment of the resolution professional under section 22</u>****.*

Section 17 Management of Affairs of Corporate Debtor by Interim Resolution Professional

(1) From the date of appointment of the interim resolution professional,—

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

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

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

Section 18 Duties of Interim Resolution Professional

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

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—
(i) business operations for the previous 2 years;
(ii) financial and operational payments for the previous 2 years;
(iii) list of assets and liabilities as on the initiation date; and
(iv) such other matters as may be specified;

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

(c) ***constitute a committee of creditors****;*

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

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

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—
(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;
(ii) assets that may or may not be in possession of the corporate debtor;
(iii) tangible assets, whether movable or immovable;
(iv) intangible assets including intellectual property;
(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
(vi) assets subject to the determination of ownership by a court or authority;

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

*Explanation.—For the purposes of this section, the term "**assets" shall not include the following**, namely:—*
(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;
(b) assets of any Indian or foreign subsidiary of the corporate debtor; and
(c) such other assets as may be notified by the CG in consultation with any financial sector regulator.

Section 19 Personnel to extend co-operation to Interim Resolution Professional

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

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

(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.

Section 20 Management of Operations of Corporate Debtor as Going Concern

(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.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority—
(a) to appoint accountants, legal or other professionals as may be necessary;
(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of CIRP;
(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

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

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

Section 21 Committee of Creditors

*(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:*

*Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, **if it is a related party of the corporate debtor, shall not have any right of representation**, participation or voting in a meeting of the committee of creditors:*

Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

*(3) Subject to sub-sections (6) and (6A), where] the corporate debtor owes financial debts to two or more financial creditors as part of a c**onsortium 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.

(4) Where **any person is a financial creditor as well as an operational creditor**,—
(a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and **shall be included in the committee of creditors**, with voting share **proportionate to the extent of financial debts** owed to such creditor;
(b) **such person shall be considered to be an operational creditor to the extent of the operational debt** owed by the corporate debtor to such creditor.

(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.

(6) **Where** the terms of the financial debt extended as part of a consortium **arrangement** or syndicated facility **provide for a single trustee or agent to act for all financial creditors**, each financial creditor **may**—
(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
(d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

21(6A) Where a financial debt—
(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;
(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;
(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,
and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

21(6B) The remuneration payable to the authorised representative—
(i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and
(ii) under clause (b) of sub-section (6A) shall be as specified which shall form part of the insolvency resolution process costs.

(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).

(8) **All decisions of the committee of creditors shall be taken by a vote of not less than <u>75 per cent</u> 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**.

(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 CIRP.

(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 7 days of such requisition.**

Section 22 Appointment of Resolution Professional

*(1) The **first meeting** of the committee of creditors shall be held **within 7 days of the constitution** of the committee of creditors.*
*(2) The committee of creditors, may, in **the first meeting, by a majority vote of not less than 66 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, <u>subject to a **written consent** from the interim resolution professional</u> in the specified form] 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 <u>**along with a written consent from the proposed resolution professional**</u> in the specified form.*
(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 10 days** of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, **direct the interim resolution professional to continue to function** as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.*

Section 23 Resolution professional to conduct CIRP

*(1) Subject to section 27, the **resolution professional shall conduct the entire CIRP and manage the operations of the corporate debtor during the CIRP period**. Provided that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the CIRP period until an order is passed by the Adjudicating Authority under section 31.*
(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.

Section 24 <u>Meeting</u> of <u>Committee of Creditors</u> [CoC]

*(1) The members of the committee of creditors **may meet in person or by such electronic means** as may be specified.*
*(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-- (a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5); (b) members of the suspended BOD or the partners of the corporate persons, as the case may be; (c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.*
(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings: Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

(5) Subject to sub-sections (6), (6A) and (6B) of section 21, 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 will 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.

Section 25 Duties of Resolution Professional

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.
(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:— (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor; (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings; (c) raise interim finances subject to the approval of the committee of creditors under section 28; (d) appoint accountants, legal or other professionals in the manner as specified by Board; (e) maintain an updated list of claims; (f) convene and attend all meetings of the committee of creditors; (g) prepare the information memorandum in accordance with section 29; (h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans. (i) present all resolution plans at the meetings of the committee of creditors; (j) file application for avoidance of transactions in accordance with Chapter III, if any; and (k) such other actions as may be specified by the Board.

Section 25A Rights and Duties of Authorised Representative of Financial Creditors

(1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.
(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.
(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions: Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share: Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.
(4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be. Explanation.-- For the purposes of this section, the "electronic means" shall be such as may be specified.

Section 26 Application for avoidance of transaction not to affect proceedings

*The filing of an **avoidance application** under clause (j) of sub-section (2) of section 25 by the resolution professional **shall not affect the proceedings of the CIRP**.*

Section 27 Replacement of Resolution Professional by Committee of Creditors

(1) Where, at any time during the CIRP, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.
*(2) The committee of creditors may, at a meeting, by a vote of **66 per cent** of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.*
(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.
(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.
(5) where any discriplinary proceeding are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another professional under the section.

Section 28 Approval of Committee of Creditors for certain actions

(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the CIRP, shall not take any of the following actions without the prior approval of the committee of creditors namely:— (a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their 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 meeting; (f) undertake any related party transaction; (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; (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.
(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 **66 per cent** of the voting shares.*
(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 taking necessary actions against him under this Code.

Section 29 Preparation of <u>Information Memorandum</u>

(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— (a) to comply with provisions of 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 (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.

<u>Section 29A Persons not eligible to Resolution Applicant [V.IMPORTANT]</u>

[Note: This Section is lengthy and hence is advised to be read in small parts.]

*A person shall **not be eligible to submit a resolution plan**, if such person, or any other person acting jointly or in concert with such person—*

*(a) is an **undischarged insolvent**;*

*(b) is a **wilful defaulter** in accordance with the guidelines of the RBI issued under the Banking Regulation Act, 1949;*

*(c) **at the time of submission of the resolution plan** has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, **classified as non-performing asset** in accordance with the guidelines of the RBI issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, **and at least a period of one year has lapsed from the date of such classification** till the date of commencement of the CIRP of the corporate debtor:*

***Provided** that **the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission** of resolution plan:*

***Provided further** that **nothing in this clause shall apply to** a resolution applicant where such **applicant is a financial entity and is not a related party to the corporate debtor**.*

***Explanation** I.- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.*

***Explanation** II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;*

*(**d**) has been **convicted** for **any offence punishable with imprisonment** –*
*(i) for **two years or more under any Act specified** under the Twelfth Schedule; or*
*(ii) for **seven years or more under any law** for the time being in force:*

***Provided** that this **clause shall not apply to a person after the expiry of a period of two years from the date of his release** from imprisonment:*
Provided further that this clause shall not apply in relation to a connected person referred to in clause(iii) of Explanation I;

(e) is disqualified to act as a director under the Companies Act, 2013

Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

***(f)** is **prohibited by the SEBI from trading** in securities or accessing the securities markets;*

*(**g**) **has been a promoter or in the management or control** of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:*

***Provided** that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;*

*(**h**) **has executed a guarantee in favour of a creditor** in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;*

***(i)** is **subject to any disability, corresponding to clauses (a) to (h)**, under any law in a jurisdiction **outside India**; or*

***(j) has a connected person not eligible** under clauses (a) to (i).*

***Explanation** I. — For the purposes of this clause, the expression "**connected person**" means—*
(i) any person who is the promoter or in the management or control of the resolution applicant; or
(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

*Provided further that the expression "**related party**" **shall not include** a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;*

***Explanation** II—For the purposes of this section, "**financial entity**" shall mean the following entities which meet such criteria or conditions as the CG may, in consultation with the financial sector regulator, notify in this behalf, namely:—*
(a) a scheduled bank;
(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of

Understanding;
(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the FEMA, 1999;
(d) an asset reconstruction company register with the RBI under section 3 of the SARFAESI Act, 2002;
(e) an Alternate Investment Fund registered with SEBI;
(f) such categories of persons as may be notified by the CG.

Section 30 Submission of Resolution Plan

(1) A resolution applicant may submit a resolution plan ***along with an affidavit stating that he is eligible under section 29A*** *to the resolution professional prepared on the basis of the information memorandum.*

(2) The ***resolution professional shall examine each resolution plan received by him to confirm that each resolution plan****--*
(a) ***provides for the payment of insolvency resolution process costs*** *in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;*

(b) ***provides for the payment of the debts of operational creditors*** *in such manner as may be 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) ***provides for the management of the affairs*** *of the Corporate debtor after approval of the resolution plan;*
(d) the ***implementation and supervision*** *of the resolution plan;*
(e) ***does not contravene any of the provisions of the law*** *for the time being in force;*
(f) ***conforms to such other requirements*** *as may be specified by the Board.*

Explanation*.-- For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law;*

(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 ***66 per cent*** *of voting share of the financial creditors, after considering its feasibility and viability and such other requirements as may be specified by the Board:*

Provided *that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the IBC (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:*

Provided further *that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:*

Provided also *that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the CIRP shall be completed within the period specified in that sub-section.*

Provided also *that the eligibility criteria in section 29A as amended by the IBC (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the IBC (Amendment) Ordinance, 2018.*

(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.

Section 31 Approval of Resolution Plan

(1) If the Adjudicating Authority is satisfied that 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,* ***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.* *Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.*
(2) Where ***the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements*** *referred to in 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* *(b) the resolution professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.*
(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later: *Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.*
MCA Circular: ***It is clarified by the MCA on 25th October 2017 (vide General Circular No. IBC/01/2017) that once the resolution plan is approved by the Adjudicating Authority i.e. National Company Law Tribunal (NCLT), no further approval of the resolution plan is required from the shareholders/members of the Corporate Debtor.***

Section 32 Appeal
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.

Section 33 Initiation of Liquidation

(1) Where the Adjudicating Authority,-- *(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the CIRP under section 12 or the fast track CIRP under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or* *(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall--* *(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter [Liquidation]* *(ii) issue a public announcement stating that the corporate debtor is in liquidation; and* *(iii) require such order to be sent to the authority with which the corporate debtor is registered.*
(2) Where the resolution professional, at any time during the CIRP but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than ***66 per cent*** *of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*
(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 sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).
(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 sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).
(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.*
(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the CG 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.

Section 34 Appointment of Liquidator and fee to be paid

(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the CIRP under Chapter II [viz. Liquidation] shall subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form, act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).
(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 in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.
(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; or* *(c) the resolution professional fails to submit written consent under sub-section (1).*
(5) For the purposes of clauses (a) and (c) of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator. .
(6) The Board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specified form, within 10 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.

Section 35 Power and Duties of Liquidator

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:— *(a) to verify claims of all the creditors;* *(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;* *(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and*

prepare a report; *(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;* *(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;* *(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;* *Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.* *(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;* *(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;* *(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;* *(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;* *(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;* *(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;* *(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;* *(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board;* ***and*** *(o) to perform such other functions as may be specified by the Board.*
(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.*

Section 36 Liquidation Estate

(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.
(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;* *(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;* *(c) tangible assets, whether movable or immovable;* *(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of*

the corporate debtor) and financial instruments, insurance policies, contractual rights;
(e) assets subject to the determination of ownership by the court or authority;
(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;
(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; **and**
(i) all proceeds of liquidation as and when they are realised.

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

(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) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
(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 CG in consultation with any financial sector regulator

(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
(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.

Section 37 Power of Liquidator to access information

(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:—
(a) an information utility;
(b) credit information systems regulated under any law for the time being in force;
(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;
(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 7 days** from the date of such request or provide reasons for not providing such information.

Section 38 Consolidation of Claims

(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.

(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 as provided for the submission of claims for the operational creditor under sub-section (3).

(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).
(5) A creditor may withdraw or vary his claim under this section within 14 days of its submission.

Section 39 Verification of claims

*(1) The liquidator **shall verify** the claims submitted u/s 38 within such time as specified by the Board.*
*(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.*

Section 40 Admission or rejection of claims

*(1) The liquidator may, after verification of claims u/s 39, either admit or reject the claim, in whole or in part, as the case may be: 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 **7 days** of such admission or rejection of claims.*

Section 41 Determination of valuation of claims
*The **liquidator shall determine** the value of claims admitted u/s 40 in such manner as may be specified by the Board.*

Section 42 Appeal against the decision of liquidator

*A **creditor may appeal** to the Adjudicating Authority **against the decision of the liquidator accepting or rejecting the claims within 14 days** of the receipt of such decision.*

Section 43 Preferential transactions and relevant time

*(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.*
*(2) A **corporate debtor <u>shall be deemed to have given</u> a preference**, **if**– (a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and (b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.*
*(3) For the purposes of sub-section (2), a **preference <u>shall not include</u> 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 – (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and*

(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property: *Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.*
***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 <u>deemed</u> to be given at a relevant time, if** –* *(a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or* *(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.*

Section 44 Orders in case of preferential transactions

(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:

(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;

(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;

(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;

(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 CIRP for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

***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.

***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, -*
(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. ***Explanation**-II. – A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the CIRP has been made u/s 13.*

Section 45 Avoidance of undervalued transactions

(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) determines that certain transactions were made during the relevant period u/s 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.
*(2) A transaction **shall be considered undervalued where** the corporate debtor–* *(a) **makes a gift** to a person; <u>**OR**</u>* *(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,* *<u>**AND**</u> such **transaction has not taken place in the ordinary course** of business of the corporate debtor*

<u>Section 46</u> Relevant period for avoidable transactions *(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* *(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.

Section 47 Application by creditor in cases of undervalued transactions

*(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 <u>**creditor, member or a partner of a corporate debtor**</u>, as the case may be, <u>**may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect**</u> in accordance with this Chapter.*
*(2) **Where, the Adjudicating Authority**, <u>after examination</u> of the application made under sub-section (1), is satisfied that -* *(a) undervalued transactions had occurred; and* *(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;* ***(b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.***

Section 48 Order in cases of undervalued transactions

(1) The order of the Adjudicating Authority u/s 45(1) may provide for the following: - *(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;* *(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.*

Section 49 Transactions defrauding creditors

(1) 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 - *(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,* ***the Adjudicating Authority shall make an order****-* *(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and* *(ii) 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* *(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.*

Section 50 Extortionate credit transactions

(1) Where the corporate debtor has been a party to an ***extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date****, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.*
(2) The Board may specify the circumstances in which a transactions which shall be covered under sub-section (1). ***Explanation****. - For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.*

Section 51 Orders of Adjudicating Authority in respect of extortionate credit transactions

Where the Adjudicating Authority after examining the application made u/s 50(1) is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order – *(a) restore the position as it existed prior to such transaction;* *(b) set aside the whole or part of the debt created on account of the extortionate credit transaction;* *(c) modify the terms of the transaction;* *(d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or* *(e) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.*

Section 52 Secured creditor in liquidation proceedings

(1) A <u>secured creditor</u> 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* *(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 –* *(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.*
*(**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.*
*(**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.*
*(**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.*
*(**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.*
*(**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.

Section 53 Distribution of assets [IMPORTANT]

(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: -

*(**a**) the insolvency resolution process costs and the liquidation costs paid in full;*
*(**b**) <u>the following debts which shall **rank equally** between and among the following</u>:*

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

*(**c**) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*
*(**d**) financial debts owed to unsecured creditors;*
*(**e**) the following dues shall rank equally between and among the following: -*

(i) any amount due to the CG and the SG 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 2 years preceding the liquidation commencement date;
(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

*(**f**) any remaining debts and dues;*
*(**g**) preference shareholders, if any; and*
*(**h**) equity shareholders or partners, as the case may be*
.

*(2) **Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.***

(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.

***Explanation**. – For the purpose 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
(ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

Section 54 Dissolution of corporate debtor

(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.

(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 7 days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

FAST TRACK CIRP

Section 55 Fast track CIRP

*(1) A CIRP carried out in accordance with this Chapter [**Chapter IV of Part 2 of IBC,2016**] shall be called as fast track CIRP.*
(2) An application for fast track CIRP 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 CG; or***   ***(b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the CG; or***   ***(c) such other category of corporate persons as may be notified by the CG.***
Notification: ***CG has notified that an application for fast track CIRP may be made in respect of the following** corporate debtors, namely :-*   *(a) a **small company** as defined under clause (85) of section 2 of Companies Act, 2013; or*   *(b) a **Startup** (**other than the partnership firm**) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 23rd May, 2017; or*   *(c) **an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees ONE CRORE.***

Section 56 Time period for completion of fast track CIRP

*(1) Subject to the provisions of sub-section (3), the fast track CIRP **shall be completed within a period of 90 days from the insolvency commencement date**.*
*(2) The **resolution professional shall file** an application to the Adjudicating Authority **to extend the period** of the fast track CIRP **beyond 90 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 75 per cent of the voting share**.*
*(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 **fast track CIRP cannot be completed within ninety days**, it may, by order, **extend the duration of such process beyond the said period 90 days by such further period, as it thinks fit, but not exceeding 45 days**:*   *Provided that **any extension** of the fast track CIRP under this section **shall not be granted more than once**.*

Section 57 Manner of initiating fast track CIRP

*An **application** for fast track CIRP **<u>may be filed by a creditor or corporate debtor</u>** as the case may be, **along with**-*

*(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 CIRP..

Section 58 Applicability of Chapter II to this Chapter

The process for conducting a CIRP under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require.

[Chapter II is of Normal CIRP and 'this chapter' means Fast track CIRP]

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

Section 59 Voluntary liquidation of corporate persons

*(1) A corporate person **who intends to liquidate itself voluntarily and has not committed any default** may initiate voluntary liquidation proceedings under the provisions of this Chapter.*
(2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.
*(3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company **shall meet the following conditions**, namely: -* *(**a**) a **declaration from majority of the directors of the company <u>verified by an affidavit</u> 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 2 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 **SR 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 ROC and the Board about the resolution under sub-section (3) to liquidate the company within 7 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 Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.
(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 an application filed by the liquidator under sub-section (7), pass an 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 14 days from the date of such order, be forwarded to the authority with which the corporate person is registered**.*

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

Regulation 3: Eligibility for resolution professional

(1) An insolvency professional shall be eligible to be appointed as a resolution professional for a CIRP of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor. ***Explanation**– A person shall be considered independent of the corporate debtor, if he:* *(**a**) is eligible to be appointed as an independent director on the board of the corporate debtor u/s 149 of the Companies Act, 2013, where the corporate debtor is a company;* *(**b**) is not a related party of the corporate debtor; or* ***(c) is not an employee or proprietor or a partner:*** *(i) of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor; or* *(ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to 5 per cent or more of the gross turnover of such firm, in the last 3 financial years.*
(1A) Where the committee decides to appoint the interim resolution professional as resolution professional or replace the interim resolution professional under section 22 or replace the resolution professional under section 27, it shall obtain the written consent of the proposed resolution professional in Form AA of the Schedule.
(2) A resolution professional shall make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct. (3) A resolution professional, who is a director or a partner of an insolvency professional entity, shall not continue as a resolution professional in a CIRP if the insolvency professional entity or any other partner or director of such insolvency professional entity represents any of the other stakeholders in the same CIRP.

Regulation 16 Committee with only operational creditors.

(1) Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be set up in accordance with this Regulation.
(2) The committee formed under this Regulation shall consist of members as under - *(a) **18 largest operational creditors by value**:* ***Provided** that if the number of operational creditors is less than eighteen, the committee shall include all such operational creditors;* *(b) one representative elected by all workmen other than those workmen included under sub-clause (a); and* *(c) one representative elected by all employees other than those employees included under sub-clause (a).*
(3) A member of the committee formed under this Regulation shall have voting rights in proportion of the debt due to such creditor or debt represented by such representative, as the case may be, to the total debt. ***Explanation** – For the purposes of this sub-regulation, 'total debt' is the sum of-* *(a) the amount of debt due to the creditors listed in sub-regulation 2(a);* *(b) the amount of the aggregate debt due to workmen under sub-regulation 2(b); and* *(c) the amount of the aggregate debt due to employees under sub-regulation 2(c).*
(4) A committee formed under this Regulation and its members shall have the same rights, powers, duties and obligations as a committee comprising financial creditors and its members, as the case may be.

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The Foreign Exchange Management Act, 1999

(With Applicable Regulations and Rules)

QUICK INTRODUCTION

As per the preamble of The Foreign Exchange Management Act, 1999 (hereinafter referred to as "**FEMA, 1999**"), it is an Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

Note: FEMA, 1999 extends to the whole of India. (No exception to J&K, even before abrogation of Article 370**)**
It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.

Note: As per Exclusion Notification Issued by ICAI, there is a change in scope/coverage of provisions covered in this chapter which is as follows:

Topics Retained	**The FEMA, 1999 along with the following Rules/Regulations –** • Fem (Permissible Capital Account Transactions) Regulations, 2000 **[Topic given on page 1.16 in Applicable ICAI Study Material]** • Fem (Current Account Transactions) Rules, 2000 **[Topic given on page 1.10 in Applicable ICAI Study Material]** • FEM (Export of Goods & Services) Regulations, 2015 **[Topic given on page 1.23]**
Topics Excluded	• Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 **[Topic given on page 1.19 in Applicable ICAI Study Material]** • Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015 **[Topic given on page 1.21 in Applicable ICAI Study Material]** • Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000 **[Topic given on page 1.31 in Applicable ICAI Study Material]** • Foreign Exchange Management (Possession and retention of foreign currency) Regulations, 2015 **[Topic given on page 1.34 in Applicable ICAI Study Material]**

Further as per the RTP issued by ICAI, this chapter, for November, 2019 Exams have certain SMALL AMENDMENTS as compared to applicable Study Material issued by BOS, ICAI. These amendments are discussed below:

- **RBI makes amendments in the Foreign Exchange Management (Permissible CAPITAL Account Transactions) Regulations, 2000**, w.e.f. 26/02/2019.

  [Topic given on page 1.16 in Applicable ICAI Study Material]

  The main objective of the amendment is to bring derivative contracts under the ambit of the regulation.

  Accordingly, a new definition for Derivative under clause (da) of Regulation 2 has been introduced and also Schedule I and II of the Regulation has been amended to include derivative contracts.

  The amendments are as follows:

(i) After the clause (d) of Para 2 (Definitions) the following shall be added: "(da) '**Derivative'** means a financial contract, to be settled at a future date, whose value is derived from one or more financial, or non-financial variables."
(ii) In Schedule I (Classes of capital account transactions of persons resident in India) of Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, **for the existing clause (k), the following shall be substituted, namely**; "(k) **Undertake derivative contracts**"
(iii) In the Schedule II (Classes of capital account transactions of persons resident outside India) of Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, **after existing clause (g) the following shall be added, namely**; "(h) **Undertake derivative contracts**"

Therefore, it is advised to refer this chapter from ICAI Study Material only considering the above given change in scope and amendments^^. The same may be accessed by visiting the link given below:

https://resource.cdn.icai.org/47265bosfinal-p4-mod3-cp1.pdf

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Foreign Contribution Regulation Act, 2010

(With Foreign Contribution (Regulation) Rules, 2011)

QUICK INTRODUCTION

As per the preamble of Foreign Contribution Regulation Act, 2010 (hereinafter referred to as "**FCRA, 2010**"), it is an Act to **consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest** and for matters connected therewith or incidental thereto.

Note: FCRA, 2010 extends to the whole of India, and it shall also apply to—
(a) citizens of India outside India; and
(b) associate branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India. (No exception to J&K, even before abrogation of Article 370**)**

Note: As per Exclusion Notification issued by ICAI, this chapter, for November, 2019 Exams have NO change in scope/coverage as compared to applicable Study Material issued by BOS, ICAI. However, as per RTP Issued by ICAI, there are certain SMALL AMENDMENTS in certain topics of this chapter which are discussed below: As per Notification issued by Ministry of Home Affairs dt. 07/03/2019, the **CG** In exercise of the powers conferred by section 48 of the FCRA, 2010 **amended Rule 7 and 12 of the Foreign Contribution(Regulation) Rules, 2011**. (Although the said notification makes certain other amendments also, but they have not been covered by ICAI in RTP, hence ignored).

The said Rule 7 and 12 are given below in their amended position:

Rule 7 Receiving foreign hospitality by specified categories of persons **[Amend at Page 4.8 of ICAI Study Material]**
1) Any person belonging to any of the categories **specified in section 6** who wishes to avail of foreign hospitality shall apply ***electronically online*** to the CG in Form FC-2 for prior permission to accept such foreign hospitality.
(2) Every application for acceptance of foreign hospitality shall be accompanied by an invitation letter from the host or the host country, as the case may be, and administrative clearance of the Ministry or department concerned in case of visits sponsored by a Ministry or department of the Government.
(3) The application for grant of permission to accept foreign hospitality must reach the appropriate authority ordinarily two weeks before the proposed date of onward journey.
(4) In case of.emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the CG within **60 days** of such receipt giving full details including fee source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilised. Provided that no such intimation is required if the value of such hospitality in emergent medical aid is upto one lakh rupees or equivalent thereto.

(Extra Coverage) Interpretation Issue with Section 6 and Rule 7:

Section 6, inter alia, **requires** that in case of.emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the CG within **1 Month** of such receipt giving full details including source and manner, **WHEREAS**, **Rule 7**, inter alia, requires the same intimation in **60 Days.**

Issue: Contradiction in time limit for intimation in Section and Rule.

Analysis: As per rules of Interpretation of Law, **'Rules' are sub-ordinate to 'Sections'**. The reason for the same is that the 'Sections' which are part of "Act" which is made by Parliament and whereas 'Rules' are made by CG using the powers conferred to it under provisions of that 'Act' only.

Conclusion: In practical life, the said time limit should be of 1 month only.

What to do in Exam: Firstly, Examiner rarely asks such a issue as 'Interpretation of Statutes' is not applicable for New Course Students of CA Final. However if still asked then it is recommended to state both section and rule in Exam. Further in case of MCQ, answer should be specific to question as to whether it is asked for Section or Rule.

Rule 12 Renewal of registration certificate. – **[Amend at Page 4.17 of ICAI Study Material]**
'1) Every certificate of registration issued to a person shall be liable to be renewed after the expiry of **5 years** from the date of its issue on proper application.
(2) Every person shall apply ***to the CG electronically online in Form FC-3C***, 6 months before the date of expiry of the certificate of registration, for its renewal.
(3) OMITTED
(4) An application made for renewal of the certificate of registration shall be accompanied by a fee of ***Rs.1,500/-.***
(5) The fee for renewal of the certificate of registration shall be remitted by demand draft or banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi or through online electronic payment gateway as specified by the CG.
(6) In case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have ceased from the date of completion of the period of 5 years from the date of the grant of registration. **Illustration**: - A certificate of registration granted on the 1st January, 2012 shall be valid till the 31st December, 2016. A request for renewal of the registration certificate shall reach the CG, accompanied by the requisite fee, by the 30th June, 2016. If no application is received or is not accompanied by the renewal fee, the validity of the registration certificate issued on the 1st January 2012 shall be deemed to have lapsed with effect from the close of the day on 31st December, 2016.
(7) If the validity of the certificate of registration of a person has ceased in accordance with the provisions of these rules, a fresh request for the grant of a certificate of registration may be made by the person to the CG as per the provisions of rule 9.
(8) In case a person provides sufficient grounds, in writing, explaining the reasons for not submitting the certificate of registration for renewal within the stipulated time, his application may be accepted for consideration along with the requisite fee ***and with late fee of Rs.5000/- (Five Thousand rupees only)***, but not later than ***1 Year*** after the expiry of the original certificate of registration.

<u>Therefore, it is advised to refer this chapter from ICAI Study Material only considering the above given amendments</u>^^. The same may be accessed by visiting the link given below:

https://resource.cdn.icai.org/47267bosfinal-p4-mod3-cp4.pdf

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The SARFAESI Act, 2002

QUICK INTRODUCTION

As per the preamble of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "**The SARFAESI Act,2002**"), it is an Act to regulate **securitisation** and **reconstruction** of financial assets and **enforcement of security interest and** to **provide for a Central database** of security interests created on property rights, and for matters connected therewith or incidental thereto.

Note: The SARFAESI Act, 2002 extends to the whole of India. (No exception to J&K, even before abrogation of Article 370**)**

Note: As per RTP issued by ICAI, this chapter, for November, 2019 Exams have NO RELEVANT AMENDMENT as compared to applicable Study Material issued by BOS, ICAI. However, as per Exclusion Notification Issued by ICAI, there is a change in scope/coverage of provisions which is as follows:

Topics Retained	Relevant definitions covered in the Study Material, management of asset by the bank and the financial institutions [Sections 1- 19 of the SARFAESI Act]	**Page 2.1 - 2.29** and **2.41 - 2.48** of ICAI Study Material relevant for Nov., 2019 Exams (New Course)
Topics Excluded	**Section 20 and onwards** of this chapter	**Page 2.30 - 2.40** of ICAI Study Material relevant for Nov., 2019 Exams (New Course) [**My Suggestion**: Still Don't skip Section 31 (Ques. 4 Page 2.47) due to its relevance]

Therefore, it is advised to refer this chapter from ICAI Study Material only considering the above given change in scope^^. The same may be accessed by visiting the link given below:

https://resource.cdn.icai.org/47266bosfinal-p4-mod3-cp2.pdf

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The Arbitration and Conciliation Act, 1996

QUICK INTRODUCTION

The Arbitration and Conciliation Act, 1996 is an Act to consolidate and amend the law relating to **domestic arbitration**, **international commercial arbitration** and **enforcement of foreign arbitral awards** as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.

Note: The Arbitration and Conciliation Act, 1996 extends to the whole of India.
Provided that Parts I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

Explanation.—In this sub-section, the expression "international commercial conciliation" shall have the same meaning as the expression "international commercial arbitration" in clause (f) of sub-section (1) of section 2, subject to the modification that for the word "arbitration" occurring therein, the word "conciliation" shall be substituted.
[Note: This position is applicable for exam and abrogation of Article 370 has no impact on it as of now.]

Note: As per RTP read with relevant Exclusion Notification issued by ICAI, this chapter, for November, 2019 Exams have neither any relevant amendment nor the scope/coverage of provisions have been changed as compared to applicable Study Material issued by BOS, ICAI (i.e. No topics excluded or newly included). Therefore, it is advised to refer this chapter from ICAI Study Material only without any modification^^. The same may be accessed by visiting the link given below:

https://resource.cdn.icai.org/47268bosfinal-p4-mod3-cp5.pdf

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OTHER IMPORTANT LINKS

1. Revision Test Paper (RTP)	https://www.icai.org/post.html?post_id=14473.
2. Mock Test Papers (MTPs)	https://www.icai.org/post.html?post_id=14629.
3. Suggested Answers	https://www.icai.org/post.html?post_id=14910.
4. Admit Card	https://icaiexam.icai.org/
5. BOS Announcements	https://www.icai.org/new_category.html?c_id=438
6. TOLL FREE No. for Students' Query (ICAI)	18001211330
7. Faculty, BOS Contacts	https://resource.cdn.icai.org/29574contact-bos-faculty-19221.pdf
8. **Company Law** Notes (For Nov., 2019)	https://www.caclubindia.com/share_files/details.asp?mod_id=78113
9. **Securities Laws** Notes (For Nov., 2019)	https://www.caclubindia.com/share_files/ca-final-securities-laws-notes-for-nov-19-78498.asp
Give your suggestions/ reviews at https://forms.gle/LWAheiNqYZ7juPHP6	

For Paper 4: Corporate and Economic Laws **May, 2020** Notes, join at:

https://t.me/CAFinalLawNotes

All the very Best for Exams

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