CA- FINAL (NEW)

CORPORATE & ECONOMIC LAWS

Revision Notes for **November, 2021** Exams

Part C: Economic Laws

- *All Amendments Covered (incl. RTP)*
- *Updated as per latest ICAI guidelines*
- *All November, 2021 Amendments highlighted*
- *Accessible on all Smartphones/Tablets/PCs*
- *Downloadable and Print Friendly*

5th Edition

By CA. Mohit Bansal

Telegram/@CAFinalLawNotes

Hello :)

Hope you and your family are fine!

Dear friends, 'Revision Notes for CA-Final Law (New Course)' is a small endeavor from my side to help CA students in quickly revising the subject at the exam time, particularly for those doing self-study ensuring coverage of all relevant provisions of law for exam or even conceptually. I started these notes with the intent to provide updated study material of CA-Final Law subject before examination so that student need not refer his main book and amendments separately while revision and these notes act as his/her one stop solution before exams.

Thanks a lot for your responses so far which is a great motivation for me and I look forward to hear more from you. Now, I am really happy to release the 5th edition of these revision notes and hope they will serve the expected purpose.

*The Part A (Company Law) is available for **free** online access by all CA students along with Download option with other parts as well. (Visit download link)*

If you find these notes useful or have any suggestion to make them better, do let me know at cafinalwithmohitbansal@gmail.com. You can connect on Telegram mobile App/@connect_mohit.

Do refer these notes to your friends as well.

Best Wishes
CA. Mohit Bansal

Amendments/Changes for November/December, 2021 Exams

1. ***All relevant amendments notified till 30/04/2021 are covered in theses notes along with any update issued by ICAI for November, 2021 Exams (including RTP).***

2. ***Coverage of all relevant topics including any changes in latest ICAI Study material***

   ICAI recently issued November 2020 Edition of Study material for Corporate & Economic Laws and Academic update for November, 2021 Exams. ***These notes already incorporate all the relevant changes made therein.*** *Hence, student need not worry about the coverage of such changes.*

   However ICAI has also included certain new questions for practice in the new study material and have also issued new MCQs and Case Scenario Booklet, ***the students are advised to go through same for practice purpose (keeping in view the relevant amendments for Nov., 2021).***

3. ***The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021–***

   All relevant sections notified as applicable till the cut-off date (30/04/2021) for November/December, 2021 CA – Final Examination are covered in these notes. Short explanations of the amendments are also added wherever required. ***Needless to say, these amendments are specifically highlighted.***

   This is in addition to the Companies (Amendment) Act, 2020 affecting Part A of these notes.

4. ***Deletions in the scope of coverage of Syllabus w.e.f. November 2021 Exams***

   The Institute recently has made the following deletions in the scope of coverage of syllabus of Paper-4: Corporate & Economic Laws for students appearing for November 2021 examination and onwards at the Final Level. (https://resource.cdn.icai.org/64997bos52263.pdf)

   i) *SCRA, 1956 and SCRR, 1957*
   ii) *SARFAESI Act, 2002*

   Accordingly, these chapters are no longer made part of these notes. (See Part B & C of Notes)

5. ***COVID-19 Relaxations***

   In the year 2020/2021, due to COVID- 19 pandemic, many relaxations were granted by Government. These relaxations, inter alia, also included certain relaxations which may have an impact on syllabus of CA-Final (New) Course) Paper 4. ***These Revision Notes by CA. Mohit Bansal, do not cover the said relaxations/extended dates of compliances because of their very nature of being extra-ordinary.*** *However, for those who wish to go through such relaxations may visit MCA/SEBI/MHA Website for the same (But it is recommended to do so only when you are done with your entire syllabus).*

Part A: Company Law Notes for November, 2021

Free online access* available at https://bit.ly/CLawNotesN21

**Free online access may not be available once November/December, 2021 Exams are concluded. Please visit Telegram/@CAFinalLawNotes for latest revision notes thereafter.*

(For downloading your copy of notes of complete subject (Part A+B+C), please visit **https://bit.ly/dwnldNov21**)

Introduction to Notes:

- ***THESE NOTES ARE REVISION NOTES AND NOT SHORT NOTES***
  Hence these notes cover all relevant topics applicable for Part C (Economic Laws) of CA-Final (New) Paper 4: Corporate and Economic Laws for ***November, 2021*** *Exams*
  Visit Telegram Channel for Part – A (Company Law) and Part – B (Securities Law).

- *These notes (along with other parts) are prepared with intention to help students on the paper day for complete revision of syllabus in around 1.5 day and are meant for* ***revision*** *only and therefore suggested to be referred by only those who have studied the provisions of subject in detail from ICAI Study Material or any other Study Material/Classes.*

- ***At least 2 readings of these notes is suggested, 1st before beginning of exams (in which student may put markings in these notes as per his/her convenience) and 2nd in days just before the Paper.***

- *Interpretation/Analysis of most provision has not been included unless extremely required in these notes as the same would have defeated the purpose by making the notes lengthy and difficult to cover in entirety.* ***Although necessary effects such as underlining or making the font Bold/Coloured have been made at appropriate places for easy interpretation and highlighting importance.***
  (Light coloured text is meant to be skipped in last revision since it was given for better understanding and linkage of provisions in the initial revision(s).)

- ***These notes are fully updated as per the amended provisions of Company Law effective on 30/04/2021 which is cut-off date for November, 2021 Exam (including RTP for November, 2021 Exams).***

- ***AMENDMENTS FOR NOVEMBER, 2021 EXAMS HAVE SPECIFICALLY BEEN HIGHLIGHTED AT ALL THE RELEVANT PLACES TO HELP STUDENTS EASILY IDENTIFY AND GRASP THEM.***

- **In case you also wish to see the specific amendments made in previous attempts, you are advised to see MAY, 2021 notes which are available at telegram channel (for limited period).**

- *All* ***relevant Rules/Regulations/Schedules/Case Laws/Circulars have been covered*** *in these notes to the extent made part of syllabus by BOS, ICAI and most of them are given with relevant section(s).*

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.*

Due care has been taken while preparing these notes, in spite of this if any error (typographical or otherwise) is noticed by you, then you may please bring the same into my notice so that the same can be taken care of appropriately

The Insolvency and Bankruptcy Code, 2016

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.

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 by ICAI for CA-Final Course as of now.

IBC, 2016 extends to the whole of India without any exception.

Special Note for November, 2021 Exams Onwards

{Amendment due to the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021}:

Aforesaid **Part II** (Insolvency Resolution And Liquidation For Corporate Persons) ,for Exams purpose, earlier used to cover only chapters I, II, III and IV.

Now, Govt. of India has newly added Part **Chapter III-A** '*Pre-Packaged Insolvency Resolution Process*" which is a new addition for CA Final Syllabus. Due to introduction of this new concept, certain other amendments are also made. So, critically analyse the same while revision.

PART – I (PRELIMINARY)

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 LLP 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)

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

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 u/s 188(1);

(2) "bench" means a bench of the Adjudicating Authority;

(3) "bye-laws" mean the bye-laws made by the insolvency professional agency u/s 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 section 2(20) of the Companies Act, 2013 , **a LLP**, as defined in section 291)(n) 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**;

[**As per Jindal Saxena Financial Services v. Mayfair Capital (2008**): NBFC is engaged in various activities and hence NBFC is not by the very fact or act be excluded (on ground that it is a financial service provider) from definition of 'corporate person' u/s 3(7) of IBC. **NBFC can be a 'Corporate Debtor' (depending upon facts and circumstances).**]

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

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

(a) accepting electronic submission of financial information in such form and manner as may be specified;
(b) safe and accurate recording of financial information;
(c) authenticating and verifying the financial information submitted by a person; and
(d) providing access to information stored with the information utility to persons as may be specified;

(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 u/s 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional u/s 207;

(20) "**insolvency professional agency**" means any person registered with the Board u/s 201 as an insolvency professional agency;

(21) "**information utility**" means a person who is registered with the Board as an information utility u/s 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 section 2(v) of FEMA, 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
(INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS)

Section 4 Application of this Part

This Part shall apply to matters relating to the **insolvency and liquidation** of **corporate debtors** where the **minimum amount of the default is ₹ 1 lakh**:

[First proviso] Provided that the **CG may**, by notification, **specify the minimum amount of default** of higher value which shall not be more than ₹ 1 crore.

[Second proviso] *Provided further that the CG may, by notification, specify such minimum amount of default of higher value, which shall not be more than ₹ 1 crore, for matters relating to the pre-packaged insolvency resolution process of corporate debtors under Chapter III-A.*

(Second proviso newly added – Amendment for November, 2021 Exams)

Notification S.O. 1205(E) dated 24 March, 2020

In exercise of the powers conferred by the (first) proviso to section 4 of the IBC, 2016, CG specified **₹ 1 Crore** as the minimum amount of default for the purposes of the said section.

Notification S.O. 1543(E) dated 09/04/2021 (November, 2021 Amendment)

In exercise of the powers conferred by the second proviso to section 4 of the IBC, 2016, CG hereby specifies ₹ 10 lakh as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code.

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 u/s 408 of the Companies Act, 2013;

(2) "auditor" means a CA certified to practice as such by ICAI u/s 6 of the Chartered Accountants Act, 1949;

*(2A) "**base resolution plan**" means a resolution plan provided by the corporate debtor u/s 54A(4)(c);*

(Newly added – Amendment for November, 2021 Exams)

(3) "Chapter" means a Chapter under this Part;

(4) "**constitutional document**", in relation to a corporate person, includes AOA, MOA 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 Corporate Insolvency Resolution Process **[CIRP]** *or the pre-packaged insolvency resolution process, as the case may be* 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;

(Amendment for November, 2021 Exams)

(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 financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) "**financial debt**" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;
(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the 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 shall be deemed to be an amount having the commercial effect of a borrowing**; 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;

ACPC Enterprises v. Affinity Beauty Saloon (2018) (NCLT- Delhi Bench):
Subscription money for the purchase of shares is not a financial debt.
In this case the application u/s 7 was rejected by NCLT on ground that the subscription money paid to company for issuing preference shares is not a financial debt, hence no CIRP application can be accepted for such amount. (However, this judgement was challenged in NCLAT, but the same was dismissed by NCLAT because of subsequent internal settlement by parties on this issue and hence it has not given any observation on this issue)

(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] *or pre-packaged insolvency resolution process, as the case may be;*

(Amendment for November, 2021 Exams)

(12) **insolvency commencement date** means the **date of admission of an application** for initiating CIRP by the Adjudicating Authority u/s 7, 9 or section 10, as the case may be;

(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 *or by the corporate debtor during the pre- packaged insolvency resolution process period, as the case may be*, and such other debt as may be notified;

Notification S.O. 1145(E) dated 18/03/2020

In exercise of the powers conferred by section 5(15) of the IBC, 2016, **CG notified a debt raised from the Special Window for Affordable and Middle-Income Housing Investment Fund I, for the purposes of the said clause**.

Explanation.—For the purposes of this notification, the expression "Special Window for Affordable and Middle-Income Housing Investment Fund I" shall mean the fund sponsored by CG for providing priority debt financing for stalled housing projects, as an alternate investment fund and registered with the SEBI, established under SEBI Act, 1992, to provide financing for the completion of stalled housing projects that are in the affordable and middle-income housing sector.

(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 VI and* 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;

*(23A) "**preliminary information memorandum**" means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G;*

*(23B) "**pre-packaged insolvency commencement date**" means the date of admission of an application for initiating the pre-packaged insolvency resolution process by the Adjudicating Authority under clause (a) of sub-section (4) of section 54C;*

(23C) "pre-packaged 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 and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the pre-packaged insolvency resolution process period, subject to section 54F(6);
(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order u/s 54J(2);
(d) any costs incurred at the expense of the Government to facilitate the pre_packaged insolvency resolution process; and
(e) any other costs as may be specified

*(23D) "**pre-packaged insolvency resolution process period**" means the period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order section 54L(1), or section 54N(1), or section 54-O(2), as the case may be, is passed by the Adjudicating Authority;*

(Clauses 23A to 23D newly inserted - Amendment for November 2021 Exams)

(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 BOD 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 2 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 individual**, 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 u/s 25(2)(h) *or pursuant to section 54K, as the case may be;*

(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]** *or the pre-packaged insolvency resolution process, as the case may be*, **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)

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** (see notification dt. 27/02/2019 given below), may file an application for initiating CIRP against a corporate debtor before the Adjudicating Authority when a default has occurred.

[1st Proviso] Provided that for the financial creditors, referred to in clauses (a) and (b) of section 21(6A), an application for initiation CIRP against the corporate debtor shall be filed jointly by not less than 100 of such creditors in the same class **or** not less than 10 per cent of the total number of such creditors in the same class, whichever is **less**:

[2nd Proviso] Provided further that for financial creditors who are allottees under a real estate project, an application for initiating CIRP against the corporate debtor shall be filed jointly by not less than 100 of such allottees under the same real estate project or not less than 10 per cent of the total number of such allottees under the same real estate project, whichever is **less**:

[3rd Proviso] Provided also that where an application for initiating the CIRP against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the IBC (Amendment) Act, 2020 (i.e. 13th March, 2020), such application shall be modified to comply with the requirements of the first or second provisos as the case may be within 30 days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

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.

Notification dated 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.

7(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.

7(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 by Operational Debtor

(1) An operational creditor may, on **the occurrence of a default**, **deliver a demand notice** 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 debtor 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, **or 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 initiation of CIRP by Operational Creditor

(1) After the expiry of the period of 10 days from the date of delivery of the notice or invoice demanding payment u/s 8(1), if the operational creditor does not receive payment from the corporate debtor or notice of the dispute u/s 8(2), 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 **affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute** of the unpaid operational debt;

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

(d) a **copy of any record with information utility** confirming **that there is no payment** of an unpaid operational debt by the corporate debtor, **if available**;

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.
9(4) An operational creditor initiating a CIRP under this section **may propose** a **resolution professional to act as** 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-

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

(b) the **information relating to the resolution** professional **proposed** to be appointed as an interim resolution professional;

and

(c) the **SR passed by shareholders of the corporate debtor or the resolution passed by at least 3/4th 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 10A Suspension of initiation of corporate insolvency resolution process (Due to COVID-19)

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of CIRP of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf

Provided that no application shall ever be filed for initiation of CIRP of a corporate debtor for the said default occurring during the said period.

***Explanation**. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.*

Notification S.O. 4638(E) dated 22/12/2020 ***(November 2021 Amendment – not so relevant now)***

*In exercise of the powers conferred by section 10A of IBC 2016 CG hereby notifies further period of **3 months from the 25th December, 2020**, for the purposes of the said section.*

Just for Information and linkage of section with above notication:

Section 10A prescribes period of 6 months from 25th March, 2021 i.e. up to 25th September, 2021.After such period, if extension is to be given, then CG need to notify.
Earlier vide Notification S.O. 3265(E) dated 24/09/2020, CG notified further period of 3 months from the 25th September, 2020 for the purposes of the said section. Therefore the above Notification S.O. 4638(E) extends dated after 25/09/2021.

Section 11 Persons not entitled to make an application

The **following persons shall <u>not</u> be entitled to make an application to initiate CIRP** under this Chapter, namely:--

(a) a corporate debtor undergoing a CIRP *or a pre-packaged insolvency resolution process*;

or

(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process;

or

(b) a corporate debtor having completed CIRP 12 months preceding the date of making of the application;

or

(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application;

or

(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 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 I -- For the purposes of this section**, <u>a corporate debtor includes a corporate applicant in respect of such corporate debtor.</u>**

Explanation II.- For the purposes of this section, it is hereby clarified that **nothing** in this section **shall prevent a <u>corporate debtor</u> referred to in clauses (a) to (d) from initiating CIRP** against <u>another corporate debtor</u>.

<u>(Higlighted sentences in red – newly added – Amendment for November 2021)</u>

Section 11A. Disposal of applications u/s 54C and u/s 7 or section 9 or section 10

(1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed u/s 7 or section 9 or section 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.

(2) Where an application u/s 54C is filed within 14 days of filing of any application u/s 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application u/s 54C.

(3) Where an application u/s 54C is filed after 14 days of the filing of any application u/s 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under sections 7, 9 or 10.

(4) The provisions of this section shall not apply where an application u/s 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the IBC (Amendment) Ordinance, 2021.

(Newly Inserted - Amendment for November, 2021 Exams)

Section 12 Time Limit 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 committee of creditors** by a vote of **66** 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.

Provided further that the CIRP shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension of the period of CIRP granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of 90 days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.

Section 12A Withdrawal of Application admitted u/s 7,9 or 10

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

Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016
Withdrawal of application.—

The Adjudicating Authority may permit withdrawal of the application made under rules 4, 6 or 7, as the case may be, on a request made by the applicant **before its admission.**

Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
(only relevant part covered)

(1) An application for withdrawal u/s 12A may be made to the Adjudicating Authority –
- (a) **before** the constitution of the committee *(of Creditors)*, by the applicant **through the interim resolution professional;**
- (b) **after** the constitution of the committee, by the applicant **through the interim resolution professional or the resolution professional,** as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest (**EoI**) under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

Section 13 Declaration of Moratorium and Public Announcement

(1) The **Adjudicating Authority**, after admission of the application u/s 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 prohibiting all of the following**, namely:—

(a) the **institution of suits or continuation of pending suits or proceedings against the corporate debtor** including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
(b) **transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right** or beneficial interest therein;
(c) **any action to foreclose, recover or enforce any security interest created by the corporate debtor** in respect of its property **including any action under 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**.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the CG, SG, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, **shall not be suspended or terminated** on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.

(Explanation newly Added – Recent Amendment)

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

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified. **(Newly inserted – Recent Amendment)**

(3) The **provisions of sub-section (1) shall not apply to**—

(a) such transactions, agreements or other arrangement as may be notified by CG in consultation with

any financial sector regulator or any other authority;
(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 u/s 33, **the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be**.

Regulation 29 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Sale of assets outside the ordinary course of business

(1) The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case:

Provided that the **book value of all assets sold during CIRP period in aggregate** under this sub-regulation **shall not exceed 10 percent of the total claims admitted** by the interim resolution professional.

(2) A sale of assets under this Regulation shall require the approval of the committee by a vote of 66% of voting share of the members.

(3) A bona fide purchaser of assets sold under this Regulation shall have a free and marketable title to such assets notwithstanding the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature.

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 180th 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** **on the insolvency commencement date.**

(Time Limit of above appointment by AA reduced from 14 days to Same day – Recent Amendment)

(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 u/s 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** u/s 9(4), 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 **shall continue till the date of appointment of the resolution professional u/s 22**.

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; **(See Extract of Regulation 7,8,9 and 13 at last pages of this chapter)**

(c) **<u>constitute a committee of creditors</u>**;

(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 int**erim 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** or completion of such transactions as may be prescribed, prior to the insolvency commencement date;

(Coloured text newly inserted – Recent Amendment)

21(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**.

21(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.

(6B) The **remuneration payable to the authorised representative**—

(a) 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

(b) **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) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of **not less than 51%** 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 shall comprise of such persons to exercise such functions in such manner as may be specified.

21(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**.
22(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.
22(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.
22(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 continue to manage the operations of the corporate debtor after the expiry of the CIRP period, until an order approving the resolution plan u/s 31(1) or appointing a liquidator u/s 34 is passed by the Adjudicating Authority.
(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 u/s 22(4), 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 Meeting of Committee of Creditors
(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 10 per cent of the debt.

As per Circular issued by IBBI on 10/08/2018: The Board has directed interim resolution professional or the resolution professional, as the case may be that he shall, in every notice of meeting of the CoC and any other communication addressed to the financial creditors, **other than creditors u/s 21(6A)(b)**, require that **they must be represented in the CoC** or in any meeting of the CoC **by such persons who are competent and are authorised to take decisions on the spot** and without deferring decisions for want of any internal approval from the financial creditors. **(To stop wastage of Time & Unnecessary delay)**

(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.

Relevant Extract of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on manner of meeting

17(1) The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority within two days of the verification of claims received under regulation 12(1).

17(2) The interim resolution professional shall hold the first meeting of the committee within 7 days of filing the report under this regulation

19(1) Subject to this Regulation, a meeting of the committee shall be called by giving not less than 5 days' notice in writing to every participant, at the address it has provided to the resolution professional and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20.

19(2) The committee may reduce the notice period from 5 days to such other period of not less than 24 hours, as it deems fit:
Provided that the committee may reduce the period to such other period of not less than 48 hours if there is any authorised representative.

22(1) **(Quorum)** A meeting of the committee shall be quorate if members of the committee representing **at least 33 percent of the voting rights** are present either in person or by video conferencing or other audio and visual means:
Provided that the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee.

22(2) Where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.

22(3) In the event a meeting of the committee is adjourned in accordance with sub-regulation (2), the adjourned meeting shall be quorate with the members of the committee attending the meeting.

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.

25A(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**.

25A(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**.

(3A) Notwithstanding anything to the contrary contained in sub-section (3), the **authorised representative u/s 21(6A) shall cast his vote on behalf of all the financial creditors he represents** in accordance with the decision **taken by a vote of more than 50 per cent. of the voting share of the financial creditors he represents, who have cast their vote:**

Provided that **for a vote to be cast in respect of an application u/s 12A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).**

[*Interpretation Note*: This is a newly inserted provision which over rules section 25A(3) {to the extent of inconsistency between 25A(3) and 25A(3A)} and provides that if a Authorised Representative is appointed by more than one financial creditor **u/s 21(6A) (viz debt in nature of securities/deposits etc.) then the Authorised Representative so appointed shall cast vote on behalf of all the financial creditors he represent and that vote of the authorised representative shall be as per the decision taken by more than 50% of voting share (of total votes casted) of financial creditor he represent** {and there is no requirement for Authorised Representative to take instruction from 'each' financial creditor as required in section25A(3)}.

Further the 'proviso' provides that even in case of Authorised Representative appointed u/s 21(6A), if the vote is to be casted for withdrawal of Application for CIRP u/s 12A (where approval of atleast 90% voting share is required), the Authorised Representative shall take instructions from 'each' financial creditor he represent and shall vote accordingly as per section 25A(3).]

(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** u/s 25(2)(j) 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 u/s 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 professiona**l appointed u/s 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 u/s 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.

28(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 Information Memorandum

(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.

Section 29A Persons not eligible to Resolution Applicant [IMPORTANT]

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 suc**h 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 or completion of such transactions as may be prescribed, 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 or completion of such transactions as may be prescribed, 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 ARC register with the RBI u/s 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 u/s 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 debts of operational creditors in such manner** as may be **specified** by the Board **which shall not be less than-**

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor u/s 53;

or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher,

and

provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with section 53(1) in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(a) **where a resolution plan has not been approved or rejected** by the Adjudicating Authority;
(b) **where an appeal has been preferred** u/s 61 or section 62 **or such an appeal is not time barred** under any provision of law for the time being in force;

or

(c) **where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority** in respect of a resolution plan;

(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).

30(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.

30(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, including the CG, any SG or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, 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 u/s 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. 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 32A

(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a **corporate debtor** for an **offence committed prior to the commencement of the CIRP shall cease**, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority u/s 31, **if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not**-

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person;

or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the CIRP against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having fulfilled:

Provided further that every person who was a "designated partner" as defined in section 2(j) of the LLP Act, 2008 or an "officer who is in default", as defined in section 2(60) of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the CIRP of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority u/s 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not–

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; **or**

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.- For the purposes of this sub-section, it is hereby clarified that,-

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through CIRP or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the CIRP.

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 u/s 12 or the fast track CIRP u/s 56, as the case may be, does not receive a resolution plan u/s 30(6);

or

(b) rejects the resolution plan u/s 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 [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).

Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution u/s 21(1) and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

(3) **Where the resolution plan approved** by the Adjudicating Authority *u/s 31 or u/s 54L(1)*, **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 u/s 33, the resolution professional appointed for the CIRP under Chapter II [viz. Liquidation] *or for the pre-packaged insolvency resolution process under Chapter III-A* 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 u/s 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 u/s 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 u/s 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.

43(3) For the purposes of sub-section (2), a **preference shall not include the following transfers**–

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that –

(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 30 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 deemed to be given at a relevant time, if** –

(a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date;

or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

Section 44 Orders in case of preferential transactions

(1) The Adjudicating Authority, may, on an application made by the resolution professional or liquidator u/s 43(1), 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) de**termines 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;

OR

(b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a **consideration the value of which is significantly less** than the value of the consideration provided by the corporate debtor,

AND

(c) such **transaction has not taken place in the ordinary course** of business of the corporate debtor

Section 46 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 **creditor, member or a partner of a corporate debtor**, as the case may be, **may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect** in accordance with this Chapter.

(2) **Where, the Adjudicating Authority**, after examination 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 2 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.

Regulation 5 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
A transaction shall be considered **extortionate u**/s 50(2) where the terms:
(1) require the corporate debtor to make exorbitant payments in respect of the credit provided; **or**
(2) are unconscionable under the principles of law relating to contracts

Also Regulation 11 of IBBI (Liquidation Process) Regulations, 2016:
A transaction shall be considered an **extortionate credit transaction** u/s 50(2) where the terms-
(1) require the corporate debtor to make exorbitant payments in respect of the credit provided; **or**
(2) are unconscionable under the principles of law relating to contracts.

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

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

53(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.

Regulation 42 of IBBI (Liquidation Process) Regulations, 2016
Distribution

(1) Subject to the provisions of section 53, the liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority.

(2) The **liquidator shall distribute** the proceeds from realization **within 90 days from the receipt** of the amount to the stakeholders.

(3) The insolvency resolution process costs, if any, and the liquidation costs shall be deducted before such distribution is made.

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.

Regulation 44 of IBBI (Liquidation Process) Regulations, 2016
Completion of liquidation

(1) The **liquidator shall liquidate** the corporate debtor **within** a period of **one year** from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under Chapter III of Part II of the Code (i.e Liquidation Process), before the Adjudicating Authority or any action thereof:

Provided that where the sale is attempted under regulation 32A(1), the liquidation process may take an **additional period up to 90 days**.

(2) If the liquidator fails to liquidate the corporate debtor within one year, **he shall make an application** to the Adjudicating Authority **to continue** such liquidation, **along with a report** explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation.

Chapter- III-A: PRE-PACKAGED Insolvency Resolution Process

*(New Concept introduced – **Amendment for November 2021** Exams onwards*

***Note**: This chapter is mainly introduced for the purpose of providing better solutions for MSME sector while using IBC.*

Section 54A Corporate debtors eligible for pre-packaged insolvency resolution process

*(1) An application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a **micro, small or medium enterprise (MSME)** under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.*

(2) Without prejudice to sub-section (1), an application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor, who commits a default referred to in section 4, subject to the following conditions, that–

(a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of 3 years preceding the initiation date;

(b) it is not undergoing a CIRP;

(c) no order requiring it to be liquidated is passed u/s 33;

(d) it is eligible to submit a resolution plan u/s 29A;

*(e) the financial creditors of the corporate debtor, <u>not being its related parties, representing such number and such manner as may be specified</u>, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the corporate debtor, and the financial creditors of the corporate debtor, not being its related parties, representing not less than **<u>66% in value</u>** of the financial debt due to such creditors, have approved such proposal in such form as may be specified.*

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified;

(f) the majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified, stating, inter alia, —

(i) that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days;
(ii) that the pre-packaged insolvency resolution process is not being initiated to defraud any person; and
(iii) the name of the insolvency professional proposed and approved to be appointed as resolution

professional under clause (e);

(g) the members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating prepackaged insolvency resolution process.

(3) The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than 66% in value of the financial debt due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified:.

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the approval under this sub-section shall be provided by such persons as may be specified.

(4) Prior to seeking approval from financial creditors under sub section (3), the corporate debtor shall provide such financial creditors with —

(a) the declaration referred to in clause (f) of sub-section (2);
(b) the special resolution or resolution referred to in clause (g) of subsection (2);
(c) a base resolution plan which conforms to the requirements referred to in section 54K, and such other conditions as may be specified; ***and***
(d) such other information and documents as may be specified

Section 54B **Duties of resolution professional before initiation of pre-packaged insolvency resolution process**

(1) The insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval u/s 54A(2)(e), namely:—

(a) prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in section 54A(4)(c);

(b) file such reports and other documents, with the Board, as may be specified; and

(c) perform such other duties as may be specified.

(2) The duties of the insolvency professional under sub-section (1) shall ***cease****, if, —*

(a) the corporate debtor fails to file an application for initiating pre-packaged insolvency resolution process within the time period as stated under the declaration referred to in clause (f) of sub-section (2) of section 54A;

or

(b) the application for initiating pre-packaged insolvency resolution process is admitted or rejected by the Adjudicating Authority, as the case may be.

(3) The fees payable to the insolvency professional in relation to the duties performed under sub-section (1) shall be determined and borne in such manner as may be specified and such fees shall form part of the pre-packaged insolvency resolution process costs, if the application for initiation of pre-packaged insolvency resolution process is admitted.

Section 54C ***Application to initiate pre-packaged insolvency resolution process.***
(1) Where a corporate debtor meets the requirements of section 54A, a corporate applicant thereof may file an application with the Adjudicating Authority for initiating prepackaged insolvency resolution process.
(2) The application under sub-section (1) shall be filed in such form, containing such particulars, in such manner and accompanied with such fee as may be prescribed.
(3) The corporate applicant shall, along with the application, furnish— *(a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating pre-packaged insolvency resolution process in terms of section 54A;* *(b) the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional as approved under clause (e) of sub-section (2) of section 54A, and his report as referred to in clause (a) of sub-section (1) of section 54B;* *(c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in such form as may be specified;* *(d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.*
(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;* ***or*** *(b) reject the application, if it is incomplete* *Provided that the Adjudicating Authority shall, before rejecting an application, give notice to the applicant to rectify the defect in the application within 7 days from the date of receipt of such notice from the Adjudicating Authority.*
(5) The pre-packaged insolvency resolution process shall commence from the date of admission of the application under clause (a) of sub-section (4).

Section 54D **Time-limit for completion of pre-packaged insolvency resolution process**
(1) The pre-packaged insolvency resolution process shall be completed within a period of 120 days from the pre-packaged insolvency commencement date.
(2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or sub-section (12), as the case may be, of section 54K, within a period of 90 days from the pre-packaged insolvency commencement date.
(3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

Section 54E Declaration of moratorium and public announcement during pre-packaged insolvency resolution process
(1) The Adjudicating Authority shall, on the pre-packaged insolvency commencement date, along with the order of admission under section 54C — (a) declare a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, which shall, mutatis mutandis apply, to the proceedings under this Chapter; (b) appoint a resolution professional — **(i)** as named in the application, if no disciplinary proceeding is pending against him; or **(ii)** based on the recommendation made by the Board, if any disciplinary proceeding is pending against the insolvency professional named in the application. (c) cause a public announcement of the initiation of the pre-packaged insolvency resolution process to be made by the resolution professional, in such form and manner as may be specified, immediately after his appointment.
(2) The order of moratorium shall have effect from the date of such order till the date on which the pre-packaged insolvency resolution process period comes to an end.

Section 54F **Duties and powers of resolution professional during pre-packaged insolvency resolution process**
(1) The resolution professional shall conduct the pre-packaged insolvency resolution process of a corporate debtor during the pre-packaged insolvency resolution process period.

(2) The resolution professional shall perform the following duties, namely:— *(a) confirm the list of claims submitted by the corporate debtor u/s 54G, in such manner as may be specified;* *(b) inform creditors regarding their claims as confirmed under clause (a), in such manner as may be specified;* *(c) maintain an updated list of claims, in such manner as may be specified;* *(d) monitor management of the affairs of the corporate debtor;* *(e) inform the committee of creditors in the event of breach of any of the obligations of the BOD or partners, as the case may be, of the corporate debtor, under the provisions of this Chapter and the rules and regulations made thereunder;* *(f) constitute the committee of creditors and convene and attend all its meetings;* *(g) prepare the information memorandum on the basis of the preliminary information memorandum submitted under section 54G and any other relevant information, in such form and manner as may be specified;* *(h) file applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, if any; and* *(i) such other duties as may be specified.*
(3) The resolution professional shall exercise the following powers, namely:— *(a) access all books of accounts, records and information available with the corporate debtor;* *(b) access the electronic records of the corporate debtor from an information utility having financial information of the corporate debtor;* *(c) access the books of accounts, records and other relevant documents of the corporate debtor available with Government authorities, statutory auditors, accountants and such other persons as may be specified;* *(d) attend meetings of members, BOD and committee of directors, or partners, as the case may be, of the corporate debtor;* *(e) appoint accountants, legal or other professionals in such manner as may be specified;* *(f) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor and the existence of any transactions that may be within the scope of provisions relating to avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, including information relating to —*

(i) business operations for the previous two years from the date of prepackaged insolvency commencement date;

(ii) financial and operational payments for the previous two years from the date of pre-packaged insolvency commencement date;

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

(iv) such other matters as may be specified;

(g) take such other actions in such manner as may be specified.

(4) From the date of appointment of the resolution professional, the financial institutions maintaining accounts of the corporate debtor shall furnish all information relating to the corporate debtor available with them to the resolution professional, as and when required by him.

(5) The personnel of the corporate debtor, its promoters and any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (2) and (3) of section 19 shall, mutatis mutandis apply, in relation to the proceedings under this Chapter.

(6) The fees of the resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process shall be determined in such manner as may be specified.

Provided that the committee of creditors may impose limits and conditions on such fees and expenses:

Provided further that the fees and expenses for the period prior to the constitution of the committee of creditors shall be subject to ratification by it.

(7) The fees and expenses referred to in sub-section (6) shall be borne in such manner as may be specified.

Section 54G ***List of claims and preliminary information memorandum***

(1) The corporate debtor shall, <u>within 2 days of the pre-packaged insolvency commencement date</u>, submit to the resolution professional the following information, updated as on that date, in such form and manner as may be specified, namely:—

(a) a list of claims, along with details of the respective creditors, their security interests and guarantees, if any; and

(b) a preliminary information memorandum containing information relevant for formulating a resolution plan.

(2) Where any person has sustained any loss or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum submitted by the corporate debtor, every person who—

(a) is a promoter or director or partner of the corporate debtor, as the case may be, at the time of submission of the list of claims or the preliminary information memorandum by the corporate debtor; ***or*** *(b) has authorised the submission of the list of claims or the preliminary information memorandum by the corporate debtor,* *shall, without prejudice to section 77A, be liable to pay compensation to every person who has sustained such loss or damage.*
(3) No person shall be liable under sub-section (2), if the list of claims or the preliminary information memorandum was submitted by the corporate debtor without his knowledge or consent.
(4) Subject to section 54E, any person, who sustained any loss or damage as a consequence of omission of material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum shall be entitled to move a court having jurisdiction for seeking compensation for such loss or damage.

Section 54H ***Management of affairs of corporate debtor***
During the pre-packaged insolvency resolution process period,— *(a) the management of the affairs of the corporate debtor shall continue to vest in the BOD or the partners, as the case may be, of the corporate debtor, subject to such conditions as may be specified;* *(b) the BOD or the partners, as the case may be, of the corporate debtor, shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern;* ***and*** *(c) the promoters, members, personnel and partners, as the case may be, of the corporate debtor, shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor, subject to the provisions of this Chapter and such other conditions and restrictions as may be prescribed.*

Section 54I ***Committee of creditors***
(1) The resolution professional shall, within 7 days of the pre-packaged insolvency commencement date, constitute a committee of creditors, based on the list of claims confirmed u/s 54F(2)(a). *Provided that the composition of the committee of creditors shall be altered on the basis of the updated list of claims, in such manner as may be specified, and any such alteration shall not affect the validity of any past decision of the committee of creditors.*
(2) The first meeting of the committee of creditors shall be held within 7 days of the constitution of the committee of creditors.

(3) Provisions of section 21, except sub-section (1) thereof, shall, mutatis mutandis apply, in relation to the committee of creditors under this Chapter.

Provided that for the purposes of this sub-section, references to the "resolution professional" under subsections (9) and (10) of section 21, shall be construed as references to "corporate debtor or the resolution professional".

Section 54J **Vesting management of corporate debtor with resolution professional.**

(1) Where the committee of creditors, at any time during the pre-packaged insolvency resolution process period, by a vote of not less than **66% of the voting shares**, resolves to vest the management of the corporate debtor with the resolution professional, the resolution professional shall make an application for this purpose to the Adjudicating Authority, in such form and manner as may be specified.

(2) On an application made under sub-section (1), if the Adjudicating Authority is of the opinion that during the pre-packaged insolvency resolution process—

(a) the affairs of the corporate debtor have been conducted in a fraudulent manner;

or

(b) there has been gross mismanagement of the affairs of the corporate debtor,

it shall pass an order vesting the management of the corporate debtor with the resolution professional.

(3) Notwithstanding anything to the contrary contained in this Chapter, the provisions of —

(a) sub-sections (2) and (2A) of section 14;
(b) section 17;
(c) clauses (e) to (g) of section 18;
(d) sections 19 and 20;
(e) sub-section (1) of section 25;
(f) clauses (a) to (c) and clause (k) of subsection (2) of section 25; and
(g) section 28,
shall, mutatis mutandis apply, to the proceedings under this Chapter, from the date of the order under subsection (2), until the pre-packaged insolvency resolution process period comes to an end.

Section 54K **Consideration and approval of resolution plan**

(1) The corporate debtor shall submit the base resolution plan, referred to in section 54A(4)(c), to the resolution professional within 2 days of the prepackaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors.

(2) The committee of creditors may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval under sub-section (4) or invitation of prospective resolution applicants under sub-section (5), as the case may be.
(3) The resolution plans and the base resolution plan, submitted under this section shall conform to the requirements referred to in sub-sections (1) and (2) of section 30, and the provisions of sub-sections (1), (2) and (5) of section 30 shall, mutatis mutandis apply, to the proceedings under this Chapter.
(4) The committee of creditors may approve the base resolution plan for submission to the Adjudicating Authority if it does not impair any claims owed by the corporate debtor to the operational creditors.
(5) Where — *(a) the committee of creditors does not approve the base resolution plan under subsection (4);* ***or*** *(b) the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors,* *the resolution professional shall invite prospective resolution applicants to submit a resolution plan or plans, to compete with the base resolution plan, in such manner as may be specified.*
(6) The resolution applicants submitting resolution plans pursuant to invitation under sub-section (5), shall fulfil such criteria as may be laid down by the resolution professional with the approval of the 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.
(7) The resolution professional shall provide to the resolution applicants, — *(a) the basis for evaluation of resolution plans for the purposes of sub-section (9), as approved by the committee of creditors subject to such conditions as may be specified; and* *(b) the relevant information referred to in section 29, which shall, mutatis mutandis apply, to the proceedings under this Chapter, in such manner as may be specified.*
(8) The resolution professional shall present to the committee of creditors, for its evaluation, resolution plans which conform to the requirements referred to in sub-section (2) of section 30.
(9) The committee of creditors shall evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst them.
(10) Where, on the basis of such criteria as may be laid down by it, the committee of creditors decides that the resolution plan selected under sub-section (9) is significantly better than the base resolution plan, such resolution plan may be selected for approval under subsection (12): *Provided that the criteria laid down by the committee of creditors under this sub-section shall be subject to such conditions as may be specified.*

(11) Where the resolution plan selected under subsection (9) is not considered for approval or does not fulfil the requirements of sub-section (10), it shall compete with the base resolution plan, in such manner and subject to such conditions as may be specified, and one of them shall be selected for approval under subsection (12).

(12) The resolution plan selected for approval under sub-section (10) or sub-section (11), as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority

Provided that where the resolution plan selected for approval under sub-section (11) is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

(13) The approval of the resolution plan under subsection (4) or sub-section (12), as the case may be, by the committee of creditors, shall be by a vote of not less than 66% of the voting shares, after considering its feasibility and viability, the manner of distribution proposed, taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified.

(14) While considering the feasibility and viability of a resolution plan, where the resolution plan submitted by the corporate debtor provides for impairment of any claims owed by the corporate debtor, the committee of creditors may require the promoters of the corporate debtor to dilute their shareholding or voting or control rights in the corporate debtor.

Provided that where the resolution plan does not provide for such dilution, the committee of creditors shall, prior to the approval of such resolution plan under sub-section (4) or sub-section (12), as the case may be, record reasons for its approval.

(15) The resolution professional shall submit the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12), as the case may be, to the Adjudicating Authority.

***Explanation I**.- For the removal of doubts, it is hereby clarified that, the corporate debtor being a resolution applicant u/s 5(25), may submit the base resolution plan either individually or jointly with any other person.*

***Explanation II**.- For the purposes of subsections (4) and (14), claims shall be considered to be impaired where the resolution plan does not provide for the full payment of the confirmed claims as per the updated list of claims maintained by the resolution professional.*

Section 54L **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) or sub-section (12) of section 54K, as the case may be, subject to the conditions provided therein, meets the requirements as referred to in section 30(2), it shall, within 30 days of the receipt of such resolution plan, by order approve the resolution plan:

Provided that the Adjudicating Authority shall, before passing an order for approval of a resolution plan under this sub-section, satisfy itself that the resolution plan has provisions for its effective implementation.

(2) The order of approval under sub-section (1) shall have such effect as provided under sub-sections (1), (3) and (4) of section 31, which shall, mutatis mutandis apply, to the proceedings under this Chapter.

(3) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order u/s 54N.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order u/s 54J(2) and the resolution plan approved by the committee of creditors under sub-section (4) or subsection (12), as the case may be, of section 54K, does not result in the change in the management or control of the corporate debtor to a person who was not a promoter or in the management or control of the corporate debtor, the Adjudicating Authority shall pass an order —

(a) rejecting such resolution plan;

(b) terminating the pre-packaged insolvency resolution process and passing a liquidation order in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of section 33(1)(b);

and

(c) declaring that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Section 54M **Appeal against order under section 54L**

Any appeal from an order approving the resolution plan u/s 54L(1), shall be on the grounds laid down in section 61(3).

Section 54N **Termination of pre-packaged insolvency resolution process**

(1) Where the resolution professional files an application with the Adjudicating Authority, —

(a) under the proviso to section 54K(12);

or

(b) under sub-section (3) of section 54D,

the Adjudicating Authority shall, within 30 days of the date of such application, by an order, —

(i) *terminate the pre-packaged insolvency resolution process;* ***and***
(ii) *provide for the manner of continuation of proceedings initiated for avoidance of transactions*

under Chapter III or proceedings initiated under section 66 and section 67A, if any.
*(2) Where the resolution professional, at any time after the pre-packaged insolvency commencement date, but before the approval of resolution plan under subsection (4) or subsection (12), as the case may be, of section 54K, intimates the Adjudicating Authority of the decision of the committee of creditors, approved by a vote of **66%** of the voting shares, to terminate the pre-packaged insolvency resolution process, the Adjudicating Authority shall pass an order under sub-section (1).*
(3) Where the Adjudicating Authority passes an order under sub-section (1), the corporate debtor shall bear the pre-packaged insolvency resolution process costs, if any.
*(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the prepackaged insolvency resolution process is required to be terminated under sub-section (1), the Adjudicating Authority shall pass an order — (a) of liquidation in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; **and** (b) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.*

Section 54-O Initiation of corporate insolvency resolution process
(1) The committee of creditors, at any time after the pre-packaged insolvency commencement date but before the approval of resolution plan under sub-section (4) or subsection (12), as the case may be, of section 54K, by a vote of sixty-six per cent. of the voting shares, may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II.
(2) Notwithstanding anything to the contrary contained in Chapter II, where the resolution professional intimates the Adjudicating Authority of the decision of the committee of creditors under sub-section (1), the Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to — (a) terminate the pre-packaged insolvency resolution process and initiate corporate insolvency resolution process under Chapter II in respect of the corporate debtor; (b) appoint the resolution professional referred to in clause (b) of sub-section (1) of section 54E as the interim resolution professional, subject to submission of written consent by such resolution professional to the Adjudicatory Authority in such form as may be specified; and (c) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the

corporate debtor.

(3) Where the resolution professional fails to submit written consent under clause (b) of sub-section (2), the Adjudicating Authority shall appoint an interim resolution professional by making a reference to the Board for recommendation, in the manner as provided under section 16.

(4) Where the Adjudicating Authority passes an order under sub-section (2) —

(a) such order shall be deemed to be an order of admission of an application u/s 7 and shall have the same effect;

(b) the corporate insolvency resolution process shall commence from the date of such order;

(c) the proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any, shall continue during the CIRP;

(d) for the purposes of sections 43, 46 and 50, references to "insolvency commencement date" shall mean "pre-packaged insolvency commencement date"; and

(e) in computing the relevant time or the period for avoidable transactions, the time period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50.

Section 54P **Application of provisions of Chapters II, III, VI, and VII to this Chapter**

(1) Save as provided under this Chapter, the provisions of sections 24, 25A, 26, 27, 28, 29A, 32A, 43 to 51, and the provisions of Chapters VI and VII of this Part shall, mutatis mutandis apply, to the pre-packaged insolvency resolution process, subject to the following, namely:—
(a) reference to "members of the suspended BOD or the partners" under clause (b) of sub-section (3) of section 24 shall be construed as reference to "members of the BOD or the partners, unless an order has been passed by the Adjudicating Authority under section 54J";
(b) reference to "clause (j) of sub-section (2) of section 25" under section 26 shall be construed as reference to "clause (h) of sub-section (2) of section 54F";
(c) reference to "section 16" under section 27 shall be construed as reference to "section 54E";
(d) reference to "resolution professional" in sub-sections (1) and (4) of section 28 shall be construed as "corporate debtor";
(e) reference to "section 31" under sub-section (3) of section 61 shall be construed as reference to "sub-section (1) of section 54L";
(f) reference to "section 14" in sub-sections (1) and (2) of section 74 shall be construed as reference to "clause (a) of sub-section (1) of section 54E";
(g) reference to "section 31" in sub-section (3) of section 74 shall be construed as" reference to "sub-section (1) of section 54L".

(2) Without prejudice to the provisions of this Chapter and unless the context otherwise requires, where

the provisions of Chapters II, III, VI and VII are applied to the proceedings under this Chapter, references to —

(a) "insolvency commencement date" shall be construed as references to "prepackaged insolvency commencement date";

(b) "resolution professional" or "interim resolution professional", as the case may be, shall be construed as references to the resolution professional appointed under this Chapter;

(c) "corporate insolvency resolution process" shall be construed as references to "pre-packaged insolvency resolution process"; and

(d) "insolvency resolution process period" shall be construed as references to "prepackaged insolvency resolution process period."

FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS

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 u/s 2(85) 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; **or**

(c) **an unlisted company with total assets, as reported in the financial statement of the immediately preceding FY, not exceeding ₹ 1 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 90 days**, it may, by order, **extend the duration of such process beyond the said period of 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 **may be filed by a creditor or corporate debtor** 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]

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 verified by an affidavit stating** that –

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

and

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

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

(i) audited **financial statements** and record of business operations of the company for the **previous 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 4 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**.

Section 60 Adjudicating Authority for corporate persons
(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for **corporate persons** including corporate debtors and personal guarantors thereof shall be the NCLT having territorial jurisdiction over the place where the registered office of a corporate person is located.
(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a CIRP or liquidation proceeding of a corporate debtor is pending before a NCLT, an application relating to the insolvency resolution or liquidation or bankruptcy of a **corporate guarantor or personal guarantor**, as the case may be, of such corporate debtor shall be filed before the NCLT.
(3) An insolvency resolution process or liquidation or bankruptcy proceeding of a **corporate guarantor or personal guarantor**, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.
(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of subsection (2).
(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of **(a)** any application or proceeding by or against the corporate debtor or corporate person; **(b)** any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India;

and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

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

Section 61 Appeals and Appellate Authority. -

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

(2) Every appeal under sub-section (1) shall be filed within 30 days before NCLAT:

Provided that NCLAT may allow an appeal to be filed after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed 15 days.

61(3) An appeal against an order approving a resolution plan u/s 31 may be filed on the following grounds, namely: –

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; **or**
(v) the resolution plan does not comply with any other criteria specified by the Board.

(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54L, or sub-section (4) of section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

(5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O may be filed on grounds of material irregularity or fraud committed in relation to such an order.

Section 62 Appeal to Supreme Court

(1) Any person aggrieved by an order of the NCLAT may file an appeal to the Supreme Court **on a question of law** arising out of such order under this Code within 45 days from the date of receipt of such order.

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within 45 days, allow the appeal to be filed within a further period not exceeding 15 days.

IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016 (which are not covered with applicable sections)

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:** **(a)** of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor; or **(b)** 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 FYs.
(1A) Where the committee decides to appoint the interim resolution professional as resolution professional or replace the interim resolution professional u/s 22 or replace the resolution professional u/s 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.

Important Summary of Regulation 7, 8, 9 and 13 (related to secion 18):

Submission of PROOF OF CLAIMS by Operational Creditor, Financial Creditor & workmen and employees to the interim resolution professional

7(1) A person claiming to be an **operational creditor**, other than workman or employee of the corporate debtor, shall submit claim with proof to the interim resolution professional in person, **by post or by electronic means** in **Form B** of the Schedule

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

8(1) A person claiming to be a **financial creditor**, other than a financial creditor belonging to a class of creditors, shall submit claim with proof to the interim resolution professional in **electronic form** in **Form C** of the Schedule:
Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

9(1) A person claiming to be a **workman or an employee** of the corporate debtor shall submit claim with proof to the interim resolution professional in person**, by post or by electronic means** in **Form D** of the Schedule:

Provided that such person may submit supplementary documents or clarifications in support of the claim , **on his own or if required by the interim resolution professional**, before the constitution of the committee.

13(1) The interim resolution professional or the resolution professional, as the case may be, shall **verify every claim**, as on the insolvency commencement date, **within 7 days from the last date of the receipt of the claims**, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

Other Relevant Provision:

- **As per Regulation 12**: A creditor shall submit claim with proof on or before the last date mentioned in the public announcement. A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date
- The IRP within 2 days of aforesaid verification of claims, file a report to the Adjudicating Authority, certifying constitution of the CoC.

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.

Certain other amendments (Just for reference)

Notification dated 18/11/2019 in relation to NBFCs under IBC,2016

The insolvency resolution and liquidation proceedings of the following categories of financial service providers shall be undertaken in accordance with the provisions of the IBC, 2016 read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 and the applicable Regulations:

Category of Financial Service Provider	Appropriate Regulator
NBFC (which include housing finance companies) with asset size of ₹ 500 crore or more, as per last audited balance sheet	RBI

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