

**FREQUENTLY ASKED QUESTIONS ON  
THE INSOLVENCY AND BANKRUPTCY CODE, 2016**  
(Revised July, 2019 Edition)



**Committee on Insolvency & Bankruptcy Code**  
**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

# **Frequently Asked Questions on The Insolvency and Bankruptcy Code, 2016**

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## Foreword to the Second Edition

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The Institute of Chartered Accountants of India with a view to provide specific focus on an important legislation and major economic reform i.e., the Insolvency and Bankruptcy Code, 2016 has formed a dedicated Committee, “Committee on Insolvency & Bankruptcy Code”.

With a view to create awareness and disseminate knowledge, the Institute in the year 2017 itself had issued a publication “Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016”. Since the issuance of this publication, a number of developments have taken place through the Insolvency and Bankruptcy Code (Amendment) Act, 2018, Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, amendments in Regulations, Notifications and Clarifications etc. All these developments and regulatory changes necessitated the revision of the publication issued earlier.

It is heartening to note that the Committee on Insolvency & Bankruptcy Code has taken the initiative to revise the publication “*Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016*” for the benefit of the members at large. The publication has been written in an easy to understand language and contains questions and answers on various issues in the Insolvency and Bankruptcy Code, 2016.

I sincerely appreciate the efforts of all the members of the Committee and particularly that of CA. Prakash Sharma, Chairman, Committee on Insolvency & Bankruptcy Code and CA. (Dr.) Debashis Mitra, Vice-Chairman, Committee on Insolvency & Bankruptcy Code for responsibly undertaking this revision and fulfilling this initiative in time.

I am confident that this revised publication will be of great significance and will also provide assistance to our members and other stakeholders on the critical issues arising out of the Code.

Date: 21st June , 2019  
Place: New Delhi

**CA. Prafulla P. Chhajed**  
**President ICAI**



## **Preface to the Second Edition**

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It is over two years now, since the Insolvency and Bankruptcy Code, 2016, the new legal framework has been implemented in the country.

During this period, two amendments have been brought in the Code, namely, the Insolvency and Bankruptcy Code (Amendment) Act, 2018 and Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

Some of the important amendments that have taken place are related to the home buyers who have been given the status of financial creditors; clarity has been provided regarding the persons who can submit a resolution plan; making certain persons ineligible for being a resolution applicant; that the committee of creditors shall approve the resolution plan by a vote of not less than sixty six per cent of voting share of the financial creditors; punishment for contravention of the provisions where no specific penalty or punishment is mentioned etc.

The Institute of Chartered Accountants of India through the Corporate Laws and Corporate Governance Committee had earlier issued the publication “Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016”, in the year 2017.

Considering the various amendments, the Committee on Insolvency & Bankruptcy Code of ICAI which has been constituted to focus on the Insolvency and Bankruptcy Laws has undertaken the exercise of revision of the publication, “Frequently Asked Questions on the Insolvency & Bankruptcy Code, 2016”.

The publication is in a question and answer format which comprehensively covers questions to assist our members and other stakeholders to enable them to have conceptual clarity on the various aspects of Insolvency and Bankruptcy Code, 2016.

Our sincere thanks to President ICAI CA. Prafulla P. Chhajed, and the Vice President ICAI CA. Atul Kumar Gupta for providing us this opportunity to revise the publication to resolve queries that are in the minds of practitioners.

We also wish to place on record our sincere thanks to all the Committee members and all the Co-opted Members for their support and guidance in this initiative.

We appreciate the efforts made by the Secretary to the Committee Ms. S. Rita, CA. Sarika Singhal and Ms Surabhi Arora for revising the publication and providing their technical and administrative support.

We are confident that this revised publication would be of use to the members and other stakeholders.

**CA. Prakash Sharma**  
Chairman  
Committee on Insolvency &  
Bankruptcy Code, ICAI

**CA. (Dr.) Debashis Mitra**  
Vice-Chairman  
Committee on Insolvency &  
Bankruptcy Code, ICAI

Date: 17th June, 2019

# Foreword to the First Edition

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The Insolvency and Bankruptcy Code, 2016 was enacted with a purpose to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals and align Indian law at par with the best practices being followed internationally.

The intention is to strike the right balance of interests of all stakeholders of the business enterprise so that the corporates and other business entities enjoy availability of credit and at the same time the creditor do not have to bear the losses on account of default. The Code is now in the implementation phase.

With a view to improve *Ease of doing Business in India*, the Code provides for a time bound process for speedy disposal and also the manner for maximization of value of assets. It will create a win-win situation not only for the creditor and debtor companies, but it will also benefit the overall economy.

The Hon'ble Finance Minister in his Union Budget Speech in February, 2017 also acknowledged the importance of enactment of Insolvency and Bankruptcy Code by mentioning it one of the major reforms taken place last year.

As per the Code, the insolvency resolution processes are to be conducted by the Insolvency Professionals, who are required to be members of an Insolvency Professional Agency which in turn is to be registered with the Insolvency and Bankruptcy Board of India.

Taking this Government's initiative ahead, the Institute of Chartered Accountants of India formed Indian Institute of Insolvency professionals of ICAI (IIPI) to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy code 2016 and read with regulations in November, 2016.

I congratulate the Corporate Laws & Corporate Governance Committee of the Institute of Chartered Accountants of India (ICAI) to take this initiative in bringing out a comprehensive and a handy book on Frequently Asked Questions (FAQs) on the Insolvency and Bankruptcy Code, 2016 to provide



guidance to the members of the profession and other stakeholders for clear interpretation and understanding of the new law.

I extend my sincere appreciation to CA. Sanjay Kumar Agarwal and CA. Debashis Mitra, the Chairman and Vice-Chairman of the Corporate Laws & Corporate Governance Committee (CL&CGC) respectively, CA. Dhinal Shah, Central Council Member, ICAI to conceptualize this project and CA. K. Sripriya, Convenor of the Insolvency and Bankruptcy Laws Group of CL&CGC, CA. Ranjeet Kumar Agarwal, Dy-Convenor of the Insolvency and Bankruptcy Laws Group of CL&CGC, my Council Colleagues, other members of the Committee to conceptualize and bring out this important publication.

My appreciation to the Secretariat of the Committee comprising of CA. Sarika Singhal, Ms. S. Rita, CA. Ashita Jain and Ms Nidhi Bansal for their efforts in preparation and bringing out this publication.

I am confident that this publication would be of great help to the members especially to insolvency professionals and other stakeholders.

New Delhi  
7<sup>th</sup> April, 2017

**CA. Nilesh S. Vikamsey**  
President, ICAI

# Preface to the First Edition

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The Insolvency and Bankruptcy Code, 2016 is one of the major economic reform Code initiated by the Government in the year 2015. There were multiple overlapping laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India.

Also, the existing laws were not aligned with the market realities and had several problems and were inadequate. As per that legal framework, provisions relating to insolvency and bankruptcy for companies could be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. Resolution and jurisdiction being with the multiple agencies with overlapping powers were leading to delays and complexities in the process.

To facilitate easy and time bound closure of business in India and to overcome these challenges, a strong bankruptcy law was required.

To study the corporate bankruptcy legal framework in India and to suggest the Government for reforming the system, the Government of India had formed the Bankruptcy Law Reforms Committee. The Committee suggested that there was a need for creation of a uniform framework for the matters of insolvency and bankruptcy of all legal entities and individuals. It evaluated the working of present arrangements in India, and the difficulties faced with these present arrangements.

As stated by Mr T. K. Viswanathan, Chairman, Bankruptcy Law Reforms Committee that “It was a mission to usher in sweeping changes to the country's bankruptcy law and the New Bankruptcy Law was Necessary for Reviving Economy”.

Accordingly, the Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha in December, 2015 and referred to the Joint Parliamentary Committee. After due consultation process, the Joint Committee submitted its Report to the Hon'ble Parliament which was subsequently passed by both the Houses of Parliament in May 2016 as the Insolvency and Bankruptcy Code, 2016 which got assent of the President of India on 28<sup>th</sup> May, 2016.

The Code offers a uniform, comprehensive insolvency legislation encompassing all companies, partnerships and individuals (other than financial firms). There is a clear and explicit process to be followed by all stakeholders. Also, there is shift of control from shareholders and promoters to creditors.

The IBC provides an institutional set-up comprising of five pillars, i.e., Insolvency Professionals Agency, Insolvency Professionals, Information Utilities, Insolvency and Bankruptcy Board of India and Adjudicating Authority.

The Implementation of any system does not only depend on the law, but also on the institutions involved in administration and execution of the same. It depends on the effective functioning of all the institutions but the Insolvency Professionals have a vital role to play in the insolvency and bankruptcy resolution process.

The pace with which this Code is being implemented will also help India in improving its 'Ease of Doing Business' rankings and enhancing India's ranking as resolving insolvency is a key criteria in the World Bank's survey.

At this backdrop, to facilitate the understanding of the provisions of the Insolvency and Bankruptcy Code, 2016 and its Regulations, the Corporate Laws & Corporate Governance Committee decided to bring out a publication on the Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016.

The publication has been designed in a question and answer format to assist our members and other stakeholders to enable them to have clarity on the provisions of the Insolvency and Bankruptcy Code, 2016 and its Regulation released upto 31st January, 2017.

In this connection I take this opportunity in thanking the President of ICAI, CA. Nilesh S. Vikamsey and Vice President CA. Naveen N. D. Gupta for their moral support and encouragement in bringing out the publication. I place on record my appreciation to CA. Dhinal Shah for conceptualizing this publication, CA. Debashis Mitra, Vice Chairman, CL&CGC, CA. K. Sripriya, Convenor of the Insolvency and Bankruptcy Laws Group of CL&CGC, CA. Ranjeet Kumar Agarwal, Dy-Convenor of the Insolvency and Bankruptcy Laws Group of CL&CGC and the other committee members for their help and guidance in framing and bringing out this publication comprising of the

Frequently Asked Questions on the provisions of the Insolvency and Bankruptcy Code, 2016.

I would like to thank CA. Sarika Singhal, Ms. S. Rita, CA. Ashita Jain and Ms Nidhi Bansal who were involved in preparing and putting together the FAQs.

I sincerely believe that the members of the profession, industries and other stakeholders will find the publication immensely useful.

New Delhi  
7th April, 2017

**CA. Sanjay Kumar Agarwal**  
Chairman  
Corporate Laws & Corporate Governance Committee, ICAI



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# PART I

## Chapter 1

# Preliminary

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**Q.1. What is the purpose of enactment of the Insolvency and Bankruptcy Code, 2016?**

- A.1 As per Preamble to the Code, the purpose of this Act is as follows:-
- (a) To consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals.
  - (b) To fix time periods for execution of the law in a time bound manner.
  - (c) To maximize the value of assets of interested persons.
  - (d) To promote entrepreneurship
  - (e) To increase availability of credit.
  - (f) To balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues.
  - (g) To establish an Insolvency and Bankruptcy Board of India as a regulatory body for insolvency and bankruptcy law.

**Q.2. To whom shall the provisions of the Code apply?**

- A.2 According to Section 2, the provisions of the Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:-
- (a) Any company incorporated under the Companies Act, 2013 or under any previous 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.



## **FAQs on the Insolvency and Bankruptcy Code, 2016**

- (c) Any Limited Liability Partnership under the LLP Act 2008.
- (d) Such other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf.
- (e) Personal Guarantors to Corporate Debtors;
- (f) Partnership firms and Proprietorship firms;
- (g) Individuals, other than persons referred to in clause (e).

### **Q.3. Who shall be termed as Corporate Debtor?**

A.3 As per Section 3(8) of the Code, Corporate Debtor means a corporate person who owes a debt to any person.

### **Q.4. Who is a Corporate Person?**

A.4 A Corporate Person as defined under section 3 (7) is as follows:

- a) A company as defined under section 2(20) of the Companies Act, 2013;
- b) A Limited Liability Partnership as defined in Section 2(1)(n) of Limited Liability Act, 2008; or,
- c) Any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

### **Q.5. What are the services that are included in the term financial service?**

A.5 As per Section 3(16), Financial services include 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;

## Preliminary

- (e) Rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—
  - (i) Buying, selling, or subscribing to, a financial product;
  - (ii) Availing a financial service; or
  - (iii) Exercising any right associated with a financial product or financial service;
- (f) Establishing or operating an investment scheme;
- (g) Maintaining or transferring records of ownership of a financial product;
- (h) Underwriting the issuance or subscription of a financial product; or
- (i) Selling, providing, or issuing stored value or payment instruments or providing payment services;

**Q.6. Who shall be covered in the definition of a Financial Service Provider?**

A.6 As per Section 3(17) of the Code, a 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.

**Q.7. What do we understand as financial sector regulator?**

A.7. As per Section 3(18), financial sector regulator means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;

**Q.8. What shall be included in Financial Information?**

A.8 As per Section 3(13), Financial Information includes the following:-

- a) Records of debt of the person
- b) Records of liabilities when the person is insolvent

## **FAQs on the Insolvency and Bankruptcy Code, 2016**

- c) Records of assets of assets of the 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

### **Q.9. What shall be treated as Debt under the Code?**

A.9 As per Section 3(11) of the Code, 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.

### **Q.10. What shall be considered as Claim under the Code?**

A.10 As per Section 3(6) of the Code, 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.

### **Q.11. Who are covered in the definition of person?**

A.11 As per Section 3(23) of the Code, a person includes the following:-

- a) an individual
- b) a Hindu Undivided Family
- c) a company
- d) a trust
- e) a partnership
- f) A limited liability partnership and any other entity established under a Statute.

and includes a person resident outside India

## Preliminary

**Q.12. What do you understand by the term Security Interest?**

A.12 As per Section 3(31) of the Code 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.

**Q.13. What is termed as a transaction under the Code?**

A.13 A transaction includes an agreement or arrangement in writing for transfer of assets, or funds, goods or services, from or to the corporate debtor.

**Q.14. What shall be included in Transfer as per the Code?**

A.14 Transfer includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. In case of property- 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.

**Q.15. What is a "Charge" under the Code?**

A.15 A 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.

**Q.16. Who shall be termed as creditor under the Code?**

A.16 A 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.

**Q.17. What is a Financial Product?**

A.17 A financial product means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small

## **FAQs on the Insolvency and Bankruptcy Code, 2016**

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.

### **Q.18. What is the definition of property under the Code?**

A.18 As per Section 3(27) of the Code, property includes:-

- a) Money, goods, actionable claims, land and every description of property, whether situated in India or outside India and
- b) Every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property

### **Q.19. What is the meaning of the term 'default'?**

A.19 Default means a 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.

## **PART II**

### **Chapter 2**

# **Insolvency Resolution and Liquidation for Corporate Persons**

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**Q.20. What is the threshold limit for making an application for insolvency and liquidation of corporate persons?**

A.20 The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

**Q.21. Who is the Adjudicating Authority for corporate persons?**

A.21 The National Company Law Tribunal shall be Adjudicating Authority for the insolvency resolution and liquidation process of a corporate person.

**Q.22. Who is a corporate guarantor?**

A.22 According to Section 5A of Code, "Corporate Guarantor" means a Corporate Person who is the surety in a contract of guarantee to a Corporate Debtor.

**Q.23. Define the term dispute under the Code.**

A.23 As per Section 5 (6) of the Code, "Dispute" includes a suit or arbitration proceedings relating to –

- (a) The existence of the amount of the debt;
- (b) The quality of goods or services; or
- (c) The breach of a representation or warranty.

**Q.24. What is included in the Financial Debt?**

## FAQs on the Insolvency and Bankruptcy Code, 2016

A.24 As per Section 5(8) of the Code, 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) Any money borrowed against the payment of interest.
- (b) Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent.
- (c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument.
- (d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards.
- (e) Any 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-

- (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 meaning respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 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.

## **Insolvency Resolution and Liquidation for Corporate Persons**

- (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 above sub clauses.

**Q.25. What is insolvency commencement date under Insolvency and Bankruptcy Code, 2016?**

A.25 As per section 5 (12) of the Code, Insolvency Commencement date means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under section 7, 9 or section 10.

Where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority

**Q.26. Define the term operational creditor.**

A.26 As per Section 5 (20) of the Code, Operational Creditor is defined under section 5 (20), it means, a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

**Q.27. What is included in Operational Debt?**

A.27 As per Section 5(21) of the Code, Operational Debt means a claim in respect of

- (a) provision of goods, or
- (b) provision of services including employment, or
- (c) a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

**Q.28. Explain who is a related party in relation to an individual under the Code?**

A.28 According to Section 5 (24A) of the Code, "Related Party" in relation to an individual is described as below:



## **FAQs on the Insolvency and Bankruptcy Code, 2016**

- (a) A person who is a relative of the individual or a relative of the spouse of the individual;
- (b) A partner of a limited liability partnership, or a limited liability partnership 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 two per cent of its share capital;
- (e) A public company in which the individual is a director and holds along with relatives, more than two 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) A limited liability partnership 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 % of the share capital of the company or controls the appointment of the board of directors of the company.

### **Q.29. Who is termed as relative with reference to an individual under the Code?**

A.29 As per Explanation to section 24A of the Code, "Relative", with reference to an individual means anyone who is related to another, in the following manner, namely:—

- (i) Members of a Hindu Undivided Family,
- (ii) husband,
- (iii) wife,

## Insolvency Resolution and Liquidation for Corporate Persons

- (iv) father,
- (v) mother,
- (vi) son,
- (vii) daughter,
- (viii) son's daughter and son,
- (ix) daughter's daughter and son,
- (x) grandson's daughter and son,
- (xi) granddaughter's 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

### **Q.30. Who is a resolution applicant?**

A.30 As per Section 5 (25) of the Code, a Resolution Applicant means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of the sub-section (2) of section 25.

### **Q.31. Who is a corporate applicant?**

A.31 As per Section 5(5) of the Code, 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

## **FAQs on the Insolvency and Bankruptcy Code, 2016**

process under the constitutional document of the corporate debtor; or

- (c) an individual who is in charge of managing the operations and resources of the corporate debtor; or
- (d) a person who has the control, and supervision over the financial affairs of the corporate debtor;

### **Q.32. What does the term resolution plan mean?**

A.32 According to Section 5 (26) of the Code, 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

### **Q.33. Who may initiate corporate insolvency resolution process against a corporate person?**

A.33 The corporate insolvency resolution process may be initiated against any defaulting corporate debtor by

- (a) Financial creditor,
- (b) Operational creditor
- (c) Corporate debtor itself

### **Q.34. What is the Insolvency Resolution Process for financial creditors?**

A.34 As per section 7 of the Code, a financial creditor either itself or along with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by Central Government, may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of its dues.

The financial creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also give the name of the Resolution Professional to act as interim resolution professional.

The Adjudicating Authority shall within fourteen days of the receipt of the application, ascertain the existence of a default from the

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records of an Information Utility or on the basis of other evidence furnished by the financial creditor.

Where the Adjudicating Authority is satisfied that a default has occurred and the application by the financial creditor is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may by order, admit such application made by the financial creditor. Otherwise, the application may be rejected. However, the applicant may rectify the defect within seven days of receipt of notice of rejection from the Adjudicating Authority.

### **Q.35. What is the Insolvency Resolution Process for operational creditors?**

A.35 As per Section 8 and 9 of the Code, on the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.

The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if any, or record of pendency of any suit or arbitration proceedings. He shall also provide the details of payment of unpaid operational debt in case the debt has or is being paid.

After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The Adjudicating Authority shall within fourteen days of receipt of the application, admit or reject the application. However, before rejecting the application, an opportunity shall be given to the applicant to rectify the defect within seven days of receipt of rejection.

### **Q.36. What is the procedure of Insolvency Resolution Process for a Corporate Applicant?**

A.36 As per Section 10 of the Code, where a corporate debtor has committed a default, a corporate applicant thereof may file an

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application for initiating corporate insolvency resolution process with the Adjudicating Authority.

The corporate applicant shall, along with the application, furnish:-

- (i) The information relating to books of account and other documents for such period as may be specified.
- (ii) The information relating to the Resolution Professional to be appointed as an Interim Resolution Professional
- (iii) The Special Resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case maybe, approving filing of the application.

The Adjudicating Authority shall within fourteen days of receipt of application, by an order –

- (i) Admit the application, if it is complete and no disciplinary proceeding is pending against the proposed Resolution Professional;
- (ii) Reject the application, if it is incomplete or any disciplinary proceeding is pending against the proposed Resolution Professional.

However, applicant would be allowed to rectify the defect within seven days of receipt of notice of such rejection.

### **Q.37. When will the insolvency resolution process commence?**

A.37 The insolvency resolution process shall commence from the date of admission of application by the Adjudicating Authority. It is referred to as the Insolvency Commencement Date.

### **Q.38. What is the Corporate Insolvency Process initiation date?**

A.38 The date of filing of the application before the National Company Law Tribunal (NCLT) for initiating corporate insolvency resolution process is referred to as the Initiation date.

### **Q.39. Who is not entitled to make application to initiate a corporate insolvency process?**

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- A.39 As per Section 11 of the Code, the following persons shall not be entitled to initiate the corporate insolvency process:-
- (a) A corporate debtor already undergoing an insolvency resolution process; or
  - (b) A corporate debtor having completed corporate insolvency resolution process 12(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 (twelve) months before the date of making of an application; or
  - (d) A corporate debtor in respect of whom a liquidation order has been made.

**Q.40. Whether the provisions of Section 11 are applicable to Corporate Applicant?**

- A.40 Yes, as per Explanation to section 11 of the Code, for the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

**Q.41. Is there any time limit for completion of the Insolvency Resolution Process?**

- A.41 Section 12 of the Code states that any Insolvency Resolution Process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate the process.

However, the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a vote of 66% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

**Q.42. What is the significance of the Corporate Insolvency Resolution Commencement Date?**

- A.42 The commencement date of the corporate insolvency resolution is the beginning of moratorium or a calm period till the completion of

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the corporate insolvency resolution process during which all suits and legal proceedings etc. against the Corporate Debtor are held in abeyance to give time to the entity to resolve its status.

### **Q.43. Whether an admitted application may be withdrawn under section 7, 9 or 10?**

A.43 Yes, as per section 12 A, the Adjudicating Authority may allow the withdrawal of application admitted under section 7,9, or 10, on an application made by the applicant with the approval of ninety per cent voting share of the Committee of Creditors, in such manner as may be specified.

### **Q.44. What shall be the effect to admission of application under Section 7, 9 or 10?**

A.44 As per section 13, the Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order –

- (a) declare a moratorium for the purposes referred to in section 14;
- (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and
- (c) appoint an interim resolution professional in the manner as laid down in section 16.

### **Q.45. What is the effect of order of moratorium?**

A.45 Moratorium has been explained in Section 14 of the Code, during the moratorium period the following acts shall be prohibited:

- (a) The institution of suits or continuation of any 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;

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- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the 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.

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.

**Q.46. Whether the supply of the essential goods or services to the corporate debtor shall be terminated during moratorium period?**

A.46 No, as per Section 14 of the Code, 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.

**Q.47. On which transactions, moratorium shall not apply?**

A.47 As per Section, 14 of the Code, the provisions of section 14 (1) shall not apply to –

- (i) Such transaction as may be notified by the Central Government in consultation with any financial regulator
- (ii) A surety in a contract of guarantee to a corporate debtor.

**Q.48. When the moratorium shall cease to have effect?**

A.48 As per Section, 14 of the Code, the order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.

Also, if the Adjudicating Authority approves the Resolution Plan during CIRP period under section 31(1) or passes an order for liquidation of corporate debtor, the Moratorium shall cease to have effect from the date of such approval or liquidation order.

**Q.49. What shall be included in the Public Announcement made by an Adjudicating Authority?**

A.49 As per Section 15 of the Code, the Public Announcement shall include the following:-



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- (a) Name & Address of Corporate Debtor under the Corporate Insolvency Resolution Process.
- (b) Name of the authority with which the corporate debtor is incorporated or registered.
- (c) Details of interim resolution Professional who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims, as may be specified.
- (d) Penalties for false or misleading Claims.
- (e) The last date for the submission of the claims, as may be specified
- (f) The date on which the Corporate Insolvency Resolution Process ends.

### **Q.50. Who shall appoint the Insolvency Resolution Professional?**

A.50 As per Section 16 of the Code, the Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date.

### **Q.51. Where the application for corporate insolvency resolution process is made by an operational creditor and no proposal has been made for an Insolvency Resolution Professional, who shall appoint the IRP?**

A.51 As per Section 16 (3) of the Code, where the application for corporate insolvency resolution process is made by an operational creditor and 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.

### **Q.52. What shall be the term of Interim Resolution Professional?**

A.52 As per Section 16 of the Code, the Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date. The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22.

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**Q.53. Who shall manage the affairs of the corporate debtor from the date of appointment of Insolvency Resolution Professional?**

A.53 As per Section 17(1) of the Code, from the date of appointment of the interim resolution professional,

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

**Q.54. What shall be the rights of Insolvency Resolution Professional when he is vested with the management of the affairs of the corporate debtor?**

A.54 As per Section 17(2) of the Code, 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 accounts, records and other relevant documents of corporate debtor available

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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.

### **Q.55. What shall be the duties of the interim resolution professional in case of Management of operations of corporate debtor as going concern?**

A.55 As per Section 20 of the Code, the interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

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 corporate insolvency resolution process;
- (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.

### **Q.56. What shall be composition of the Committee of Creditors?**

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A.56 As per Section 21 of the Code, the committee of creditors shall comprise all financial creditors of the corporate debtor.

**Q.57. Who cannot participate in the Meeting of the Committee of Creditors?**

A.57 As per Section 21 of the Code, a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) of Section 21 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.

However, the above provision shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

**Q.58. In case a person is financial creditor as well as operational creditor, how will he be included in the Committee of Creditors?**

A.58 As per Section 21 (4) of the Code, 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.

**Q.59. What shall be the remuneration payable to the authorised representative?**

A.59 As per Section 21 (6B) of the Code, the remuneration payable to the authorised representative-

- (i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and

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- (ii) under clause (b) of sub-section (6A) shall be as specified which shall form part of the insolvency resolution process costs.

### **Q.60. Who will conduct the meeting of creditors?**

A.60 As per Section 24 of the Code, the resolution professional shall conduct all the meetings of the Committee of Creditors.

### **Q.61. How is the voting share of a creditor in the committee of creditors determined?**

A.61 The voting share is determined based on the value of the debt of the creditor in proportion to the total debt.

### **Q.62. Do Operational Creditors have right to vote in the meeting of Committee of Creditors?**

A.62 No, the Operational Creditors do not have right to vote in the meeting of Committee of Creditors, however, the directors, partners and one representative of operational creditors may attend the meetings of Committee of Creditors.

### **Q.63. What is the tenure of an interim resolution professional?**

A.63 The tenure of the Interim resolution professional shall continue till the date of appointment of the resolution Professional under section 22.

### **Q.64. Is it mandatory on the Board to confirm the Appointment of Resolution Professional proposed by Adjudicating Authority?**

A.64 No, as per Section 22(3) of the Code, if the Board does not confirm the name of the proposed resolution professional within ten 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 as the resolution professional until such time as the Board confirms the Appointment of the proposed resolution professional.

### **Q.65. Who shall act as an authorised representative for financial creditors where a financial debt is in the form of securities or deposits or is owed to a class of creditors or is represented by**

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**a guardian, executor or administrator? Section 21 (6A) provides for it, it is described as follows:**

- A.65 As per Section 21 (6A) of the Code, 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.

**Q.66. What is the voting share on which decisions are taken by Committee of Creditors?**

- A.66 According to section 21 (8) of the Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent of voting share of the financial creditors.

In case 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.

**Q.67. Within how many days, a Resolution Professional shall make available any financial information so required by Committee of Creditors?**

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A.67 According to section 21 (10) of the Code, the resolution professional shall make available any financial information so required by the committee of creditors within a period of seven days of such requisition.

### **Q.68. What are the key roles of an Interim Resolution Professional?**

A.68 The key roles of an Interim Resolution Professional are:-

- (a) Issuance of public notice of the Corporate Insolvency Resolution process
- (b) Collation of claims received
- (c) Constitution of the Committee of Creditors
- (d) Conduct of the first meeting of the Committee of Creditors

### **Q.69. Can an interim resolution professional have the authority to access the books of accounts, records and other relevant documents of the corporate debtor?**

A.69 Yes, the interim resolution professional have the authority to access the books of accounts, records and other relevant documents and information so far as it is necessary for discharging his duties under the Code.

### **Q.70. Whether the filing of an avoidance application by resolution professional shall have effect on Corporate Insolvency Resolution Process?**

A.70 No, as per Section 26 of the Code, the filing of an avoidance application under clause (j) of sub-section (2) of Section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.

### **Q.71. What are the rights and duties of authorised representative of financial creditors?**

A.71 As per Section 25 A, the rights and duties of authorised representative of financial creditors are:

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 creditors he

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represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

2. It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.
3. The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:
  - (i) 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
  - (ii) Further, if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.
4. The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

**Q.72. What is the time limit prescribed to conduct corporate insolvency resolution process by the resolution professional?**

A.72 According to section 23 (1) of the Code, subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process.

The resolution professional shall if the resolution plan under section 30 (6) has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31.



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### **Q.73. What is the procedure for replacement of insolvency resolution professional?**

A.73 As per Section 27 of the Code, the Committee of Creditors may at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.

The Committee of Creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority and after the confirmation of the proposed insolvency resolution professional by the Board he shall be appointed in the same manner as laid down in Section 16.

Where any disciplinary proceedings are pending against the proposed resolution professional then the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

### **Q.74. What are the key tasks to be performed by a Resolution Professional?**

A.74 The following are the key tasks to be performed by a resolution professional:-

- (a) Obtaining Valuation of the entity
- (b) Preparation of Information Memorandum
- (c) Examine each Resolution plan
- (d) Obtaining consent of the Committee of Creditors for the Resolution plan
- (e) Periodic reporting to the Board

### **Q.75. Does resolution professional require approval of Committee of Creditors for performance of his duties?**

A.75 As per Section 28 of the Code, the resolution professional shall require prior approval of the Committee of Creditors by a vote of Sixty-six per cent of voting shares for following actions:-

- (a) To raise any interim finance in excess of the amount as may be decided by the Committee of Creditors in their meeting.

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- (b) To create any security interest over the assets of the corporate debtor.
- (c) To 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) To record any change in the ownership interest of the corporate debtor.
- (e) To 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) To undertake any related party transaction.
- (g) To amend any constitutional documents of the corporate debtor.
- (h) To delegate its authority to any other person.
- (i) To dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties.
- (j) To make any change in the management of the corporate debtor or its subsidiary.
- (k) To transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business.
- (l) To make changes in the Appointment or terms of contract of such personnel as specified by the Committee of Creditors.
- (m) To make changes in the Appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

**Q.76. What is a Resolution plan?**

A.76 As provided in Section 5(26) of the Code, resolution plan means a plan proposed by resolution applicant for insolvency resolution of corporate debtor as a going concern in accordance with Part II of the Code.

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

The Resolution Plan should provide for:

- (i) Payment of insolvency resolution costs;
- (ii) Payment of the debts to operational creditors;
- (iii) Management of affairs of the Company after approval of the resolution plan;
- (iv) Implementation and supervision of the resolution plan;
- (v) Does not contravene any of the provisions of the law for the time being in force; and
- (vi) Conforms to such other requirement as may be specified by the Board.

### **Q.77. What is the process of submitting of a resolution plan?**

A.77 The following are the steps to submit a resolution plan:

- (i) As per section 30 (1), a resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29 A to the resolution professional, prepared on the basis of the information memorandum.
- (ii) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan consists of all the documents as provided in the said section.
- (iii) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in section.
- (iv) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six 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.

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

**Q.78. Can the resolution applicant attend the meeting of the committee of creditors?**

A.78 The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered. However 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.

**Q.79. When will an ineligible person to be a resolution applicant because of being classified as non- performing asset become eligible to submit resolution plan and what is the time period allowed to such resolution applicant to make payment of overdue amounts as per Section 29(A)?**

A.79 The ineligible person as per Section 29A because of being classified as non- performing asset 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. However the Committee of Creditors shall allow such resolution applicant not exceeding thirty days to make payment of overdue amounts.

**Q.80. Is the resolution professional required to provide access to information of the information memorandum to the resolution applicant?**

A.80 As per Section 29 of the Code, the resolution professional shall provide all the access of the information memorandum to the resolution applicant and furnish all the relevant information in physical and electronic form. However, the resolution professional will be required to obtain the following undertaking from the resolution applicant :-

- (a) They will comply with the provisions of the law for the time being in force relating to the confidentiality and Insider Trading;

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- (b) They will protect any Intellectual property of the corporate debtor it may have access; and
- (c) They will not to share the relevant information to the third party.

### **Q.81. When shall the resolution plan be considered as approved by Committee of Creditors?**

A.81 The resolution plan shall be approved by the Committee of Creditors by a vote of not less than sixty six per cent of voting share of the financial creditors.

### **Q.82. What remedy is available to a Resolution Professional with whom the Corporate debtor personnel do not cooperate?**

A.82 Where any personnel of the corporate debtor, its promoter or any other person, required to, assist or co-operate 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.

The Adjudicating Authority, on receiving an application 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.

### **Q.83. Does the National Company Law Tribunal (NCLT) have powers to reject Resolution plans?**

A.83 Yes, the National Company Law Tribunal (NCLT) has powers to reject Resolution plans proposed by the Committee of Creditors.

### **Q.84. What happens when the Resolution Plan is not filed within 180 days of the Commencement date or such other extended period?**

A.84 National Company Law Tribunal (NCLT) may pass orders for the liquidation of the corporate debtor if the Resolution Plan is not filed within 180 days of the Commencement date or such other extended period.

The NCLT shall do the following

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- (i) Pass an order requiring the corporate debtor to be liquidated in the manner as laid down;
- (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

#### **Q.85. Who all are not eligible to be a resolution applicant?**

A.85 According to section 29 A of the Code, 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 Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 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 Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 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 corporate insolvency resolution process of the corporate debtor;
- (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:

- (e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

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- (f) is prohibited by the Securities and Exchange Board of India 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
- (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)

**Q.86. Whether Section 29A (Persons not eligible to be resolution applicant) is applicable to a resolution applicant where such applicant is a financial entity and is not related to the corporate debtor?**

A.86 Section 29A(c) is not applicable to a resolution applicant where such applicant is a financial entity and is not related to the corporate debtor, i.e., such financial entity can submit resolution plan. Here the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

**Q.87. What does the expression "connected person" mean as per Section 29A?**

A.87 As per Explanation I to Section 29A (j), the expression "connected person" means-

- (i) any person who is the promoter or in the management or control of the resolution applicant; or

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- (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)

**Q.88. What does “financial entity” mean as per Section 29A?**

A.88 As per Explanation II to Section 29A, “financial entity” means-

- (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 Foreign Exchange Management Act, 1999 (42 of 1999);
- (d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (e) an Alternate Investment Fund registered with Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.

**Q.89. What is the time limit prescribed to the resolution applicant for taking approvals pursuant to the resolution plan approval from Adjudicating Authority?**

A.89 As per Section 31 (4), the resolution applicant, pursuant to resolution plan approval from Adjudicating Authority, shall obtain



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necessary approval required under any law for the time being in force within the period of 1 year from the date of approval of the resolution plan by the Adjudicating Authority under 31 (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains provision for combination as referred to in section 5 of Competition Act, 2002 (12 of 2003), 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.

### **Q.90. What is the first step that Adjudicating Authority takes in approval of resolution plan?**

A.90 According to section 31 (1), if the adjudicating authority is satisfied that the resolution plan, after approval from the committee of creditors under section 30 (4) and fulfilling all the requirements as referred to in section 30 (2), it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

The Adjudicating Authority shall, before passing an order for approval of resolution plan, must satisfy that the resolution plan has provisions for its effective implementation.

### **Q.91. What are Insolvency Resolution Process Costs? What is the significance of these costs?**

A.91 As per Section 5(13) of the Code, "Insolvency Resolution Process Costs" means the following costs:-

- (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.

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- (e) Any other costs as may be specified by the Board.

These costs have priority over other costs in the event of winding up of the corporate debtor.

### **Q.92. In which cases the Adjudicating Authority can order for the liquidation of the Corporate Debtor?**

A.92 As per Section 33 of the Code, the Adjudicating Authority may order for the liquidation of the Corporate Debtor in the following cases:-

- (a) Where before the expiry of the Insolvency Resolution Process or within 180 days of the initiation Insolvency Resolution, if the Adjudicating Authority does not receive the Resolution Plan.
- (b) If the Committee of Creditors before the expiry of the resolution process intimates the Adjudicating Authority, of the decision of the Committee of Creditors that they have passed an order for the liquidation of Corporate Debtor.
- (c) Where the Resolution Plan is in contravention with the interest of any person, whose interest is prejudicially affected by the contravention, may make an application to the Adjudicating Authority to pass the liquidation order.

### **Q.93. What shall be the contents of order of liquidation?**

A.93 The order of liquidator shall contain the following:-

- (a) An order requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III Part II of the Code.
- (b) An order for issuing a Public Announcement stating that the corporate debtor is in liquidation.
- (c) It shall also require such order to be sent to the authority with which the corporate debtor is registered.

### **Q.94. What will be the effect of order of liquidation?**

A.94 As per Section 33 of the Code, the following shall be the effect of passing of an order of liquidation by the Adjudicating Authority:-

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- (a) No suit or other legal proceeding shall be instituted by or against the corporate debtor. However, the liquidator may institute a suit or other legal proceeding on behalf of the corporate debtor with the prior approval of the Adjudicating Authority.
- (b) The legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator shall not be affected.
- (c) The order for liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except in the case where the business of the corporate debtor is continued during the liquidation process by the liquidator.

### **Q.95. What shall be the fees that liquidator may charge for conducting liquidation proceeding?**

A.95 The liquidator shall charge fee for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets, as may be specified by the Board under Section 34(8) of the Code.

### **Q.96. Can a resolution professional act as a liquidator?**

A.96 Yes, under section 34 (1), where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority, may act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.

### **Q.97. Under what circumstances can a resolution professional be replaced by an Adjudicating Authority in the process of liquidation?**

A.97 According to section 34 (4) the Adjudicating Authority may by an order replace the resolution professional, under the following circumstances:

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- (i) The resolution plan submitted by the resolution Professional under section 30 was rejected due to failure to meet the requirements mentioned in section 30 (2).
- (ii) The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.
- (iii) The resolution professional fails to submit written consent under section 34 (1).

Also, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator as described under section 34 (5). After the directions by Adjudicating Authority, the board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specific form within ten days, as provided under section 34 (6).

**Q.98. What happens when the committee of creditors approve for liquidating the corporate debtor before the confirmation of resolution plan?**

A.98 According to section 33 (2), where the resolution professional, at any time during the corporate insolvency resolution process but before the confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by at-least sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order.

**Q.99. What is the remedy available to the creditors if the liquidator rejects his claims?**

A.99 As per section 42, a creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.

**Q.100. Under what circumstances transactions will be referred to as preferential transactions?**

A.100 As provided in Section 43 of the Code, a corporate debtor shall be deemed to have given a preference in the following circumstances:-

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- (a) If 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) If 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 of the Code.

### **Q.101. Under what circumstances transactions will not be referred to as preferential transactions?**

A.101 As per Section 43(3) of the Code, following transfers shall not be referred to as a preference transaction:-

- (a) The transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee.
- (b) Any transfer creating a security interest in property acquired by the corporate debtor to the extent that
  - (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and
  - (ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property.

Further, 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.

### **Q.102. When shall a transaction entered by any corporate debtor be deemed as Undervalued?**

A.102 As per Section 45 of the Code, a transaction shall be considered undervalued where the corporate debtor:-

- (a) makes a gift to a person; or

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

**Q.103. When can a liquidator apply for avoidance of preferential transaction?**

A.103 As provided under section 43 (4), Where the liquidator is of the opinion that the corporate debtor has at a relevant time given a preference in transactions to:

- (a) A related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date.
- (b) A person other than a related party during the period of one year preceding the insolvency commencement date.
- (c) The liquidator shall apply to Adjudicating Authority for avoidance of such preferential transactions.

**Q.104. What is the relevant period for avoiding any undervalued transaction?**

A.104 As per Section 46 of the Code, if in an application, the liquidator or resolution professional demonstrates

- (a) That the transaction was made with any person within the period of one year preceding the insolvency commencement date; or
- (b) That the transaction was made with a related party within a period of two years preceding the insolvency commencement date.

**Q.105. Can a creditor make an application to the Adjudicating Authority for avoidance of any undervalued transactions in case of a corporate debtor?**

A.105 Yes, as empowered by Section 47 of the Code, where an undervalued transaction has taken place and the liquidator or the

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resolution professional has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect.

### **Q.106. What are Extortionate credit transactions?**

A.106 As per section 50 of the Code, 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.

As provided in Regulation 5 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an Extortionate Credit Transactions shall be considered extortionate under section 50(2) where the terms:

- (i) Require the corporate debtor to make exorbitant payments in respect of the credit provided, or
- (ii) Are unconscionable under the principles of the law relating to contracts.

### **Q.107. Can an application be filed to avoid extortionate credit transactions in case of a corporate debtor?**

A.107 Yes, as per Section 50 of the Code, where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date in that case the liquidator or the resolution professional as 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.

### **Q.108. What are the powers of an Adjudicating Authority where a corporate debtor enters into exorbitant transactions?**

A.108 As per Section 51 of the Code, if an Adjudicating Authority after examining the application 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;

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- (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.

#### **Q.109. In what order shall a liquidator distribute the assets?**

A.109 As per Section 53 of the Code, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority:

- (a) Any insolvency resolution process costs and the liquidation costs to be paid in full.
- (b) Debts which shall rank equally between and among the following:—

Any workmen dues outstanding for a period of twenty-four months preceding the liquidation commencement date.

  - (i) Debts which are owed to a secured creditor where such secured creditor has relinquished security.
- (c) Wages and any unpaid dues owed to employees other than the workmen for a period of twelve months preceding the liquidation commencement date.
- (d) Financial debts owed to unsecured creditors.
- (e) Also the following dues shall rank equally between and among the following:—
  - (i) Any amount which is due to the Central Government and the State Government including any amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date.



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- (ii) All 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
- (h) Equity shareholders or partners

Any contractual arrangements if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

### **Q.110. How shall the fees payable to liquidator be paid?**

A.110 The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under Section 53(1) and the proceeds to the relevant recipient shall be distributed after such deduction. The fees payable to liquidator shall have priority over other payments during liquidation.

### **Q.111. What is the procedure for enforcement of security interest by secured creditor?**

A.111 As per Section 52(4) of the Code, the secured creditor may enforce, realize, settle, compromise or deal with the secured assets after completion of verification by liquidator in accordance with such law as applicable to the security interest and apply the proceeds to recover the debts due to it.

The secured creditor may apply to Adjudicating Authority under Section 52(5) of the Code to facilitate the secured creditor to realize such security interest.

### **Q.112. Can the liquidator consult stakeholders? Is such consultation binding on the liquidator?**

A.112 Yes, as per Section 35(2) of the Code, a liquidator has the power to consult any of the stakeholders entitled to distribution of proceeds under Section 53 of the Code. However, such consultation shall not be binding on the liquidator.

### **Q.113. Which assets shall not be used for recovery in liquidation?**

A.113 The following assets shall not be used for recovery in the liquidation:—

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Any assets owned by a third party, which are in possession of a corporate debtor, and which include-

- (a) Assets held in trust for any third party;
- (b) Bailment contracts;
- (c) All sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
- (d) Other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
- (e) Such other assets as may be notified by the Central Government in consultation with any financial sector regulator.
- (f) Assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (g) 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;
- (h) Assets of any Indian or foreign subsidiary of the corporate debtor; or
- (i) 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.

### **Q.114. Is a liquidator bound to provide information to creditors?**

A.114 The creditors may require the liquidator to provide them any financial information relating to the corporate debtor. The liquidator shall provide information to the creditors who have requested for such information within a period of seven days from the date of such request or he may provide reasons for not providing such information.

### **Q.115. Is there any time limit for receipt of claim of creditors?**

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A.115 Yes, 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.

### **Q.116. Can a creditor withdraw or vary his claim?**

A.116 Yes, a creditor may withdraw or vary his claim within fourteen days of its submission.

### **Q.117. How does the liquidator verify his claim?**

A.117 The liquidator shall verify the claims submitted to him within such time as be specified by the Board. Further, he may require any creditor or the corporate debtor or any other person to produce documents or evidences which he thinks necessary for the purpose of verification of whole or any part of the claim.

### **Q.118. What is fast track insolvency resolution process?**

A.118 A fast track insolvency resolution, as the name suggests, is a process wherein the insolvency resolution process shall be completed with 90(ninety) days from the insolvency commencement date.

According to section 55, an application under this category can be made by corporate debtor falling under any of the below mentioned category:

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

### **Q.119. Can the time period for fast track corporate insolvency resolution process be extended?**

A.119 Yes, the Adjudicating Authority may extend time period for fast track corporate insolvency resolution process.

As provided under section 56 (2), the resolution professional shall file an application to the Adjudicating Authority to extend the period

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of the fast track corporate insolvency resolution process beyond ninety days, if instructed to do so by a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy-five per cent of the voting share.

Further, under section 56 (3), on receipt of an application to the Adjudicating Authority and if it is satisfied that the fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order; extend the duration of such process to a further period which shall not be exceeding forty-five days and such extension shall not be granted more than once.

### **Q.120. When can a corporate person initiate voluntary liquidation process?**

A.120 Section 59 of the Code empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:-

- (a) A declaration from majority of the directors of the company verified by an affidavit stating
  - (i) That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts 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) That the company is not being liquidated to defraud any person.
- (b) The declaration shall be accompanied with the following documents, namely:
  - (i) Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
  - (ii) A report of the valuation of the assets of the company, if any, prepared by a registered valuer.

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- (c) After making the declaration the corporate debtor shall within four weeks
  - (i) Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.
  - (ii) Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

### **Q.121. Can a liquidator make application for dissolution of the company?**

- A.121 Yes, after the affairs of the corporate person have been completely wound up and its assets are completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of the company.

### **Q.122. When does a corporate person require approval of creditors for voluntary liquidation process?**

- A.122 As per the proviso to Section 59(3) of the Code, if the company owes any debt to any person, then creditors representing two-thirds in value of the debt to the company shall approve the resolution to be passed at the general meeting, within seven days of such resolution.

### **Q.123. Who shall be the Adjudicating Authority for a corporate person?**

- A.123 In case of a corporate person including corporate debtors and personal guarantors the Adjudicating Authority shall be National Company Law Tribunal (NCLT) having territorial jurisdiction over the place where the registered office of the corporate person is situated, as per section 60 (1) of the Code.

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Further as per section 60 (2), the Code provides that without any prejudice to section 60 (1), where the corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, of such corporate debtor shall be filed before such National Company Law Tribunal (NCLT).

In addition to the above, section 60 (3) provides that 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 processing of such corporate debtor.

### **Q.124. What are the jurisdictional powers of Adjudicating Authority?**

- A.124 As per Section 60 of the Code, the Adjudicating Authority i.e., National Company Law Tribunal shall have jurisdiction to entertain or dispose of the following:-
- (a) Any application or proceedings by or against the Corporate Debtor / Corporate person.
  - (b) Any Claim made against the Corporate Debtor/ Corporate Person including the subsidiaries situated in India.
  - (c) Any question of priority, question of law or fact under this Code.

### **Q.125. Is the period of moratorium excluded for the purpose of limitation?**

- A.125 Yes, as per Section 60(6) of the Code, the period during which moratorium is in place shall be excluded 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.

### **Q.126. Whether an appeal can be filed against the order of the National Company Law Tribunal?**

- A.126 Yes, as per Section 61 of the Code, any person aggrieved by the order of the National Company Law Tribunal may prefer an appeal to

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National Company Law Appellate Tribunal within thirty (30) days from the date of order of the National Company Law Tribunal (NCLT).

### **Q.127. On what grounds can an appellant appeal against an order of National Company Law Tribunal for approving the resolution plan?**

A.127 As per Section 61(3) of the Code, an appeal against an order of National Company Law Tribunal (NCLT) for approving the resolution plan may be filed on the following grounds:-

- (a) The approved resolution plan is in contravention of the provisions of any law for the time being in force.
- (b) There has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period.
- (c) 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.
- (d) The insolvency resolution process costs have not been provided for repayment in priority to all other debts.
- (e) The resolution plan does not comply with any other criteria specified by the Board.

### **Q.128. Does an appeal lie from the order of National Company Law Appellate Tribunal?**

A.128 Yes, as per Section 62 of the Code, any person aggrieved by the order of National Company Law Appellate Tribunal may file an appeal to the Supreme Court within 45 days from the date of receipt of the order. However, appeal shall lie only on the Question of law arising out of this Code.

### **Q.129. Does Civil Court have jurisdiction in matters relating to insolvency of corporate persons?**

A.129 No, as per section 63, Civil Court shall not have jurisdiction to entertain any suit or proceedings in respect of any matter relating to insolvency of corporate persons on which the National Company

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Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code.

**Q.130. Is there any provision for extension of the time specified in the Code where an application is not disposed off or an order has not been passed?**

A.130 Yes, as per section 64, the President of National Company Law Tribunal (NCLT) or the Chairperson of National Company Law Appellate Tribunal (NCLAT) may extend the time specified in the Act for not more than ten (10) days, where an application is not disposed off or an order is not passed within the period specified in the Code.

**Q.131. What is the punishment for fraudulently or maliciously initiating the insolvency resolution process or liquidation?**

A.131 According to Section 65 of the Code, any person who fraudulently or with malicious intent initiates the insolvency resolution process or liquidation process shall be punishable with a minimum penalty of one lakh rupees which may extend to one crore rupees.

Further, any person who initiates voluntary liquidation proceedings with the intent to defraud any person shall be punishable with a minimum penalty of one lakh rupees which may extend to one crore rupees.

**Q.132. What is the punishment for concealment of property by the officers of the corporate debtor?**

A.132 In Accordance with section 68 of the Code, where any officer of the Corporate Debtor, within twelve months immediately preceding the insolvency commencement date,

- (i) Wilfully concealed any property or part of such property of the value of Rs 10,000/- or more,
- (ii) Fraudulently removed any part of the property of the value of Rs 10,000/- or more,
- (iii) Wilfully concealed, destroyed or mutilated or falsified any book or paper



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- (iv) Wilfully made any false entry in any book or paper affecting or related to the property,
- (v) Fraudulently parted with, altered or made any omission in any document affecting or relating to property,
- (vi) Wilfully created any security interest over, transferred or disposed of any property unless it was in the ordinary course of business,
- (vii) Wilfully concealed the knowledge of the doing by other of any acts mentioned above;

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

### **Q.133. What is the punishment for entering in transactions for defrauding creditors?**

A.133 If an officer of the corporate debtor or the corporate debtor

- (i) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against or where the property of the corporate debtor
- (ii) has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor

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

### **Q.134. What shall be treated as misconduct in the course of corporate insolvency resolution process?**

A.134 The following acts of an officer of the corporate debtor on or after the commencement of insolvency date will be treated as misconduct:-

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- (a) When he does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information required by the resolution professional.
- (b) When he does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver.
- (c) When he does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver.
- (d) When he fails to inform the resolution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process.
- (e) When he prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor.
- (f) When he accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date.

**Q.135. What is the punishment for misconduct in the course of corporate insolvency resolution process?**

A.135 Where an officer of the corporate debtor is liable for misconduct under Section 70 of the Code, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees or with both. ,

**Q.136. What is the punishment for contravention of the provisions of the Code by an Insolvency Professional?**

A.136 Section 70(2) of the Code provides that if an insolvency professional deliberately contravenes the provisions of the Code he shall be

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punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but may extend to five lakhs rupees or with both.

### **Q.137. What is the punishment for falsification of books of corporate debtor?**

A.137 In accordance with section 71 of the Code, where on and after the insolvency commencement date any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the corporate debtor with intent to defraud or deceive any person he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees or with both.

### **Q.138. What is the punishment for wilful and material omissions from statements relating to affairs of corporate debtor?**

A.138 Where an officer of the corporate debtor makes any material and wilful omission in any statement relating to the affairs of the corporate debtor he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees or with both, as per section 72 of the Code.

### **Q.139. What is the punishment for making false representations to creditors?**

A.139 Section 73 provides that where any officer of the corporate debtor-

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

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

**Q.140. What is the punishment for contravention of moratorium or resolution plan?**

A.140 In accordance with Section 74, if the corporate debtor or any of its officer violates the provisions of Section 14 (Moratorium), any such officer who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable with imprisonment for a term which shall not be less than three years but may extend to five years or with fine which shall not be less than one lakh rupees but may extend to three lakh rupees, or with both.

If any creditor violates the provisions of Section 14 (Moratorium), any person who knowingly and wilfully authorised or permitted such contravention by a creditor shall be punishable with imprisonment for a term which shall not be less than one year but may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees, or with both.

If the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under Section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

**Q.141. What is the punishment for furnishing false information in application for initiating insolvency process under Section 7 of the Code?**

A.141 Any person who knowingly furnishes information in the application made under Section 7 (Initiation of corporate insolvency resolution process by financial creditor) which is false in material particulars or omits any material fact, such person shall be punishable with fine which shall not be less than one lakh rupees but may extend to one crore rupees, as provided under section 75 of the Code.

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### **Q.142. What is the punishment for non-disclosure of dispute or payment of debt by operational creditor?**

A.142 Section 76 provides that if an operational creditor has wilfully or knowingly concealed in an application under Section 9 the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final payment of the unpaid operational debt or any person who knowingly and wilfully authorised or permitted such concealment, such operational creditor or person shall be punishable with imprisonment for a term which shall not be less than one year but may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees, or with both.

### **Q.143. What is the punishment for providing false information in application made by corporate debtor?**

A.143 Section 77 provides that, if a corporate debtor knowingly provides information in the application under Section 10 which is false in material particulars or omits any material fact or any person who knowingly and wilfully authorised or permitted the furnishing of such information, such corporate debtor or person shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than one lakh rupees but which may extend to one crore rupees, or with both.

## **Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016**

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**Q.144. What is the date of enforcement of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016?**

A.144 The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 have been enforced w.e.f. 1st day of December, 2016.

**Q.145. What is meant by a Demand Notice?**

A.145 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.

**Q.146. Can a Demand Notice by an operational creditor be issued in any form?**

A.146 No, the Demand Notice has to be issued in Form No. 3 as provided in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**Q.147. What shall be the mode of service of demand notice?**

A.147 The demand notice may be delivered to the corporate debtor in any of the following modes:

- By hand, registered post or speed post with the acknowledgment due delivered at the registered office of the corporate debtor.
- By electronic mail service to a whole time director or designated partner or key managerial personnel of the corporate debtor.

## **FAQs on the Insolvency and Bankruptcy Code, 2016**

### **Q.148. What are the forms to be used for Application to be filed before National Company Law Tribunal (NCLT) by Financial Creditor, Operational Creditor and Financial Debtor?**

A.148 The form in which the application is to be preferred is provided in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as follows:

- Financial Creditor – Form 1
- Operational Creditor – Form 5
- Corporate Applicant – Form 6

### **Q.149. What is the process for making an application by financial creditor?**

A.149 As per Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, a financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority by registered post or speed post to the registered office of the corporate debtor.

### **Q.150. What is a Financial Contract?**

A.150 Financial contract is a contract between a corporate debtor and a financial creditor which lays down the terms of the financial debt like the tenure of the debt, interest payable and date of repayment etc.

### **Q.151. Can an assignee of a financial contract make an application under corporate insolvency resolution process?**

A.151 Yes, as per Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 where an applicant of corporate insolvency resolution is an assignee or transferee of a financial contract the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

## **Insolvency and Bankruptcy (Application to Adjudicating Authority) ...**

### **Q.152. What is the process for making an application by Operational creditor?**

A.152 An operational creditor shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 9 of the Code in Form 5, accompanied with documents and records required therein and as specified in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

### **Q.153. What is the process for making an application by Corporate applicant?**

A.153 A corporate applicant shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 10 of the Code in Form 6, accompanied with documents and records required therein and as specified in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

### **Q.154. Can an applicant withdraw its application for insolvency process?**

A.154 Yes, as per Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 an applicant may withdraw application for insolvency process by making a request to the Adjudicating Authority. However, such a withdrawal may not be made after the application has been admitted by the adjudicating authority.

### **Q.155. Does an applicant need any declaration from the proposed interim resolution professional?**

A.155 Yes, as per Rule 9 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 an applicant is required to obtain



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a written communication from the proposed interim resolution professional. The communication shall be obtained in Form 2 of the said Rules.

**Q.156. Is there any provision for relaxation in submission of relevant supporting documents to an application for insolvency resolution where the supporting documents are very bulky?**

A.156 Yes, the proviso to Rule 10 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 makes provision for submission of accompanying documents in electronic form, when such documents are bulky in nature. The documents should be scanned and be submitted in legible portable format in a data storage device such as compact disc or a USB flash drive which is acceptable to the Adjudicating Authority.

# **IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2016**

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**Q.157. What is the meaning of the term ‘class of creditors’?**

A.157 According to Regulation 2(1) aa of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 “class of creditors” means a class with at least ten financial creditors under clause (b) of sub-section (6A) of section 21 and the expression, “creditors in a class” shall be construed accordingly.

**Q.158. What does “evaluation matrix” mean?**

A.158 As per Regulation no. 2(1)(ha) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, “evaluation matrix” means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval.

**Q.159. What does “fair value” mean?**

A.159 As per Regulation no. 2(1)(hb) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, “fair value” means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

**Q.160. What is the meaning of the term “liquidation value”?**

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A.160 As per Regulation 2(1)(k) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, "liquidation value" means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.

### **Q.161. What are the eligibility criteria for appointment of an Insolvency Professional as a Resolution Professional for a corporate insolvency resolution process?**

A.161 As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor i.e.,

- (a) He 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) He is not a related party of the corporate debtor.
- (c) He is not an employee or proprietor or a partner of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor in the last three financial years.
- (d) He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm in the last three financial years.

### **Q.162. What is the meaning of the term Extortionate credit transaction?**

A.162 As per Regulation No. 5 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a transaction shall be considered extortionate under section 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

## **IBBI (Insolvency Resolution Process for Corporate Persons) ...**

### **Q.163. What is the protocol for issuance of public announcement?**

A.163 As per Regulation 6(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the public announcement shall be published in following:-

- One English newspaper
- One vernacular newspaper
- Website of the Corporate Debtor
- Website designed by the Insolvency and Bankruptcy Board of India

### **Q.164. Who shall bear the expenses of public announcement?**

A.164 As per Regulation 6 of the Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016 the expenses of public announcement shall be borne by the applicant which may be reimbursed by the Committee of Creditors, to the extent it ratifies them.

### **Q.165. What is the procedure for claims by Operational Creditors?**

A.165 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

Such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee of creditors.

The existence of debt due to the operational creditor under this Regulation may be proved on the basis of-

- (a) The records available with an information utility, if any; or
- (b) Other relevant documents, including –
  - (i) A contract for the supply of goods and services with corporate debtor;
  - (ii) An invoice demanding payment for the goods and services supplied to the corporate debtor;

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- (iii) An order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or
- (iv) financial accounts.

### **Q.166. What is the procedure for claims by Financial Creditors?**

A.166 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

Such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee of creditors.

The existence of debt due to the financial creditor may be proved on the basis of –

- (a) The records available with an information utility, if any; or
- (b) Other relevant documents, including –
  - (i) A financial contract supported by financial statements as evidence of the debt;
  - (ii) A record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;
  - (iii) Financial statements showing that the debt has not been [paid];
  - (iv) An order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

### **Q.167. Who shall bear the cost of proof?**

A.167 As per Regulation no. 11 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a creditor shall bear the cost of proving the debt due to such creditor.

### **Q.168. What is the remedy if a Creditor fails to submit proof of claim within the time stipulated in the public announcement?**

A.168 As per Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a Creditor who failed to

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submit proof of claim within stipulated time may submit such proof to Interim Resolution Professional or the resolution professional on or before the ninetieth day of the insolvency commencement date.

**Q.169. Is there any time limit for verification of claims by the resolution professional?**

A.169 Yes, as per Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, all the claims must be verified by the resolution professional within seven days from the last date of receipt of claims.

**Q.170. Can list of creditors prepared by resolution professional be inspected?**

A.170 Yes, as per Regulation 13 IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the list of creditors shall be available for inspection by the persons who submitted proofs of claims and also by the members, partners, directors and guarantors of the corporate debtors.

Further, the list shall also be displayed on the website of the corporate debtor.

**Q.171. Who will determine the amount claimed by the creditor which is not precise due to any contingency or any other reason?**

A.171 As per Regulation 14 (1) IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, shall revise the amounts of claims admitted, including the estimates of claims made as soon as may be practicable, when he comes across additional information warranting such revision.

**Q.172. If there is no financial creditor, how will the committee of creditors be constituted?**

A.172 As per Regulation 16 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, where the corporate debtor

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has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be formed comprising of following members:-

- (a) 18 largest operational creditors by value.
- (b) 1 representative elected by all workmen
- (c) 1 representative elected by all employees.

Where the number of operational creditors is less than 18, the committee shall include all such operational creditors.

### **Q.173. Who is Authorized representative?**

A.173 As per Regulation 16A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorized representative of the creditors of the respective class.

### **Q.174. What is the compliance with Adjudicating Authority post constitution of committee of creditors?**

A.174 After the constitution of committee of creditors, as per Regulation 17 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the interim resolution professional is required to file a report certifying the constitution of the committee of creditors to the Adjudicating Authority. The report shall be filed within two days of the verification of claims received under Regulation 12(1) of the said Regulations.

### **Q.175. Can a member attend the meeting of committee of creditors by video conferencing?**

A.175 Yes, as per Regulation 22 of the Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016 a member of committee of creditors may attend the meeting by video conferencing or other audio and visual means.

### **Q.176. What is the quorum required for convening of the meeting of committee of creditors?**

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A.176 As provided in Regulation 22(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a meeting of committee of creditors shall be quorate if members of the committee of creditors representing at least thirty three per cent of the voting rights are present either in person or by video/audio means.

**Q.177. What shall be the consequence if the quorum is not fulfilled?**

A.177 As per Regulation 22(2) and 22(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, if the requisite quorum for committee of creditors is not fulfilled the meeting cannot be held and the meeting shall automatically stand adjourned at the same time and place on the next day. The adjourned meeting shall be quorate with the members of the committee attending the meeting.

**Q.178. Who will appoint the registered valuers and within how many days?**

A.178 As per Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation.

Provided that the following persons shall not be appointed as registered valuers, namely:

- (a) A relative of the resolution professional;
- (b) A related party of the corporate debtor;
- (c) An auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or
- (d) A partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

**Q.179. How the sales of the assets outside the ordinary course of business take place?**

A.179 As per Regulation 29 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional may sell unencumbered asset(s) of the corporate debtor, other than



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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:

But the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional. The sale of assets under this Regulation shall require the approval of the committee by a vote of sixty-six per cent of voting share of the members.

### **Q.180. What is the process for withdrawal of application under Section 12A?**

A.180 As per Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an application for withdrawal under section 12A shall be submitted to the interim resolution professional or the resolution professional, in Form FA of the Schedule before issue of invitation for expression of interest under regulation 36A alongwith a bank guarantee towards estimated cost incurred on or by interim resolution professional or resolution professional till the date of application.

The Committee of Creditors shall consider the application made within seven days of its constitution or seven days of receipt of the application, whichever is later.

Where the application is approved by the committee with ninety percent voting share, the resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

The Adjudicating Authority may, by order, approve the application submitted.

### **Q.181. What is the meaning of the term “essential supplies”**

A.181 The essential goods and services referred to in section 14(2) shall mean-

- (a) Electricity;
- (b) Water;
- (c) Telecommunication services; and

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- (d) Information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

#### **Q.182. What are the Costs of the Interim Resolution Professional?**

A.182 As per Regulation 33 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016-

- (1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.
- (2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses.
- (3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.
- (4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

For the purposes of this regulation, “expenses” include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional..

#### **Q.183. What are Resolution Professional costs?**

A.183 As per Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the committee of creditors shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

#### **Q.184. What is the compliance requirement with respect to disclosure of costs?**

A.184 As per Regulation 34A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the interim resolution professional or the resolution professional, shall disclose item wise insolvency resolution process costs in such manner as may be required by IBBI.

#### **Q.185. How fair value and liquidation value shall be determined?**

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A.185 As per Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, fair value and liquidation value shall be determined in the following manner:-

- (a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;
- (b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and
- (c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value.

**Q.186. Where the resolution professional is of the opinion that the corporate debtor has been subjected to preferential and other transactions, what shall he do?**

A.186 As per Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016-

- (1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.
- (2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board.
- (3) Where the resolution professional makes a determination, he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.

**Q.187. By when the resolution professional shall submit the information memorandum?**

### **IBBI (Insolvency Resolution Process for Corporate Persons) ...**

A.187 The resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.

#### **Q.188. What is the process for Invitation for expression of interest?**

A.188 Regulation 36A (1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that the resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.

- (2) The resolution professional shall publish Form G-
  - (i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;
  - (ii) on the website, if any, of the corporate debtor;
  - (iii) on the website, if any, designated by the Board for the purpose; and
  - (iv) in any other manner as may be decided by the committee.
- (3) The Form G in the Schedule shall -
  - (a) state where the detailed invitation for expression of interest can be downloaded or obtained from, and
  - (b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.

#### **Q.189. What is the timeline to issue provisional list of eligible prospective resolution applicants and final list of prospective resolution applicants?**

A.189 As provided in Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution

## **FAQs on the Insolvency and Bankruptcy Code, 2016**

professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list may be made with supporting documents within five days from the date of issue of the provisional list.

On considering the objections received, the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

### **Q.190. By when the request for resolution plan to be made by resolution professional?**

A.190 As per Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans, within five days of the date of issue of the provisional list to –

- (a) every prospective resolution applicant in the provisional list; and
- (b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.

The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).

### **Q.191. What is the process for evaluating the resolution plans as received by Committee of Creditors?**

A.191 The Committee of Creditors as per Regulation 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall evaluate the resolution plans received strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit:

However the committee shall record the reasons for approving or rejecting a resolution plan.

## **IBBI (Insolvency Resolution Process for Corporate Persons) ...**

**Q.192. What is the timeline for a resolution professional to submit the resolution plan approved by Committee of Creditors to the Adjudicating Authority?**

A.192 The resolution professional as per Regulation 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.

**Q.193. What is meant by performance security under sub-regulation (4A) of Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,?**

A.193 “Performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.

**Q.194. What is fast track process period?**

A.194 As per Regulation 2 (1) (j) of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, “fast track process period” means the period of ninety days beginning from the fast track commencement date and ending on the ninetieth day.

**Q.195. What is fast track commencement date?**

A.195 As per Regulation 2 (1) (l) of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, “fast track commencement date” means the date of admission of an application by the Adjudicating Authority for initiating the fast track process under Chapter IV of Part II of the Code.

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**Q.196. When shall an interim resolution professional file a report certifying the constitution of the Committee of Creditors to the Adjudicating Authority in case of fast track process?**

A.196 As provided in Regulation 17 of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, the interim resolution professional shall file a report certifying the constitution of the Committee of Creditors to the Adjudicating Authority on or before the expiry of twenty-one days from the date of his appointment.

**Q.197. What happens if the interim resolution professional is of the opinion that the fast track process is not applicable to the corporate debtor?**

A.197 As per Regulation 17 of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, based on records of the corporate debtor and claims, if the interim resolution professional is of the opinion that the fast track process is not applicable to the corporate debtor as per notifications under section 55(2), he shall file an application to the Adjudicating Authority along with the report to pass an order converting the fast track process to corporate insolvency resolution process under Chapter II of Part II of the Code.

**Q.198. What happen in an event if the creditor assigns or transfers the debt due to such creditor to any other person during the fast track process period?**

A.198 As provided in Regulation 27 of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, in the event a creditor assigns or transfers the debt due to such creditor to any other person during the fast track process period, both parties shall provide the interim resolution professional or the resolution professional, the terms of such assignment or transfer and the identity of the assignee or transferee.

The resolution professional shall notify each creditor and the Adjudicating Authority of any resultant change in the committee within two days of such change.

**Q.199. What is the fast track process cost?**

### **IBBI (Insolvency Resolution Process for Corporate Persons) ...**

- A.199 “Fast track process costs” shall mean –
- (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 process;
  - (e) Amounts due to suppliers of essential goods and services under Regulation 31;
  - (f) Amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
  - (g) Expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 32;
  - (h) Expenses incurred on or by the resolution professional fixed under Regulation 33; and
  - (i) Other costs directly relating to the fast track process and approved by the committee.

**Q.200. When shall the resolution professional submit the information memorandum in fast track process?**

- A.200 As provided in Regulation 35 of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, the resolution professional shall submit the information memorandum in electronic form to each member of the committee of creditors within two weeks of his appointment as resolution professional and to each prospective resolution applicant latest by the date of invitation of resolution plan.

**Q.201. When will the Invitation of Resolution Plans be made by the resolution professional in fast track process?**

- A.201 As per Regulation 35A of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, the resolution



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professional shall issue an invitation, including evaluation matrix, to the prospective resolution applicants to submit resolution plans at least fifteen days before the last date of submission of resolution plans.

Where the invitation does not contain the evaluation matrix, the resolution professional shall issue, with the approval of the committee of creditors, the evaluation matrix to the prospective resolution applicants at least eight days before the last date for submission of resolution plans.

### **Q.202. When shall the resolution professional submit the resolution plan approved by Committee of Creditors to the Adjudicating Authority in case of fast track process?**

A.202 As provided in Regulation 38 of IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, the resolution professional shall submit the resolution plan approved by the Committee of Creditors to the Adjudicating Authority, at least fifteen days before the expiry of the maximum period permitted for the completion of the fast track corporate insolvency resolution process, with the certification that the contents of the resolution plan meet all the requirements of the Code and the Regulations and the resolution plan has been approved by the Committee of Creditors.

## **IBBI (Liquidation Process) Regulations, 2016 and IBBI (Voluntary Liquidation Process) Regulations, 2017**

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**Q.203. What does contributory mean?**

A.203 As per Regulation 2(1)(c) of IBBI ( Liquidation Process) Regulations, 2016, “contributory” means a member of the company, a partner of the limited liability partnership, and any other person liable to contribute towards the assets of the corporate debtor in the event of its liquidation.

**Q.204. What is liquidation cost?**

A.204 As per Regulation 2(1)(ea) of IBBI ( Liquidation Process) Regulations, 2016, “liquidation cost” under sub-section (16) of section 5 means

- (a) fee payable to the liquidator under regulation 4;
- (b) remuneration payable by the liquidator under regulation 7;
- (c) cost incurred by the liquidator under regulation 24; and
- (d) interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower

**Q.205. What are the reports that are submitted by liquidator under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016?**

A.205 As per Regulation 5 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator shall prepare and submit:

- (a) A preliminary report;
- (b) An asset memorandum;

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- (c) Progress report(s);
- (d) Sale report(s);
- (e) Minutes of consultation with stakeholders; and
- (f) The final report prior to dissolution

to the Adjudicating Authority in the manner specified under these Regulations.

### **Q.206. When will the liquidator make a public announcement under Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016?**

A.206 The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment.

The public announcement shall-

- (a) Call upon stakeholders to submit their claims as on the liquidation commencement date; and
- (b) Provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.

### **Q.207. When does a liquidator submit a Preliminary Report to the Adjudicating Authority under the IBBI (Liquidation Process) Regulations, 2016?**

A.207 The liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy five days from the liquidation commencement date, detailing-

- (a) The capital structure of the corporate debtor;
- (b) The estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate debtor: Provided that if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate debtor are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;
- (c) Whether, he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate debtor or the conduct of the business thereof; and

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- (d) The proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

**Q.208. Is early dissolution possible by liquidator under IBBI (Liquidation Process) Regulations, 2016?**

A.208 Yes. As per Regulation 14 of the said Regulations, at any time after the preparation of the Preliminary Report, if it appears to the liquidator that-

- (a) The realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and
- (b) The affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.

**Q.209. What is the process for submission of proof of claim to the liquidator by stakeholders?**

A.209 The following is the process for submission of proof of claim to the liquidator by stakeholders -

- (1) A person claiming to be an operational creditor of the corporate debtor, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form C of Schedule II
- (2) A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II
- (3) A person claiming to be a workman or an employee of the corporate debtor shall submit proof of claim to the liquidator in person, by post or by electronic means in Form E of Schedule II.
- (4) A person, claiming to be a stakeholder other than those as mentioned above, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form G of Schedule II.

**Q.210. Who shall bear the cost of proof in liquidation process?**

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A.210 A 194 As per Regulation 24 of the IBBI (Liquidation Process) Regulations, 2016, a claimant shall bear the cost of proving its claim. Further, Costs incurred by the liquidator for verification and determination of a claim shall form part of liquidation cost.

### **Q.211. What is the timeline for Verification of claims by liquidator?**

A.211 As provided in Regulation 30 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part.

### **Q.212. What is the process for preparation of List of stakeholders by the liquidator and filing of the same with the Adjudicating Authority?**

A.212 As provided in Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted. The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of claims, and the filing of the list shall be announced to the public.

### **Q.213. How will the liquidator sell an asset?**

A.213 As per Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016, The liquidator may sell-

- (a) an asset on a standalone basis;
- (b) the assets in a slump sale;
- (c) a set of assets collectively;
- (d) the assets in parcels;
- (e) the corporate debtor as a going concern; or
- (f) the business(s) of the corporate debtor as a going concern.

### **Q.214. When shall the liquidator prepare an asset memorandum?**

A.214 On forming the liquidation estate under section 36, the liquidator shall prepare an asset memorandum in accordance with Regulation 34 within seventy-five days from the liquidation commencement date.

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### **Q.215. What are the contents of an Asset sale report?**

A.215 On sale of an asset, the liquidator shall prepare an asset sale report in respect of said asset, to be enclosed with the Progress Reports, containing - (a) the realized value; (b) cost of realization, if any; (c) the manner and mode of sale; (d) if the value realized is less than the value in the asset memorandum, the reasons for the same; (e) the person to whom the sale is made; and (f) any other details of the sale.

### **Q.216. When shall the liquidator distribute the proceeds from realization to the stakeholders?**

A.216 As per Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority. The liquidator shall distribute the proceeds from realization within six months from the receipt of the amount to the stakeholders. Further the insolvency resolution process costs, if any, and the liquidation costs shall be deducted before such distribution is made.

### **Q.217. At what period of time the liquidator shall liquidate the corporate debtor under IBBI (Liquidation Process) Regulations, 2016?**

A.217 As per Regulation 44 of the said Regulations, the liquidator shall liquidate the corporate debtor within a period of two years. If the liquidator fails to liquidate the corporate debtor within two years, 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

### **Q.218. Explain the preparation of Final report before dissolution.**

A.218 Regulation 45 of IBBI (Liquidation Process) Regulations, 2016 provides that, when the corporate debtor is liquidated, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor's assets have been liquidated. If the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report, the liquidator shall explain

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the reasons for the same. The final report thus prepared shall form part of the application for the dissolution of the corporate debtor to the Adjudicating Authority to be made under section 54.

### **Q.219. What will be the effect of liquidation under IBBI (Voluntary Liquidation Process) Regulations, 2017.**

A.219 As per Regulation 4 of the said Regulations the following will be the effect:-

(1) The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business

However, the corporate person shall continue to exist until it is dissolved under section 59(8) of the Code.

### **Q.220. What are the reports that are submitted by liquidator under IBBI (Voluntary Liquidation Process) Regulations, 2017.**

A.220 The liquidator shall prepare and submit-

- (a) Preliminary Report;
- (b) Annual Status Report;
- (c) Minutes of consultations with stakeholders; and
- (d) Final Report in the manner specified.

### **Q.221. In how many days a Preliminary report is submitted by liquidator to a corporate person in Voluntary liquidation process?**

A.221 The liquidator shall submit a Preliminary Report to the corporate person within forty five days from the liquidation commencement date, detailing-

- (a) The capital structure of the corporate person;
- (b) The estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate person:

If the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate person are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;

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- (c) Whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate person or the conduct of the business thereof; and
- (d) The proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

**Q.222. Who will make the public announcement to stakeholders to submit their claims in voluntary liquidation process?**

A.222 As per Regulation 14 of IBBI (Voluntary Liquidation Process) Regulations, 2017 –

- (1) The liquidator shall make a public announcement in Form A of Schedule I within five days from his appointment.
- (2) The public announcement shall-
  - (a) Call upon stakeholders to submit their claims as on the liquidation commencement date; and
  - (b) Provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.

**Q.223. What is the process for submission of proof of claim to the liquidator by stakeholders in voluntary liquidation process?**

A.223 The following is the process for submission of proof of claim to the liquidator by stakeholders in voluntary liquidation process-

1. A person claiming to be an operational creditor of the corporate debtor, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form B of Schedule I.
2. A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form C of Schedule I.
3. A person claiming to be a workman or an employee of the corporate debtor shall submit proof of claim to the liquidator in person, by post or by electronic means in Form D of Schedule I.



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4. A person, claiming to be a stakeholder other than those as mentioned above, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form F of Schedule I.

### **Q.224. How is the existence of security interest proved under IBBI (Voluntary Liquidation Process) Regulations, 2017?**

A.224 As per Regulation 20 of the said Regulations, the existence of a security interest may be proved by a secured creditor on the basis of-

- (a) The records available in an information utility;
- (b) Certificate of registration of charge issued by the Registrar of Companies;
- (c) Proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India; or
- (d) Other relevant documents which adequately establish the security interest.

### **Q.225. When will the person who is seeking to prove debt against corporate debtor shall produce bills of exchange, promissory note and other negotiable instrument?**

A.225 As per Regulation 21 of IBBI (Voluntary Liquidation Process) Regulations, 2017 where a person seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature for which the corporate person is liable, such bill of exchange, note, instrument or security, shall be produced before the liquidator before the claim is admitted.

### **Q.226. Who will verify the claims under IBBI (Voluntary Liquidation Process) Regulations, 2017?**

A.226 As per Regulation 29 of the said Regulations, the liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be, as per section 40 of the Code. A creditor may appeal to the Adjudicating Authority against the decision of the liquidator as per section 42 of the Code.

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**Q.227. In how many days the liquidator shall complete the voluntary liquidation process?**

A.227 As per Regulation 37 of IBBI (Voluntary Liquidation Process) Regulations, 2017 the liquidator shall endeavour to complete the liquidation process of the corporate person within twelve months from the liquidation commencement date.

**Q.228. What happens if the voluntary liquidation process is continued for more than 12 months?**

A.228 In the event of the voluntary liquidation process continuing for more than twelve months, the liquidator shall-

- (a) Hold a meeting of the contributories of the corporate person within fifteen days from the end of the twelve months from the liquidation commencement date, and at the end every succeeding twelve months till dissolution of the corporate person; and
- (b) Shall present an Annual Status Report(s) indicating progress in liquidation, including-
  - (i) Settlement of list of stakeholders,
  - (ii) Details of any assets that remains to be sold and realized,
  - (iii) Distribution made to the stakeholders, and
  - (iv) Distribution of unsold assets made to the stakeholders;
  - (v) Developments in any material litigation, by or against the corporate person; and
  - (vi) Filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.

**Q.229. What will liquidator do if there is detection of fraud or insolvency in case of voluntary liquidation process?**

A.229 As per section 40 of IBBI (Voluntary Liquidation Process) Regulations, 2017 where the liquidator is of the opinion that the liquidation is being done to defraud a person, he shall make an

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application to the Adjudicatory Authority to suspend the process of liquidation and pass any such orders as it deems fit.

(2) Where the liquidator is of the opinion that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation, he shall make an application to the Adjudicating Authority to suspend the process of liquidation and pass any such orders as it deems fit.

## PART III

### Chapter 6

# Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms

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**Q.230. On what matters shall the Part III of the Code apply?**

A.230 Part III shall apply to matters relating to

- fresh start
- insolvency and bankruptcy of individuals and partnership firms

**Q.231. What is the threshold limit for making an application under Part III of the Code?**

A.231 An application under Part III of the Code shall be made, where the amount of the default shall not be less than one thousand rupees. Further, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one lakh rupees.

**Q.232. Who shall be referred to as a bankrupt?**

A.232 As per Section 79 (3), a bankrupt means –

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

**Q.233. What shall bankrupt debt in relation to a bankrupt mean?**

A.233 As per Section 79 (5), bankruptcy debt in relation to a bankrupt means –

- (a) any debt owed by him as on the bankruptcy commencement date;

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

### **Q.234. What shall be the bankruptcy commencement date?**

A.234 As per Section 79 (6), bankruptcy commencement date means the date on which a bankruptcy order is passed by the Adjudicating Authority under section 126;

### **Q.235. What do you mean by discharge order?**

A.235 As per Section 79 (13), discharge order means an order passed by the Adjudicating Authority discharging the debtor under sections 92, 119 and section 138, as the case may be.

### **Q.236. What is a qualifying debt?**

A.236 As per Section 79(19) of the Code, qualifying debt means amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time and does not include:

- (i) an excluded debt,
- (ii) a debt to the extent it is secured and
- (iii) any debt which has been incurred three months prior to the date of the application for fresh start process.

### **Q.237. What shall be treated as excluded debt?**

A.237 As per Section 79(15) of the Code, excluded debt shall mean any -

- (i) liability to pay fine imposed by a court or tribunal,
- (ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation,
- (iii) liability to pay maintenance to any person under any law for the time being in force,
- (iv) liability in relation to a student loan and
- (v) any other debt as may be prescribed.

## Insolvency Resolution and Bankruptcy for Individuals and Partnership ...

### **Q.238. Who shall be referred as an undischarged bankrupt?**

A.238 As per Section 79(22) of the Code, undischarged bankrupt refers to a bankrupt who has not received a discharge order under Section 138.

### **Q.239. What is the eligibility criteria for making an application for fresh start under Section 80 of the Code?**

A.239 A debtor, who is unable to pay his debt and fulfils the conditions specified below shall be entitled to make an application for a fresh start for discharge of his qualifying debt under this Chapter, if -

- (a) the gross annual income of the debtor does not exceed sixty thousand rupees;
- (b) the aggregate value of the assets of the debtor does not exceed twenty thousand rupees;
- (c) the aggregate value of the qualifying debts does not exceed thirty -five thousand rupees;
- (d) he is not an undischarged bankrupt;
- (e) he does not own a dwelling unit, irrespective of whether it is encumbered or not;
- (f) a fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; and
- (g) no previous fresh start order under this Chapter has been made in relation to him in the preceding twelve months of the date of the application for fresh start.

### **Q.240. Whether an application may be filed by the debtor personally?**

A.240 Yes, a debtor may apply, either personally or through a resolution professional, for a fresh start under this Chapter in respect of his qualifying debts to the Adjudicating Authority if he fulfils the conditions given above.

### **Q.241. On what grounds can an aggrieved debtor or creditor make an application to the Adjudicating Authority against the action taken by the Resolution Professional under the Fresh Start Process?**

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A.241 Section 87 of the Code empowers an aggrieved debtor or creditor to make an application to the Adjudicating Authority against the action taken by the Resolution Professional under the Fresh Start Process on any of the following grounds:-

- (a) The resolution professional has not given an opportunity to debtor or creditor to make a representation.
- (b) The resolution professional colluded with the other party in arriving at the decision.
- (c) The resolution professional has not complied with the requirements laid down in Section 86 of the Code stating objection by creditor.

### **Q.242. Is there any time limit for which moratorium shall be in force?**

A.242 Yes, if the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

### **Q.243. What is the effect of commencement of moratorium period?**

A.243 After the commencement of moratorium period as per Section 85 any pending legal action or legal proceeding in respect of any debt shall be deemed to have been stayed and the creditors shall not initiate any legal action or proceedings in respect of any debt.

### **Q.244. What are the restrictions imposed on a debtor during moratorium period?**

A.244 The following restrictions are imposed on debtor during moratorium period u/s 85(3):-

- (a) He shall not act as a director of any company, or directly or indirectly take part in or be concerned in promotion, formation or management of the company.
- (b) He shall not dispose off or alienate any of his assets.
- (c) He shall inform his business partners that he is undergoing a fresh start process.

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- (d) He shall be required to inform prior to entering into any financial or commercial transaction of such value as maybe notified by the Central Government, either individually or jointly, that he is undergoing a fresh start process.
- (e) He shall disclose the name under which he enters into business transactions, if it is a different name than the one under the application.
- (f) He shall not travel outside India except with the permission of the Adjudicating Authority.

### **Q.245. When can an order passed by the Adjudicating Authority be revoked?**

A.245 As per Section 91 of the Code a resolution professional may submit an application to the Adjudicating Authority seeking revocation of an order on the following grounds:-

- (a) When due to any change in financial circumstances of the debtor, the debtor is ineligible for a fresh start process.
- (b) When the debtor fails to comply with the requirements stated u/s 85(3) during the moratorium period.
- (c) When the debtor has acted in a mala fide manner and has wilfully failed to comply with the provisions of the Code.

### **Q.246. Can a partner of a firm file an application to the Adjudicating Authority as a debtor on behalf of the firm?**

A.246 Section 94(2) of the Code states that where a debtor is a partner of a firm, such debtor shall not apply to the Adjudicating Authority in respect of the firm unless all or a majority of partners of the firm file the application jointly.

### **Q.247. Under what circumstances debtor is not entitled to make an application to the Adjudicating Authority?**

A.247 A debtor shall not be entitled to make an application to the Adjudicating Authority in following cases:-

- (a) If he is an undischarged bankrupt.
- (b) If he is undergoing a fresh start process.



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- (c) If he is undergoing an insolvency resolution process.
- (d) If he is undergoing a bankruptcy process.

### **Q.248. What are the requirements for making an application by a creditor for initiating an insolvency resolution process?**

A.248 As per Section 95 of the Code a creditor can file an application either himself or jointly with other creditors or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process by submitting an application. This application shall be accompanied with the following details and documents relating to:-

- (a) The debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application.
- (b) The failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of the demand.
- (c) Relevant evidence of such default or non- repayment of debt.

### **Q.249. Can a resolution professional be replaced?**

A.249 Yes, if a debtor or a creditor is of the opinion that the resolution professional appointed is required to be replaced, he may apply to the Adjudicating Authority for replacement of such professional. The Adjudicating Authority within seven days of receipt of the application may make reference to the Board for Replacement of Resolution Professional.

### **Q.250. How can a debtor prove that the debt claimed as unpaid by the creditor has already been settled and paid?**

A.250 The debtor may prove the repayment of debt claimed as unpaid by a creditor by furnishing:-

- (a) Evidence of electronic transfer of the unpaid amount from the bank account of the debtor.
- (b) Evidence of encashment of a cheque issued by the debtor.
- (c) A signed acknowledgement by the creditor accepting receipt of dues.

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However, where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.

### **Q.251. What is a repayment plan and what details shall it include?**

A.251 A Repayment plan means a plan prepared by the debtor in consultation with resolution professional containing a proposal to the committee of creditors for restructuring of his debt or affairs.

A repayment plan shall include the following:-

- (a) A justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan.
- (b) A provision for payment of fee to the resolution professional and any such other matters as may be specified.

### **Q.252. Is there any time limit for submission of repayment plan?**

A.252 Yes, the resolution professional shall submit the repayment plan alongwith his report on such plan to the Adjudication Authority within 21 days from the last date of submission of claims by creditors.

### **Q.253. How will a repayment plan be approved?**

A.253 A repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.

### **Q.254. When does a repayment plan end prematurely?**

A.254 A repayment plan shall be deemed to have come to an end prematurely if it has not been fully implemented in respect of all persons bound by it within the period as mentioned in the repayment plan.

### **Q.255. Who can file an application for bankruptcy of a debtor?**

A.255 An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor.

### **Q.256. When can one make an application for bankruptcy?**

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A.256 An application for bankruptcy of a debtor may be made in the following circumstances:-

- (a) Where an order has been passed by an Adjudicating Authority under Section 100(4) of the Code, rejecting an application for insolvency resolution process.
- (b) Where an order has been passed by an Adjudicating under Section 115(2) of the Code, rejecting the repayment plan.
- (c) Where an order has been passed by an Adjudicating Authority under Section 118(3) of the Code, where the repayment plan has not been completely implemented.

### **Q.257. Is there any time limit for making application for bankruptcy?**

A.257 Yes, the application for bankruptcy of a debtor shall be made within a period of three months of the date of the order passed by the Adjudicating Authority.

### **Q.258. How will an application for bankruptcy be made?**

A.258 The application for bankruptcy shall be made in the following manner and shall be accompanied with following:-

- (a) The records of insolvency resolution process.
- (b) A copy of the order passed by the Adjudicating Authority granting permission to apply for bankruptcy.
- (c) The statement of affairs of the debtor or the details of the debts owed by the debtor to the creditor as on the date of the application for bankruptcy, as the case may be.

Further, in case of application made by the secured creditor it shall also be accompanied with:-

- (a) A statement by the creditor having the right to enforce the security that he shall, in the event of an Order of Bankruptcy being made, give up his security for the benefit of all the creditors of the bankrupt.
- (b) A statement by the creditor stating that the application for bankruptcy is only in respect of the unsecured part of the debt and an estimated value of the unsecured part of the debt.

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### **Q.259. Can application of bankruptcy be withdrawn?**

A.259 An application for bankruptcy by the debtor may be withdrawn with the leave of the Adjudicating Authority and by the creditor with the permission of the Adjudicating Authority.

### **Q.260. What will be the effect of application of bankruptcy?**

A.260 When an application of bankruptcy is filed an interim-moratorium shall commence on the date of the making of the application on all actions against the properties of the debtor in respect of his debts and such moratorium shall cease to have effect on the bankruptcy commencement date.

### **Q.261. What is the effect of beginning of an interim moratorium?**

A.261 After commencement of interim moratorium following shall be the effect:-

- (a) Any pending legal action or legal proceeding against any property of the debtor in respect of any of his debts shall be deemed to have been stayed.
- (b) The creditors of the debtor shall not be entitled to initiate any legal action or legal proceedings against any property of the debtor in respect of any of his debts.

### **Q.262. What is the process of Appointment of a Bankruptcy Trustee?**

A.262 The Bankruptcy Trustee shall be appointed by the Adjudicating Authority in following manner:-

- (a) Where an insolvency professional is proposed as the Bankruptcy Trustee in the application for bankruptcy the Adjudicating Authority shall direct the Board within seven days of receiving the application for bankruptcy to confirm that there are no disciplinary proceedings pending against such professional.

The Board shall confirm or reject the proposed Appointment within ten days of the receipt of the direction.

- (b) In other cases, the Adjudicating Authority shall direct the Board within seven days of receiving the application to nominate a Bankruptcy Trustee for the bankruptcy process.

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The Board shall nominate a Bankruptcy Trustee within ten days of receiving the direction of the Adjudicating Authority.

### **Q.263. Is there any time limit for passing a Bankruptcy Order by the Adjudicating Authority?**

A.263 Yes, the Adjudicating Authority shall pass a Bankruptcy Order within fourteen days of receiving the confirmation or nomination of the Bankruptcy Trustee.

### **Q.264. What shall be the validity of Bankruptcy Order?**

A.264 The Bankruptcy Order passed by the Adjudicating Authority shall continue to have effect till the debtor is discharged.

### **Q.265. What will be the effect of passing of Bankruptcy Order?**

A.265 The following shall be the effect of the passing of the Bankruptcy Order:-

- (a) The estate of the bankrupt shall vest in the Bankruptcy Trustee
- (b) The estate of the bankrupt shall be divided among his creditors
- (c) A creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt shall not be permitted to initiate any action against the property of the bankrupt in respect of such debt or commence any suit or other legal proceedings except with the leave of the Adjudicating Authority and on such terms as the Adjudicating Authority may impose.

However, the Bankruptcy Order shall not affect the right of any secured creditor to realise or otherwise deal with his security interest.

### **Q.266. How are claims invited from creditors by the Adjudicating Authority?**

A.266 The Adjudicating Authority invites the claims from creditors by issuing notices to the creditors, within ten days of the bankruptcy commencement date and also by issuing a public notice inviting claims from creditors.

### **Q.267. What is the mode of publication of public notice?**

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A.267 The Public notice shall be published in at least one leading English and one vernacular newspaper which is in sufficient circulation in the place where the bankrupt resides. It shall also be affixed on the premises of the Adjudicating Authority and shall also be placed on the website of the Adjudicating Authority.

### **Q.268. Who will convene the meeting of creditors in bankruptcy?**

A.268 The Bankruptcy Trustee shall be the convener of the meeting of the creditors and will summon the meeting of creditors by issuing a notice for calling a meeting of the creditors within twenty-one days from the date of bankruptcy commencement.

### **Q.269. What is the process of passing of Discharge Order by the Adjudicating Authority?**

A.269 The Bankruptcy Trustee shall apply to the Adjudicating Authority for passing of a Discharge Order on the expiry of one year from the bankruptcy commencement date or within seven (7) days of the approval of the Committee of Creditors of the completion of administration of the estates of the bankrupt.

### **Q.270. What is the effect of Discharge Order?**

A.270 The Discharge Order shall release the bankrupt from all the bankruptcy debt. However, it shall not affect the following:-

- (a) It shall not affect the functions of the Bankruptcy Trustee.
- (b) It shall not affect the operation of the provisions of Chapters IV and V of Part III.
- (c) It shall not release the bankrupt from any debt incurred by means of fraud or breach of trust to which he was a party.
- (d) It shall not discharge the bankrupt from any excluded debt.

### **Q.271. What are the restrictions imposed on a Bankrupt?**

A.271 The following restrictions shall be imposed on a Bankrupt:-

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

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- (b) He shall be prohibited from creating any charge on his estate or taking any further debt, except with the previous sanction of the Bankruptcy Trustee.
- (c) He shall be required to inform his business partners that he is undergoing a bankruptcy process.
- (d) He shall inform all the parties involved in transaction with him that he is undergoing a bankruptcy process.
- (e) He shall be incompetent to maintain any legal action or proceedings in relation to the bankruptcy debts, except with the previous sanction of the Adjudicating Authority.
- (f) He shall not be permitted to travel overseas without the permission of the Adjudicating Authority.

### **Q.272. Can restriction imposed on a bankrupt cease to have effect?**

A.272 Yes, any restriction imposed on a bankrupt shall cease to have effect if the Bankruptcy Order against him is modified or recalled under Section 142 or when he is discharged under Section 138.

### **Q.273. Can the Bankruptcy Order be modified or recalled by the authority?**

A.273 Yes, the Adjudicating Authority may modify or recall a Bankruptcy Order in following circumstances:-

- (a) There exists an error apparent on the face of such order.
- (b) The bankruptcy debts and the expenses of the bankruptcy have either been paid for or secured to the satisfaction of the Adjudicating Authority after the making of the Bankruptcy Order.

### **Q.274. What will be the effect of modification or recall of bankruptcy order by the authority?**

A.274 Where the Adjudicating Authority modifies or recalls the Bankruptcy Order any sale or other disposition of property, payment made or other things duly done by the Bankruptcy Trustee shall be valid and the property of the bankrupt shall vest in such person as the Adjudicating Authority may appoint or, in default of any such

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Appointment, revert to the bankrupt on such terms as the Adjudicating Authority may direct.

### **Q.275. Can a Bankruptcy Trustee be replaced?**

A.275 Yes, a Bankruptcy Trustee can be replaced in the following manner:-

- (a) The Committee of Creditors may replace the Bankruptcy Trustee at a meeting, by a vote of seventy-five per cent of voting share and propose to replace the Bankruptcy Trustee appointed with another Bankruptcy Trustee and it may further apply to the Adjudicating Authority for the replacement of the Bankruptcy Trustee.
- (b) The Adjudicating Authority shall within Seven (7) days of the receipt of the application direct the Board to recommend for replacement of Bankruptcy Trustee which shall further recommend a Bankruptcy Trustee for replacement against whom no disciplinary proceedings are pending within ten days of the direction of the Adjudicating Authority.
- (c) The Adjudicating Authority shall order Appointment of the Bankruptcy Trustee as recommended by the Board within Fourteen (14) days of receiving such recommendation.

### **Q.276. Under what circumstances can a Bankruptcy Trustee resign?**

A.276 A Bankruptcy Trustee may resign in following circumstances:-

- (a) When he intends to cease practicing as insolvency professional.
- (b) When there is conflict of interest or change of personal circumstances which preclude the further discharge of his duties as a Bankruptcy Trustee.

In case of resignation by Bankruptcy Trustee the Adjudicating Authority shall direct the Board for his replacement within seven (7) days of the acceptance of the resignation of the Bankruptcy Trustee.

### **Q.277. What is the role of the Bankruptcy Trustee?**

A.277 The Bankruptcy Trustee shall investigate the affairs of the bankrupt and take necessary steps for realizing the estate of the bankrupt and distribute the estate of the bankrupt.



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### **Q.278. What are the duties of Bankrupt towards the Bankruptcy Trustee?**

A.278 The bankrupt shall assist the Bankruptcy Trustee in carrying out his functions and shall-

- (a) give the information of his affairs to the Bankruptcy Trustee.
- (b) attend the Bankruptcy Trustee at such times as may be required
- (c) give notice to the Bankruptcy Trustee of acquisition or devolution of any property upon the bankrupt and any increase in the income of the bankrupt.

Also, as per Section 156 of the Code, the bankrupt, his banker or agent or any other person having possession of any property, books, papers or other records shall deliver the said property and documents to the Bankruptcy Trustee. Any failure to give possession of such property or documents shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five lakh rupees, or with both.

### **Q.279. What are the rights of Bankruptcy Trustee?**

A.279 As per Section 151 of the Code, the Bankruptcy Trustee has right to hold property, make contracts, sue and be sued, enter into engagements in respect of the estate of the bankrupt, employ persons to assist him, execute any power of attorney, deed or other instrument and do any other act which is necessary or expedient for the purposes of or in connection with the exercise of his rights.

### **Q.280. Does the Bankruptcy Trustee has any right towards estate of the bankrupt?**

A.280 The Bankruptcy Trustee has right to sell any part of the estate of the bankrupt, exercise the right of redemption in respect of any property which is pledged or hypothecated, exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt and deal with any property comprised in the estate of the bankrupt to which the bankrupt is beneficially entitled in the same manner as he might have dealt with it.

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### **Q.281. Which are the acts that require approval from creditors prior to being conducted by the Bankruptcy Trustee?**

A.281 The Bankruptcy Trustee shall require approval of the Committee of Creditors for the following acts:-

- (a) To carry on any business of the bankrupt as far as may be necessary for winding it up beneficially.
- (b) To bring, institute or defend any legal action or proceedings relating to the property comprised in the estate of the bankrupt.
- (c) To accept as consideration for the sale of any property a sum of money due at a future time subject to certain stipulations such as security.
- (d) To mortgage or pledge any property for the purpose of raising money for the payment of the debts of the bankrupt.
- (e) Where any right, option or other power forms part of the estate of the bankrupt, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of such right, option or power.
- (f) To refer to arbitration or compromise on such terms as may be agreed, any debts subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.
- (g) To make compromise or other arrangement as may be considered expedient, with the creditors.
- (h) To make compromise or other arrangement as he may deem expedient with respect to any claim arising out of or incidental to the bankrupt's estate.
- (i) To appoint the bankrupt to supervise the management of the estate of the bankrupt, carry on his business for the benefit of his creditors and to assist the Bankruptcy Trustee in administering the estate of the bankrupt.

### **Q.282. What shall be included in the estate of the Bankrupt?**

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A.282 As per Section 155 of the Code, the estate of the bankrupt shall include all property belonging to or vested in the bankrupt at the bankruptcy commencement date or by virtue of any of the provisions of this Chapter is comprised in the estate.

The estate of the bankrupt shall not include-

- (a) Excluded assets
- (b) Property held by the bankrupt on trust for any other person.
- (c) All sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund.

**Q.283. What will be the effect of any disposition of property by the debtor?**

A.283 Any disposition of property made by the debtor during the period between the date of filing of the application for bankruptcy and the bankruptcy commencement date shall be void.

**Q.284. Can the Bankruptcy Trustee claim the after acquired property of bankrupt?**

A.284 The Bankruptcy Trustee shall be entitled to claim after-acquired property of the bankrupt by giving due notice to the bankrupt. However, such right shall not be exercised in case of excluded assets or any property which is acquired by or devolves upon the bankrupt after a Discharge Order is passed under Section 138.

**Q.285. What is onerous property?**

A.285 An onerous property means and includes any unprofitable contract and any other which is unsaleable or not readily saleable, or is such that it may give rise to a claim.

**Q.286. Can a Bankruptcy Trustee disclaim any onerous property?**

A.286 Yes, the Bankruptcy Trustee may disclaim any onerous property forming part of the estate of the bankrupt by giving notice to the bankrupt or any person interested in the onerous property. However, such notice shall not be necessary in the following cases:-

- (a) If a person interested in the onerous property has applied in writing to the Bankruptcy Trustee or his predecessor requiring

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him to decide whether the onerous property should be disclaimed or not.

- (b) If a decision under clause (a) has not been taken by the Bankruptcy Trustee within seven days of receipt of the notice.

### **Q.287. Who can make an application to challenge against disclaimed property?**

A.287 The following persons may make an application challenging the disclaimed property:-

- (a) Any person who claims an interest in the disclaimed property.
- (b) Any person who is under any liability in respect of the disclaimed property.
- (c) Where the disclaimed property is a dwelling house, any person who on the date of application for bankruptcy was in occupation of or entitled to occupy that dwelling house.

### **Q.288. What will amount to undervalued transactions?**

A.288 A bankrupt is said to have entered into an undervalued transaction with any person if-

- (a) He makes a gift to that person.
- (b) No consideration has been received by that person from the bankrupt.
- (c) It is in consideration of marriage.
- (d) The value of which, in money or money's worth, is significantly less than the value in money or money's worth of the consideration provided by the bankrupt.

### **Q.289. What will be the consequence of an undervalued transaction entered between a bankrupt and any other person?**

A.289 Where an undervalued transaction has been entered between a bankrupt and any other person, during the period of two years ending on the filing of the application for bankruptcy and thereby caused bankruptcy process to be triggered. The Bankruptcy Trustee may apply to the Adjudicating Authority for an order declaring an undervalued transaction void and requiring any property transferred

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as a part of an undervalued transaction to be vested with the Bankruptcy Trustee as a part of the estate of the bankrupt.

### **Q.290. What will be the consequence where a bankrupt gives preference to any person in a transaction?**

A.290 Where a bankrupt has given a preference to any person in a transaction during the period of two years ending on the filing of the application for bankruptcy and thereby caused bankruptcy process to be triggered. The Bankruptcy Trustee may apply to the Adjudicating Authority for an order declaring the preference transaction void and requiring any property transferred as a part of the preference transaction to be vested with the Bankruptcy Trustee as a part of the estate of the bankrupt.

### **Q.291. What will be the fate of extortionate credit transactions entered into by a bankrupt?**

A.291 The Adjudicating Authority may make an order in respect of extortionate credit transactions to which the bankrupt is or has been a party. Such transactions should have been entered into by the bankrupt during the period of two years ending on the bankruptcy commencement date. The Bankruptcy Trustee may apply to the Adjudicating Authority for an order to set aside the whole or part of any debt created by the transaction or to vary the terms of the transaction or vary the terms on which any security for the purposes of the transaction is held. It may further require any person who has been paid by the bankrupt under any transaction, to pay a sum to the Bankruptcy Trustee or to surrender to the Bankruptcy Trustee any property of the bankrupt held as security for the purposes of the transaction.

### **Q.292. What are the rights of a party to a contract entered into with a bankrupt before the bankruptcy commencement date?**

A.292 Where a contract has been entered into by the bankrupt with a person before the bankruptcy commencement date party to a contract, other than the bankrupt may apply to the Adjudicating Authority for an order discharging the obligations of the applicant or the bankrupt under the contract and payment of damages by the party or the bankrupt.

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### **Q.293. Will death of a bankrupt affect the proceedings being initiated?**

A.293 The death of bankrupt shall not affect the bankruptcy proceedings and the bankruptcy proceedings shall continue as if he were alive.

### **Q.294. What shall be acceptable as a proof of debt of the creditor?**

A.294 The proof of debt shall require the creditor to give full particulars of debt and security if any and also include the date on which the debt was contracted and the value at which that person assesses it. The following may be proof of debt-

- (a) In case the creditor is a decree holder against the bankrupt, a copy of the decree shall be a valid proof of debt.
- (b) Where a debt bears interest, that interest shall be provable as part of the debt except in so far as it is owed in respect of any period after the bankruptcy commencement date.
- (c) Where a secured creditor realizes his security, he may produce proof of the balance due to him.
- (d) Where a secured creditor surrenders his security to the Bankruptcy Trustee for the general benefit of the creditors, he may produce proof of his whole claim.

### **Q.295. Can a Bankruptcy Trustee distribute interim dividend?**

A.295 When the Bankruptcy Trustee has sufficient funds in his hand he may declare and distribute interim dividend among the creditors in respect of the bankruptcy debts which they have respectively proved.

### **Q.296. Can a Bankruptcy Trustee distribute final dividend?**

A.296 The Bankruptcy Trustee may declare and distribute final dividend among the creditors who have proved their debts, without regard to the claims of any other persons after he has realized the entire estate of the bankrupt or so much of it as could be realized in his opinion.

### **Q.297. What shall be the consequences if a creditor fails to prove his debt?**

A.297 A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb the distribution of that dividend or

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any other dividend declared before his debt was proved. However, after he has proved his debt, he shall be entitled to be paid dividend(s) out of any money for the time being available for the payment of any further dividend.

### **Q.298. What shall be the order of priority of payments?**

A.298 The following debts shall be paid in priority to all other debts-

- (a) Firstly, the costs and expenses incurred by the Bankruptcy Trustee for the bankruptcy process shall be paid in full.
- (b) Secondly, the workmen's dues for the period of twenty-four (24) months preceding the bankruptcy commencement date and debts owed to secured creditors shall be paid.
- (c) Thirdly, wages and any unpaid dues owed to employees, other than workmen, of the bankrupt for the period of twelve months preceding the bankruptcy commencement date shall be paid.
- (d) Fourthly, any amount due to the Central Government and the State Government including the amount to be received on account of Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date shall be paid.
- (e) Lastly, all other debts and dues owed by the bankrupt including unsecured debts shall be paid.

### **Q.299. Who shall be the Adjudicating Authority for insolvency of individuals and partnership firms?**

A.299 The Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the Debt Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily reside or carry on the business or personally work for gain.

Further, the matters of appeal shall be handled by the Debt Recovery Appellate Tribunal.

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### **Q.300. Does Civil Court has jurisdiction in matters relating to insolvency of individuals and partnership firms?**

A.300 Civil Court does not have jurisdiction to entertain any suit or proceedings or grant injunction or any other relief in respect of any matter on which the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal has jurisdiction under this Code.

### **Q.301. Who shall be the appellate authority for insolvency of individuals and partnership firms?**

A.301 An appeal from an order of the Debt Recovery Tribunal under this Code shall be filed before the Debt Recovery Appellate Tribunal. The appeal shall be filed within thirty (30) days from the date of impugned order.

### **Q.302. Can an appeal be filed against the Order of Debt Recovery Appellate Tribunal?**

A.302 Yes, the order of the Debt Recovery Appellate Tribunal is appealable before the Supreme Court. It shall lie only on a question of law and shall be filed within 45 days from the date of impugned order.

### **Q.303. What is the punishment for furnishing false information by debtor or creditor?**

A.303 A debtor or creditor who provides information which is false in any material particulars to the resolution professional shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five lakh rupees, or with both.

### **Q.304. What shall be the consequence where a creditor dishonestly accepts money for voting in favour of repayment plan?**

A.304 Where a creditor dishonestly accepts any money, property or security from the debtor for a promise to vote in favour of the repayment plan, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three times the amount or equivalent to such money, property or security accepted by such creditor, as the case may be, or with both. However, where such amount is not quantifiable, the total amount of fine shall not exceed five lakh rupees.



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### **Q.305. What is the punishment for contraventions by insolvency professional?**

A.305 An insolvency professional, who deliberately contravenes the provisions of the Code, shall be punishable with imprisonment for a term which may extend to six months, or with fine, which shall not be less than one lakh rupees, but may extend to five lakhs rupees, or with both.

### **Q.306. What is the punishment for false information and concealment by the bankrupt?**

A.306 A bankrupt who knowingly makes a false representation or wilfully omits or conceals any material information while making an application for bankruptcy under Section 122 or while providing any information during the bankruptcy process shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five lakh rupees, or with both.

### **Q.307. What is the punishment for withholding or destroying or altering etc. of books of accounts by bankrupt?**

A.307 A bankrupt who has fraudulently failed to provide or deliberately withheld the production of, destroyed, falsified or altered, his books of account, financial information and other records under his custody or control shall be punishable with imprisonment which may extend to one year, or with fine, which may extend to five lakh rupees, or with both.

### **Q.308. What is the punishment for loss of property by the Bankrupt?**

A.308 Where a bankrupt has failed to account for any loss incurred of any substantial part of his property comprised in the estate of the bankrupt from the date which is twelve months before the filing of the bankruptcy application, without any reasonable cause or satisfactory explanation, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, which may extend to three times of the value of the loss, or with both. However, where such loss is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees.

### **Q.309. What is the punishment for absconding Bankrupt?**

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A.309 Where a bankrupt has absconded or attempts to absconds or leaves, or attempts to leave the country without delivering the possession of any property which he is required to deliver to the Bankruptcy Trustee under Section 156, after the bankruptcy commencement date, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to five lakh rupees, or with both.

#### **Q.310. What are the punishments for violations of the Code by Bankruptcy Trustee?**

A.310 The Bankruptcy Trustee who has fraudulently misapplied, retained or accounted for any money or property comprised in the estate of the bankrupt or has wilfully acted in a manner that the estate of the bankrupt has suffered any loss in consequence of breach of any duty of the Bankruptcy Trustee under Section 149, shall be punishable with imprisonment for a term which may extend to three years, or with fine, which shall not be less than three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention, or with both. However, where the loss incurred is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees.

## **PART IV**

### **Chapter 7**

# **Regulation of Insolvency Professionals, Agencies and Information Utilities**

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**Q.311. When was the Insolvency and Bankruptcy Board of India established?**

A.311 The Insolvency and Bankruptcy Board of India has been established on 1<sup>st</sup> October, 2016, vide notification no. SO 3110(E) dated 01.10.2016.

**Q.312. Where is the Head Office of Insolvency and Bankruptcy Board of India situated?**

A.312 The Head Office of Insolvency and Bankruptcy Board of India is situated in the National Capital i.e., New Delhi.

**Q.313. What is the composition of the Insolvency and Bankruptcy Board of India?**

A.313 The Insolvency and Bankruptcy Board of India is constituted u/s 189 of the Insolvency and Bankruptcy Code, 2016. It shall consist of following members who shall be appointed by the Central Government:-

- (i) Chairperson
- (ii) 3 members from amongst the officers of Central Government, not below the rank of joint secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, ex officio
- (iii) 1 member to be nominated by the Reserve Bank of India, ex officio

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- (iv) 5 other members to be nominated by the Central Government, of whom at least three shall be the whole-time members

### **Q.314. What is the term of office of Chairperson of Insolvency and Bankruptcy Board of India?**

A.314 The term of office of the Chairperson shall be 5 years or till they attain age of 65 years, whichever is earlier.

### **Q.315. What are the functions of the Insolvency and Bankruptcy Board of India?**

A.315 The functions of the Board have been entailed in Section 196 of the Code. The major function of the board is to exercise regulatory measures on insolvency professionals, insolvency professional agencies and information utilities.

### **Q.316. What are the grounds for removal of a member of Insolvency and Bankruptcy Board of India?**

A.316 As per Section 190 of Insolvency and Bankruptcy Code, 2016 the Central Government has the power to remove a member of Insolvency And Bankruptcy Board of India on following grounds:-

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

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

### **Q.317. Is there any requirement for disclosure of interest by member of the Insolvency and Bankruptcy Board of India?**

A.317 Yes, Section 193 of the Insolvency and Bankruptcy Code, 2016 mandates any member of Insolvency and Bankruptcy Board of India, who being a director of a company has any direct or indirect pecuniary interest in any matter under consideration at a meeting of

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the Board, to disclose the nature of his interest. Further, such member shall not take any part in any deliberation or decision of the Board with respect to that matter.

### **Q.318. Who shall make the Model Bye-Laws of an Insolvency Professional Agency?**

A.318 The Insolvency and Bankruptcy Board of India has the power to make Model Bye-Laws to be adopted by the Insolvency Professional Agencies.

### **Q.319. Explain the term non-discriminatory for the purpose of clause (c) of Section 196 (2) of the Code.**

A.319 As per clause (c) of Section 196 of the Code, the requirements for enrolment of person as members of insolvency professional agency which shall be non-discriminatory;

For the purposes of this clause, the term “non-discriminatory” means lack of discrimination on the ground of religion, caste, gender or place of birth and such other grounds as may be specified;

### **Q.320. Who has the power to condone delay in performance of acts by the Board under the Insolvency and Bankruptcy Code, 2016?**

A.320 The relevant Adjudicating Authority i.e., National Company Law Tribunal or Debt Recovery Tribunal, as the case may be, has the power to condone any delay in performing an act by the Board under the Insolvency and Bankruptcy Code, 2016.

### **Q.321. Whether a person can function as Insolvency Professional Agency without valid certificate of registration?**

A.321 No person shall carry on its business as insolvency professional agencies under this Code and enrol insolvency professionals as its members except under and in accordance with a certificate of registration issued in this behalf by the Board.

### **Q.322. Explain the principles governing registration of insolvency professional agency.**

A.322 The Board shall have regard to the following principles while registering the insolvency professional agencies under this Code-

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

#### **Q.323. Under what circumstances the Board may cancel or suspend the registration of an Insolvency Professional Agency?**

A.323 As per Section 201(5) of the Code, the Board may cancel or suspend the registration of an Insolvency Professional Agency in following circumstances:-

- (a) When registration is obtained by making a false statement or misrepresentation or by any other unlawful means.
- (b) When Agency has failed to comply with the requirements of the regulations made by the Board or bye-laws made by the agency.
- (c) When it has contravened any of the provisions of the Act or rules or regulations made thereunder.

#### **Q.324. Can an Insolvency Professional Agency appeal against the order of the Board?**

A.324 Yes, as per Section 202 of the Code read with Regulation 9 of Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016, any insolvency professional agency aggrieved by the order of the Board may prefer an appeal to National Company Law Appellate Tribunal within 30 days of receipt of the impugned order.

#### **Q.325. What are the functions of an Insolvency Professional Agency?**

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A.325 An Insolvency Professional Agency shall perform following functions:

- (a) Grant membership to persons who fulfill all requirements set out in its bye-laws on payment of membership fee.
- (b) Lay down standards of professional conduct for its members.
- (c) Monitor the performance of its members.
- (d) Safeguard the rights, privileges and interests of insolvency professionals who are its members.
- (e) Suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws.
- (f) Redress the grievances of consumers against insolvency professionals who are its members.
- (g) Publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations laid down by the Board.

### **Q.326. Who can become an Insolvency Professional?**

A.326 As per Section 206 and 207 read with Regulation 5 of Insolvency And Bankruptcy Board of India (Insolvency Professional) Regulations, 2016, an individual can become an insolvency professional after obtaining the membership of an Insolvency Professional Agency, register himself with the Board with in such time, in such manner and on payment of such fee as per Regulations.

### **Q.327. Who is eligible to register as an Insolvency Professional?**

A.327 The Insolvency And Bankruptcy Board of India has prescribed following persons to be eligible for registration as an Insolvency Professional:-

- Chartered Accountant, Company Secretary, Cost Accountant and Advocate who has enrolled as a member of respective Institute/Bar Council and has ten years of experience [Regulation 5(c)(iv) of the IBBI (Insolvency Professionals) Regulations, 2016], **or**

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- A Graduate who has fifteen years of experience in management, after receiving a Bachelor's degree from a university established or recognized by law [Regulation 5(c)(iii) of the IBBI (Insolvency Professionals) Regulations, 2016], **or**
- Successfully completed the National Insolvency Programme, as may be approved by the IBBI [Regulation 5(c)(i) of the IBBI (Insolvency Professionals) Regulations, 2016], **or**
- Successfully completed the Graduate Insolvency Programme, as may approved by the IBBI [Regulation 5(c)(ii) of the IBBI (Insolvency Professionals) Regulations, 2016].

**And**

- Has passed the Limited Insolvency Examination within twelve months before the date of his application for enrolment with the insolvency professional agency [Regulation 5(a) of the IBBI (Insolvency Professionals) Regulations, 2016].

**And**

- Has completed a pre-registration educational course, as may be prescribed by the IBBI, from an IPA after his enrolment as professional member. [Regulation 5(b) of the IBBI (Insolvency Professionals) Regulations, 2016]

#### **Q.328. Provide an overview about the functions of Insolvency Professionals.**

A.328 According to section 208 an insolvency professional takes such actions in the following matters:

- (a) A fresh start order process;
- (b) Individual insolvency resolution process;
- (c) Corporate insolvency resolution process;
- (d) Individual bankruptcy process;
- (e) Liquidation of a corporate debtor firm.



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### **Q.329. Enumerate the code of conduct an Insolvency Professional shall abide by as per Section 208.**

A.329 As per section 208, following code of conduct an Insolvency Professional shall abide by:

- (a) To take reasonable care and diligence while performing his duties;
- (b) To comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;
- (c) To allow the insolvency professional agency to inspect his records;
- (d) To submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member;
- (e) To perform his functions in such manner and subject to such conditions as may be specified.

### **Q.330. Who can be an Information Utility?**

A.330 A person who is registered with the Board as an Information Utility.

No person shall carry on its business as information utility under the Code without a certificate of registration issued in that behalf by the Board.

### **Q.331. What are the grounds on which registration of an Information Utility can be cancelled?**

A.331 As per Section 210 of the Code, the Board may order for suspension or cancellation of the certificate of registration granted to an information utility on any of the following grounds:-

- (a) The Registration was obtained by making a false statement or misrepresentation or any other unlawful means.
- (b) The Information utility has failed to comply with the requirements of the regulations made by the Board.

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- (c) The Information utility has contravened any of the provisions of the Act or the rules or the regulations made thereunder, or any other ground as may be specified by regulations.

### **Q.332. Can an Information Utility appeal against the order of the Board?**

A.332 Yes, any Information Utility which is aggrieved by the order of the Board under Section 210 may prefer an appeal to the National Company Law Appellate Tribunal.

### **Q.333. Does Information Utility require constituting governing board?**

A.333 Yes, the Board requires every information utility to set up a governing board for ensuring that an information utility takes into account the objectives sought to be achieved under the Code.

### **Q.334. What are the obligations of Information Utility?**

A.334 As per Section 214, the information Utility shall provide such services as may be specified by the Board including core services and for such purposes it shall perform the following:-

- (a) It shall create and store financial information in a universally accessible format.
- (b) It shall accept electronic submissions of financial information from persons who are under obligations to submit financial information under sub-section (1) of Section 215.
- (c) It shall accept electronic submissions of financial information from persons who intend to submit such information.
- (d) It shall meet such minimum service quality standards as may be specified by regulations.
- (e) It shall get the information received from various persons authenticated by all concerned parties before storing such information.
- (f) It shall provide access to the financial information stored by it to any person who intends to access such information.
- (g) It shall publish such statistical information as may be specified by regulations.

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(h) It shall have inter-operability with other information utilities.

### **Q.335. What is the procedure for submission of financial information to Information Utility?**

A.335 Any person may submit financial information to the information utility or access the information from the information utility on payment of requisite fee in such form and manner as may be specified by regulations.

### **Q.336. Can a person share the financial information submitted to Information Utility?**

A.336 No, any person who submits financial information to an information utility shall not provide such information to any other person except to such extent and under such circumstances as may be specified.

### **Q.337. Can a person modify the information submitted to Information Utility?**

A.337 Yes, a person may modify or update or rectify error in the financial information submitted to Information Utility by stating reasons in the manner as may be specified.

### **Q.338. What is the procedure to raise complaint against an Insolvency professional agency or its member or an information utility?**

A.338 As per Section 217, any person aggrieved by the functioning of an insolvency professional agency or its member or an information utility may file a complaint to the Board. The complaint shall be subjected to inspection and investigation by an Investigating Authority appointed by the Board and upon completion of investigation the Board may issue show cause notice to such person or agency and shall submit the report of the investigating authority to the disciplinary committee which may pass such order as it deems fit.

### **Q.339. What shall be the composition of the disciplinary committee?**

A.339 As per Section 220, the members of the disciplinary committee shall consist of whole-time members of the Board only.

### **Q.340. What are the powers of disciplinary committee?**

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A.340 As per Section 220, the disciplinary committee may suspend or cancel the registration of the insolvency professional or, insolvency professional agency or information utility as the case may be. It may further impose penalty which shall be three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention, or three times the amount of the unlawful gain made on account of such contravention, whichever is higher. However, where such loss or unlawful gain is not quantifiable, the total amount of the penalty imposed shall not exceed more than one crore rupees.

### **Q.341. Is there any provision for restitution of loss suffered on account of any activity in contravention of this Code?**

A.341 Yes, as per Section 220, the Board may direct the person who has made unlawful gain or averted loss by indulging in any activity in contravention of this Code to disgorge an amount equivalent to such unlawful gain or aversion of loss and may further provide restitution to the person who suffered loss on account of any contravention.

However, restitution shall be made only where person who suffered such loss is identifiable and the loss so suffered is directly attributable to such person.

### **Q.342. How can the funds of the Board be utilized?**

A.342 As per section 222, the Fund shall be applied for meeting the salaries, allowances and other remuneration of the members, officers and other employees of the Board, the expenses of the Board in the discharge of its functions under section 196 and such other expenses on objects and for purposes authorised by this Code.

### **Q.343. Who shall audit the accounts of the Board?**

A.343 As per section 223, the accounts of the Board shall be audited by the Comptroller and Auditor-General of India.

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**Q.344. What shall the Bye laws of an Insolvency Professional Agency provide?**

A.344 As per Regulation 3, a company shall submit to the Board its bye-laws along with the application for its registration as an insolvency professional agency.

The bye-laws shall provide for all matters specified in the model bye-laws and at all times be consistent with the model bye-laws

**Q.345. Whether an Insolvency Professional Agency shall publish the bye laws on its website?**

A.345 Yes, as per Regulation 3, the insolvency professional agency shall publish its bye-laws, the composition of all committees formed, and all policies created under the bye-laws on its website.

**Q.346. Whether an Insolvency Professional Agency can amend its bye laws?**

A.346 Yes, as per Regulation 4, the Governing Board may amend the bye-laws by a resolution passed by votes in favor being not less than three times the number of the votes, if any, cast against the resolution, by the directors

**Q.347. What shall be the composition of the governing board of an Insolvency Professional Agency?**

A.347 As per Regulation 5, the Governing Board shall have minimum of 7 directors consisting of-

- (a) Managing director;
- (b) Independent directors;

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(c) Shareholder directors.

More than half of the directors must be resident in India at the time of their appointment, and at all times during their tenure as directors.

The number of independent directors shall not be less than the number of shareholder directors.

**Q.348. Whether an employee of an insolvency professional agency may be appointed as a director on its Governing Board?**

A.348 Yes, as per Regulation 5, any employee of an insolvency professional agency may be appointed as a director on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

**Q.349. How an Independent Director of an Insolvency professional agency be appointed?**

A.349 As per Regulation 5, an independent director shall be nominated by the Board from amongst the list of names proposed by the insolvency professional agency.

**Q.350. What shall be term of an Independent Director of an Insolvency professional agency?**

A.350 As per Regulation 5, an individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.

**Q.351. Whether there is cooling off period for an independent director to become a shareholder director in the same or another insolvency professional agency?**

A.351 As per Regulation 5, a cooling off period of three years shall be applicable for an independent director to become a shareholder director in the same or another insolvency professional agency.

**Q.352. How many directors can be insolvency professionals on the Governing Board of insolvency professional agency?**

A.352 As per regulation 5, not more than one fourth of the directors shall be insolvency professionals.

**Q.353. Who shall be chairperson of the Governing Board of an Insolvency Professional Agency?**

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A.353 The Chairperson of the Governing Board of an Insolvency Professional Agency shall be an independent director.

### **Q.354. How a managing director can be appointed?**

A.354 As per Regulation 5A, an individual shall be selected as managing director through an open advertisement in all editions of at least one national daily newspaper.

### **Q.355. What should be the age of a managing director at the time of appointment?**

A.355 As per Regulation 5A, an individual at the time joining as managing director shall not be above the age of fifty-five years, which may be relaxed by the Governing Board up to sixty years, after recording reasons therefor.

### **Q.356. What shall be the maximum age upto which a managing director shall serve?**

A.356 As per Regulation 5A, an individual shall not serve as managing director after he attains the age of sixty-five years.

### **Q.357. What shall be the tenure of a managing director?**

A.357 As per Regulation 5A, the appointment of an individual as the managing director shall be for a tenure of not less than three years but not exceeding five years.

### **Q.358. For how many terms a managing director can serve?**

A.358 As per Regulation 5A, an individual may serve as managing director for a maximum of two terms.

### **Q.359. What shall the process for appointment of managing director for second term?**

A.359 As per Regulation 5A, the process of appointment for the second term of an individual as managing director shall be conducted afresh.

### **Q.360. Who shall approve the appointment and remuneration payable to the managing director?**

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A.360 As per Regulation 5A, the appointment and remuneration payable to the managing director shall be approved by a compensation committee constituted by the Governing Board.

**Q.361. Who shall approve the appointment, renewal of appointment and termination of service of the managing director?**

A.361 As per Regulation 5A, the appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the Board.

**Q.362. Whether the managing director shall be liable for removal or termination services?**

A.362 As per Regulation 5A, the managing director shall be liable for removal or termination of services by the Governing Board, with the prior approval of the Board, for failure to give effect to the directions, guidelines and other orders issued by the Governing Board or the Board, or the rules, the articles of association or bye-laws of the insolvency professional agency or on the ground of misconduct or incapacity to continue in office.

**Q.363. Name the committees of the Governing Board of which a managing director shall be a member?**

A.363 As per Regulation 5A, the managing director shall be an ex-officio member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and Disciplinary Committee.

**Q.364. Whether an Insolvency Professional agency is required to form Advisory Committee?**

A.364 As per Clause 7 of Regulation 3, an insolvency professional agency may form an advisory committee of professional members.

**Q.365. What is the scope of functions of Advisory Committee?**

A.365 As per Clause 7(1) of Regulation 3, the Advisory Committee may advise the Agency on matters pertaining to:-

- Development of profession
- Standards of professional and ethical conduct
- Best practices in respect of insolvency resolution, liquidation and bankruptcy



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### **Q.366. Which are the other Committees to be formed by Insolvency Professional Agency?**

A.366 As per Clause 8 of Regulation 3, the Agency may form the following committees:-

- Membership Committee
- Monitoring Committee
- Grievance Redressal Committee
- Disciplinary Committee

### **Q.367. What is the procedure for rejection of application by Insolvency Professional Agency?**

A.367 Under Clause 10 (6) of Regulation 3, the Agency while rejecting an application shall:-

- Communicate the reasons for such rejection within 30 days of receipt of application.
- It shall give time to the applicant for removing the discrepancies or deficiencies or presenting additional documents or clarifications.

### **Q.368. What is the remedy for the applicant aggrieved by the decision of Insolvency Professional Agency?**

A.368 Under Clause 10 (6) of Regulation 3, the applicant aggrieved of a decision of the Agency rejecting his application may prefer an appeal to the Membership Committee within 30 days of receipt of such decision.

### **Q.369. Enumerate the duties of an Insolvency Professional as per Model Bye Laws.**

A.369 Under Clause 13 (1) of Regulation 3, in the performance of his functions, a professional member shall-

- (i) act in good faith in discharge of his duties as an insolvency professional;
- (ii) endeavour to maximize the value of assets of the debtor;
- (iii) discharge his functions with utmost integrity and objectivity;

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- (iv) be independent and impartial;
- (v) discharge his functions with the highest standards of professional competence and professional ethics;
- (vi) continuously upgrade his professional expertise;
- (vii) perform duties as quickly and efficiently as reasonable, subject to the timelines under the Code;
- (viii) comply with applicable laws in the performance of his functions; and
- (ix) maintain confidentiality of information obtained in the course of his professional activities unless required to disclose such information by law.

**Q.370. Whether an Insolvency Professional Agency is required to have a Code of Conduct?**

A.370 Yes, as per Clause 14 of Regulation 3, the Insolvency Professional Agency shall have a Code of Conduct that shall be consistent with, and that shall provide for all matters in the Code of Conduct as specified in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

**Q.371. What are the policies an Insolvency Professional Agency is required to have?**

A.371 An Insolvency Professional Agency have the following Policies:

1. Monitoring Policy
2. Grievance Redressal Policy
3. Disciplinary Policy

**Q.372. Why an Insolvency Professional Agency is required to have a Monitoring Policy?**

A.372 As per Clause 15 of Regulation 3, the Insolvency Professional Agency shall have a Monitoring Policy to monitor the professional activities and conduct of professional members for their adherence to the provisions of the Code, rules, regulations and guidelines issued thereunder, these bye-laws, the Code of Conduct and directions given by the Governing Board.

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### **Q.373. What shall be the frequency of submission of information including records of the ongoing and concluded assignments by an Insolvency Professional?**

A.373 As per Clause 16 of Regulation 3, a professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional at least twice a year in the manner and format specified by the Agency.

### **Q.374. What shall be included in the Monitoring Policy?**

A.374 As per Clause 18 of Regulation 3, the Monitoring Policy shall provide for the following -

- (a) the frequency of monitoring;
- (b) the manner and format of submission or collection of information and records of the professional members, including by way of inspection;
- (c) the obligations of professional members to comply with the Monitoring Policy;
- (d) the use, analysis and storage of information and records;
- (e) evaluation of performance of members; and
- (f) any other matters that may be specified by the Governing Board.

### **Q.375. What shall the Monitoring Policy have regard for?**

A.375 As per Clause 19 of Regulation 3, the Monitoring Policy shall –

- (i) have due regard for the privacy of members,
- (ii) provide for confidentiality of information received, except when disclosure of information is required by the Board or by law, and
- (iii) be non-discriminatory.

### **Q.376. Whether the Agency is required to submit the monitoring report?**

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A.376 As per Clause 21 of Regulation 3, the agency shall submit a report to the Board in the manner specified by the Board with information collected during monitoring, including information pertaining to -

- (a) the details of the appointments made under the Code,
- (b) the transactions conducted with stakeholders during the period of his appointment;
- (c) the transactions conducted with third parties during the period of his appointment; and
- (d) the outcome of each appointment.

**Q.377. Whether the Agency is required to submit the monitoring report?**

A.377 As per Clause 20 of Regulation 3, the agency shall submit a report to the Board in the manner specified by the Board with information collected during monitoring, including information pertaining to -

- (a) the details of the appointments made under the Code,
- (b) the transactions conducted with stakeholders during the period of his appointment;
- (c) the transactions conducted with third parties during the period of his appointment; and
- (d) the outcome of each appointment.

**Q.378. Why an Insolvency Professional Agency is required to have a Grievance Redressal Policy?**

A.378 As per Clause 21 of Regulation 3, the Insolvency Professional Agency shall have a Grievance Redressal Policy providing the procedure for receiving, processing, redressing and disclosing grievances against the Agency or any professional member of the Agency by-

- (a) any professional member of the Agency;
- (b) any person who has engaged the services of the concerned professional members of the Agency; or
- (c) any other person or class of persons as may be provided by the Governing Board.

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### **Q.379. Whom shall the Grievance Redressal Committee refer the matter to?**

A.379 As per Clause 21 (2) of Regulation 3, the Grievance Redressal Committee shall refer the matter to the Disciplinary Committee, wherever the grievance warrants disciplinary action.

### **Q.380. What shall be included in the Grievance Redressal Policy?**

A.380 As per Clause 22 of Regulation 3, the Grievance Redressal Policy shall provide for-

- (a) the format and manner for filing grievances;
- (b) maximum time and format for acknowledging receipt of a grievance;
- (c) maximum time for the disposal of the grievance by way of dismissal, reference to the Disciplinary Committee or the initiation of mediation;
- (d) details of the mediation mechanism
- (e) provision of a report of the grievance and mediation proceedings to the parties to the grievance upon dismissal or resolution of the grievance;
- (f) action to be taken in case of malicious or false complaints;
- (g) maintenance of a register of grievances made and resolutions arrived at;
- (h) periodic review of the Grievance Redressal Mechanism.

### **Q.381. What are the grounds for disciplinary proceedings against the Professional Member?**

A.381 As per Clause 23 of Regulation 3, the Agency may initiate disciplinary proceedings against Professional Members in following cases:-

- On the basis of reference made by the Grievance Redressal Committee
- On the basis of monitoring of Professional Members
- On the directions given by the Board or any court of law

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- The Agency may initiate proceedings *suo moto*, on the basis of any information received by it

**Q.382. What shall be included in the Disciplinary Policy?**

A.382 As per Clause 24 of Regulation 3, the Disciplinary Policy shall provide for the following -

- (a) the manner in which the Disciplinary Committee may ascertain facts;
- (b) the issue of show-cause notice based on the facts;
- (c) disposal of show-cause notice by a reasoned order, following principles of natural justice;
- (d) timelines for different stages of disposal of show cause notice; and
- (e) rights and obligations of the parties to the proceedings.

**Q.383. What shall the Order of Disciplinary Committee include?**

A.383 As per Clause 24 (2) of Regulation 3, the orders that may be passed by the Disciplinary Committee shall include-

- (a) expulsion of the professional member;
- (b) suspension of the professional member for a certain period of time;
- (c) admonishment of the professional member;
- (d) imposition of monetary penalty;
- (e) reference of the matter to the Board, which may include, in appropriate cases, recommendation of the amount of restitution or compensation that may be enforced by the Board; and
- (f) directions relating to costs.

**Q.384. Whether an Insolvency Professional Agency is required to constitute an Appellate Panel?**

A.384 Yes, as per Clause 25 (1) of Regulation 3, the Governing Board shall constitute an Appellate Panel consisting of one independent director of the Agency, one member from amongst the persons of

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eminence having experience in the field of law, and one member nominated by the Board.

### **Q.385. Under what circumstances an Insolvency Professional may make an application of temporary surrender?**

A.385 Yes, as per Clause 26 (1) of Regulation 3, a professional member shall make an application for temporary surrender of his membership of the Agency at least thirty days before he-

- (a) becomes a person not resident in India;
- (b) takes up employment; or
- (c) starts any business, except as specifically permitted under the Code of Conduct;

### **Q.386. Under what circumstances an Insolvency Professional Agency may refuse to accept the application of surrender of the professional membership by an Insolvency Professional?**

A.386 Yes, as per Clause 26 (2) of Regulation 3, no application for temporary surrender of professional membership of the Agency shall be accepted if -

- (a) there is a grievance or disciplinary proceeding pending against the professional member before the Agency or the Board, and he has not given an undertaking to cooperate in such proceeding; or
- (b) the professional member has been appointed as a resolution professional, liquidator or bankruptcy trustee for a process under the Code, and the appointment of another insolvency professional may be detrimental to such process.

### **Q.387. Whether an Insolvency Professional Agency may expel a professional member?**

A.387 Yes, as per Clause 30 of Regulation 3, a professional member shall be expelled by the Agency –

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

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



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**Q.388. Explain the eligibility requirements to register as an Insolvency Professional Agency?**

A.388 As per Regulation 3 (1), following are the eligibility requirements for registration as an insolvency professional agency:

- (i) It shall be registered as a company under Section 8 of the Companies Act, 2013.
- (ii) Its sole object shall be to carry on the functions of an insolvency professional agency under the Code.
- (iii) It has bye-laws and governance structure in accordance with the Insolvency and Bankruptcy Board of India (Model Bye-laws and Governing Board of Insolvency Professional Agencies), Regulations 2016.
- (iv) It shall have minimum net worth of ten crore rupees.
- (v) It shall have a paid up share capital of five crore rupees.
- (vi) It shall not be under control of person(s) resident outside India
- (vii) The person's resident outside India does not hold more than 49% of its share capital.
- (viii) It shall not be subsidiary of a body corporate through more than one layer.
- (ix) The applicant, its promoters, its directors and its shareholders are fit and proper persons.

**Q.389. What shall be the minimum net worth of an Insolvency Professional Agency?**

A.389 As per Regulation 3 (1), an insolvency professional agency shall have minimum net worth of ten crore rupees.

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**Q.390. What shall be the paid up share capital of an Insolvency Professional Agency?**

A.390 As per Regulation 3 (1), an insolvency professional agency shall have the paid up share capital of five crore rupees.

**Q.391. Whether an Insolvency Professional Agency can be formed by a subsidiary having more than one layer of subsidiary?**

A.391 As per Regulation 3 (1), an insolvency professional agency shall not be subsidiary of a body corporate through more than one layer.

**Q.392. Whether a person can hold more than five percent of paid up equity share capital of an Insolvency Professional Agency?**

A.392 As per Regulation 3(2), no person shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than five per cent of the paid-up equity share capital in an insolvency professional agency.

**Q.393. Who can acquire or hold upto fifteen percent of paid up equity share capital of an Insolvency Professional Agency?**

A.393 As per Regulation 3(2), the following may, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent of the paid-up equity share capital of an insolvency professional agency-

- (i) a stock exchange;
- (ii) a depository;
- (iii) a banking company;
- (iv) an insurance company;
- (v) a public financial institution; and
- (vi) a multilateral financial institution,

**Q.394. Who can acquire or hold upto hundred percent of paid up equity share capital of an Insolvency Professional Agency?**

A.394 As per Regulation 3(2), the following may, acquire or hold, directly or indirectly, up to hundred per cent of the paid-up equity share capital of an insolvency professional agency.

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- (i) the Central Government;
- (ii) a State Government; and
- (iii) a statutory regulator,

### **Q.395. What is the procedure for registration as an Insolvency Professional Agency?**

A.395 As per Regulation 4(1), the company eligible for registration shall make an application to the Insolvency and Bankruptcy Board of India in Form A of the Schedule to the Regulations along with non-refundable application fee of ten lakh rupees.

### **Q.396. Can an Insolvency Professional Agency apply for renewal of certificate of registration?**

A.396 As per Regulation 4(2), an insolvency professional agency may apply for renewal of registration six months before the expiry of such registration in Form A of the Schedule to the Regulations along with non-refundable fees of five lakh rupees.

### **Q.397. What are the conditions on which the registration of an Insolvency Professional Agency shall be subjected to?**

A.397 As per Regulation 5(2), the registration shall be subject to the conditions that the insolvency professional agency shall -

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

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**Q.398. What is the term of validity of registration as an Insolvency Professional Agency?**

A.398 As per Regulation 5(3), the registration granted by Insolvency and Bankruptcy Board of India to Insolvency Professional Agency shall be valid for a period of 5 years from the date of issue.

**Q.399. What is the time limit to grant/ renew or not grant or not renew the application by the Board?**

A.399 Under Regulation 6, it is provided that if *prima facie* the Board is of the opinion that the registration ought not be granted or renewed, or be granted or renewed with additional conditions, it must communicate the reasons for forming such an opinion and give the applicant an opportunity to explain why its application should be accepted, within 15 days of the receipt of the communication from the Board, to enable it to form a final opinion.

Further the communication shall be made to the applicant within 45 days of receipt of the application, excluding the time given by the Board for removing deficiencies, presenting additional documents, information or clarification, or appearing in person.

**Q.400. What are the consequences if application for renewal of Registration is rejected by the Insolvency and Bankruptcy Board of India?**

A.400 As per Regulation 6(4), upon rejection of application of renewal the insolvency professional agency shall be required to discharge its pending obligations and shall be allowed to continue its functions till such time so as to enable the enrolment of its members with another insolvency professional agency.

**Q.401. What are the particulars that are required to be filed by an Insolvency professional Agency for surrender of certificate of registration?**

A.401 As per Regulation 7(1), an Insolvency Professional Agency may submit an application for surrender of a certificate of registration to the Board providing the following:

- (i) The reasons for such surrender;

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- (ii) The details of all the pending or on-going engagements under the Code of the insolvency professionals enrolled with it;
- (iii) Details of its pending or on-going activities;
- (iv) The manner in which it seeks to wind up its affairs as an insolvency professional agency.

### **Q.402. Whether the Board is required to invite objections on surrender of registration by an Insolvency professional Agency?**

A.402 Yes, as per Regulation 7(2), the Board within 7 days of receipt of the application publish a notice of receipt of such application on its website and invite objections to the surrender of registration, to be submitted within 14 days of the publication of the notice.

### **Q.403. Under what circumstances the Board can issue show cause notice to the Insolvency professional Agency?**

A.403 Yes, as per Regulation 8(1), based on the findings of an inspection or investigation, or on material otherwise available on record, if the Board is of the prima facie opinion that sufficient cause exists to take actions permissible under section 220, it shall issue a show-cause notice to the insolvency professional agency.

### **Q.404. Whether the show cause notice shall be in writing and what shall it state?**

A.404 Yes, as per Regulation 8(2), the show-cause notice shall be in writing, and shall state the following-

- (a) the provisions of the Code under which it has been issued;
- (b) the details of the alleged facts;
- (c) the details of the evidence in support of the alleged facts;
- (d) the provisions of the Code, rules, regulations or guidelines thereunder allegedly violated, or the manner in which the public interest is allegedly affected;
- (e) the actions or directions that the Board proposes to take or issue if the allegations are established;
- (f) the manner in which the insolvency professional agency is required to respond to the show-cause notice;

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- (g) consequences of failure to respond to the show-cause notice; and
- (h) procedure to be followed for disposal of the show-cause notice.

**Q.405. What shall be the manner in which the show cause notice shall be served?**

A.405 As per Regulation 8(4), the show-cause notice issued shall be served on the insolvency professional agency in the following manner-

- (a) by sending it to the insolvency professional agency at its the registered office, by registered post with acknowledgement due; or
- (b) by an appropriate electronic means to the email address provided by the insolvency professional agency to the Board.

**Q.406. What an Order of disposal of show cause notice may provide for?**

A.406 As per Regulation 8(10), the order in disposal of a show-cause notice may provide for-

- (a) no action;
- (b) warning;
- (c) any of the actions under section 220(2) to (4); or
- (d) a reference to the Board to take any action under section 220(5).

**Q.407. Whether the Board is required to constitute a Disciplinary Committee to dispose of the show cause notice issued to the Insolvency professional Agency?**

A.407 Yes, as per Regulation 8(5), the Board shall constitute a Disciplinary Committee for disposal of the show- cause notice.

**Q.408. What is the term of validity of registration as an Insolvency professional Agency in case of in principle approval?**

A.408 As per Regulation 10(2), in- principle approval granted by Insolvency and Bankruptcy Board of India to Insolvency professional Agency shall be valid for a period of 1 year.

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**Q.409. What is the procedure by which a person qualifies as an insolvency professional?**

A.409 As per Regulation 3, the Board shall conduct Insolvency Examination on its own or designated agency at such frequency and manner as specified to test the knowledge and practical skills of individuals in insolvency, bankruptcy and allied subjects

**Q.410. What are the type of Insolvency Examinations to be qualified to become an insolvency professional?**

A.410 As per Regulation 3, the Board shall conduct “National Insolvency Examination” or ‘Limited Insolvency Examination’.

**Q.411. Who shall publish the syllabus and frequency of Limited Insolvency Examination**

A.411 The Board shall publish the syllabus, format, qualifying marks and frequency of the limited insolvency examination which shall be published by Board on website at least three months before the examination.

**Q.412. What is eligibility to register an Insolvency Professional?**

A.412 As per Regulation 4, No individual shall be eligible to be registered as an insolvency professional if he-

- (a) is a minor;
- (b) is not a person resident in India;
- (c) does not have the qualification and experience specified in Regulation 5 or Regulation 9, as the case may be;
- (d) has been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a

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period of five years has not elapsed from the date of expiry of the sentence:

*Provided* that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

- (e) he is an undischarged insolvent, or has applied to be adjudicated as an insolvent;
- (f) he has been declared to be of unsound mind; or
- (g) he is not a fit and proper person;

### **Q.413. What shall be the criteria to determine whether a person is fit and proper to register as an insolvency professional?**

A.413 As per Regulation 4(g), for determining whether a person is fit and proper, the Board may take into account any consideration as it deems fit, including but not limited to the following criteria, namely: -

- (i) integrity, reputation and character,
- (ii) absence of conviction and restraint orders,
- (iii) competence including financial solvency and net worth.

### **Q.414. What must be the Qualification and Experience to register as an Insolvency Professional**

A.414 As per Regulation 5, the Insolvency And Bankruptcy Board of India has prescribed following persons to be eligible for registration as an Insolvency Professional:-

- (a) Has passed the Limited Insolvency Examination within twelve months before the date of his application for enrolment with the insolvency professional agency;
- (b) Has completed a pre-registration educational course, as may be required by the Board, from an insolvency professional agency after his enrolment as a professional member; and
- (c) Has-
  - (i) Successfully completed the National Insolvency Programme, as may be approved by the Board;



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- (ii) Successfully completed the Graduate Insolvency Programme, as may approved by the Board;
- (iii) Fifteen years' of experience in management, after receiving a Bachelor's degree from a university established or recognised by law; or
- (iv) Ten years' of experience as –
  - (a) Chartered Accountant registered as a member of the Institute of Chartered Accountants of India,
  - (b) Company Secretary registered as a member of the Institute of Company Secretaries of India,
  - (c) Cost Accountant registered as a member of the Institute of Cost Accountants of India, or
  - (d) Advocate enrolled with the Bar Council of India.

### **Q.415. What is the procedure for registration as an Insolvency Professional?**

A.415 As per Regulation 6(1), an individual enrolled with an Insolvency Professional Agency as a professional member may make an application to the Board in Form A of the Second Schedule to the Regulations alongwith non-refundable application fee of ten thousand rupees to the Board.

### **Q.416. What are the conditions on which the registration of an Insolvency Professional subjected to?**

A.416 As per Regulation 7(2), the registration shall be subject to the conditions that the insolvency professional shall -

- (a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;
- (b) at all times continue to satisfy the requirements under Regulation 4;
  - (ba) undergo continuing professional education, as may be required by the Board;

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- (bb) not outsource any of his duties and responsibilities under the Code, except those specifically permitted by the Board.
- (c) pay to the Board, a fee of ten thousand rupees, every five years after the year in which the certificate is granted and such fee shall be paid on or before the 30th April of the year it falls due;
  - (ca) pay to the Board, a fee calculated at the rate of 0.25 percent of the professional fee earned for the services rendered by him as an insolvency professional in the preceding financial year, on or before the 30th of April every year, along with a statement in Form E of the Second Schedule;
- (d) not render services as an insolvency professional unless he becomes a partner or director of an insolvency professional entity recognised by the Board under Regulation 13, if he is not a citizen of India;
- (e) take prior permission of the Board for shifting his professional membership from one insolvency professional agency to another, after receiving no objection from both the concerned insolvency professional agencies;
- (f) take adequate steps for redressal of grievances;
- (g) maintain records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment;
- (h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and
- (i) abide by such other conditions as may be imposed by the Board.

**Q.417. How much fees is payable to the Board by the Insolvency Professional every 5 Years?**

A.417 As per Regulation 7(2)(c), an Insolvency Professional shall pay to the Board, a fee of ten thousand rupees, every five years after the

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year in which the certificate is granted and such fee shall be paid on or before the 30<sup>th</sup> April of the year it falls due.

### **Q.418. Whether the Board can refuse to give registration to an Insolvency Professional?**

A.418 Yes, as per Regulation 8(1), if, after considering an application made by an Insolvency Professional, the Board is of the prima facie opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion and give the applicant an opportunity to explain why his application should be accepted, within fifteen days of the receipt of the communication from the Board, to enable it to form a final opinion.

### **Q.419. Whether an Insolvency Professional can temporarily surrender the registration?**

A.419 As per Regulation 10(1), an insolvency professional agency shall inform the Board if any of its professional members has temporarily surrendered his certificate of membership or revived his certificate of membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.

### **Q.420. Under what circumstances the Board can issue show cause notice to the Insolvency professional?**

A.420 As per Regulation 11(1), based on the findings of an inspection or investigation, or on material otherwise available on record, if the Board is of the prima facie opinion that sufficient cause exists to take actions permissible under section 220, it shall issue a show-cause notice to the insolvency professional.

### **Q.421. Whether the show cause notice shall be in writing and what shall it state?**

A.421 Yes, as per Regulation 11(2), the show-cause notice shall be in writing, and shall state the following-

- (a) the provisions of the Code under which it has been issued;
- (b) the details of the alleged facts;
- (c) the details of the evidence in support of the alleged facts;

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- (d) the provisions of the Code, rules, regulations or guidelines thereunder allegedly violated, or the manner in which the public interest is allegedly affected;
- (e) the actions or directions that the Board proposes to take or issue if the allegations are established;
- (f) the manner in which the insolvency professional is required to respond to the show-cause notice;
- (g) consequences of failure to respond to the show-cause notice; and
- (h) procedure to be followed for disposal of the show-cause notice.

### **Q.422. What shall be the manner in which the show cause notice shall be served?**

A.422 As per Regulation 11(4), the show-cause notice issued shall be served on the insolvency professional in the following manner-

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

### **Q.423. Whether the Board is required to constitute a Disciplinary Committee to dispose of the show cause notice issued to the Insolvency professional?**

A.423 Yes, as per Regulation 11(5), the Board shall constitute a Disciplinary Committee for disposal of the show- cause notice.

### **Q.424. What an Order of disposal of show cause notice may provide for?**

A.424 As per Regulation 11(8), the order of disposal of a show-cause notice may provide for-

- (a) no action;
- (b) warning;

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- (c) any of the actions under section 220(2) to (4); or
- (d) a reference to the Board to take any action under section 220(5).

### **Q.425. Mention the circumstances under which a company, a Registered Partnership Firm or a Limited Liability Partnership comes can be recognized as an Insolvency Professional Entity?**

A.425 As per Regulation 12, a company, a registered partnership firm or a limited liability partnership may be recognised as an insolvency professional entity, if –

- (a) The sole objective is to provide support services to insolvency professionals, who are its partners or directors, as the case may be;
- (b) It has a net worth of not less than one crore rupees;
- (c) Majority of its shares is held by insolvency professionals, who are its directors, in case it is a company;
- (d) Majority of capital contribution is made by insolvency professionals, who are its partners, in case it is a limited liability partnership firm or a registered partnership firm;
- (e) Majority of its partners or directors, as the case may be, are insolvency professionals;
- (f) Majority of its whole time directors are insolvency professionals, in case it is a company; and
- (g) None of its partners or directors is a partner or a director of another insolvency professional entity.

### **Q.426. What shall be the minimum net worth of an Insolvency Professional Entity?**

A.426 As per Regulation 12, an insolvency professional entity shall have minimum net worth of one crore rupees.

### **Q.427. What is the procedure for registration as an Insolvency Professional Entity?**

A.427 As per Regulation 12(2), a person may make an application for recognition as an insolvency professional entity to the Board in Form C of the Second Schedule along with an application fee of fifty thousand rupees.

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**Q.428. What are the conditions to withhold the recognition of Insolvency Professional Entity?**

A.428 As per Regulation 13, the recognition shall be subject to the conditions that the insolvency professional entity shall-

- (a) At all times satisfy the requirements under Regulation 12;
- (b) Inform the Board, within seven days, when an individual ceases to be its director or partner in Form F of the Second Schedule along with a fee of two thousand rupees;
- (c) Inform the Board, within seven days, when an individual joins as its director or partner, in Form F of the Second Schedule along with a fee of two thousand rupees;
  - (ca) Pay to the Board, a fee calculated at the rate of 0.25 per cent of the turnover from the services rendered by it in the preceding financial year, on or before the 30<sup>th</sup> of April every year, along with a statement in Form G of the Second Schedule; and

Abide by other conditions as may be specified.

**Q.429. Whether an Insolvency Professional Entity is required to pay any fee to the Board?**

A.429 Yes, as per Regulation 13, an insolvency professional entity shall pay to the Board, a fee calculated at the rate of 0.25 per cent of the turnover from the services rendered by it in the preceding financial year, on or before the 30<sup>th</sup> of April every year, along with a statement in Form G of the Second Schedule.

**Q.430. What shall be payable to the Board in case of delay in payment of the fees by Insolvency Professional or Insolvency Professional Entity?**

A.430 As per Regulation 15, any delay in payment of fee by Insolvency Professional or an Insolvency Professional Entity, a simple interest at the rate of 12% per annum on the amount of fee unpaid shall be paid to the Board after the last date of payment of fee under these regulations.

**Q.431. What disclosures are required to be made by an Insolvency Professional as per Code of Conduct?**

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A.431 According to Clause 8 and 8A of Code of Conduct in First Schedule under Regulation 7(2)(h), an insolvency professional shall disclose the following:

- (i) The existence of any pecuniary or personal relationship with any of the stakeholders entitled to distribution under section 53 or 178 of the Code and the concerned corporate person/ debtor as soon as he becomes aware of it, by making a declaration of the same to the applicant, committee of creditors, and the person proposing appointment, as applicable.
- (ii) An insolvency professional shall disclose as to whether he was an employee of or has been in the panel of any financial creditor of the corporate debtor, to the committee of creditors and to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

**Q.432. Is it mandatory by the Insolvency Professional to disclose the fee payable to him, Insolvency Professional Entity and professionals engaged by him?**

A.432 Yes, as per Clause 25 A of Code of Conduct in First Schedule under Regulation 7(2)(h), an insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

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**Q.433. What is the meaning of the term 'application programming interface'?**

A.433 As per Regulation 2(1) (a), Application Programming Interface” means a mechanism that allows a system or service to access data or functionality provided by another system or service.

**Q.434. Who shall be eligible to be registered as an information utility?**

A.434 As per Regulation 3, no person shall be eligible to be registered as an information utility unless it is a public company and –

- Its sole object is to provide core services and other services under these Regulations, and discharge such functions as may be necessary for providing these services;
- Its shareholding and governance is in accordance with Chapter III;
- Its bye-laws are in accordance with Chapter IV;
- It has a minimum net worth of fifty crore rupees;
- the person itself, its promoters, its directors, its key managerial personnel, and persons holding more than 5%, directly or indirectly, of its paid-up equity share capital or its total voting power, are fit and proper persons.

**Q.435. What shall be the minimum net worth of an Information Utility?**

A.435 As per Regulation 3, an insolvency utility shall have minimum net worth of fifty crore rupees.

**Q.436. Whether an Information Utility is required to have bye laws?**

A.436 Yes, as per Regulation 3, an information utility is required to have bye laws in accordance with Chapter IV of its Regulations.



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### **Q.437. What shall the Board consider for determining that the Information utility is a fit and proper person?**

A.437 As per Regulation 3, for determining whether a person is fit and proper under these Regulations, the Board may take account of relevant considerations, including-

- (a) integrity, reputation and character,
- (b) absence of conviction by a court for an offence:
  - A person may be considered 'fit and proper' if he has been sentenced to imprisonment for a period of less than six months;
  - A person shall not be considered 'fit and proper' if he has been sentenced to imprisonment for a period (a) of not less than six months, but less than seven years and a period of five years has not elapsed from the date of expiry of the sentence, or (b) of seven years or more.
- (c) absence of restraint order, in force, issued by a financial sector regulator or the Adjudicating Authority, and
- (d) financial solvency.

### **Q.438. What is the procedure for registration as an Information Utility?**

A.438 As per Regulation 4(1), a person eligible for registration shall make an application to the Insolvency and Bankruptcy Board of India in Form A of the Schedule along with non-refundable application fee of five lakh rupees.

### **Q.439. Can an Information Utility apply for renewal of certificate of registration?**

A.439 As per Regulation 4(2), an information utility may apply for renewal of registration six months before the expiry of such registration in Form A of the Schedule along with non-refundable fees of five lakh rupees.

### **Q.440. What is the time limit to grant/ renew or not grant or not renew the application by the Board?**

A.440 Under Regulation 5 (5), it is provided that if *prima facie* the Board of the opinion that the registration ought not be granted or renewed, or

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be granted or renewed with additional conditions, it must communicate the reasons for forming such an opinion and give the applicant an opportunity to explain why its application should be accepted, within 15 days of the receipt of the communication from the Board, to enable it to form a final opinion.

Further the communication shall be made to the applicant within 45 days of receipt of the application, excluding the time given by the Board for removing deficiencies, presenting additional documents, information or clarification, or appearing in person.

**Q.441. What are the consequences if application for renewal of Registration is rejected by the Insolvency and Bankruptcy Board of India?**

A.441 As per Regulation 5(8), upon rejection of application of renewal, the information utility shall be required to discharge its pending obligations and shall be allowed to continue its functions till such time so as to enable its users to transfer information stored with it to another information utility.

**Q.442. What are the conditions on which the registration of an Information Utility shall be subjected to?**

A.442 As per Regulation 6(2), the registration shall be subject to the conditions that the information utility shall -

- (i) abide by the Code;
- (ii) abide by its bye-laws;
- (iii) at all times after the grant of the certificate continue to satisfy the requirements under regulation 5 (4);
- (iv) pay a fee of fifty lakh rupees to the Board, within fifteen days of receipt of intimation of registration or renewal from the Board, as applicable;
- (v) pay an annual fee of fifty lakh rupees to the Board, within fifteen days from the end of every year from the date of grant or renewal of the certificate of registration, as applicable;
- (vi) seek prior approval of the Board for-

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- (a) the acquisition of shares or voting power by a person, which taken together with paid-up equity shares or voting power, if any, held by such person, entitles him to hold more than five per cent, directly or indirectly, of the paid-up equity share capital or total voting power;
  - (b) a change of control;
  - (c) a merger, amalgamation or restructuring;
  - (d) sale, disposal, or acquisition of the whole, or substantially the whole, of its undertaking;
  - (e) voluntary liquidation, dissolution, or any similar action involving the discontinuation of its business.
- (vii) intimate the Board if a person holding more than five per cent, directly or indirectly, of its paid-up equity share capital or total voting power ceases to hold at least five per cent, directly or indirectly, of its paid-up equity share capital or total voting power, within fifteen days from such cessation;
- (viii) take adequate steps for redressal of grievances;
- (ix) take over information stored with other information utilities on the directions of and in the manner directed by the Board, and provide core services to their users; and
- (x) abide by such other conditions as may be stipulated by the Board.

### **Q.443. What is the term of validity of registration as an Information Utility?**

A.443 As per Regulation 6(1), the registration granted by Insolvency and Bankruptcy Board of India to Information Utility shall be valid for a period of 5 years from the date of issue.

### **Q.444. What is the term of validity of registration as an Information Utility in case of in principle approval?**

A.444 As per Regulation 7(2), in- principle approval granted by Insolvency and Bankruptcy Board of India to Information Utility shall be valid for a period of 1 year.

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**Q.445. Whether a person can hold more than ten percent of paid up equity share capital of an Information Utility?**

A.445 No, as per Regulation 8(1), no person shall at any time, directly or indirectly, either by itself or together with persons acting in concert, acquire or hold more than ten per cent of the paid-up equity share capital or total voting power of an information utility.

**Q.446. Who can acquire or hold upto twenty five percent of paid up equity share capital of an Information Utility?**

A.446 As per Regulation 8(2), the following may, acquire or hold, directly or indirectly, either by themselves or together in concert, up to twenty five per cent of the paid-up equity share capital or total voting power of an information utility-

- government company;
- stock exchange;
- depository;
- bank;
- insurance company;
- a public financial institution.

**Q.447. Who can acquire or hold upto hundred percent of paid up equity share capital of an Information Utility?**

A.447 As per Regulation 8(3), the following may, acquire or hold, directly or indirectly, up to hundred per cent of the paid-up equity share capital or voting power of an information utility.

- the Central Government;
- a State Government;

**Q.448. What shall be the composition of the governing board?**

A.448 As per Regulation 9, the Governing Board shall have the directors so that the number of independent directors shall not be less than the number of shareholder directors. consisting of-

- (a) Managing director;
- (b) Independent directors;

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(c) Shareholder directors.

More than half of the directors must be citizens of India and shall be residents in India.

### **Q.449. Whether an employee of an Information Utility may be appointed as a director on its Governing Board?**

A.449 Yes, as per Regulation 9 (3), any employee of an Information Utility may be appointed as a director on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

### **Q.450. How an Independent Director of an Information Utility be appointed?**

A.450 As per Regulation 9 (6), an independent director shall be nominated by the Board from amongst the list of names proposed by the Information Utility.

### **Q.451. What shall be term of an Independent Director of an Information Utility?**

A.451 As per Regulation 9 (7), an individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.

### **Q.452. Whether there is cooling off period for an independent director to become a shareholder director in the same or another Information Utility?**

A.452 Yes, as per Regulation 9(9), a cooling off period of three years shall be applicable for an independent director to become a shareholder director in the same or another Information Utility.

### **Q.453. Who shall be chairperson of the Governing Board of an Information Utility?**

A.453 The Chairperson of the Governing Board of an Information Utility shall be an independent director.

### **Q.454. How a managing director can be appointed?**

A.454 As per Regulation 9A, an individual shall be selected as managing director through an open advertisement in all editions of at least one national daily newspaper.

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**Q.455. What should be the age of a managing director at the time of appointment?**

A.455 As per Regulation 9A, an individual at the time joining as managing director shall not be above the age of fifty-five years, which may be relaxed by the Governing Board up to sixty years, after recording reasons therefor.

**Q.456. What shall be the maximum age upto which a managing director shall serve?**

A.456 As per Regulation 9A, an individual shall not serve as managing director after he attains the age of sixty-five years.

**Q.457. What shall be the tenure of a managing director?**

A.457 As per Regulation 9A, the appointment of an individual as the managing director shall be for a tenure of not less than three years but not exceeding five years.

**Q.458. For how many terms a managing director can serve?**

A.458 As per Regulation 9A, an individual may serve as managing director for a maximum of two terms.

**Q.459. What shall the process for appointment of managing director for second term?**

A.459 As per Regulation 9A, the process of appointment for the second term of an individual as managing director shall be conducted afresh.

**Q.460. Who shall approve the appointment and remuneration payable to the managing director?**

A.460 As per Regulation 9A, the appointment and remuneration payable to the managing director shall be approved by a compensation committee constituted by the Governing Board.

**Q.461. Who shall approve the appointment, renewal of appointment and termination of service of the managing director?**

A.461 As per Regulation 9A, the appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the Board.

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### **Q.462. Whether the managing director shall be liable for removal or termination services?**

A.462 As per Regulation 9A, the managing director shall be liable for removal or termination of services by the Governing Board, with the prior approval of the Board, for failure to give effect to the directions, guidelines and other orders issued by the Governing Board or the Board, or the rules, the articles of association or bye-laws of the information utility or on the ground of misconduct or incapacity to continue in office.

### **Q.463. Whether an Information Utility is required to form a Regulatory Committee?**

A.463 Yes, as per Regulation 10, an information utility may constitute a Regulatory Committee from amongst the independent directors.

### **Q.464. What shall be purpose to form Regulatory Committee by an Information Utility?**

A.464 As per Regulation 10, the Regulatory Committee, if constituted, shall oversee the information utility's compliance with the Code.

### **Q.465. Whether an Information Utility is required to appoint a Compliance officer?**

A.465 Yes, as per Regulation 11, an information utility shall designate or appoint a compliance officer who shall be responsible for ensuring compliance with the provisions of the Code applicable to the information utility, in letter and spirit.

### **Q.466. Whom shall the Compliance officer report to?**

A.466 As per Regulation 11, the compliance officer shall, immediately and independently, report to the Board any non-compliance of any provision of the Code observed by him.

### **Q.467. Whether the Compliance officer is required to submit compliance certificate?**

A.467 Yes, as per Regulation 11, the compliance officer shall submit a compliance certificate to the Board annually, verifying that the information utility has complied with the requirements of the Code, and has redressed customer grievances.

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### **Q.468. How a Compliance officer can be appointed or removed by the Governing Board?**

A.468 As per Regulation 11, the Governing Board of an Information Utility shall appoint or remove a compliance officer only by means of a resolution passed at its meeting.

### **Q.469. Why an Information Utility is required to have a Grievance Redressal Policy?**

A.469 As per Regulation 12, an information utility shall have a Grievance Redressal Policy to deal with any grievance from –

- (i) any user; or
- (ii) any other person or class of persons as may be provided by the Governing Board in respect of its services.

### **Q.470. What shall be included in the Grievance Redressal Policy of an Information Utility?**

A.470 As per Regulation 12, the Grievance Redressal Policy shall provide for-

- the constitution of a Grievance Redressal Committee;
- the functions of the Grievance Redressal Committee;
- the format and manner for filing grievances;
- maximum time and format for acknowledging receipt of a grievance;
- maximum time for the disposal of the grievance by way of dismissal, resolution or the initiation of mediation;
- details of the mediation mechanism;
- provision of a report of the grievance and mediation proceedings to the parties to the grievance upon dismissal or resolution of the grievance;
- action to be taken in case of malicious or false complaints;
- maintenance of a register of grievances received and resolutions arrived at;



## **FAQs on the Insolvency and Bankruptcy Code, 2016**

- disclosure of receipt and disposal of grievances to the public in the form and manner directed by the Board;
- periodic reporting of the receipt and disposal of grievances to the Governing Board; and
- periodic review of the Grievance Redressal Mechanism by the Governing Board.

### **Q.471. Enumerate the matters for which the Board shall lay down the Technical Standards.**

A.471 As per Regulation 13, the Board may lay down the Technical Standards for all or any of the following matters-

- the Application Programming Interface;
- standard terms of service;
- registration of users;
- unique identifier for each record and each user;
- submission of information;
- identification and verification of persons;
- authentication of information;
- verification of information;
- data integrity;
- consent framework for providing access to information to third parties;
- security of the system;
- security of information;
- risk management framework;
- porting of information;
- exchange or transfer of information between information utilities;
- inter-operability among information utilities;

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- preservation of information; and
- purging of information.

### **Q.472. What shall be the composition of Technical Committee?**

A.472 As per Regulation 14, the Technical Committee shall comprise of at least three members who have special knowledge and experience in the field of law, finance, economics, information technology or data management.

### **Q.473. What shall the bye laws of an Information Utility provide for?**

A.473 As per Regulation 15, the bye laws of an Information Utility shall provide for the following-

- the manner and process of providing core services and other services under these Regulations;
- risk management;
- rights of users; and
- grievance redressal.

### **Q.474. Whether an Information Utility shall publish the bye laws on its website?**

A.474 Yes, as per Regulation 15, the Information Utility shall publish its bye-laws on its website.

### **Q.475. Whether an Information Utility can amend its bye laws?**

A.475 Yes, as per Regulation 16, the Governing Board may amend the bye-laws by a resolution passed by votes in favor being not less than three times the number of the votes, if any, cast against the resolution, by the directors.

### **Q.476. What is the role of Information Utility?**

A.476 The information utility shall provide:

- core services;
- other services under these Regulations; in accordance with the Code.

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### **Q.477. Whether the Information Utility is required to comply with the Technical Standards?**

A.477 Yes, As per Regulation 17, the information utility shall comply with the applicable Technical Standards.

### **Q.478. For what purposes a person shall register with the Information Utility?**

A.478 As per Regulation 18, a person shall register itself with an information utility for-

- submitting information to; or
- accessing information stored with any of the information utilities.

### **Q.479. Whether a person registered once with an Information Utility can register again with any information utility?**

A.479 No, As per Regulation 18, a person registered once with an Information Utility shall not register again with any information utility.

### **Q.480. What are the duties of an information utility?**

A.480 As per Regulation 18, an information utility shall-

- (i) maintain a list of the
  - registered users;
  - the unique identifiers of the registered users; and
  - the unique identifiers assigned to the debts under Regulation 20.
- (ii) make the list available to all information utilities and the Board.

### **Q.481. Whether a registered user may submit information to any information utility?**

A.481 Yes, as per Regulation 19, a registered user may submit information to any information utility. Different parties to the same transaction may use different information utilities to submit, or access information in respect of the same transaction.

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**Q.482. Whether a registered user may access information with an information utility through any information utility?**

A.482 Yes, as per Regulation 19, a user may access information stored with an information utility through any information utility.

**Q.483. What is the procedure for acceptance of information by an information utility?**

A.483 As per Regulation 20, an information utility shall accept information submitted by a user in Form C of the Schedule.

**Q.484. Explain the procedure to be followed by an information utility on receipt of information?**

A.484 As per Regulation 20, on receipt of the information, the information utility shall

- assign a unique identifier to the information, including records of debt;
- acknowledge its receipt, and notify the user of-
  - (i) the unique identifier of the information;
  - (ii) the terms and conditions of authentication and verification of information; and
  - (iii) the manner in which the information may be accessed by other parties.

**Q.485. Explain the procedure to be followed by an information utility on receipt of information of default?**

A.485 As per Regulation 21, on receipt of information of default, an information utility shall expeditiously undertake the processes of authentication and verification of the information.

**Q.486. What shall an information utility do after authentication and verification of information of default?**

A.486 As per Regulation 21, on completion of the processes of authentication and verification, the information utility shall communicate the information of default, and the status of authentication to registered users who are-

1. creditors of the debtor who has defaulted;

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2. parties and sureties, if any, to the debt in respect of which the information of default has been received.

### **Q.487. Where shall an information utility store the information?**

A.487 As per Regulation 22, an information utility shall store all information in a facility located in India.

The facility shall be governed by the laws of India.

### **Q.488. Who shall have access to the information of an information utility?**

A.488 As per Regulation 23, an information utility shall allow the following persons to access information stored with it-

- a. the user which has submitted the information;
- b. all the parties to the debt and the host bank, if any, if the information is of the categories in section 3(13)(a), (c) and (d);
- c. the corporate person and its auditor, if the information is of the categories in section 3(13)(b) and (e);
- d. the insolvency professional, to the extent provided in the Code;
- e. the Adjudicating Authority;
- f. the Board;
- g. any person authorised to access the information under any other law; and
- h. any other person who the persons referred to in (a), (b) or (c) have consented to share the information with.

### **Q.489. What shall the information utility enable the users to view?**

A.489 As per Regulation 23, an information utility shall in all cases enable the user to view-

- the date the information was last updated;
- the status of authentication; and

## IBBI (Information Utilities) Regulations, 2017

- the status of verification while providing access to the information.

**Q.490. Whether an Information Utility can charge fee for providing information to the Adjudicating Authority and Board?**

A.490 No, as per Regulation 23, an information utility shall provide information to the Adjudicating Authority and Board free of charge.

**Q.491. Whether a registered user can access information stored with other Information Utilities?**

A.491 Yes, as per Regulation 24, an information utility shall provide a functionality to enable users to access information stored with any information utility, which they are entitled to access.

The functionality shall enable other information utilities to provide access to information to the user directly.

The functionality shall ensure privacy and confidentiality of information.

**Q.492. Whether an Information utility is required to provide an Annual Statement?**

A.492 Yes, as per Regulation 25, an information utility shall provide every user an annual statement of all information pertaining to the user, free of charge.

An information utility shall provide the user a functionality to mark information as erroneous and correct it.

**Q.493. Whether a user is required to update information with Information utility?**

A.493 Yes, as per Regulation 27, a user shall expeditiously update the information submitted by it to an information utility.

A user shall expeditiously correct information as soon as it finds it erroneous, stating the reasons, if any.

**Q.494. Enumerate the duties of an Information utility.**

A.494 As per Regulation 28, 29 and 30, an information utility shall-

- provide services with due and reasonable care, skill and diligence.

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- hold the information as a custodian.
- provide services without discrimination in any manner.
- provide services to a user based on its explicit consent;
- guarantee protection of the rights of users;
- establish adequate procedures and facilities to ensure that its records are protected against loss or destruction;
- adopt secure systems for information flows;
- protect its data processing systems against unauthorised access, alteration, destruction, disclosure or dissemination of information; and
- transfer all the information submitted by a user, and stored with it to another information utility on the request of the user.
- not outsource the provision of core services to a third-party service provider;
- not use the information stored with it for any purpose other than providing services under these Regulations, without the prior approval of the Board;
- not seek data or details of users except as required for the provision of the services under these Regulations.

### **Q.495. What arrangements shall be made by an Information utility for indemnifying the users for losses?**

A.495 As per Regulation 31, an information utility shall make adequate arrangements, including insurance, for indemnifying the users for losses that may be caused to them by any wrongful act, negligence or default of the information utility, its employees or any other person whose services are used for the provision of services under these Regulations.

### **Q.496. What shall be the provisions for charging fee by an Information utility?**

A.496 As per Regulation 32, an information utility shall

- charge uniform fee for providing the same service to different users;

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- disclose the fee structure for provision of services on its website; and
- disclose any proposed increase in the fees for the provision of services on its website at least three months before the increase in fees is effected.

Further, the fee charged for –

- providing services shall be a reasonable reflection of the service provided; and
- providing access to information shall not exceed the fee charged for submission of information to the information utility.

### **Q.497. Whether an Information utility shall establish an appropriate risk management framework?**

A.497 Yes, as per Regulation 33, an information utility shall establish an appropriate risk management framework in accordance with the Technical Standards, if any, which provides for matters, including

- reliable, recoverable and secure systems;
- provision of core services during disasters and emergencies; and
- business continuity plans which shall include disaster recovery sites.

### **Q.498. Whether an Information utility is required to have Preservation Policy?**

A.498 Yes, as per Regulation 35, an information utility shall have a Preservation Policy consistent with the Technical Standards, if any, providing for the form, manner and duration of preservation of:

- information stored with it; and
- details of the transactions of the information utility with each user in respect of the information stored with it.

### **Q.499. What is the information which an Information utility is required to report to the Board annually?**



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A.499 As per Regulation 36, an information utility shall provide a report to the Board annually, in the manner directed by the Board, stating the-

- number and types of records collected;
- number and types of users registered;
- number and types of unique debts recorded;
- number and types of security interests recorded;
- volume of debts recorded;
- volume of secured debts recorded;
- number of instances and types of defaults recorded;
- number and types of disputes recorded;
- number of times information was accessed by the Adjudicating Authority and Board; and
- any other information as may be directed by the Board.

### **Q.500. Whether an Information Utility shall have an Exit management plan?**

A.500 As per Regulation 39, an information utility shall, at all times, have an exit management plan which shall include-

- mechanisms to enable users to transfer information to other information utilities expeditiously;
- mechanisms for preservation and transfer of information; and
- timelines and cost estimates of implementing the exit management plan.

### **Q.501. What are the particulars that are required to be filed by an Information Utility for surrender of certificate of registration?**

A.501 As per Regulation 40(1), an Information Utility may submit an application for surrender of a certificate of registration to the Board providing the following:

- The reasons for such surrender;
- Details of its pending or on-going activities;

## **IBBI (Information Utilities) Regulations, 2017**

- Details of how the exit management plan shall be implemented.

**Q.502. What are the consequences of approval of application of surrender of registration by an Information Utility?**

A.502 As per Regulation 40(4), upon approval of application of surrender of registration, an Information Utility shall be required to discharge its pending obligations and shall be allowed to continue its functions till such time so may be directed.

**Q.503. Under what circumstances the Board can issue show cause notice to the Information Utility?**

A.503 As per Regulation 41(1), based on the findings of an inspection or investigation, or on material otherwise available on record, if the Board is of the prima facie opinion that sufficient cause exists to take actions permissible under section 220, it shall issue a show-cause notice to the information utility.

**Q.504. Whether the show cause notice shall be in writing and what shall it state?**

A.504 Yes, as per Regulation 41(2), the show-cause notice shall be in writing, and shall state the following-

- the provisions of the Code under which it has been issued;
- the details of the alleged facts;
- the details of the evidence in support of the alleged facts;
- the provisions of the Code allegedly violated, or the manner in which the public interest has allegedly been affected;
- the actions or directions that the Board proposes to take or issue if the allegations are established;
- the manner in which the information utility is required to respond to the show-cause notice;
- consequences of failure to respond to the show-cause notice within the given time; and
- procedure to be followed for disposal of the show-cause notice.

## **FAQs on the Insolvency and Bankruptcy Code, 2016**

### **Q.505. What shall be the manner in which the show cause notice shall be served to an information utility?**

A.505 As per Regulation 41(4), the show-cause notice issued shall be served on the information utility in the following manner-

- (a) by sending it to the information utility at its the registered office, by registered post with acknowledgement due; and
- (b) by an appropriate electronic means to the email address provided by the information utility to the Board.

### **Q.506. What an Order of disposal of show cause notice may provide for?**

A.506 As per Regulation 41(7), the order in disposal of a show-cause notice may provide for-

- (a) no action;
- (b) warning;
- (c) any of the actions under section 220(2) to (4); or
- (d) a reference to the Board to take any action under section 220(5).

## **IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017**

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**Q.507. What does the term “complaint” mean?**

A.507 As per Regulation 2(e), “complaint” means a written expression by a stakeholder alleging contravention of any provision of the Code or rules, regulations, or guidelines made thereunder or circulars or directions issued by the Board by a service provider or any of its associated persons and includes a complaint-cum-grievance.

**Q.508. With whom a grievance shall be filed?**

A.508 As per Regulation 3, a stakeholder, who wishes to file a complaint, shall file it with the Board.

**Q.509. What is the procedure to file complaint/grievance?**

A.509 As per Regulation 3, a complaint or grievance shall be filed with the Board as follows:

- A stakeholder, who wishes to file a complaint, shall file it with the Board in Form A along with a demand draft for two thousand and five hundred rupees drawn in favour of the Insolvency and Bankruptcy Board of India payable at New Delhi or an online acknowledgement of two thousand and five hundred rupees paid to the credit of the Board towards fee.
- A grievance or a complaint shall be filed within forty-five days of the occurrence of the cause of action for the grievance or the complaint. A grievance or a complaint may be filed after the aforesaid period, if there are sufficient reasons justifying the delay, but such period shall not exceed 30 days.

**Q.510. Whether a complaint/grievance can be filed online only?**

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A.510 No, as per Regulation 3, a grievance or a complaint can be filed with the Board online or offline until the Board provides a facility for online filing of grievances and complaints.

### **Q.511. State the requirements of filing a grievance by an aggrieved.**

A.511 As per Regulation 3, the grievance shall state the following:

- Details of identity of the aggrieved;
- Details of identity of the service provider
- Details of the conduct of the service provider that has caused the suffering to the aggrieved
- Details of suffering, whether pecuniary or otherwise, the aggrieved has undergone
- How the conduct of the service provider has caused the suffering of the aggrieved
- Details of his efforts to get the grievance redressed from the service provider and why the response, if any, of the service provider is not satisfactory
- How the grievance may be redressed.

### **Q.512. Whether a stakeholder who is filing a complaint/grievance is required to disclose its identity?**

A.512 Yes, as per Regulation 4, a stakeholder who is filing a complaint/grievance is required to disclose its identity and also the identity of the authorised representative, who is authorised to file it.

However, a stakeholder filing a grievance or a complaint, as the case may be, may request the Board to keep its identity confidential and in that case the Board shall keep it confidential unless its disclosure is necessary for processing the grievance or complaint or under any law.

### **Q.513. Whether the Board may club a complaint or a grievance?**

A.513 Yes, as per Regulation 5, where the Board is in receipt of more than one grievance or more than one complaint in the same matter, it may club such grievances or such complaints together for their disposal.

**IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017**

**Q.514. Whether the Board is required to provide a Registration number to a complaint or a grievance?**

A.514 Yes, as per Regulation 5, the Board shall assign a unique registration number to every grievance and every complaint and communicate the said registration number to the aggrieved or the complainant within a week of its receipt.

**Q.515. Whether the Board is required to take cognizance of an anonymous complaint or a grievance?**

A.515 No, as per Regulation 5, the Board shall not take any cognizance of any anonymous grievance or complaint.

**Q.516. How the Board deals with the disposal of a Grievance?**

A.516 As per Regulation 6, a grievance may be disposed of as follows:

- The Board may seek additional information and records from the aggrieved and information and records from the concerned service provider to decide if the grievance requires any redress by the service provider.
- The aggrieved and the service provider shall submit the information and records within fifteen days thereof.
- The Board shall close the grievance within forty-five days of its receipt if it does not require any redress.
- The Board shall direct the service provider to redress the grievance within forty-five days of its receipt if it requires any redress

**Q.517. How the Board deals with disposal of Complaints under the Regulation?**

A.517 As per Regulation 7, a complaint may be disposed of as follows:

- The Board may seek additional information and records from the complainant and information and records from the concerned service provider to form a prima facie view whether the contravention alleged in the complaint is correct
- The complainant and the service provider shall submit the information and records within fifteen days thereof

### **FAQs on the Insolvency and Bankruptcy Code, 2016**

- The Board shall form an opinion whether there exists a prima facie case within forty-five days of the receipt of the complaint
- The Board shall close the complaint where it is of the opinion that there does not exist a prima facie case and communicate the same to the complainant.
- If the complainant is not satisfied with the decision of the Board, he may request a review of such decision
- The Board shall dispose of the review within thirty days of the receipt of the request for review by an order with an opinion whether there exists a prima facie case
- Where the Board is of the opinion under this regulation that there exists a prima facie case, it may order an inspection, investigation or issue a show cause notice as described under the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.
- Where the Board is of the opinion that the complaint is not frivolous, it shall refund the fee of two thousand five hundred rupees received.

**Q.518. Whether the Board is required to disclose the statistics about receipt and disposal of grievances and complaints on its website?**

A.518 As per Regulation 8, the Board shall periodically disclose summary statistics about receipt and disposal of grievances and complaints on its web site.

## **IBBI (Inspection and Investigation) Regulations, 2017**

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**Q.519. To whom shall IBBI (Insolvency and Investigation) Regulations be applied?**

A.519 These regulations shall apply to inspection and investigation of service providers.

**Q.520. Who all come under the purview of notice under the Regulation?**

A.520 As per Regulation 2 (1) (g), a “Noticee” means a service provider or an associated person who is alleged to have contravened any provision of the Code, or the rules, regulations or guidelines made thereunder.

**Q.521. Define “Service Provider” under the Regulation.**

A.521 As per Regulation 2 (1) (j), service provider means insolvency professional agency, insolvency professional, insolvency professional entity or information utility.

**Q.522. What is the purpose for carrying out inspection of records of a service provider?**

A.522 As per Regulation 3, the purposes for carrying out inspection of records of a service provider shall include the following:

- To ensure that the records are being maintained by a service provider in the manner required under the relevant Regulations
- To ascertain whether adequate internal control systems, procedures and safeguards have been established and are being followed by a service provider to fulfil its obligations under the relevant Regulations
- To ascertain whether any circumstance exists which would render a service provider unfit or ineligible



## **FAQs on the Insolvency and Bankruptcy Code, 2016**

- To ascertain whether the provisions of the Code, or the rules, regulations and guidelines made thereunder and the directions issued by the Board, if any, are being complied with
- To inquire into the complaints received from clients or any other person on any matter having a bearing on the activities of a service provider
- Such other purpose as may be deemed fit by the Board in furtherance of the objectives of the Code.

### **Q.523. What shall the order by the Board directing an inspecting Authority to conduct an inspection of records of a service provider include?**

A.523 As per Regulation 3, the order by the Board directing an inspecting Authority to conduct an inspection of records of a service provider must include the following:

- scope of inspection
- composition of Inspecting Authority
- timelines for conducting the inspection
- reporting of progress in inspection
- submission of interim inspection report, if any, and
- submission of inspection report

### **Q.524. Is it necessary to serve notice to the service provider before the commencement of the investigation and inspection of service provider?**

A.524 According to Regulation 4(1) and 8(1), the inspecting authority/ investigation authority shall serve a notice of inspection/ investigation to the service provider at least 10 days prior to the commencement of the inspection or investigation.

Further, they also state that, if the Inspecting Authority/Investigating Authority is satisfied that the notice will cause undue delay in inspection/ investigation or there is an apprehension that the records of the service provider may be destroyed, mutilated, altered, falsified or secreted, after the notice is served, it may, for reasons to be recorded in writing, dispense with such notice.

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### **Q.525. What is the objective of interim inspection report?**

A.525 As per Regulation 5, the inspecting authority may submit an Interim Inspection Report to the Board keeping in view the nature and progress of the inspection, if required by the Board.

If the Board is satisfied from the Interim Inspection Report that there is a gross violation of the provisions of the Code, or Rules, Regulations made thereunder, by the service provider and an immediate action under section 220 (2) is warranted, the Board shall refer the matter to the Disciplinary Committee for an appropriate action. Further the Disciplinary Committee may pass an interim order with specific directions to the service provider. Also, the interim order shall lapse on expiry of 90 days.

### **Q.526. Whom shall the Investigation Report be submitted to?**

A.526 As per Regulation 10, the Investigation Report shall be submitted to the Board.

### **Q.527. Whether the show cause notice shall be in writing and what shall it state?**

A.527 Yes, as per Regulation 12(2), the show-cause notice shall be in writing, and shall state the following-

- The provisions of the Code under which it has been issued;
- The details of the alleged facts;
- The details of the evidence in support of the alleged facts;
- The provisions of the Code, or the rules, regulations or guidelines made thereunder, allegedly violated
- The actions or directions that the Board proposes to take or issue, if the allegations are established;
- The time within which the noticee may make written submission.

### **Q.528. What are the factors that the Board shall consider?**

A.528 The Board shall take into account, but not limited to, the following factors: -

## **FAQs on the Insolvency and Bankruptcy Code, 2016**

- The nature and seriousness of the alleged contraventions, including whether it was deliberate, reckless or negligent on the part of the noticee;
- The consequences and impact of the alleged contravention, including –
  - (i) Unfair advantage gained by the noticee as a result of the alleged contravention;
  - (ii) Loss caused, or likely to be caused, to clients or any other person as a result of the alleged contravention;
  - (iii) The conduct of the noticee after the occurrence of the alleged contravention, and prior to the alleged contraventions.

### **Q.529. How is a show cause notice served on the noticee?**

A.529 As per regulation 12 (6) a show cause notice shall be served on the noticee in the following manner:

- (i) By sending it to the noticee at its registered office, by registered post with acknowledgement due; and
- (ii) By an appropriate electronic form to the email address provided by the service provider to the Board;

### **Q.530. What is the maximum time that shall be provided to Noticee to file Written Submissions?**

A.530 As per Regulation 12 (3), a show cause notice shall provide at least 21 days to the Noticee to make a written submission.

### **Q.531. What is the maximum time period in which a show cause notice shall be disposed of by the Disciplinary Committee?**

A.531 As per Regulation 13 (2), the show cause notice shall be disposed of by the Disciplinary Committee within a period of 180 days of the issue of show cause notice.

### **Q.532. What shall the Order of disposal of show cause notice provide for?**

A.532 As per Regulation 13 (3), the order of disposal of show cause notice shall provide for the following:

### **IBBI (Inspection and Investigation) Regulations, 2017**

- closure of show-cause notice without any direction;
- warning;
- any of the actions under sub-sections (2), (3) and (4) of section 220;
- a reference to the Board to take any action under sub-section (5) of section 220 or sub-section (2) of section 236; or
- any other action or direction as may be considered appropriate.

#### **Q.533. Explain the process of Restitution?**

A.533 As per Regulation 14, where a direction has been issued, to any person to disgorge the amount under section 220 (4), the Board shall endeavour to realize the amount of disgorgement expeditiously.

Further, the Board shall, as soon as after the realization of the amount of disgorgement, invite claims by a public announcement from persons, who have suffered loss on account of the contravention underlying the direction under section 220 (4), seeking restitution from the disgorged amount.

The persons referred to above shall submit claims in Form A within 30 days of the public announcement.

The Board shall scrutinise the claims and prepare a list of valid claims within 30 days of the last date for receipt of claims.

The Board shall disburse such amount proportionately among the claimants within 30 days of preparation of the list of valid claims.

## **IBBI (Procedure for Governing Board Meetings) Regulations, 2017**

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**Q.534. What are the businesses that shall be transacted by the Governing Board?**

A.534 As per Regulation 3, the Governing Board shall transact the following businesses:-

- Regulations to be made under section 240;
- Annual Accounts and Audit under section 223;
- Annual Budget under section 228;
- Annual Report under section 229;
- Delegation of Powers under section 230;
- Operations Manuals for various activities;
- Timelines for Disposal of various activities;
- Expenditures above Rs.5 crore;
- Location of Office Premises;
- Number and categories of employees and their compensation;
- Accommodation for Chairperson and Whole Time Members under Rule 12 of the IBBI (Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016;
- Any other as may be specifically required by the Governing Board from time to time;
- Any other as may be brought before the Governing Board from time to time; and
- Any other as may be required under any law for the time being in force.

**IBBI (Procedure for Governing Board Meetings) Regulations, 2017**

**Q.535. How many meetings must be held of the Governing Board?**

A.535 As per Regulation 4, there shall at least be four meetings of the Governing Board in a year and at least one meeting in each quarter.

**Q.536. How many days notice shall be served for the meetings of the Governing Board?**

A.536 As per Regulation 5, Not less than seven days' notice shall ordinarily be given of each meeting of the Governing Board and such notice along with agenda papers shall be sent to every member ordinarily seven working days in advance at his usual address in India or by e-mail, as furnished by him to the Board.

**Q.537. Whether the meeting of a Governing Board can be held at a shorter notice?**

A.537 Yes, as per Regulation 5 (2), if an urgent meeting of the Governing Board is required to be convened, seven days' notice may be dispensed with by the Chairperson subject to the condition that Members get sufficient notice to enable them to attend the meeting.

**Q.538. What shall be the quorum for the meetings of the Governing Board?**

A.538 As per Regulation 6, quorum for transaction of the meeting of Governing board shall be:

- Five Members, if the Governing Board has eight or more Members,
- three Members, if the Governing Board has less than eight Members
- Also, all businesses which come up before any meeting of the Governing Board shall be decided by a majority vote of the Members present and voting and in the event of an equality of votes, the Chairperson, or in his absence, the Member presiding, shall have a second or casting vote.

**Q.539. When a member is not allowed to participate in meetings of Governing Board?**

A.539 As per Regulation 10, every Member, who is directly or indirectly concerned or interested in any business coming up for consideration

## **FAQs on the Insolvency and Bankruptcy Code, 2016**

at a meeting of the Governing Board, shall, as soon as possible, after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Governing Board and the Member shall not take part in any deliberation or decision of the Governing Board with respect to that business.

### **Q.540. Whether a member is obligated to give information of disqualification?**

A.540 Yes, as per Regulation 11, a Member shall, as soon as possible, inform the Board if he becomes subject to any of the disqualifications specified in section 190 of the Code.

Further, the Board shall inform the Central Government, if it comes to the notice of the Board that any Member has attracted any of the disqualifications.

### **Q.541. What is the manner in which contracts are executed?**

A.541 As per Regulation 13, the manner to execute contracts are as follows:

- Any contract on behalf of the Board may be made in writing signed by a Member, Officer of the Board or any other person acting under its authority, express or implied and may in the same manner be varied or discharged.
- Any document connected with any contract may be signed and verified on behalf of the Board by any Officer authorised by the Chairperson.
- All contracts made according to the provisions of this regulation shall be valid and binding on the Board.

## **IBBI (Advisory Committee) Regulations, 2017**

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**Q.542. What are the committees that are required to be constituted by the Board?**

A.542 As per Regulation 3, the Board may constitute the following committees:-

- Advisory Committee on Service Providers;
- Advisory Committee on Corporate Insolvency and Liquidation;
- Advisory Committee on Individual Insolvency and Bankruptcy, and
- Any other subject specific Advisory Committee as the Board may consider expedient from time to time.

**Q.543. What shall be the composition of the advisory committee?**

A.543 As per Regulation 4, an Advisory Committee shall comprise of:-

- Professional Members, who are eminent academicians or practitioners in the relevant area, and
- General Members, who are eminent citizens not having direct involvement or interest in the area:

Professional Members and General Members shall roughly be in the ratio of 2:1.

**Q.544. What shall be the term of the member of the advisory committee?**

A.544 As per Regulation 4, the term of a Member shall not exceed three years:

However, a person shall be eligible for reappointment as Member of the same or another Advisory Committee.



## **FAQs on the Insolvency and Bankruptcy Code, 2016**

### **Q.545. Who will be designated as Chairperson and Secretary to the advisory committee?**

A.545 As per Regulation 4 (4), the Board shall designate:

- (a) one of the General Members of the Advisory Committee as its Chairperson; and
- (b) one of its senior Officers as Secretary to the Advisory Committee and such Secretary shall have right to speak, but not vote on any issue in the meetings of the Advisory Committee.

### **Q.546. What is the quorum of the meeting of the advisory committee?**

A.546 As per Regulation 5, Fifty percent of the existing strength of the Advisory Committee shall constitute quorum for its meetings.

### **Q.547. Whether a member of the advisory committee shall be entitled to a fee?**

A.547 Yes, as per Regulation 6, a Member of the Committee shall be entitled to a sitting fee of Rs.10,000 for a meeting of the Committee. Also, a Member of the Committee shall be entitled to reimbursement of expenses on his travel and accommodation for attending the meetings of the Committee at par with the entitlement of Secretary to Government of India.

## IBBI (Employees' Service) Regulations, 2017

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**Q.548. Define the term 'Dependent'.**

A.548 As per Regulation 2 (1) (c), dependent" means-

- parents and step parents (a female employee can have either her parents or her parents-in-law as dependent)
- sisters, widowed sister, widowed daughter, minor brother;
- children and step-children (son upto the age of 25 or till his marriage, whichever is earlier, and daughter till she gets married, and handicapped son)
- divorced / abandoned or separated sisters and divorced / abandoned or separated daughters, whose income from all sources doesn't exceed Rs. 10,000/- per month or such other amount, as may be decided by the Board from time to time;

**Q.549. Define the term 'Duty'.**

A.549 As per Regulation 2 (1) (d), duty means-

- service as a probationer;
- period during which an employee is on joining time or training authorized by the Board;
- period spent on causal leave duly authorized by the Board;

**Q.550. Who shall decide the maximum number of employees in each Grade and each position?**

A.550 The Board shall decide from time to time the maximum number of employees in each Grade and each position.

**Q.551. What is the probation period of employees?**

A.551 As per Regulation 6, an employee shall be on probation for two years on initial appointment in the Grade. The Board may, if it

## **FAQs on the Insolvency and Bankruptcy Code, 2016**

considers it necessary, extend the period of probation up to one year for unsatisfactory performance or reduce or dispense with period of probation for reasons to be recorded in writing.

### **Q.552. Whether the Board can discharge any employee on one day's notice?**

A.552 Yes, as per Regulation 6 (4), an employee on initial appointment may be discharged without assigning any reason at one day's notice during the first month of his probation and at one month's notice or on payment of pay of the notice period in lieu thereof thereafter.

### **Q.553. When shall the Service be deemed to be commenced?**

A.553 Under these Regulations, "service" of an employee shall be deemed to commence from the working day on which an employee reports for duty.

### **Q.554. When shall the Service be deemed to be commenced, in case he reports in the afternoon?**

A.554 If an employee reports in the afternoon, his service shall commence from the next following working day.

### **Q.555. When shall an employee be eligible for gratuity?**

A.555 As per Regulation 16, an employee shall be eligible for gratuity on –

- retirement;
- death;
- disablement rendering him unfit for further service;
- resignation after completing five years of continuous service; or
- termination of service in any other way (except by way of punishment) after completion of five years of service.

### **Q.556. Can a leave be admissible to an employee under suspension or against whom disciplinary proceedings are pending?**

A.556 No, as per Regulation 26, leave may not be granted to an employee under suspension or against whom disciplinary proceedings are pending.

**IBBI (Employees' Service) Regulations, 2017**

**Q.557. Can an employee take active participation in politics and standing for election?**

A.557 No, as per regulation 40, no employee shall take active part in politics or in any political demonstration, or stand for election as a member of a municipal council, district board or any other local body or any legislative body.

**Q.558. Who is the appellate authority under these Regulations?**

A.558 "Appellate Authority" means-

- the Board, where the Chairperson is the Competent Authority,
- the Chairperson, where the Whole Time Member is the Competent Authority,
- the Whole Time Member, where Executive Director is the Competent Authority, and
- the Executive Director, where Chief General Manager (Human Resources) is the competent authority.

## **IBBI (Engagement of Research Associates and Consultants) Regulations, 2017**

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**Q.559. What shall be the functions of Research Associates and Consultants?**

A.559 As per regulation 4, the Research Associates and Consultants engaged by the Board shall discharge such functions, as may be assigned to them by the Board.

**Q.560. What shall be the Qualifications of Research Associates and Consultants?**

A.560 As per regulation 5, the eligibility for Research Associates and Consultants for different disciplines shall be as given in Schedule I.

**Q.561. Whether the Board can appoint Research Associates and Consultants from any other discipline not provided in schedule I?**

A.561 As per regulation 5, the Board may also engage Research Associates and Consultants from any other discipline as deemed necessary to assist the Board in the discharge of its functions under the Code.

**Q.562. What shall be the terms and conditions for appointment of Research Associates and Consultants?**

A.562 As per regulation 8, the terms and condition of engagement are:

- A selected candidate shall be engaged as Research Associates or Consultants on contractual basis for not less than six months and not more two years.

### **IBBI (Engagement of Research Associates and Consultants) ...**

- the engagement of a Research Associate or a Consultant may be discontinued by giving one months' notice or one month's salary in lieu of the notice, to the other party.
- a selected candidate at the time of joining the Board shall enter into a contract which details the terms and conditions of engagement, including the confidentiality, with the Executive Director acting on behalf of the Board.
- The terms and conditions of engagement may be modified, in a specific case, where the Board deems it necessary.
- the breach of agreement executed by or on behalf of any Research Associate or Consultant shall be considered a sufficient ground for termination of the engagement made under the contract and may further debar such person from future engagement by the Board.

## **PART V**

### **Chapter 18**

## **Miscellaneous**

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**Q.563. What shall be credited to the Insolvency and Bankruptcy Fund?**

A.563 As per section 224, the following amounts shall be credited to the Fund-

- (a) the grants made by the Central Government for the purposes of the Fund;
- (b) the amount deposited by persons as contribution to the Fund;
- (c) the amount received in the Fund from any other source; and
- (d) the interest or other income received out of the investment made from the Fund.

**Q.564. Can any person contribute to and withdraw from Insolvency and Bankruptcy Fund?**

A.564 Yes, a person can contribute to Insolvency and Bankruptcy Fund voluntarily as per the provisions of Section 224(3) of the Code. If insolvency proceedings are initiated against such person, he can withdraw funds not exceeding the amount contributed by him for making payments to workmen, protecting the assets of such person, meeting the incidental costs during the proceedings etc.

**Q.565. What are the circumstances under which Central Government may supersede the Board?**

A.565 The Central Government may supersede the Board at any time in the following circumstances:-

- a) When the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Code on account of grave emergency.
- b) When the Board has persistently not complied with any direction issued by the Central Government under this Code or in the discharge of the functions and duties imposed on it

## Miscellaneous

by or under the provisions of this Code and as a result of such non-compliance the financial position of the Board or the administration of the Board has deteriorated.

- c) In any other circumstances which render it necessary in the public interest to supersede the Board.

**Q.566. Is there any time period for which the Central Government may supersede the Board?**

A.566 Yes, the Central Government may supersede the Board for a period not exceeding six months.

**Q.567. To whom shall the Board place its Annual Report?**

A.567 As per Section 229 of the Code, the Board shall prepare in each financial year its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the Central Government. Further, a copy of the report shall be laid, as soon as may be after it is received, before each House of Parliament.

**Q.568. What shall be the punishment where no specific penalty or punishment is provided in the Code?**

A.568 As per section 235A, If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

**Q.569. Who shall take cognizance of offences under the Code?**

A.569 The offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

**Q.570. When can the Special Court take cognizance of offence under the Code?**

A.570 Special Court shall take cognizance of an offence punishable under this Act only upon receipt of complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.



## **FAQs on the Insolvency and Bankruptcy Code, 2016**

### **Q.571. What is the provision with regard to Limitation Act 1963 in the Code?**

A.571 As per section 238A, the provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.

### **Q.572. Who has the power to make rules under the Code?**

A.572 The Central government shall have the power to make rules for carrying out the provisions of this Code.

### **Q.573. Who has the power to make regulations under the Code?**

A.573 The Board shall have the power to make regulations to carry out the provisions of this Code and such regulations shall be consistent with this Code and the rules made thereunder.

### **Q.574. What is the application of the Code with regard to Micro, Small and Medium Enterprises?**

A.574 As per section 240A, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises.

However, the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—

- (a) not apply to micro, small and medium enterprises; or
- (b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification

### **Q.575. If Voluntary liquidation of Corporates is regulated by the Insolvency and Bankruptcy Code, what is the status of the provisions of the Companies Act 2013 in relation to this aspect?**

A.575 The aspects relating to Revival and Rehabilitation of Sick Companies as well as voluntary winding up have been omitted from the Companies Act and will only be governed by the provisions of the Code.

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**Q.576. As the Sick Industrial Companies (Special Provisions) Act 1985 has been repealed, what will be the effect of enforcement of Code on proceedings pending under Sick Industrial Companies (Special Provisions) Repeal Act, 2003?**

A.576 As per Section 252 of the Code read with Section 4(b) of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 as made effective on 01.12.2016, any reference pending before Board for Industrial and Financial Reconstruction(BIFR) or appeal made before Appellate Authority stands abated on 01.12.2016.

The Company in respect of which such appeal or reference etc., stands abated may make reference to National Company Law Tribunal (NCLT) under Insolvency and Bankruptcy Code, 2016 within 180 days from commencement of Code.

## **IBBI (Mechanism for Issuing Regulations) Regulations, 2018**

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**Q.577. For the purposes of making Regulation, what shall the Board upload on its website for seeking public comments?**

A.577 As per regulation 4 (1), for the purpose of making regulations, the Board shall upload the following, with the approval of the Governing Board, on its website seeking comments from the public

- draft of proposed regulations;
- the specific provision of the Code under which the Board proposes regulations;
- a statement of the problem that the proposed regulation seeks to address;
- an economic analysis of the proposed regulations under regulation 5;
- a statement carrying norms advocated by international standard setting agencies and the international best practices, if any, relevant to the proposed regulation;
- the manner of implementation of the proposed regulations; and
- the manner, process and timelines for receiving comments from the public.

**Q.578. How many days the Board shall allow for submission of public comments?**

A.578 As per regulation 4 (2), The Board shall allow at least twenty one days for public to submit their comments.

**Q.579. Under what circumstances, the Board is required to repeat the process of seeking comments?**

## **IBBI (Mechanism for Issuing Regulations) Regulations, 2018**

A.579 As per regulation 4 (4), in case the Governing Board decides to approve regulations in a form substantially different from the proposed regulations, it shall repeat the process under this regulation.

### **Q.580. Explain economic analysis of the proposed Regulations?**

A.580 As per Regulation 5, the Board shall cause an economic analysis of the proposed regulations to be made. The economic analysis shall cover the following-

- Expected costs to be incurred by, and the benefits that will accrue to, the society, economy, stakeholders and the Board, both directly and indirectly on account of the proposed regulation; and
- How the proposed regulations further strengthen the objectives of the Code.

### **Q.581. What shall be the frequency of review of the Regulation by the Board?**

A.581 As per Regulation 7, the Board shall review each regulation every three years unless a review is warranted earlier and amend or repeal any regulation.

### **Q.582. Explain the process of Review of Regulations.**

A.582 As per Regulation 7, the Board shall review each regulation every three years unless a review is warranted earlier and amend or repeal any regulation, keeping in view

- its objectives;
- its outcome;
- experience of its implementation;
- experience of its enforcement and the related litigation;
- global best practices, if any;
- its relevance in the changed environment; and
- any other factor considered relevant by the Board.

## **FAQs on the Insolvency and Bankruptcy Code, 2016**

### **Q.583. Under what circumstances, the Board can issue urgent Regulation?**

A.583 As per Regulation 8, where the Board is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently, it may make regulations or amend the existing regulations, as the case may be, with the approval of Governing Board.

### **Q.584. Whether the Guidance on law provided by the Board be construed as determination of any question of fact or law?**

A.584 No, the Board may provide for a scheme for general or specific clarification or guidance on the provisions of regulations made by it either on a request by a person or on its own, subject to the condition that such clarification or guidance shall not be construed as determination of any question of fact or law.

Annexure

**List of Sections of the Insolvency  
and Bankruptcy Code, 2016 not yet  
notified till 15<sup>th</sup> June 2019**

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Sl. No.	Section No.	Particulars
1.	Section 78	Application.
2.	Section 79	Definitions.
3.	Section 80	Eligibility for making an application.
4.	Section 81	Application for fresh start order.
5.	Section 82	Appointment of resolution professional.
6.	Section 83	Examination of application by resolution professional.
7.	Section 84	Admission or rejection of application by Adjudicating Authority.
8.	Section 85	Effect of admission of application.
9.	Section 86	Objections by creditor and their examination by resolution professional.
10.	Section 87	Application against decision of resolution professional.
11.	Section 88	General duties of debtor.
12.	Section 89	Replacement of resolution professional.
13.	Section 90	Directions for compliances of restrictions, etc.
14.	Section 91	Revocation of order admitting application..
15.	Section 92	Discharge order.
16.	Section 93	Standard of conduct.
17.	Section 94	Application by debtor to initiate insolvency resolution process.
18.	Section 95	Application by creditor to initiate insolvency resolution process.

### FAQs on the Insolvency and Bankruptcy Code, 2016

19.	Section 96	Interim-moratorium.
20.	Section 97	Appointment of resolution professional.
21.	Section 98	Replacement of resolution professional.
22.	Section 99	Submission of report by resolution professional.
23.	Section 100	Admission or rejection of application.
24.	Section 101	Moratorium.
25.	Section 102	Public notice and claims from creditors.
26.	Section 103	Registering of claims by creditors.
27.	Section 104	Preparation of list of creditors.
28.	Section 105	Repayment plan.
29.	Section 106	Report of resolution professional on repayment plan.
30.	Section 107	Summoning of meeting of creditors.
31.	Section 108	Conduct of meeting of creditors.
32.	Section 109	Voting rights in meeting of creditors.
33.	Section 110	Rights of secured creditors in relation to repayment plan.
34.	Section 111	Approval of repayment plan by creditors.
35.	Section 112	Report of meeting of creditors on repayment plan.
36.	Section 113	Notice of decisions taken at meeting of creditors.
37.	Section 114	Order of Adjudicating Authority on repayment plan.
38.	Section 115	Effect of order of Adjudicating Authority on repayment plan.
39.	Section 116	Implementation and supervision of repayment plan.
40.	Section 117	Completion of repayment plan.
41.	Section 118	Repayment plan coming to end prematurely.
42.	Section 119	Discharge order.
43.	Section 120	Standard of conduct.
44.	Section 121	Application for bankruptcy.
45.	Section 122	Application by debtor.
46.	Section 123	Application by creditor.
47.	Section 124	Effect of application.

**Annexure : List of Sections of the Insolvency and Bankruptcy Code ...**

48.	Section 125	Appointment of insolvency professional as bankruptcy trustee.
49.	Section 126	Bankruptcy order.
50.	Section 127	Validity of bankruptcy order.
51.	Section 128	Effect of bankruptcy order.
52.	Section 129	Statement of financial position.
53.	Section 130	Public notice inviting claims from creditors.
54.	Section 131	Registration of claims.
55.	Section 132	Preparation of list of creditors.
56.	Section 133	Summoning of meeting of creditors.
57.	Section 134	Conduct of meeting of creditors.
58.	Section 135	Voting rights of creditors.
59.	Section 136	Administration and distribution of estate of bankrupt.
60.	Section 137	Completion of administration.
61.	Section 138	Discharge order.
62.	Section 139	Effect of discharge.
63.	Section 140	Disqualification of bankrupt.
64.	Section 141	Restrictions on bankrupt.
65.	Section 142	Modification or recall of bankruptcy order.
66.	Section 143	Standard of conduct.
67.	Section 144	Fees of bankruptcy trustee.
68.	Section 145	Replacement of bankruptcy trustee.
69.	Section 146	Resignation by bankruptcy trustee.
70.	Section 147	Vacancy in office of bankruptcy trustee.
71.	Section 148	Release of bankruptcy trustee.
72.	Section 149	Functions of bankruptcy trustee.
73.	Section 150	Duties of bankrupt towards bankruptcy trustee.
74.	Section 151	Rights of bankruptcy trustee.
75.	Section 152	General powers of bankruptcy trustee.
76.	Section 153	Approval of creditors for certain acts.
77.	Section 154	Vesting of estate of bankrupt in bankruptcy trustee.



### FAQs on the Insolvency and Bankruptcy Code, 2016

78.	Section 155	Estate of bankrupt.
79.	Section 156	Delivery of property and documents to bankruptcy trustee.
80.	Section 157	Acquisition of control by bankruptcy trustee.
81.	Section 158	Restrictions on disposition of property.
82.	Section 159	After-acquired property of bankrupt.
83.	Section 160	Onerous property of bankrupt.
84.	Section 161	Notice to disclaim onerous property.
85.	Section 162	Disclaimer of leaseholds.
86.	Section 163	Challenge against disclaimed property.
87.	Section 164	Undervalued transactions.
88.	Section 165	Preference transactions.
89.	Section 166	Effect of order.
90.	Section 167	Extortionate credit transactions.
91.	Section 168	Obligations under contracts.
92.	Section 169	Continuance of proceedings on death of bankrupt.
93.	Section 170	Administration of estate of deceased bankrupt.
94.	Section 171	Proof of debt.
95.	Section 172	Proof of debt by secured creditors.
96.	Section 173	Mutual credit and set-off.
97.	Section 174	Distribution of interim dividend.
98.	Section 175	Distribution of property.
99.	Section 176	Final dividend.
100.	Section 177	Claims of creditors.
101.	Section 178	Priority of payment of debts.
102.	Section 179	Adjudicating Authority for individuals and partnership firms.
103.	Section 180	Civil court not to have jurisdiction.
104.	Section 181	Appeal to Debt Recovery Appellate Tribunal.
105.	Section 182	Appeal to Supreme Court.
106.	Section 183	Expeditious disposal of applications.

**Annexure : List of Sections of the Insolvency and Bankruptcy Code ...**

107.	Section 184	Punishment for false information, etc., by creditor in insolvency resolution process.
108.	Section 185	Punishment for contravention of provisions.
109.	Section 186	Punishment for false information, concealment, etc., by bankrupt.
110.	Section 187	Punishment for certain actions.
111.	Section 195	Power to designate financial sector regulator.
112.	Section 208 {Clauses (a), (b) and (d) of sub-section 1}	Functions and obligations of insolvency professionals.
113.	Section 216 {sub-section 2}	Rights and obligations of persons submitting financial information.
114.	Section 224	Insolvency and Bankruptcy Fund.
115.	Section 239{ (2)(g) to (zc), (zi) to (zk) and (zn)}	Power to make rules
116.	Section 240 {(2)(zn) to (zs)}	Power to make regulations
117.	Section 243	Repeal of certain enactments and savings.
118.	Section 245	Amendments of Act 9 of 1932.
119.	Section 249	Amendments of Act 51 of 1993.