

**Handbook on
Personal Guarantors to Corporate Debtors
under
The Insolvency and Bankruptcy Code, 2016**



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

**Handbook
on
Personal Guarantors to Corporate Debtors
under
The Insolvency and Bankruptcy Code, 2016**



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

© The Institute of Chartered Accountants of India

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means electronic, mechanical, photocopying, recording or otherwise without prior permission in writing from the publisher.

DISCLAIMER:

The views expressed in this book are of the author(s). The Institute of Chartered Accountants of India may not necessarily subscribe to the views expressed by the author(s).

The information cited in this book has been drawn from various sources. While every effort has been made to keep the information cited in this book error free, the Institute or any office of the same does not take the responsibility for any typographical or clerical error which may have crept in while compiling the information provided in this book.

Published In	:	June 2021
Committee/Department	:	Committee on Insolvency & Bankruptcy Code
E-mail	:	cibc@icai.in
Website	:	www.icai.org
Price	:	₹ 180/-
ISBN No	:	978-81-8441-
Published by	:	The Publication Directorate on behalf of The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110002.

Foreword

The Insolvency and Bankruptcy Code, 2016 was implemented with the provisions relating to insolvency and liquidation of corporate persons coming into force in December 2016. Implementation of individual insolvency and bankruptcy was intended to be notified in a phased manner and accordingly, Part III of the Code (i.e., Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms) for personal guarantors to corporate debtors have been notified by the Central Government and the provisions came into effect from 1st December 2019.

Given its intertwining nature, it becomes crucial that insolvency of the Corporate Debtor as well as its guarantors are studied together wherever required for fulfilment of insolvency resolution process and liquidation process since it is quite common of giving personal guarantees for loans taken by corporate debtor. Thereby, the insolvency proceedings of the corporate debtor and personal guarantors are interlinked.

I commend the Committee on Insolvency & Bankruptcy Code of ICAI for taking the initiative of bringing out the publication - **Handbook on Personal Guarantors to Corporate Debtors under the Insolvency and Bankruptcy Code, 2016** to help the professionals in getting clarity on the applicability of the provisions relating to Personal Guarantors under the Code.

I congratulate the entire Committee and particularly appreciate the efforts put in by CA. Durgesh Kumar Kabra, Chairman, Committee on Insolvency & Bankruptcy Code and CA. Prakash Sharma, Vice- Chairman, Committee on Insolvency & Bankruptcy Code in bringing out this important publication at this juncture.

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

CA. Nihar N. Jambusaria
President ICAI

Date: 27th June, 2021

Place: New Delhi

Preface

Since the enactment of The Insolvency and Bankruptcy Code, 2016 over the last four years we all are aware how the Code is evolving continuously and developments are taking place regularly for effective implementation of the legislation.

As provided in Section 128 of Indian Contract Act, 1872, liability of a guarantor is co-extensive with that of the principal borrower. It implies that if the principal borrower defaults in repayment of debt to a creditor, the creditor may choose to go after the guarantor for payment of debt. It accordingly has been a natural corollary that the insolvency regime for personal guarantors to corporate debtors were made available from 1st December, 2019. After the commencement notification of provisions under Part III of the Code for Personal Guarantors to Corporate Debtors, the Rules pertaining to insolvency and Rules pertaining to bankruptcy for Personal Guarantors to Corporate Debtors have been notified by Ministry of Corporate Affairs and the Regulations for Personal Guarantors to Corporate Debtors have also been notified by Insolvency and Bankruptcy Board of India.

Looking at the significance of this subject, the Committee on Insolvency & Bankruptcy Code of ICAI as part of its initiative in bringing pertinent publications in the insolvency resolution area has brought out this publication – **Handbook on Personal Guarantors to Corporate Debtors under the Insolvency and Bankruptcy Code, 2016**, so as to enable understanding the application and intricacies of the provisions related to personal guarantors under the Code.

We take this opportunity in thanking the President of ICAI, CA. Nihar N. Jambusaria and Vice President of ICAI, CA. (Dr.) Debashis Mitra for their encouragement and support in bringing out the publication.

We would like to thank all the Committee Members for their guidance in bringing out this publication.

We would like to sincerely appreciate and thank the Group of Insolvency Professionals- CA. Pradeep Kumar Kabra, CA. Dinesh Mundada, CA. Hajari Lal Saini and CA. Pawan Kumar Jagetia who prepared the Draft of the publication under the Convenorship and guidance of CA. Jay Chhaira, Central Council Member, ICAI.

We appreciate the efforts put in by Shri Rakesh Sehgal, Director, Directorate of Corporate and Economic Laws, ICAI, Ms. S. Rita, Secretary, Committee on Insolvency & Bankruptcy Code, ICAI and the Committee Secretariat comprising of CA. Himanshu Gulati and CA. Abhishek Tarun for providing their technical and administrative support in bringing out this publication.

We are sure that the members of the profession, industries and other stakeholders will find the publication very useful.

CA. Durgesh Kumar Kabra
Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

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

Date: 23rd June, 2021

Contents

Chapter 1	Introduction.....	1
Chapter 2	Highlights related to Insolvency and Bankruptcy Process for Personal Guarantors to Corporate Debtors under Insolvency and Bankruptcy Code, 2016 (IBC)	4
Chapter 3	Provisions with respect to Insolvency Resolution Process for Personal Guarantors to Corporate Debtors under IBC....	11
Chapter 4	Provisions with respect to eligibility of RP for appointment and role of RP in Insolvency Resolution Process for Personal Guarantors to Corporate Debtors under IBC	28
Chapter 5	Provisions with respect to Bankruptcy Process for Personal Guarantors to Corporate Debtors under IBC	30
Chapter 6	Provisions with respect to eligibility of Bankruptcy Trustee for appointment, remuneration and role of Bankruptcy Trustee in Bankruptcy Process for Personal Guarantors to Corporate Debtors under IBC	41
Chapter 7	Provisions with respect to submission of various reports by Bankruptcy Trustee during Bankruptcy Process for Personal Guarantors to Corporate Debtors	50
Chapter 8	Provisions with respect to proceeds of Bankruptcy Process and distribution of proceeds	55
Chapter 9	Offences and Penalties – For misconduct during Insolvency and Bankruptcy Process for Personal Guarantors to Corporate Debtors under IBC	71
Chapter 10	Practical aspects related to the Insolvency and Bankruptcy Process for Personal Guarantors to Corporate Debtors under IBC	73
Chapter 11	Frequently Asked Questions on Insolvency and Bankruptcy Process for Personal Guarantors to Corporate Debtors under IBC	77

Chapter 12	Case laws under Insolvency and Bankruptcy Code, 2016 on Insolvency and Bankruptcy Process for Personal Guarantors to Corporate Debtors	85
Annexure	Forms under IBC, 2016 related to the Insolvency and Bankruptcy Process for Personal Guarantors to Corporate Debtors	94
References	129

Chapter 1

Introduction

The Insolvency and Bankruptcy Code, 2016 (hereinafter called as Code) was passed by both the Houses of Parliament in May 2016 and the same has been notified on 28th May, 2016. The Part II of the Code relating to Insolvency Resolution and Liquidation for Corporate Persons came into effect in December 2016. The Part III of the Code (i.e., Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms) for personal guarantors to corporate debtors have been notified by the Central Government and the provisions came into effect from 1st December 2019 as a first step in phase-wise implementation of the said part of the Code.

Outline of Part III of the Code

Prior to enactment of the Code, the two key legislations which addressed the insolvency and bankruptcy of individuals and partnership firms were the Provincial Insolvency Act, 1920 (“Provincial Act”) and the Presidency-Towns Insolvency Act, 1909 (“Presidency Act”). The Code was passed with the aim of replacing these legislations and providing a consolidated statute for insolvency of such persons, by enabling collective and timely resolution and maximising value to creditors. The process provided in the Code is significantly different from the framework provided in the Provincial and Presidency Acts. While the Presidency Act applies to Chennai, Kolkata and Mumbai, the Provincial Act applies to the rest of India.

The Insolvency and Bankruptcy Board of India (IBBI), vide an order dated 13th June, 2017, constituted a Former Working Group (FWG) to recommend the strategy and approach for implementation of provisions relating to insolvency and bankruptcy of individuals and partnership firms, under Part III of the Insolvency and Bankruptcy Code, 2016.

It was decided that phase-wise implementation be undertaken for Part III of the Code, and that insolvency resolution for personal guarantors to corporate debtors be implemented to begin with.

Further, by an order dated 4th May, 2018, the IBBI formed a Reconstituted Working Group (RWG) , under the chairmanship of Mr. P.K. Malhotra, to recommend the strategy and approach for implementation of the provisions

of the Code dealing with insolvency and bankruptcy in respect of (i) personal guarantors to corporate debtors; (ii) partnership firms and proprietorship firms; and (iii) other individuals.

The RWG was of the considered view that in the design and implementation of an insolvency regime for the three classes of individuals, it is most likely the case that one size does not fit all. Therefore, it has been decided to propose a separate set of rules and regulations, and make other suitable recommendations, for the strategy and approach for implementation of the provisions of the Code dealing with insolvency and bankruptcy in respect of each of the three classes of individuals to which the Code applies.

At the time of enactment of the Code, Part III of the Code was envisaged to apply to partnership firms and individuals. However, an amendment was made to Section 2 of the Code to distinguish applicability of Part III into three categories of Individuals: (i) personal guarantors to corporate debtors; (ii) partnership firms and proprietorship firms (“individuals with business”); and (iii) other individuals (“individuals without business”). The Working Group discussed that this amendment indicates that these three categories of individuals have distinct peculiarities, characteristics and dynamics. It was noted that though involvement of individuals is a common factor in these categories, they may require slightly distinct treatment and processes in insolvency.

The RWG noted that there are many common factors and linkages between the corporate debtor and personal guarantors to such corporate debtors under the Code. A ‘personal guarantor’ is defined in section 5(22) of the Code and “*means an individual who is the surety in a contract of guarantee to a corporate debtor.*” A contract of guarantee is defined under section 126 of the Indian Contract Act, 1872 as “*a contract to perform the promise, or discharge the liability, of a third person in case of his default.*” The person who gives the guarantee is called the ‘surety’, the person in respect of whose default the guarantee is given is called the ‘principal debtor’, and the person to whom the guarantee is given is called the ‘creditor’. Simply speaking, therefore, a personal guarantee is a promise, given by an individual to ensure that a third party fulfils its obligations and, if the third party fails to do so, then such individual will be liable to fulfil those obligations.

The Working Group noted that giving personal guarantees for loans taken by corporations is a prevalent practice in India. A personal guarantee is a

contract whereby an individual becomes the surety for a loan taken by a company or a limited liability partnership.

As per Section 128 of Indian Contract Act, 1872, liability of a personal guarantor is co-extensive with that of principal debtor (here, corporate debtor), unless the contract provides otherwise. This means that if the principal debtor defaults in repayment of debt to the creditor, the creditor may choose to go after the personal guarantor for repayment of her debt. Thus, insolvency proceedings of a corporate debtor and its personal guarantor will be closely linked to each other.

All the relevant provisions and sections were notified by the Government related to personal guarantors to corporate debtors with effect from 1st December, 2019.

Chapter 2

Highlights related to Insolvency and Bankruptcy Process for Personal Guarantors to Corporate Debtors under Insolvency and Bankruptcy Code, 2016 (IBC)

The Central Government has notified, that Part III of the Insolvency and Bankruptcy Code, 2016 ("Code"), which is applicable to the personal guarantors of a corporate debtor. The Code divides individuals falling under the Code into 3 categories, namely, **personal guarantors to the corporate debtor, partnership/ proprietor firms and other individuals**. Central Government in its notification dated 15th November, 2019, has notified the provisions related to personal guarantors to the corporate debtor in the Code. Central Government also notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019. The Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 and The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 have also been notified by IBBI.

The said provisions, rules and regulations came into effect from 1st December, 2019. These Rules provide for the process and forms for making application(s) for initiating insolvency resolution and bankruptcy proceedings against personal guarantors to corporate debtors, withdrawal of such applications, forms for public notice for inviting claims from the creditors, etc.

The gist of the process specified under the IBC Code/ Rules is as follows:

- Application for initiating the Insolvency Resolution Process in respect of personal guarantors is to be made either under section 94 (1) of the

Highlights related to Insolvency and Bankruptcy Process for PG to CD under IBC

Code by the Debtor himself along with Form A attached to the application or the Creditor(s) can initiate the CIRP by filing an application under section 95 (2) along with Form C attached. The Application by creditors can be made after 14 days of receipt of demand notice (Form B) by the Guarantor, if the Guarantor fails to make such payments.

- If the application is made by a resolution professional ("RP"), the Adjudicating Authority has to direct the Insolvency and Bankruptcy Board of India ("IBBI") to confirm within 7 days that no disciplinary proceedings are pending against the RP. Accordingly, the application is moved forward.
- The application copy has to be provided to the RP within 3 days of his appointment. One copy has to be submitted to the IBBI by the applicant.
- The Insolvency Resolution Process for Guarantors, in terms of Section 96 provides for an "interim moratorium" in relation to any debts of the Guarantor as soon as the application for insolvency under Section 94 or Section 95 is filed before the Adjudicating Authority, in addition to a moratorium under Section 101 which comes into effect only upon admission. This is a distinction from the CIRP regulations which imposes a single moratorium period in relation to the assets of a Corporate Debtor and only once the National Company Law Tribunal ("NCLT") passes an order imposing such moratorium on the admission of an application filed before it.
- In the cases of personal guarantors, regardless of whether the application against a guarantor is admitted by the Adjudicating Authority or not, an interim moratorium shall immediately apply preventing the enforcement of any debts of the guarantor and staying any ongoing legal proceedings in relation thereto.
- Unlike issue of public notice by Interim Resolution Professional under CIRP, the Adjudicating Authority itself issues the notice, under Section 102 of the Code, within seven days of passing the order under Section 100.
- Tantamount to a Resolution Plan, the Code requires that the Guarantor in consultation with the RP, shall prepare a Repayment Plan ("Plan") which shall, *inter alia*, provide for a restructuring

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

mechanism for the debts owed by the Guarantor, justification for preparation of such Plan and reasons on the basis of which the creditors may agree upon the Plan.

- The Repayment Plan has to be submitted by the RP, as approved by the creditors, within 120 days from the resolution process commencement date.
- Upon the finalization of the Repayment Plan, the RP shall, within 21 days from the last date of submission of claims under Section 102, submit the Plan to the NCLT along with a report requesting whether or not a meeting of the creditors is required. In the event that a meeting is required, the meeting of the creditors shall take place within a period of 28 days from the date of the recommendation by the RP.
- The RP is responsible for supervising the execution of the Plan, and upon successful implementation, notice of the same must be sent to the Adjudicating Authority. In the event the guarantor fails to implement the plan, the RP shall issue a notice to the guarantor asking the guarantor to remedy the same, in the event such remedy is not accomplished, and the RP may approach the Adjudicating Authority for directions.
- The RP shall apply to the NCLT for a discharge order in relation to the debts mentioned in Repayment Plan, on the basis of the Repayment Plan.
- Further, in the event of failure of the successful implementation of the plan the creditors so affected have the right to initiate bankruptcy proceedings against the guarantor in a similar manner as liquidation proceedings are initiated against a corporate debtor in the event that a resolution plan fails. Apart from a Creditor, the Debtor is also entitled to apply to the NCLT for initiating Bankruptcy process.
- The application can be withdrawn upon receipt of the permission of withdrawal from the Adjudicating Authority. The Adjudicating Authority may grant the permission for withdrawal before the application is admitted, on a request made by the applicant. Withdrawal may be allowed after the admission of the application if 90% of the creditors agree to such withdrawal.

The Insolvency and Bankruptcy of personal guarantors in the Code can be seen as a welcoming change as it will affect the strength of the creditors'

Highlights related to Insolvency and Bankruptcy Process for PG to CD under IBC

efforts in resolution and the creditors can achieve an effective resolution for debt that is owed by a corporate debtor as well as its personal guarantors thereby avoiding legal proceedings in multiple tribunals. It also helps the personal guarantors to settle with the Creditor(s) through legal process and get discharged from the Creditors with respect to their liabilities under Guarantee(s).

CHAPTER I of PART III of IBC deals with important definitions related to

Section 79(2) “associate” of the debtor means –

- (a) a person who belongs to the immediate family of the debtor; 66
- (b) a person who is a relative of the debtor or a relative of the spouse of the debtor;
- (c) a person who is in partnership with the debtor;
- (d) a person who is a spouse or a relative of any person with whom the debtor is in partnership;
- (e) a person who is employer of the debtor or employee of the debtor;
- (f) a person who is a trustee of a trust in which the beneficiaries of the trust include a debtor, or the terms of the trust confer a power on the trustee which may be exercised for the benefit of the debtor; and
- (g) a company, where the debtor or the debtor along with his associates, own more than fifty per cent. of the share capital of the company or control the appointment of the board of directors of the company.

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

- (i) they are members of a Hindu Undivided Family;
- (ii) one person is related to the other in such manner as may be prescribed;

Section 79(3) “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

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

(c) any person adjudged as an undischarged insolvent;

Section 79(4) “bankruptcy” means the state of being bankrupt;

Section 79 (5) “bankruptcy debt”, in relation to a bankrupt, means –

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

(b) any debt for which he may become liable after bankruptcy commencement date but before his discharge by reason of any transaction entered into before the bankruptcy commencement date; and

(c) any interest which is a part of the debt under section 171;

Section 79 (6) “bankruptcy commencement date” means the date on which a bankruptcy order is passed by the Adjudicating Authority under section 126;

Section 79 (7) “bankruptcy order” means an order passed by an Adjudicating Authority under section 126;

Section 79 (8) “bankruptcy process” means a process against a debtor under Chapters IV and V of this part;

Section 79 (9) “bankruptcy trustee” means the insolvency professional appointed as a trustee for the estate of the bankrupt under section 125;

Section 79 (11) “committee of creditors” means a committee constituted under section 134;

Section 79 (12) “debtor” includes a judgment-debtor;

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;

Section 79 (14) “excluded assets” for the purposes of this part includes –

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

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

Highlights related to Insolvency and Bankruptcy Process for PG to CD under IBC

- (c) any unencumbered personal ornaments of such value, as may be prescribed, of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;
- (d) any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family; and
- (e) an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed;

Section 79 (15) “excluded debt” means –

- (a) liability to pay fine imposed by a court or tribunal;
- (b) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;
- (c) liability to pay maintenance to any person under any law for the time being in force;
- (d) liability in relation to a student loan;
- (e) any other debt as may be prescribed;

Section 79 (16) “firm” means a body of individuals carrying on business in partnership whether or not registered under section 59 of the Partnership Act, 1932 (9 of 1932);

Section 79 (17) “immediate family” of the debtor means his spouse, dependent children and dependent parents;

Section 79(18) “partnership debt” means a debt for which all the partners in a firm are jointly liable;

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

- (a) an excluded debt;
- (b) a debt to the extent it is secured; and
- (c) any debt which has been incurred three months prior to the date of the application for fresh start process;

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

Section 79 (20) “repayment plan” means a plan prepared by the debtor in consultation with the resolution professional under section 105 containing a proposal to the committee of creditors for restructuring of his debts or affairs;

Section 79 (21) “resolution professional” means an insolvency professional appointed under this part as a resolution professional for conducting the fresh start process or insolvency resolution process;

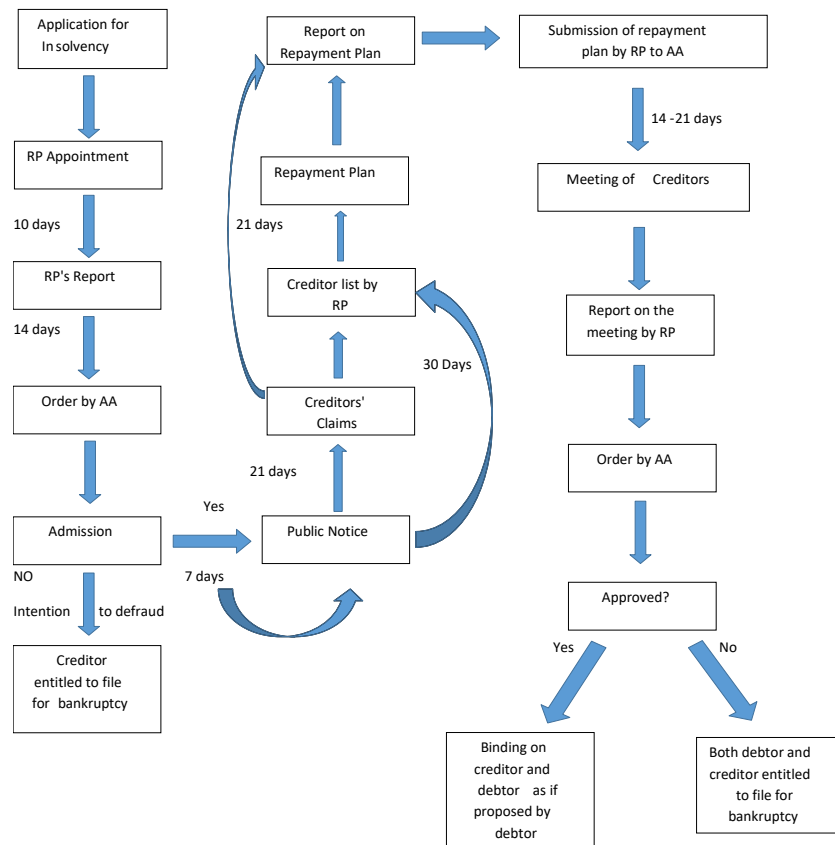
Section 79 (22) “undischarged bankrupt” means a bankrupt who has not received a discharge order under section 138.

Chapter 3

Provisions with respect to Insolvency Resolution Process for Personal Guarantors to Corporate Debtors under IBC

Chapter III of PART III of the Code covering Section 94-120, deals with the insolvency resolution process for Individuals and Partnership firms, currently applicable to personal guarantor to corporate debtor.

The Resolution Process



Initiation of the Insolvency Resolution Process:

The Insolvency Resolution Process for individuals and partnership firms, can be initiated by a creditor or debtor himself.

Table showing summary of application by Debtor/ Creditor.

Debtor (S.94)	Creditor (S.95)
<ul style="list-style-type: none"> ➤ In Form A ➤ Committed default (qualifying debt) ➤ Personally, or through a Resolution Professional 	<ul style="list-style-type: none"> ➤ Demand notice in Form B ➤ Application in Form C ➤ Guarantee is invoked ➤ Individually or jointly with other creditors ➤ Directly or through a Resolution Professional ➤ Only if debtors fail to pay within 14 days of service of demand notice (in Form B).

Form A, B and C has been prescribed as per The IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. Formats of same has been depicted in Annexure.

Application by debtor (Section 94):

A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application in such form and manner and accompanied with such fee as may be prescribed. An application shall be submitted only in respect of debts which are not excluded debts. A debtor shall not be entitled to make an application if he is

- a) Undischarged bankrupt;
- b) Undergoing a fresh start process;
- c) Undergoing an insolvency resolution process; or
- d) Undergoing a bankruptcy process. Or
- e) If an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.

Application by creditor (Section 95):

A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application in such form and manner and accompanied by such fee as may be prescribed.

A creditor may apply in relation to any partnership debt owed to him for initiating an insolvency resolution process against-

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

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

An application shall be accompanied with 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 demand; and
- c) Relevant evidence of such default or non-repayment of debt.

Interim- moratorium (Section 96)

When an application is filed under section 94 or section 95 –

- a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and
- b) during the interim-moratorium period -
 - any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and

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

Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application. The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

Appointment of resolution professional (Section 97)

If the application under section 94 or 95 is filed through a resolution professional, the Adjudicating Authority shall direct the Board within seven days of the date of the application to confirm that there are no disciplinary proceedings pending against resolution professional.

The Board shall within seven days of receipt of directions communicate to the Adjudicating Authority in writing either confirming the appointment of the resolution professional; or rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.

If the application is filed not through the resolution professional, the Adjudicating Authority shall direct the Board, within seven days of the filing of such application, to nominate a resolution professional for the insolvency resolution process. The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority. The Adjudicating Authority shall by order appoint the resolution professional recommended or nominated by the Board.

Replacement of resolution professional (Section 98)

Where the debtor or the creditor is of the opinion that the resolution professional appointed under section 97 is required to be replaced, he may apply to the Adjudicating Authority for the replacement of such resolution professional.

The Adjudicating Authority shall, within seven days of the receipt of the application make a reference to the Board for replacement of the resolution professional. The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority, recommend the name of the resolution professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

Provisions w.r.to Insolvency Resolution Process for PG to CD under IBC

The creditors may apply to the Adjudicating Authority for replacement of the resolution professional where it has been decided in the meeting of the creditors, to replace the resolution professional with a new resolution professional for implementation of the repayment plan. On the basis of the communication of the Board, the Adjudicating Authority shall pass an order appointing a new resolution professional.

The Adjudicating Authority may give directions to the resolution professional replaced to share all information with the new resolution professional in respect of the insolvency resolution process and to co-operate with the new resolution professional in such matters as may be required.

Submission of report by resolution professional (Section 99)

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

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

- a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;
- b) evidence of encashment of a cheque issued by the debtor; or
- c) A signed acknowledgment by the creditor accepting receipt of dues.

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. For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information. The information or explanation to be furnished, within seven days of receipt of the request.

The RP will examine the application whether it satisfies the requirements set out in section 94 or 95; the applicant has provided information and given explanation sought by the resolution professional. The resolution professional shall record the reasons for recommending the acceptance or

rejection of the application. The resolution professional shall give a copy of the report to the debtor or the creditor, as the case may be.

Where the Resolution Professional finds that the debtor is eligible for a Fresh Start, he shall submit a Report recommending that the application by the Debtor be treated as an application under Section 81 by the Adjudicating Authority.

Admission or rejection of application (Section 100)

The Adjudicating Authority shall, within fourteen days from the date of submission of the report under section 99 pass an order either admitting or rejecting the application referred to in section 94 or 95. Where the Adjudicating Authority admits an application, it may, on the request of the resolution professional, issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan.

The Adjudicating Authority shall provide a copy of the order, along with the report of the resolution professional and the application referred to in section 94 or 95, to the creditors within seven days from the date of the said order.

If the application, is rejected by the Adjudicating Authority on the basis of report submitted by the resolution professional or that the application was made with the intention to defraud his creditors or the resolution professional, the order shall record that the creditor is entitled to file for a bankruptcy order under Chapter IV.

Withdrawal of Application

As per Rule 11 of The IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, Withdrawal of application may be permitted:

- a) before its admission, on a request made by the applicant;
- b) after its admission, on the request made by the applicant, if ninety percent of the creditors agree to such withdrawal. Application under this rule shall be in Form D.

Moratorium (Section 101)

When the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the

Provisions w.r.to Insolvency Resolution Process for PG to CD under IBC

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.

During the moratorium period-

- a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
- b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
- c) the debtor shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficial interest therein;

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

Public notice and claims from creditors (Section 102)

The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty- one days of such issue.

The notice shall include–

- a) details of the order admitting the application;
- b) particulars of the resolution professional with whom the claims are to be registered; and
- c) the last date for submission of claims.

The notice shall be -

- a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;
- b) affixed in the premises of the Adjudicating Authority; and
- c) placed on the website of the Adjudicating Authority.

Registering of claims by creditors (Section 103)

The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier,

speed post or registered letter. Along with claim, the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed. Regulation 7 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, prescribes as follows:

- 1) A creditor shall submit its claim along with proof to the resolution professional in Form B, on or before the last date mentioned in the public notice issued of section 102.
- 2) The creditor shall bear the costs relating to submission of the claim, including proof, under these regulations.

Preparation of list of creditors (Section 104)

The resolution professional shall prepare a list of creditors on the basis of -

- a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;
- b) claims received by the resolution professional under section 102.

The resolution professional shall prepare the list within thirty days from the date of the notice.

The list shall contain the names of creditors, amount claimed, amount admitted and security interest, if any, in respect of such claims. The resolution professional shall make the list of creditors available for inspection by persons submitting claims, serve a copy of the list to the guarantor, make available the list on the website, present the list in the meeting and file a certified copy of the list with the Adjudicating Authority along with the repayment plan. (as per regulations).

Repayment plan (Section 105)

The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs.

The repayment plan may authorize or require the resolution professional to

- a) carry on the debtor's business or trade on his behalf or in his name; or
- b) realise the assets of the debtor; or
- c) Administer or dispose of any funds of the debtor.

Provisions w.r.to Insolvency Resolution Process for PG to CD under IBC

The repayment plan shall include the following, namely: -

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

Regulation 17 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, provides the **Contents of repayment plan** as follows:

- 1) The repayment plan shall provide the following -
 - (a) the term of the repayment plan and its implementation schedule, including the amounts to be repaid and dates of repayment to creditors;
 - (b) the source of funds that will be used to pay resolution process costs and that such payment shall be made in priority over any creditor;
 - (c) a minimum budget for the duration of the repayment plan, to cover the reasonable expenses of the guarantor and members of his immediate family to the extent they are dependent on him, provided that at least ten percent of the realisable income of the guarantor shall be utilised for repayment of debts;
 - (d) financing required for implementation of the repayment plan;
 - (e) if the guarantor has any business, the manner in which it is proposed to be conducted during the course of the repayment plan, and the role of the resolution professional;
 - (f) the manner in which funds held for the purposes of the repayment plan, invested or otherwise dealt with, pending repayment to creditors;
 - (g) the functions which are to be undertaken by the resolution professional, including supervision and implementation of the repayment plan;
 - (h) variation of onerous terms of a contract or transaction involving the guarantor;

- (i) the details of excluded assets and excluded debts of the guarantor; and
 - (j) terms and conditions for the discharge of the guarantor.
- 2) The repayment plan may provide for the following-
- (a) transfer or sale of all or part of the assets of the guarantor along with the mode and manner of such sale;
 - (b) administration or disposal of any funds of the guarantor;
 - (c) satisfaction or modification of any security interest;
 - (d) reduction in the amount payable to creditors;
 - (e) curing or waiving of any breach of a debt due from the guarantor;
 - (f) modification in the terms of repayment of any debt due from the guarantor;
 - (g) part of the income of the guarantor to be used for the repayment of the debt, and the manner of calculating the income of the guarantor;
 - (h) the manner in which funds held for the purpose of repayment to creditors, and not so repaid at the end of the repayment plan, are to be dealt with; and
 - (i) such other matters as may be required by the creditors.

Report of resolution professional on repayment plan (Section 106)

The resolution professional shall submit the repayment plan under section 105 along with his report on such plan to the Adjudicating Authority within a period of twenty-one days from the last date of submission of claims under section 102.

The report shall include that-

- (a) the repayment plan is in compliance with the provisions of any law for the time being in force;
- (b) the repayment plan has a reasonable prospect of being approved and implemented; and

Provisions w.r.to Insolvency Resolution Process for PG to CD under IBC

- (c) there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:

Provided that where the resolution professional recommends that a meeting of the creditors is not required to be summoned, reasons for the same shall be provided.

The report shall also specify the date on which, and the time and place at which, the meeting should be held if he is of the opinion that a meeting of the creditors should be summoned. The date on which the meeting is to be held shall be not less than fourteen days and not more than twenty-eight days from the date of submission of report. The resolution professional shall consider the convenience of creditors in fixing the date and venue of the meeting of the creditors.

Summoning of meeting of creditors (Section 107)

The resolution professional shall issue a notice calling the meeting of the creditors at least fourteen days before the date fixed for such meeting and the notice of the meeting to be sent to the list of creditors prepared. The notice shall state the address of the Adjudicating Authority to which the repayment plan and report of the resolution professional on the repayment plan has been submitted and shall be accompanied by -

- (a) a copy of the repayment plan;
- (b) a copy of the statement of affairs of the debtor;
- (c) a copy of the said report of the resolution professional; and
- (d) forms for proxy voting. The proxy voting, including electronic proxy voting shall take place in such manner and form as may be specified.

Conduct of meeting of creditors (Section 108)

- 1) The meeting of the creditors shall be conducted in accordance with the provisions of this section and sections 109,110 and 111.
- 2) In the meeting of the creditors, the creditors may decide to approve, modify or reject the repayment plan.
- 3) The resolution professional shall ensure that if modifications are suggested by the creditors, consent of the debtor shall be obtained for each modification.

- 4) The resolution professional may for a sufficient cause adjourn the meeting of the creditors for a period of not more than seven days at a time.

Voting rights in meeting of creditors (Section 109)

A creditor shall be entitled to vote at every meeting of the creditors in respect of the repayment plan in accordance with voting share assigned to him. The resolution professional shall determine voting share to be assigned to each creditor in the manners specified by the Board.

A creditor shall not be entitled to vote in respect of a debt for an unliquidated amount. A creditor shall not be entitled to vote in a meeting of the creditors if he is not a creditor mentioned in the list of creditors under section 104 or is an associate of the debtor.

Rights of secured creditors in relation to repayment plan (Section 110)

- 1) Secured creditors shall be entitled to participate and vote in the meetings of the creditors.
- 2) A secured creditor participating in the meetings of the creditors and voting in relation to the repayment plan shall forfeit his right to enforce the security during the period of the repayment plan in accordance with the terms of the repayment plan.
- 3) Where a secured creditor does not forfeit his right to enforce security, he shall submit an affidavit to the resolution professional at the meeting of the creditors stating -
 - (a) that the right to vote exercised by the secured creditor is only in respect of the unsecured part of the debt; and
 - (b) the estimated value of the unsecured part of the debt.
- 4) In case a secured creditor participates in the voting on the repayment plan by submitting an affidavit, the secured and unsecured parts of the debt shall be treated as separate debts.
- 5) The concurrence of the secured creditor shall be obtained if he does not participate in the voting on repayment plan but provision of the repayment plan affects his right to enforce security.

For the purposes of this section, "period of the repayment plan" means the period from the date of the order passed under section 114 till the date on which the notice is given by the resolution professional under section 117 or report submitted by the resolution professional under section 118, as the case may be.

Approval of repayment plan by creditors (Section 111)

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

Report of meeting of creditors on repayment plan (Section 112)

The resolution professional shall prepare a report of the meeting of the creditors on repayment plan. The report shall contain -

- (a) whether the repayment plan was approved or rejected and if approved, the list the modifications, if any;
- (b) the resolutions which were proposed at the meeting and the decision on such resolutions;
- (c) list of the creditors who were present or represented at the meeting, and the voting records of each creditor for all meetings of the creditors; and
- (d) such other information as the resolution professional thinks appropriate to make known to the Adjudicating Authority.

Notice of decisions taken at meeting of creditors (Section 113)

The resolution professional shall provide a copy of the report of the meeting of creditors to -the debtor, the creditors, including those who were not present at the meeting; and the Adjudicating Authority.

Regulation 19 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, **Filing with the Adjudicating Authority.**

The resolution professional shall file the repayment plan, as approved by the creditors, along with the report mentioned in sections 106 or 112, as the case

may be, with the Adjudicating Authority on or before completion of one hundred and twenty days from the resolution process commencement date.

The resolution professional shall provide the copies of the documents filed with the Adjudicating Authority to the guarantor and the creditors, within three days from the date of such filing.

Order of Adjudicating Authority on repayment plan (Section 114)

The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional. Provided that where a meeting of creditors is not summoned, the Adjudicating Authority shall pass an order on the basis of the report prepared by the resolution professional under section 106. The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan. Where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution professional to re-convene a meeting of the creditors for reconsidering the repayment plan.

Effect of order of Adjudicating Authority on repayment plan (Section 115)

Where the Adjudicating Authority has approved the repayment plan, the repayment plan shall take effect as if proposed by the debtor in the meeting; and be binding on creditors mentioned in the repayment plan and the debtor.

Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.

A copy of the order passed by the Adjudicating Authority shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196.

Implementation and supervision of repayment plan (Section 116)

The resolution professional shall supervise the implementation of the repayment plan.

The resolution professional may apply to the Adjudicating Authority for directions, if necessary, in relation to any particular matter arising under the repayment plan. The Adjudicating Authority may issue directions to the resolution professional on that basis.

Completion of repayment plan (Section 117)

The resolution professional shall within fourteen days of the completion of the repayment plan, forward to the persons who are bound by the repayment plan and the Adjudicating Authority, a notice that the repayment plan has been fully implemented; and a copy of a report by the resolution professional summarising all receipts and payments made in pursuance of the repayment plan and extent of the implementation of such plan as compared with the repayment plan approved by the meeting of the creditors.

The resolution professional may apply to the Adjudicating Authority to extend the time for such further period not exceeding seven days.

Regulation 20 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, **Breach of repayment plan by the guarantor.**

- 1) If in the opinion of the resolution professional, the guarantor has failed in implementation of the repayment plan, the resolution professional shall, within three days of knowledge of such failure, issue a notice to the guarantor identifying the failure and requiring him, within fifteen days of receipt of the notice, to-
 - (a) address such failure if it can be addressed, or
 - (b) provide an explanation for the failure.
- 2) If the guarantor, within the period specified under sub-regulation (1), -
 - (a) addresses the failure in implementation of the repayment plan; or
 - (b) provides a satisfactory explanation for such failure,the resolution professional shall report the failure to creditors within seven days of the date of failure addressed or explanation provided for such failure.
- 3) In cases not covered under sub-regulation (2), the resolution professional may apply to the Adjudicating Authority under sub-section (2) of section 116 for directions, if he is of the opinion that the failure

will affect the implementation of the repayment plan.

Repayment plan coming to end prematurely (Section 118)

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. Where a repayment plan comes to an end prematurely under this section, the resolution professional shall submit a report to the Adjudicating Authority which shall state:

- (a) the receipts and payments made in pursuance of the repayment plan;
- (b) the reasons for premature end of the repayment plan; and
- (c) the details of the creditors whose claims have not been fully satisfied.

The Adjudicating Authority shall pass an order on the basis of the report submitted by the resolution professional that the repayment plan has not been completely implemented.

The debtor or the creditor, whose claims under repayment plan have not been fully satisfied, shall be entitled to apply for a bankruptcy order under Chapter IV.

The Adjudicating Authority shall forward to the persons bound by the repayment plan under section 115, a copy of the report submitted by the resolution professional to the Adjudicating Authority and order passed by the Adjudicating Authority.

The Adjudicating Authority shall forward a copy of the order passed to the Board, for the purpose of recording entries in the register referred to in section 196.

Discharge order (Section 119)

On the basis of the repayment plan, the resolution professional shall apply to the Adjudicating Authority for a discharge order in relation to the debts mentioned in the repayment plan and the Adjudicating Authority may pass such discharge order.

The repayment plan may provide for -

- (a) early discharge; or
- (b) discharge on complete implementation of the repayment plan.

Provisions w.r.to Insolvency Resolution Process for PG to CD under IBC

The discharge order shall be forwarded to the Board, for the purpose of recording entries in the register referred to in section 196. The discharge order shall not discharge any other person from any liability in respect of his debt.

Regulation 21 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, **Application for discharge order.**

- 1) The resolution professional shall, for the purpose of discharge order, file an application along with copies of the notice and report under section 117 to the Adjudicating Authority under section 119.
- 2) On consideration of the notice and the report of section 117, the Adjudicating Authority may pass the discharge order.

Regulation 22 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, **Non-cooperation by guarantor.**

In the event of non-cooperation of the guarantor at any time during the resolution process period or during the implementation of the repayment plan, the resolution professional shall prepare a statement to this effect and file the same with the Adjudicating Authority for appropriate directions

Chapter 4

Provisions with respect to eligibility of RP for appointment and role of RP in Insolvency Resolution Process for Personal Guarantors to Corporate Debtors under IBC

Regulation 4 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, **Eligibility of resolution professional:**

- 1) An insolvency professional shall be eligible to be appointed as a resolution professional for a resolution process, if-
 - (a) he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;
 - (b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and
 - (c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the resolution process.

Explanation.- For the purposes of this sub-regulation, -

- (1) a person shall be considered independent of the guarantor, if he-
 - (a) is not an associate of the guarantor;
 - (b) is not a related party of the corporate debtor; and
 - (c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor;
- (2) the expression “related party” shall have the meaning assigned to it in sub-section (24) of section 5.

- 2) An insolvency professional, other than who has filed an application under section 94 or 95 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the Adjudicating Authority before his appointment as resolution professional in a resolution process.

Standard of conduct (Section 120)

The resolution professional shall perform his functions and duties in compliance with the code of conduct provided under section 208. Sub section (2) of section 208 provides that

Every insolvency professional shall abide by the following code of conduct: –

- (a) to take reasonable care and diligence while performing his duties;
- (b) to comply with all requirements and terms and conditions specified in the 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; and
- (e) to perform his functions in such manner and subject to such conditions as may be specified.

Code of Conduct For Insolvency Professionals as per IBBI (Insolvency Professionals) Regulations 2016 includes the following principles:

- Integrity and objectivity
- Independence and impartiality
- Professional competence
- Representation of correct facts and correcting misapprehensions
- Timeliness
- Information management
- Confidentiality
- Occupation, employability and restrictions
- Remuneration and costs
- Gifts and hospitality

Chapter 5

Provisions with respect to Bankruptcy Process for Personal Guarantors to Corporate Debtors under IBC

Chapter IV of PART III of the Code covering Section 121 to 148, deals with the bankruptcy process for individuals and partnership firms, currently applicable to personal guarantor to corporate debtor.

Grounds on which Application for bankruptcy could be filed:

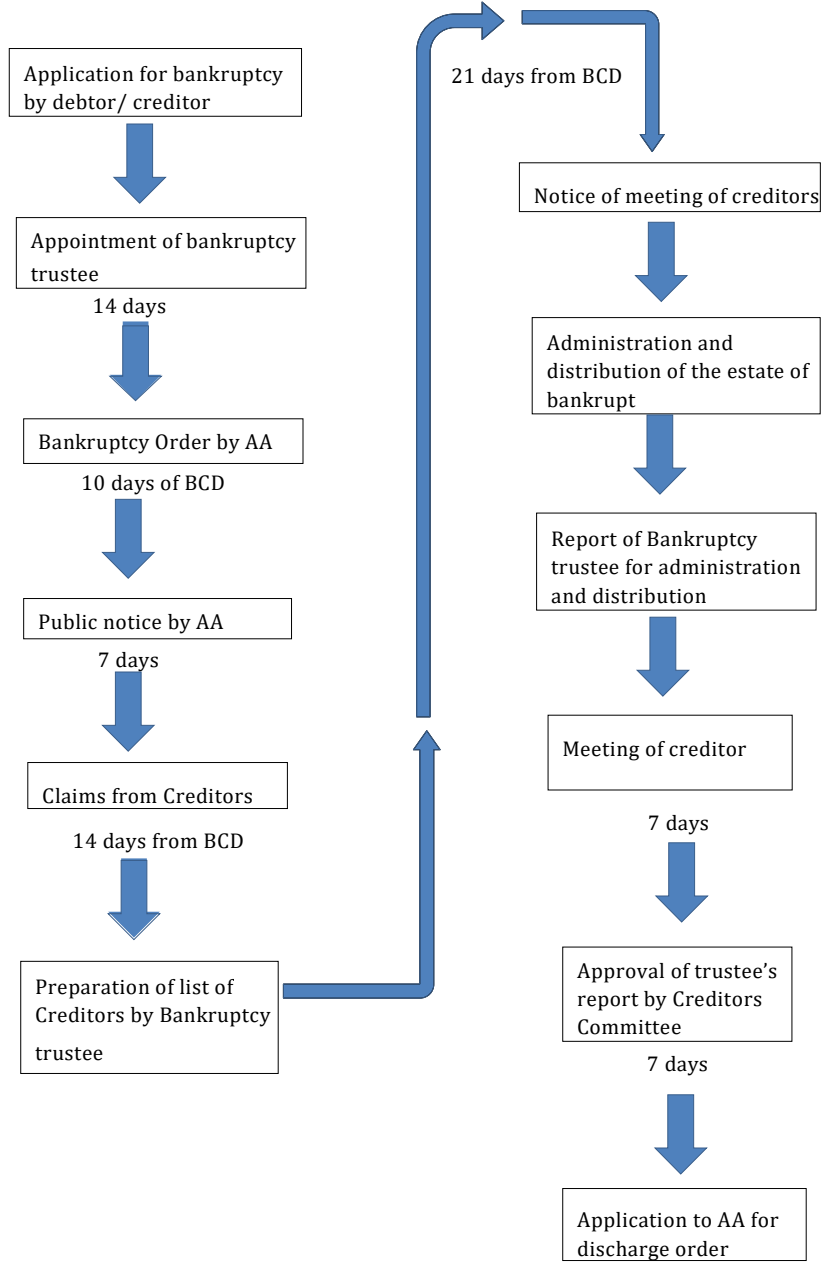
Application for Bankruptcy (Section 121)

An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely;

- (a) where an order has been passed by an Adjudicating Authority under sub-section 4 of section 100; or
- (b) where an order has been passed by an Adjudicating Authority under sub-section 2 of section 115; or
- (c) Where an order has been passed by an Adjudicating Authority under sub-section 3 of section 118.

An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority. Where the debtor is a firm, the application may be filed by any of its partners.

Bankruptcy Process



Application by debtor (Section 122)

The application for bankruptcy by the debtor shall be accompanied by -

- (a) the records of insolvency resolution process undertaken;
- (b) the statement of affairs of the debtor in such form and manner as may be prescribed, on the date of the application for bankruptcy; and
- (c) a copy of the order passed by the Adjudicating Authority permitting the debtor to apply for bankruptcy.

The debtor may propose an insolvency professional as the bankruptcy trustee in the application for bankruptcy. The application shall be in such form and manner and accompanied by such fee as may be prescribed. An application for bankruptcy by the debtor shall not be withdrawn without the leave of the Adjudicating Authority.

Application by creditor (Section 123)

The application for bankruptcy by the creditor shall be accompanied by-

- (a) the records of insolvency resolution process undertaken.
- (b) a copy of the order passed by the Adjudicating Authority permitting the creditor to apply for bankruptcy;
- (c) details of the debts owed by the debtor to the creditor as on the date of the application for bankruptcy; and
- (d) such other information as may be prescribed.

An application made in respect of a debt which is secured, shall be accompanied with -

- (a) a statement by the creditor having the right to enforce the security that he shall, in the event of a bankruptcy order being made, give up his security for the benefit of all the creditors of the bankrupt; or
- (b) a statement by the creditor stating 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.

If a secured creditor makes an application for bankruptcy and submits a statement as referred, the secured and unsecured parts of the debt shall be treated as separate debts.

The creditor may propose an insolvency professional as the bankruptcy trustee in the application for bankruptcy. An application for bankruptcy in case of a deceased debtor, may be filed against his legal representatives. The application shall be in such form and manner and accompanied by such fee as may be prescribed. It shall not be withdrawn without the permission of the Adjudicating Authority.

Effect of application (Section 124)

When an application 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. During the interim-moratorium period -

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

Where the application has been made in relation to a firm, the interim-moratorium shall operate against all the partners of the firm as on the date of the making of the application.

Appointment of insolvency professional as bankruptcy trustee (Section 125)

If 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 against such professional. The Board shall within ten days of the receipt of the direction in writing either confirm the appointment of the proposed insolvency professional as the bankruptcy trustee for the bankruptcy process or reject the appointment of the proposed insolvency professional as the bankruptcy trustee and nominate another bankruptcy trustee for the bankruptcy process.

Where a bankruptcy trustee is not proposed by the debtor or creditor, the Adjudicating Authority shall direct the Board within seven days of receiving

the application to nominate a bankruptcy trustee for the bankruptcy process. The Board shall nominate a bankruptcy trustee within ten days of receiving the direction of the Adjudicating Authority. The bankruptcy trustee confirmed or nominated under this section shall be appointed as the bankruptcy trustee by the Adjudicating Authority in the bankruptcy order.

Bankruptcy order (Section 126)

The Adjudicating Authority shall pass a bankruptcy order within fourteen days of receiving the confirmation or nomination of the bankruptcy trustee. The Adjudicating Authority shall provide the following documents to bankrupt, creditors and the bankruptcy trustee within seven days of the passing of the bankruptcy order, namely: -

- (a) a copy of the application for bankruptcy; and
- (b) a copy of the bankruptcy order.

Validity of bankruptcy order (Section 127)

The bankruptcy order passed by the Adjudicating Authority shall continue to have effect till the debtor is discharged.

Effect of bankruptcy order (Section 128)

On the passing of the bankruptcy order the estate of the bankrupt shall vest in the bankruptcy trustee. The estate of the bankrupt shall be divided among his creditors. The bankruptcy order shall not affect the right of any secured creditor to realize or otherwise deal with his security interest in the same manner as he would have been entitled if the bankruptcy order had not been passed. Provided that no secured creditor shall be entitled to any interest in respect of his debt after the bankruptcy commencement date if he does not take any action to realise his security within thirty days from the said date. A creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt shall not—

- (i) initiate any action against the property of the bankrupt in respect of such debt; or
- (ii) commence any suit or other legal proceedings except with the leave of the Adjudicating Authority and on such terms as the Adjudicating Authority may impose.

Where a bankruptcy order has been passed against a firm, the order shall operate as if it were a bankruptcy order made against each of the individuals who, on the date of the order, is a partner in the firm.

Statement of financial position (Section 129)

Where a bankruptcy order is passed on the application for bankruptcy by a creditor, the bankrupt shall submit his statement of financial position to the bankruptcy trustee within seven days from the bankruptcy commencement date. The statement of financial position shall be submitted in such form and manner as may be prescribed.

Where the bankrupt is a firm, its partners on the date of the order shall submit a joint statement of financial position of the firm, and each partner of the firm shall submit a statement of his financial position. The bankruptcy trustee may require the bankrupt or any other person to submit in writing further information explaining or modifying any matter contained in the statement of financial position.

Public notice inviting claims from creditors (Section 130)

The Adjudicating Authority shall send notices within ten days of the bankruptcy commencement date, to the creditors mentioned in the statement of affairs submitted by the bankrupt or the application for bankruptcy submitted by the bankrupt.

AA shall issue a public notice inviting claims from creditors.

The public notice shall include the last date up to which the claims shall be submitted and such others matters and details as may be prescribed and shall be -

- (a) published in leading newspapers, one in English and another in vernacular having sufficient circulation where the bankrupt resides;
- (b) affixed on the premises of the Adjudicating Authority; and
- (c) placed on the website of the Adjudicating Authority.

Registration of claims (Section 131)

The creditors shall register claims with the bankruptcy trustee within seven days of the publication of the public notice, by sending details of the claims to the bankruptcy trustee in such manner and such other information as may be prescribed.

Preparation of list of creditors (Section 132)

The bankruptcy trustee shall, within fourteen days from the bankruptcy commencement date, prepare a list of creditors of the bankrupt on the basis of the information disclosed by the bankrupt in the application for bankruptcy filed by the bankrupt and the statement of affairs filed and claims received by the bankruptcy trustee.

Summoning of meeting of creditors (Section 133)

The bankruptcy trustee shall, within twenty-one days from the bankruptcy commencement date, issue a notice for calling a meeting of the creditors, to every creditor of the bankrupt as mentioned in the list prepared. The notices issued under shall - state the date of the meeting of the creditors, which shall not be later than twenty-one days from the bankruptcy commencement date. Notices to be accompanied with forms of proxy voting specifying the form and manner in which the proxy voting may take place.

Conduct of meeting of creditors (Section 134)

The bankruptcy trustee shall be the convener of the meeting of the creditors. He shall decide the quorum for the meeting of the creditors, and conduct the meeting only if the quorum is present.

The following business shall be conducted in the meeting of the creditors in which regard a resolution may be passed, namely: –

- (a) the establishment of a committee of creditors;
- (b) any other business that the bankruptcy trustee thinks fit to be transacted.

The bankruptcy trustee shall cause the minutes of the meeting of the creditors to be recorded, signed and retained as a part of the records of the bankruptcy process. The bankruptcy trustee shall not adjourn the meeting of the creditors for any purpose for more than seven days at a time.

Voting rights of creditors (Section 135)

Every creditor mentioned in the list or his proxy shall be entitled to vote in respect of the resolutions in the meeting of the creditors in accordance with the voting share assigned to him. The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

A creditor shall not be entitled to vote in respect of a debt for an unliquidated amount.

The following creditors shall not be entitled to vote under this section, namely: –

- (a) creditors who are not mentioned in the list of creditors under section 132 and those who have not been given a notice by the bankruptcy trustee;
- (b) creditors who are associates of the bankrupt.

Administration and distribution of estate of bankrupt (Section 136)

The bankruptcy trustee shall conduct the administration and distribution of the estate of the bankrupt in accordance with the provisions of Chapter V.

Completion of administration (Section 137)

The bankruptcy trustee shall convene a meeting of the committee of creditors on completion of the administration and distribution of the estate of the bankrupt. The bankruptcy trustee shall provide the committee of creditors with a report of the administration of the estate of the bankrupt in the meeting of the said committee. The committee of creditors shall approve the report submitted by the bankruptcy trustee within seven days of the receipt of the report and determine whether the bankruptcy trustee should be released under section 148. The bankruptcy trustee shall retain sufficient sums from the estate of the bankrupt to meet the expenses of convening and conducting the meeting required under this section during the administration of the estate.

Discharge order (Section 138)

The bankruptcy trustee shall apply to the Adjudicating Authority for a discharge order –

- (a) on the expiry of one year from the bankruptcy commencement date; or
- (b) within seven days of the approval of the committee of creditors of the completion of administration of the estates of the bankrupt where such approval is obtained prior to the period of one year.

The Adjudicating Authority shall pass a discharge order on an application by bankruptcy trustee. A copy of Discharge order shall be provided to the

Board, for the purpose of recording an entry in the register referred to in section 196.

Effect of discharge (Section 139)

The discharge order shall release the bankrupt from all the bankruptcy debts, Provided that a discharge shall not –

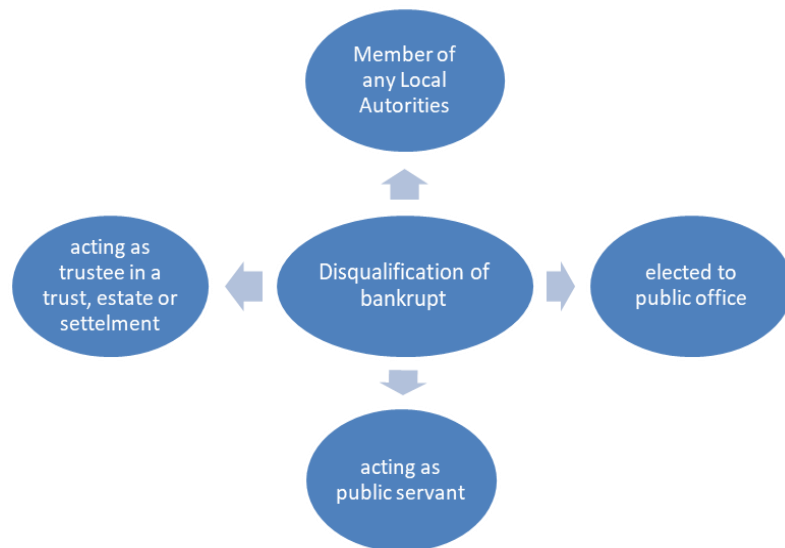
- (a) affect the functions of the bankruptcy trustee; or
- (b) affect the operation of the provisions of Chapter IV and V of Part III;
- (c) release the bankrupt from any debt incurred by means of fraud or breach of trust to which he was a party; or
- (d) discharge the bankrupt from any excluded debt.

Disqualification of bankrupt (Section 140)

The bankrupt shall, from the bankruptcy commencement date, be subject to the disqualifications mentioned as below:

- (a) being appointed or acting as a trustee or representative in respect of any trust, estate or settlement;
- (b) being appointed or acting as a public servant;
- (c) being elected to any public office where the appointment to such office is by election; and
- (d) being elected or sitting or voting as a member of any local authority.

Any disqualification to which a bankrupt may be subject under this section shall cease to have effect, if the bankruptcy order against him is modified or recalled under section 142 or he is discharged under section 138.



Restrictions on bankrupt (Section 141)

A bankrupt, from the bankruptcy commencement date, shall, –

- (a) not act as a director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company;
- (b) without the previous sanction of the bankruptcy trustee, be prohibited from creating any charge on his estate or taking any further debt;
- (c) be required to inform his business partners that he is undergoing a bankruptcy process;
- (d) prior to entering into any financial or commercial transaction of such value as may be prescribed, either individually or jointly, inform all the parties involved in such transaction that he is undergoing a bankruptcy process;
- (e) without the previous sanction of the Adjudicating Authority, be incompetent to maintain any legal action or proceedings in relation to the bankruptcy debts; and
- (f) not be permitted to travel overseas without the permission of the Adjudicating Authority.

Any restriction to which a bankrupt may be subject under this section shall cease to have effect, if the bankruptcy order against him is modified or recalled under section 142 or he is discharged under section 138.

Modification or recall of bankruptcy order (Section 142)

The Adjudicating Authority may, on an application or suo motu, modify or recall a bankruptcy order, whether or not the bankrupt is discharged, if it appears to the Adjudicating Authority that —

- (a) there exists an error apparent on the face of such order; or
- (b) both the bankruptcy debts and the expenses of the bankruptcy have, after the making of the bankruptcy order, either been paid for or secured to the satisfaction of the Adjudicating Authority.

Where the Adjudicating Authority modifies or recalls the bankruptcy order under this section, any sale or other disposition of property, payment made or other things duly done by the bankruptcy trustee shall be valid except that the property of the bankrupt shall vest in such person as the Adjudicating Authority may appoint or, in default of any such appointment, revert to the bankrupt on such terms as the Adjudicating Authority may direct. The modification or recall of the order by the Adjudicating Authority shall be binding on all creditors so far as it relates to any debts due to them which form a part of the bankruptcy.

Chapter 6

**Provisions with respect to eligibility of
Bankruptcy Trustee for appointment,
remuneration and role of Bankruptcy
Trustee in Bankruptcy Process for
Personal Guarantors to Corporate
Debtors under IBC**

Regulation 3 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

Eligibility of bankruptcy trustee

1. An insolvency professional shall be eligible to be appointed as a bankruptcy trustee for a bankruptcy process, if-
 - (a) he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;
 - (b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and
 - (c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the bankruptcy process.

Explanation. - For the purposes of this sub-regulation, a person shall be considered independent of the guarantor, if he-

- (a) is not an associate of the guarantor;
- (b) is not a related party of the corporate debtor; and
- (c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor.

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

2. A bankruptcy trustee, who has been an auditor of the guarantor at any time during the preceding three years, shall make a disclosure of remuneration received, year-wise for such audit, to the committee.
3. An insolvency professional, other than who has filed an application under section 122 or 123 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the Adjudicating Authority before his appointment as bankruptcy trustee in a bankruptcy process.

Regulation 5 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

Appointment of professionals

A bankruptcy trustee may appoint accountants, registered valuers, advocates or other professionals, as may be necessary, to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the bankruptcy process cost:

Provided that the following persons shall not be appointed under this regulation, namely-

- (a) a relative of the bankruptcy trustee;
- (b) a partner or director of the insolvency professional entity of which the bankruptcy trustee is a partner or director;
- (c) an insolvency professional who has acted or is acting as an interim resolution professional, a resolution professional or a liquidator in respect of the corporate debtor;
- (d) an associate of the bankrupt;
- (e) a related party of the corporate debtor.

Before appointing a professional, the bankruptcy trustee shall obtain a disclosure of details of the existence of any pecuniary or personal relationship with any of the creditors, the bankruptcy trustee, the corporate debtor or the bankrupt, from the professional.

Fees of bankruptcy trustee (Section 144)

A bankruptcy trustee appointed for conducting the bankruptcy process shall charge such fees as may be specified in proportion to the value of the estate of the bankrupt. The fees for the conduct of the bankruptcy process shall be

Provisions w.r.t. appointment eligibility, remuneration and role of Bankruptcy Trustee

paid to the bankruptcy trustee from the distribution of the estate of the bankrupt in the manner provided in section 178.

Regulation 4 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

Fees of bankruptcy trustee.

1. The bankruptcy trustee shall be entitled to such fee and the fee shall be paid in such manner as decided by the committee.
2. In all cases other than those covered under sub-regulation (1), the bankruptcy trustee shall be entitled to a fee as a percentage of the amount realised from the estate of the bankrupt and of the amount distributed from such realisation, in accordance with Schedule I.

Replacement, Resignation and Vacancy in the office of bankruptcy trustee (Section 145, 146, 147)

Where Committee of creditors is of the opinion that at any time during the bankruptcy process, a bankruptcy trustee is required to be replaced, it may replace him with another bankruptcy trustee. The Committee of creditors may, at a meeting, by a vote of seventy-five per cent. of voting share, propose to replace the bankruptcy trustee with another bankruptcy trustee.

A bankruptcy trustee may resign if -

- a) he intends to cease practising as an insolvency professional; or
- b) there is conflict of interest or change of personal circumstances which preclude the further discharge of his duties as a bankruptcy trustee.

If a vacancy occurs in the office of the bankruptcy trustee for any reason other than his replacement or resignation, the vacancy shall be filled by the Adjudicating Authority in following manner.

The Committee of creditors may apply to the Adjudicating Authority for the replacement of bankruptcy trustee. The Adjudicating Authority shall within seven days of the receipt of the application direct the Board to recommend for replacement of bankruptcy trustee. The Board shall, within ten days of the direction of the Adjudicating Authority, recommend a bankruptcy trustee for replacement against whom no disciplinary proceedings are pending. The Adjudicating Authority shall, by an order, appoint the bankruptcy trustee as recommended by the Board within fourteen days of receiving such recommendation.

The bankruptcy trustee appointed under section 145 shall give a notice of his appointment to the bankrupt within seven days of his appointment. The bankruptcy trustee appointed under section 146 and Section 147 shall give a notice of his appointment to the CoC and to the bankrupt within seven days of his appointment.

The Adjudicating Authority may give directions to the earlier bankruptcy trustee-

- (a) to share all information with the new bankruptcy trustee in respect of the bankruptcy process; and
- (b) to co-operate with the new bankruptcy trustee in such matters as may be required.

Release of bankruptcy trustee (Section 148)

- A. A bankruptcy trustee shall be released from his office with effect from the date on which the Adjudicating Authority passes an order appointing a new bankruptcy trustee in the event of replacement, resignation or occurrence of vacancy under sections 145, 146 or 147, as the case may be.
- B. Notwithstanding the release under sub-section (1), the bankruptcy trustee who has been so released, shall share all information with the new bankruptcy trustee in respect of the bankruptcy process and co-operate with the new bankruptcy trustee in such matters as may be required.

A bankruptcy trustee who has completed the administration of the bankruptcy process shall be released of his duties with effect from the date on which the committee of creditors approves the report of the bankruptcy trustee under section 137.

ROLE OF BANKRUPTCY TRUSTEE

Sections under Code covering the related provisions:

Functions of bankruptcy trustee (Section 149)

The bankruptcy trustee shall perform the following functions –

- (a) investigate the affairs of the bankrupt;
- (b) realise the estate of the bankrupt; and
- (c) distribute the estate of the bankrupt.

Duties of bankrupt towards bankruptcy trustee (Section 150)

The bankrupt shall assist the bankruptcy trustee in carrying out his functions by -

- (a) giving to the bankruptcy trustee the information of his affairs;
- (b) attending on the bankruptcy trustee at such times as may be required;
- (c) giving notice to the bankruptcy trustee of any of the following events which have occurred after the bankruptcy commencement date, -
 - (i) acquisition of any property by the bankrupt;
 - (ii) devolution of any property upon the bankrupt;
 - (iii) increase in the income of the bankrupt;
- (d) doing all other things as may be prescribed.

The bankrupt shall give notice of the increase in income or acquisition or devolution of property within seven days of such increase, acquisition or devolution. The bankrupt shall continue to discharge the duties even after the discharge under section 138.

Rights of bankruptcy trustee (Section 151)

For the purpose of performing his functions, the bankruptcy trustee may, by his official name -

- (a) hold property of every description;
- (b) make contracts;
- (c) sue and be sued;
- (d) enter into engagements in respect of the estate of the bankrupt;
- (e) employ persons to assist him;
- (f) execute any power of attorney, deed or other instrument; and
- (g) do any other act which is necessary or expedient for the purposes of or in connection with the exercise of his rights.

General Powers of bankruptcy trustee (Section 152)

The bankruptcy trustee may while discharging his functions -

- (a) sell any part of the estate of the bankrupt;

- (b) give receipts for any money received by him;
- (c) prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate;
- (d) where any property comprised in the estate of the bankrupt is held by any person by way of pledge or hypothecation, exercise the right of redemption in respect of any such property subject to the relevant contract by giving notice to the said person;
- (e) where any part of the estate of the bankrupt consists of securities in a company or any other property which is transferable in the books of a person, exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt; and
- (f) deal with any property comprised in the estate of the bankrupt to which the bankrupt is beneficially entitled in the same manner as he might have dealt with it.

Approval of creditors for certain acts (Section 153)

The bankruptcy trustee may after procuring the approval of the committee of creditors, -

- (a) carry on any business of the bankrupt as far as may be necessary for winding it up beneficially;
- (b) bring, institute or defend any legal action or proceedings relating to the property comprised in the estate of the bankrupt;
- (c) accept as consideration for the sale of any property a sum of money due at a future time subject to certain stipulations such as security;
- (d) mortgage or pledge any property for the purpose of raising money for the payment of the debts of the bankrupt;
- (e) where any right, option or other power forms part of the estate of the bankrupt, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of such right, option or power;
- (f) refer to arbitration or compromise on such terms as may be agreed, any debts subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt;

Provisions w.r.t. appointment eligibility, remuneration and role of Bankruptcy Trustee

- (g) make compromise or other arrangement as may be considered expedient, with the creditors;
- (h) make compromise or other arrangement as he may deem expedient with respect to any claim arising out of or incidental to the bankrupt's estate;
- (i) appoint the bankrupt to -
 - (A) supervise the management of the estate of the bankrupt or any part of it;
 - (B) carry on his business for the benefit of his creditors;
 - (C) assist the bankruptcy trustee in administering the estate of the bankrupt.

Vesting of estate of bankrupt in bankruptcy trustee (Section 154)

The estate of the bankrupt shall vest in the bankruptcy trustee immediately from the date of his appointment. The vesting shall take effect without any conveyance, assignment or transfer.

Estate of bankrupt (Section 155)

The estate of the bankrupt shall include

- (a) all property belonging to or vested in the bankrupt at the bankruptcy commencement date;
- (b) the capacity to exercise and to initiate proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the bankruptcy commencement date or before the date of the discharge order passed under section 138; and
- (c) all property which 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; and

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

Delivery of property and documents to bankruptcy trustee (Section 156)

The bankrupt, his banker or agent or any other person having possession of any property, books, papers or other records which bankruptcy trustee is required to take possession for the purposes of the bankruptcy process shall deliver the said property and documents to the bankruptcy trustee.

Acquisition of control by bankruptcy trustee (Section 157)

The bankruptcy trustee shall take possession and control of all property, books, papers and other records relating to the estate of the bankrupt or affairs of the bankrupt which belong to him or are in his possession or under his control. Where any part of the estate of the bankrupt consists of things in actionable claims, they shall be deemed to have been assigned to the bankruptcy trustee without any notice of the assignment.

SCHEDULE I
FEES OF BANKRUPTCY TRUSTEE [Under regulation 4(2)]

Amount of realization in rupees (less bankruptcy process cost)	Percentage of fee on the amount realized			
	in the first six months	in the next three months	in the next three months	Thereafter
On the first 25 lakh	10.00	7.50	5.00	3.75
On the next 50 lakh	7.50	5.00	3.75	2.80
On the next 1 crore	5.00	3.75	2.50	1.88
On the next 9 crore	3.75	2.80	1.88	1.41
On the next 40 crore	2.50	1.88	1.25	0.94
On the next 50 crore	1.25	0.94	0.68	0.51

Provisions w.r.t. appointment eligibility, remuneration and role of Bankruptcy Trustee

Amount of realization in rupees (less bankruptcy process cost)	Percentage of fee on the amount realized			
On further sums realized	0.25	0.19	0.13	0.10
Amount of distribution in rupees	Percentage of fee on the amount distributed			
On the first 50 lakh	5.00	3.75	3.00	1.88
On the next 75 lakh	3.75	3.00	1.88	1.41
On the next 1 crore	2.50	1.88	1.25	0.94
On the next 9 crore	1.88	1.40	0.94	0.71
On the next 40 crore	1.25	0.94	0.63	0.47
On the next 50 crore	0.63	0.48	0.34	0.25
On further sums distributed	0.13	0.10	0.06	0.05

Chapter 7

Provisions with respect to submission of various reports by Bankruptcy Trustee during Bankruptcy Process for Personal Guarantors to Corporate Debtors

1. Reports by bankruptcy trustee (Regulation 7 of the Insolvency and Bankruptcy Board of India (**Bankruptcy Process** for Personal Guarantors to Corporate Debtors) **Regulations**, 2019).

The bankruptcy trustee shall prepare and submit the following reports to the Adjudicating Authority and the committee -

- (a) a preliminary report;
- (b) progress reports; and
- (c) a final report

(a) Preliminary report (Regulation 8)

- 1) The bankruptcy trustee shall submit a preliminary report to the Adjudicating Authority and the committee within ninety days of the bankruptcy commencement date.
- 2) The bankruptcy trustee shall send a copy of the preliminary report to the bankrupt at the time of submission of the report.
- 3) The preliminary report shall include the following details-
 - a) a list of the assets and liabilities of the bankrupt as on the bankruptcy commencement date based on the books of the bankrupt:

Provided that if the bankruptcy trustee has reasons to believe, to be recorded in writing, that the books of the bankrupt are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him.

Provisions w.r.to submission of various reports by Bankruptcy Trustee

- b) the proposed plan of action in relation to administration of the estate, including the timeline in which it is proposed to be carried out and the estimated costs;
 - c) any further inquiry to be made in respect of the assets, business or affairs of the bankrupt;
 - d) details of the assets which are intended to be realised, including the following-
 - (i) value of the assets, valued in accordance with regulation 33;
 - (ii) intended manner of realisation of the assets and reasons thereof;
 - (iii) expected amount of realisation;
 - (iv) any other information that may be relevant for the realisation of the assets.
 - e) details of the excluded assets and other assets under sub-section (2) of section 155.
- 4) The preliminary report shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it subject to such terms and conditions, as it may consider appropriate.

(b) Progress reports (Regulation 10)

- 1) The bankruptcy trustee shall submit progress reports to the Adjudicating Authority and to the committee within fifteen days after the end of every quarter:
- Provided that if an insolvency professional ceases to act as a bankruptcy trustee during the bankruptcy process, he shall file a progress report for the quarter up to the date of his so ceasing to act, within fifteen days of such cessation.
- 2) The bankruptcy trustee shall send a copy of the progress report to the bankrupt at the time of submission of the report under sub-regulation (1).
- 3) The progress report shall include-
- (a) appointment, tenure of appointment and cessation of appointment of professionals;

- (b) a statement indicating the progress in the bankruptcy process containing-
 - (i) distribution of dividend and interim dividend;
 - (ii) any material change in the expected realisation for any asset and basis for such change;
 - (iii) any material change in the value of assets or liabilities of the bankrupt and basis for such change;
 - (iv) any material change on estimated cost of bankruptcy process and basis for such change;
 - (v) distribution of unsold property made to the creditors;
 - (vi) details of any property that remains to be realised;
 - (vii) list of creditors; and
 - (viii) any other relevant information.
- (c) an asset sale report with the following details of the assets realised-
 - (i) realised value;
 - (ii) cost of realisation;
 - (iii) manner and mode of realisation, including details as per Schedule II;
 - (iv) reasons for any reduction in the realisable value compared to the value mentioned in the preliminary report; and
 - (v) details of the persons in favour of whom the property has been realised.
- (d) details of fee and remuneration due to and received by the bankruptcy trustee along with a description of the activities carried out by him;
- (e) details of the fee and remuneration paid to professionals appointed by the bankruptcy trustee along with a description of activities carried out by them;
- (f) other expenses incurred by the bankruptcy trustee in relation to the bankruptcy process;
- (g) status of any material litigation by or against the bankrupt;

Provisions w.r.to submission of various reports by Bankruptcy Trustee

- (h) filing of and developments in relation to disclaimer of onerous properties or leasehold interests under sections 160 and 162, or transactions under sections 164, 165 and 167.
 - (i) accounts maintained by the bankruptcy trustee showing the receipts and payments made during the period of the report, as well as cumulative receipts and payments made since the bankruptcy commencement date; and
 - (j) any other relevant aspect of the bankruptcy process.
- 4) The progress report for the fourth quarter of the financial year shall enclose audited accounts of the receipts and payments of the bankrupt for the financial year.
- 5) The progress reports shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it on specified terms and conditions.

Illustration

Where an insolvency professional becomes a bankruptcy trustee on 13th February, 2020 and ceases to act as such on 12th February, 2021, he shall submit progress reports as under:

Report No.	Period covered in the Quarter	Last Date of Submission of Report
1	13th February - 31st March, 2020	15th April, 2020
2	April - June, 2020	15th July, 2020
3	July - September, 2020	15th October, 2020
4	October - December, 2020	15th January, 2021
5	January - 12th February, 2021	27th February, 2021

He shall submit the audited accounts of receipts and payments as under:

Account No.	Period covered in the Quarter	Last Date of Submission of Report
1	13th February - 31st March, 2020	15th April, 2020
2	1st April, 2019 - 12th February, 2021	27th February, 2021

(c) Final report (Regulation 11)

- 1) The final report shall contain an account of the completion of the administration and distribution of the estate of the bankrupt, including -
 - (a) manner of realisation of the assets of the bankrupt;
 - (b) manner of distribution of the dividends amongst the creditors;
 - (c) details regarding the discharge of the bankrupt;
 - (d) unclaimed dividend, if any;
 - (e) surplus dividend, if any; and
 - (f) if the bankruptcy process cost exceeds the estimated cost provided in the preliminary report, along with reasons for the same.
- 2) The bankruptcy trustee shall file the final report with the Adjudicating Authority along with the application under sub-section (1) of section 138.

Chapter 8

Provisions with respect to proceeds of Bankruptcy Process and distribution of proceeds

Chapter VI of Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 deals with Proceeds of Bankruptcy Process and Distribution of Proceeds as per the Regulations:

1. Bank account for bankruptcy process (Regulation 32)

- 1) The bankruptcy trustee shall open a bank account in the name of the bankrupt followed by the words 'in bankruptcy process', in a scheduled bank, for the receipt of all moneys due to the bankrupt.
- 2) The bankruptcy trustee shall deposit in the bank account opened under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the bankruptcy trustee of the bankrupt, and the realisations of each day shall be deposited into the bank account, without any deduction, not later than the next working day.
- 3) The bankruptcy trustee may maintain cash of ten thousand rupees or such higher amount, as may be permitted by the Adjudicating Authority to meet bankruptcy process costs.
- 4) All payments out of the account by the bankruptcy trustee above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

2. Distribution of dividend to claimant of deceased creditor (Regulation 33)

- 1) In the event an application is made by a claimant or heir of a deceased creditor for receiving dividend payable to such deceased creditor, the bankruptcy trustee shall satisfy himself as to the claimant's right and title to receive the dividend, and may call for evidence regarding such right or title.
- 2) On being satisfied of the veracity of the claim as per sub-regulation (1),

the bankruptcy trustee may apply to the Adjudicating Authority for sanctioning the payment of such dividend or return to the claimant.

3. Distribution of dividend (Regulation 34)

- 1) Subject to the provisions of sections 174 and 178, the bankruptcy trustee shall not commence distribution of dividend unless a preliminary report is filed with the Adjudicating Authority.
- 2) The bankruptcy process cost shall be deducted before any dividend is distributed under this regulation.

4. Return of amount (Regulation 35)

A creditor shall forthwith return any amount received by him in distribution, which he was not entitled to at the time of distribution, or subsequently.

5. Unclaimed proceeds of bankruptcy or undistributed assets (Regulation 36)

- 1) After filing the final report under regulation 11, the bankruptcy trustee shall, within three days from the date of such filing, apply to the Adjudicating Authority for an order to credit to the Insolvency and Bankruptcy Fund formed under the Code, any unclaimed dividends of bankruptcy process or undistributed asset or any other balance amount payable to the creditors, left with him.
- 2) Without prejudice to any penalty that may be imposed by the Board, the bankruptcy trustee shall be liable to pay interest at the rate of twelve percent per annum on the amount retained by him under sub-regulation (1), if he fails to-
 - a. apply to the Adjudicating Authority within three days from the date of filing;
 - b. credit to the Fund within three days from the date of order of the Adjudicating Authority.
- 3) The bankruptcy trustee shall, when crediting the amount referred to in sub-regulation (1), furnish to the Board, a statement setting forth the following –
 - a. the names and last known address of the creditors entitled to the unclaimed dividend or undistributed asset or any other balance;

Provisions w.r.to proceeds of BP and distribution of proceeds

- b. the amount of the unclaimed dividend or any other balance for each creditor under (a);
 - c. the value of the undistributed assets.
- 4) The bankruptcy trustee shall be entitled to a receipt from the Board for any amount deposited by him under sub- regulation (2), and such receipt shall be proof of credit by him.
 - 5) A person claiming to be entitled to any amount paid into the Insolvency and Bankruptcy Fund may apply to the Board for an order for payment of the amount claimed.
 - 6) The Board may, if satisfied that the person referred to in sub-regulation (5) is entitled to the whole or any part of the amount claimed, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.
 - 7) Any amount paid into the Insolvency and Bankruptcy Fund under sub-regulation (1), which remains unclaimed for a period of fifteen years, shall be liable to be utilised for the purposes of the Insolvency and Bankruptcy Fund.

Sections under Code covering the related provisions:

Restrictions on disposition of property (Section158)

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. Any disposition of property shall not give rise to any right against any person, in respect of such property, even if he has received such property before the bankruptcy commencement date in

- a) good faith;
- b) for value; and
- c) without notice of the filing of the application for bankruptcy.

For the purposes of this section, the term “property” means all the property of the debtor, whether or not it is comprised in the estate of the bankrupt, but shall not include property held by the debtor in trust for any other person.

After-acquired property of bankrupt (Section 159)

The bankruptcy trustee shall be entitled to claim for the estate of the bankrupt, any after-acquired property by giving a notice to the bankrupt. A notice shall not be served in respect of -

- a) excluded assets, or
- b) any property which is acquired by or devolves upon the bankrupt after a discharge order is passed under section 138.

The notice shall be given within fifteen days from the day on which the acquisition or devolution of the after-acquired property comes to the knowledge of the bankruptcy trustee.

Anything which comes to the knowledge of the bankruptcy trustee shall be deemed to have come to the knowledge of the successor of the bankruptcy trustee at the same time; and anything which comes to the knowledge of a person before he is appointed as a bankruptcy trustee shall be deemed to have come to his knowledge on the date of his appointment as bankruptcy trustee.

The bankruptcy trustee shall not be entitled, to claim from any person who has acquired any right over after-acquired property, in good faith, for value and without notice of the bankruptcy.

A notice may be served after the expiry of the period only with the approval of the Adjudicating Authority.

For the purposes of this section, the term "after-acquired property" means any property which has been acquired by or has devolved upon the bankrupt after the bankruptcy commencement date.

Onerous property of bankrupt (Section 160)

The bankruptcy trustee may, by giving notice to the bankrupt or any person interested in the onerous property, disclaim any onerous property, which forms a part of the estate of the bankrupt. The bankruptcy trustee may give the notice notwithstanding that he has taken possession of the onerous property, endeavoured to sell it or has exercised rights of ownership in relation to it.

A notice of disclaimer shall -

- a) determine, as from the date of such notice, the rights, interests and liabilities of the bankrupt in respect of the onerous property disclaimed;

Provisions w.r.to proceeds of BP and distribution of proceeds

- b) discharge the bankruptcy trustee from all personal liability in respect of the onerous property as from the date of appointment of the bankruptcy trustee.

A notice of disclaimer shall not be given in respect of the property which has been claimed for the estate of the bankrupt under section 155 without the permission of the committee of creditors. A notice of disclaimer shall not affect the rights or liabilities of any other person, and any person who sustains a loss or damage in consequence of the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the loss or damage.

The term “onerous property” means -

- (i) any unprofitable contract; and
- (ii) any other property comprised in the estate of the bankrupt which is unsaleable or not readily saleable, or is such that it may give rise to a claim.

Notice to disclaim onerous property (Section 161)

No notice of disclaimer under section 160 shall be necessary if -

- a) a person interested in the onerous property has applied in writing to the bankruptcy trustee or his predecessor requiring him to decide whether the onerous property should be disclaimed or not; and
- b) a decision under clause (a) has not been taken by the bankruptcy trustee within seven days of receipt of the notice.

Any onerous property which cannot be disclaimed shall be deemed to be part of the estate of the bankrupt.

An onerous property is said to be disclaimed where notice in relation to that property has been given by the bankruptcy trustee.

Disclaimer of leaseholds (Section 162)

- 1) The bankruptcy trustee shall not be entitled to disclaim any leasehold interest, unless a notice of disclaimer has been served on every interested person and –
 - (a) no application objecting to the disclaimer by the interested person, has been filed with respect to the leasehold interest, within fourteen days of the date on which notice was served; and

- (b) where the application objecting to the disclaimer has been filed by the interested person, the Adjudicating Authority has directed under section 163 that the disclaimer shall take effect.
- 2) Where the Adjudicating Authority gives a direction under clause (b) of subsection (1), it may also make order with respect to fixtures, improvements by tenant and other matters arising out of the lease as it may think fit.

Challenge against disclaimed property (Section 163)

An application challenging the disclaimer may be made by the following persons to the Adjudicating Authority-

- (a) any person who claims an interest in the disclaimed property; or
- (b) any person who is under any liability in respect of the disclaimed property; or
- (c) where the disclaimed property is a dwelling house, any person who on the date of application for bankruptcy was in occupation of or entitled to occupy that dwelling house.

The Adjudicating Authority may on an application, make an order for the vesting of the disclaimed property in, or for its delivery to any of the persons mentioned. The Adjudicating Authority shall not make an order in favour of a person who has made an application except where it appears to the Adjudicating Authority that it would be just to do so for the purpose of compensating the person.

The effect of an order shall be taken into account while assessing loss or damage sustained by any person in consequence of the disclaimer.

Undervalued transactions (Section 164)

A bankrupt enters into an undervalued transaction with any person if-

- (a) he makes a gift to that person;
- (b) no consideration has been received by that person from the bankrupt;
- (c) it is in consideration of marriage; or
- (d) it is for a consideration, the value of which in money or money's worth is significantly less than the value in money or money's worth of the consideration provided by the bankrupt.

Provisions w.r.to proceeds of BP and distribution of proceeds

The bankruptcy trustee may apply to the Adjudicating Authority in respect of an undervalued transaction between a bankrupt and any person.

The undervalued transaction should have

- (a) been entered into during the period of two years ending on the filing of the application for bankruptcy; and
- (b) caused bankruptcy process to be triggered.

A transaction between a bankrupt and his associate entered into during the period of two years preceding the date of making of the application for bankruptcy shall be deemed to be an undervalued transaction.

On the application of the bankruptcy trustee, the Adjudicating Authority may -

- (a) pass an order declaring an undervalued transaction void;
- (b) pass an order requiring any property transferred as a part of an undervalued transaction to be vested with the bankruptcy trustee as a part of the estate of the bankrupt; and
- (c) pass any other order it thinks fit for restoring the position to what it would have been if the bankrupt had not entered into the undervalued transaction.

The order shall not be passed if it is proved by the bankrupt that the transaction was undertaken in the ordinary course of business of the bankrupt:

Preference transactions (Section 165)

A bankrupt shall be deemed to have entered into a transaction giving preference to any person if –

- (a) the person is the creditor or surety or guarantor for any debt of the bankrupt; and
- (b) the bankrupt does anything or suffers anything to be done which has the effect of putting that person into a position which, in the event of the debtor becoming a bankrupt, will be better than the position he would have been in, if that thing had not been done.

The bankruptcy trustee may apply to the Adjudicating Authority for an order, if a bankrupt has given a preference to any person.

The transaction giving preference to an associate of the bankrupt should have been entered into by the bankrupt with the associate during the period of two years ending on the date of the application for bankruptcy. Transaction giving preference should have been entered into by the bankrupt during the period of six months ending on the date of the application for bankruptcy. Further the transaction giving preference should have caused the bankruptcy process to be triggered.

On the application of the bankruptcy trustee, the Adjudicating Authority may –

- (a) pass an order declaring a transaction giving preference void;
- (b) pass an order requiring any property transferred in respect of a transaction giving preference to be vested with the bankruptcy trustee as a part of the estate of the bankrupt; and
- (c) pass any other order it thinks fit for restoring the position to what it would have been if the bankrupt had not entered into the transaction giving preference.

The Adjudicating Authority shall not pass an order unless the bankrupt was influenced in his decision of giving preference to a person by a desire to produce in relation to that person an effect of giving preference.

Effect of order (Section 166)

If the interest was acquired or the benefit was received -

- (a) in good faith;
- (b) for value;
- (c) without notice that the bankrupt entered into the transaction at an under-value or for giving preference;
- (d) without notice that the bankrupt has filed an application for bankruptcy or a bankruptcy order has been passed; and
- (e) by any person who at the time of acquiring the interest or receiving the benefit was not an associate of the bankrupt.

An order passed by the Adjudicating Authority shall not, -

- (a) give rise to a right against a person interested in the property which was acquired in an undervalued transaction or a transaction giving preference,

Provisions w.r.to proceeds of BP and distribution of proceeds

whether or not he is the person with whom the bankrupt entered into such transaction; and

- (b) require any person to pay a sum to the bankruptcy trustee in respect of the benefit received from the undervalued transaction or a transaction giving preference, whether or not he is the person with whom the bankrupt entered into such transaction.

Any sum required to be paid to the bankruptcy trustee shall be included in the estate of the bankrupt.

Extortionate credit transactions (Section 167)

An extortionate credit transaction is a transaction for or involving the provision of credit to the bankrupt by any person-

- (a) on terms requiring the bankrupt to make exorbitant payments in respect of the credit provided; or
- (b) which is unconscionable under the principles of law relating to contracts.

Any debt extended by a person regulated for the provision of financial services in compliance with the law in force in relation to such debt, shall not be considered as an extortionate credit transaction

On an application by the bankruptcy trustee, the Adjudicating Authority may make an order under this section in respect of extortionate credit transactions to which the bankrupt is or has been a party.

The transactions should have been entered into by the bankrupt during the period of two years ending on the bankruptcy commencement date.

An order of the Adjudicating Authority may –

- (a) set aside the whole or part of any debt created by the transaction;
- (b) vary the terms of the transaction or vary the terms on which any security for the purposes of the transaction is held;
- (c) require any person who has been paid by the bankrupt under any transaction, to pay a sum to the bankruptcy trustee;
- (d) require any person to surrender to the bankruptcy trustee any property of the bankrupt held as security for the purposes of the transaction.

Any sum paid or any property surrendered to the bankruptcy trustee shall be included in the estate of the bankrupt.

Obligations under contracts (Section 168)

- 1) This section shall apply where a contract has been entered into by the bankrupt with a person before the bankruptcy commencement date.
- 2) Any party to a contract, other than the bankrupt, may apply to the Adjudicating Authority for –
 - (a) an order discharging the obligations of the applicant or the bankrupt under the contract; and
 - (b) payment of damages by the party or the bankrupt, for non-performance of the contract or otherwise.
- 3) Any damages payable by the bankrupt by virtue of an order shall be provable as bankruptcy debt.
- 4) When a bankrupt is a party to the contract under this section jointly with another person, that person may sue or be sued in respect of the contract without joinder of the bankrupt.

Continuance of proceedings on death of bankrupt (Section 169)

If a bankrupt dies, the bankruptcy proceedings shall, continue as if he were alive.

Administration of estate of deceased bankrupt (Section 170)

All the provisions of Chapter V relating to the administration and distribution of the estate of the bankrupt shall, so far as the same are applicable, apply to the administration of the estate of a deceased bankrupt.

While administering the estate of a deceased bankrupt, the bankruptcy trustee shall have regard to the claims by the legal representative of the deceased bankrupt to payment of the proper funeral and testamentary expenses incurred by them. The claims shall rank equally to the secured creditors in the priority provided under section 178.

If, on the administration of the estate of a deceased bankrupt, any surplus remains in the hands of the bankruptcy trustee after payment in full of all the debts due from the deceased bankrupt, together with the costs of the administration and interest as provided under section 178, such surplus shall

Provisions w.r.to proceeds of BP and distribution of proceeds

be paid to the legal representatives of the estate of the deceased bankrupt or dealt with in such manner as may be prescribed.

Proof of debt (Section 171)

The bankruptcy trustee shall give notice to each of the creditors to submit proof of debt within fourteen days of preparing the list of creditors.

The proof of debt shall –

- (a) require the creditor to give full particulars of debt, including the date on which the debt was contracted and the value at which that person assesses it;
- (b) require the creditor to give full particulars of the security, including the date on which the security was given and the value at which that person assesses it;
- (c) be in such form and manner as may be prescribed.

In case the creditor is a decree holder against the bankrupt, a copy of the decree shall be a valid proof of debt. 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. The bankruptcy trustee shall estimate the value of any bankruptcy debt which does not have a specific value.

The value assigned by the bankruptcy trustee shall be the amount provable by the concerned creditor. A creditor may prove for a debt where payment would have become due at a date later than the bankruptcy commencement date as if it were owed presently and may receive dividends in a manner as may be prescribed.

Where the bankruptcy trustee serves a notice and the person on whom the notice is served does not file a proof of security within thirty days after the date of service of the notice, the bankruptcy trustee may, with leave of the Adjudicating Authority, sell or dispose of any property that was subject to the security, free of that security.

Proof of debt by secured creditors (Section 172)

- (1) Where a secured creditor realises his security, he may produce proof of the balance due to him.

- (2) Where a secured creditor surrenders his security to the bankruptcy trustee for the general benefit of the creditors, he may produce proof of his whole claim.

Mutual credit and set-off (Section 173)

- (1) Where before the bankruptcy commencement date, there have been mutual dealings between the bankrupt and any creditor, the bankruptcy trustee shall -
 - (a) take an account of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other; and
 - (b) only the balance shall be provable as a bankruptcy debt or as the amount payable to the bankruptcy trustee as part of the estate of the bankrupt.
- (2) Sums due from the bankrupt to another party shall not be included in the account taken by the bankruptcy trustee under sub-section (1), if that other party had notice at the time they became due that an application for bankruptcy relating to the bankrupt was pending.

Distribution of interim dividend (Section 174)

- (1) Whenever the bankruptcy trustee has sufficient funds in his hand, he may declare and distribute interim dividend among the creditors in respect of the bankruptcy debts which they have respectively proved.
- (2) Where the bankruptcy trustee has declared any interim dividend, he shall give notice of such dividend and the manner in which it is proposed to be distributed.
- (3) In the calculation and distribution of the interim dividend, the bankruptcy trustee shall make provision for -
 - (a) any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their debts; and
 - (b) any bankruptcy debts which are subject of claims which have not yet been determined;
 - (c) disputed proofs and claims; and

Provisions w.r.to proceeds of BP and distribution of proceeds

- (d) expenses necessary for the administration of the estate of the bankrupt.

Distribution of property (Section 175)

- (1) The bankruptcy trustee may, with the approval of the committee of creditors, divide in its existing form amongst the creditors, according to its estimated value, any property in its existing form which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.
- (2) An approval shall be sought by the bankruptcy trustee for each transaction, and a person dealing with the bankruptcy trustee in good faith and for value shall not be required to enquire whether any approval required has been given.
- (3) Where the bankruptcy trustee has done anything without the approval of the committee of creditors, the committee may, for the purpose of enabling him to meet his expenses out of the estate of the bankrupt, ratify the act of the bankruptcy trustee.
- (4) The committee of the creditors shall not ratify the act of the bankruptcy trustee unless it is satisfied that the bankruptcy trustee acted in a case of urgency and has sought its ratification without undue delay.

Final dividend (Section 176)

- (1) Where the bankruptcy trustee has realised the entire estate of the bankrupt or so much of it as could be realised in the opinion of the bankruptcy trustee, he shall give notice -
 - (a) of his intention to declare a final dividend; or
 - (b) that no dividend or further dividend shall be declared.
- (2) The notice shall contain such particulars as may be prescribed and shall require all claims against the estate of the bankrupt to be established by a final date specified in the notice.
- (3) The Adjudicating Authority may, on the application of any person interested in the administration of the estate of the bankrupt, postpone the final date referred.

- (4) After the final date, the bankruptcy trustee shall -
 - (a) defray any outstanding expenses of the bankruptcy out of the estate of the bankrupt; and
 - (b) if he intends to declare a final dividend, declare and distribute that dividend among the creditors who have proved their debts, without regard to the claims of any other persons.
- (5) If a surplus remains after payment in full with interest to all the creditors of the bankrupt and the payment of the expenses of the bankruptcy, the bankrupt shall be entitled to the surplus.
- (6) Where a bankruptcy order has been passed in respect of one partner in a firm, a creditor to whom the bankrupt is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

Claims of creditors (Section 177)

- (1) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but –
 - (a) when he has proved the debt, he shall be entitled to be paid any dividend or dividends which he has failed to receive, out of any money for the time being available for the payment of any further dividend; and
 - (b) any dividend or dividends payable to him shall be paid before that money is applied to the payment of any such further dividend.
- (2) No action shall lie against the bankruptcy trustee for a dividend, but if the bankruptcy trustee refuses to pay a dividend payable, the Adjudicating Authority may order him to –
 - (a) pay the dividend; and
 - (b) pay, out of his own money -
 - (i) interest on the dividend; and
 - (ii) the costs of the proceedings in which the order to pay has been made.

Order of Priority of Distribution:

Cost	Workmen & Secured Creditors	Employee dues	Government Dues	Other debts
Cost and expenses incurred by the bankruptcy trustee for the bankruptcy process - in full.	Workmen dues for a period of 24 months prior to BCD; Debts to secured creditors	Wages and any unpaid dues to employees other than workmen, for a period of 12 months prior to BCD	Any amount due to CG or SG, for 2 years preceding the BCD	All other debts and dues including unsecured debts

Priority of payment of debts (Section 178)

- (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or the State Legislature for the time being in force, in the distribution of the final dividend, the following debts shall be paid in priority to all other debts —
 - (a) firstly, the costs and expenses incurred by the bankruptcy trustee for the bankruptcy process in full;
 - (b) secondly, -
 - i. the workmen’s dues for the period of twenty-four months preceding the bankruptcy commencement date; and
 - ii. debts owed to secured creditors
 - (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;
 - (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;

- (e) lastly, all other debts and dues owed by the bankrupt including unsecured debts.
- (2) The debts in each class specified in sub-section (1) shall rank in the order mentioned in that sub-section but debts of the same class shall rank equally amongst themselves, and shall be paid in full, unless the estate of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.
- (3) Where any creditor has given any indemnity or has made any payment of moneys by virtue of which any asset of the bankrupt has been recovered, protected or preserved, the Adjudicating Authority may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks taken by him in so doing.
- (4) Unsecured creditors shall rank equally amongst themselves unless contractually agreed to the contrary by such creditors.
- (5) Any surplus remaining after the payment of the debts under sub-section (1) shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the bankruptcy commencement date.
- (6) Interest payments under sub-section (5) shall rank equally irrespective of the nature of the debt.
- (7) In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.
- (8) Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

Chapter 9

**Offences and Penalties – For
misconduct during Insolvency and
Bankruptcy Process for Personal
Guarantors to Corporate Debtors
under IBC**

Punishment for false information etc., contravention of provisions, false information, concealment, etc., certain actions. (Section 184 to 187)

Section	Offence	Applicable to	Penalty
184(1)	False information etc. by creditor in insolvency resolution process	Creditor or debtor	Imprisonment for a term upto 1 year or fine upto Rs. 5 lakhs or both.
184(2)	Creditor promises to vote in favour of the repayment plan dishonestly	Creditor	Imprisonment for a term upto 2 year or fine upto three times the amount or its equivalent of such money, property or security accepted by the creditor, or both.
185	Contravention of provisions of this part	Insolvency professional	Imprisonment for a term upto 6 months or fine of minimum Rs. 1 lakhs upto Rs. 5 lakhs, or with both.
186(a)	False representation or wilful omission or concealment of any material information, etc. by bankrupt	Bankrupt	Imprisonment for a term upto 6 months or fine upto Rs. 5 lakhs, or both.

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

186(b)	Fraudulently has failed to provide or deliberately withheld the production of, destroyed, falsified or altered, his Books of Account, , etc. by bankrupt	Bankrupt	Imprisonment for a term upto 1 year or fine upto Rs. 5 lakhs or both.
186(c)	Contravened the restrictions provided under section 140 or section 141 of the Code	Bankrupt	Imprisonment for a term upto 6 months or fine upto Rs. 5 lakhs, or both.
186(d)	Failed to deliver possession of property	Bankrupt	Imprisonment for a term upto 6 months or fine upto Rs. 5 lakhs, or both.
186(e)	Failed to account for any loss incurred	Bankrupt	Imprisonment for a term upto 2 years or fine upto three times the value of loss or both.
186(f)	Absconded or attempts to Abscond	Bankrupt	Imprisonment for a term upto 1 year or fine upto Rs. 5 lakhs, or both.
187	Punishment for certain actions	Bankruptcy trustee	Imprisonment for a term upto 3 years or fine not less than three times the amount of loss caused, or both.

Chapter 10

Practical aspects related to the Insolvency and Bankruptcy Process for Personal Guarantors to Corporate Debtors under IBC

Circumstances which leads to initiation of personal guarantee:

Personal Guarantee

When seeking funding for a business, many business loans, financial arrangements, or leases require the company director/other to sign a personal guarantee as a form of security for the lender.

Large unpaid debts and continuing defaults by borrowers require the banks and financial institutions to initiate proceedings for recovery of dues against the principal borrowers as well as the guarantors.

The concept of guarantee is governed by the Indian Contract Act, 1872 ("ICA"), where under the contract of guarantee puts an obligation on a surety to honour the promise of principal debtor by paying the principal debtor's present or future debt, provided to him by a creditor in case of default by the principal debtor.

Options available with creditors (Financial Institutions), if guarantor does not pay within the timeframe described.

Following on from this, guarantor needs to pay within the timeframe described. If he does not, the creditor has two options:

- (a) Initiate legal proceedings against personal guarantor for recovery of dues under various legislations and forums, including the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for enforcement of security against the guarantors and under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before the Debt Recovery

Tribunals for recovery of debt against the guarantors etc. (other than IBC in old regime) Normally it takes long time for recovery here.

- (b) File petition/application for insolvency/bankruptcy under Insolvency and Bankruptcy Code. IBC is a game changer to initiate actions against guarantors. This is a time bound process, hence it is a very effective mechanism available with creditors.

Even the **RBI's circular** dated September 9, 2014 issued with reference to the Master Circular on Wilful Defaulters DBOD.No.CID.BC.3/20.16.003/2014-15 dated July 1, 2014, clarified that when a payment default is made by the principal debtor, the bank is entitled to proceed against the guarantor/surety even without exhausting the remedies against the principal debtor. In case the said guarantor refuses to comply with the demand made by the creditor/bank, despite having sufficient means to make payment of the dues, such guarantor would also be treated as a 'Wilful defaulter'.

Some of the earlier cases relating to guarantors are given below:

1. Variance in terms of the Contract:

As per section 133 of the Indian Contract Act, any variance, made without surety's consent, in terms of the contract between the principal debtor and the creditor, discharges surety as to transactions subsequent to the variance. Thus, in case the guarantor successfully establishes that there have been subsequent variations to the contract of guarantee to which the guarantor was not privy to or had no knowledge of, the guarantor can be excused from performing his obligations under law for all the subsequent transactions post the variance.

The Hon'ble Bombay High Court in the matter of *Keshavlal Hari Lal Setalvad and Ors vs Pratapsingh Moholalbai Sheth and Ors* [ILR1932 56 Bom 101] elaborated the principles of variation of contract and discharge of the surety and confirmed that if there is a substantial alteration, even if there be no actual prejudice to the surety which can be shown to exist, the surety will be discharged.

2. Discharge of Guarantor by Release of Principal Debtor:

Section 134 of the ICA provides that the guarantor shall stand discharged from its liabilities under a contract of guarantee in case of any agreement arrived at between the creditor and the principal debtor, by which the principal debtor is released. Such release of principal debtor could be owing

to any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. Simply put, if the principal debtor is discharged of his liability to the creditor, the guarantor also stands discharged.

3. Release of Principal Debtor by Creditor:

In terms of Section 135 of the ICA, if without the consent of the surety, the creditor and debtor enter into a contract, whereby the creditor agrees to make composition/compromise with or gives time to or agrees not to sue the surety, in such a case, guarantor being the surety stands discharged by law to fulfil his obligations under the contract of guarantee unless the surety assents such contract. The Hon'ble Rajasthan High Court in the matter of *Ramswaroop and Anr. vs State Bank of Bikaner & Jaipur* [2002 (3) WLN 430] held that:

"It is true that in each and every case of compromise surety cannot claim discharge of the liability under the surety bond but when the creditor accepted that the decree be passed against all the defendants and this decree is to be satisfied by defendant No. 1 and when the creditor himself agrees to accept entire decretal amount from only the borrower defendant, then it amounts to voluntarily entering into new contract by the creditor with the debtor. This new compromise (agreement), by necessary implication, discharges the guarantor."

4. Remedy of Surety impaired by the act or omission of the Creditor:

Where the creditor either does something, which is inconsistent with the rights of the surety or omits to do his duty towards the surety and because of this, the eventual remedy of the surety that he had against the principal debtor is impaired, the surety/guarantor is discharged from his liability towards the creditor in accordance with section 139 of the ICA.

In the case of *Jose Inacio Lourence vs Syndicate Bank and Another* [1989 65 Comp Cas 698 Bom], the Hon'ble Bombay High Court held that *"failure in not registering the charge is also an act which is inconsistent with the rights of surety within the meaning of Section 139, ICA and the eventual remedy which the surety may have against the principal debtor is impaired resulting in discharge of the surety."*

5. *Guarantee obtained by Misrepresentation:*

In case where a guarantee has been obtained by means of misrepresentation made by the creditor, or with his knowledge and consent, concerning a material part of the transaction, such a guarantee is invalid. In terms of Section 142 of ICA, any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

6. *Guarantee obtained by concealment:*

One additional ground that can be taken by the guarantor is that the guarantee was obtained by the creditor by means of keeping silence as to certain material circumstances and in such circumstances the guarantee can be challenged as invalid.

In the matter of *Krishan Kumar vs. Syndicate bank & Ors. (RFA No. 1/1997 decided on February 19, 2009)* before the Hon'ble Delhi High Court, it was argued that the guarantor did not give any guarantee and had not signed any document undertaking to pay any money to the bank in the event of defendant no. 1 (principal borrower) failed to repay the same and the guarantor contended forgery by the bank manager. The Hon'ble Delhi High Court held that the finding of the trial court in holding the guarantor liable as much as the principal borrower was erroneous in light of the fact that the plaintiff bank had failed to prove the authenticity of the guarantee forming the subject matter of the case.

Chapter 11

Frequently Asked Questions on Insolvency and Bankruptcy Process for Personal Guarantors to Corporate Debtors under IBC

Q 1. What are the Regulations to deal with Personal Guarantors to Corporate Debtors and from what date it is effective?

A 1. There are two Regulations to deal with Personal Guarantors to Corporate Debtors, those are namely;

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

Both of the above two Regulations shall come into force from the 1st day of December 2019.

Q 2. What is the meaning of Personal Guarantor?

A 2. As per Section 5(22) of IBC- "Personal Guarantor" means an individual who is the surety in a contract of guarantee to a corporate debtor.

Q 3. What is the meaning of Guarantor?

A 3. As per Rule 3 (e) of The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, "**Guarantor**" means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part.

Q 4. Define Corporate Guarantor

A 4. Section 5A of IBC, "Corporate Guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor.

Q 5. How Notice can be served?

A 5. As per Rule 3 (g) of Personal Guarantor, - “**serve**” means sending any communication by any means, including registered post, speed post, courier or electronic form, which is capable of producing or generating an acknowledgement of receipt of such communication: **Provided** that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personally works for gain;

Q 6. What is “Contract of Guarantee”?

A 6. As per Section 126. of Indian Contract Act - “**Contract of Guarantee**”, “**Surety**”, “**Principal Debtors**” and “**Creditors**” — A “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the “surety”; the person in respect of whose default the guarantee is given is called the “principal debtor”, and the person to whom the guarantee is given is called the “creditor”. A guarantee may be either oral or written.

Q 7. How is “Invocation of Guarantee” carried out?

A 7. The Letter of Guarantee Agreement should be well stamped and **enforceable** as per “**The Indian Contract Act**” and the Guarantee agreement has been **invoked** as per sections 126 to 147 of the Indian contract act, 1872. Usually, Guarantee should be invoked by **servicing a notice in writing** to guarantor and CC to Principal Debtor/borrower. Amount of Debt remains unpaid in full or part, should be mentioned in the notice clearly.

Q 8. In case of Joint Guarantors/sureties, IBC proceedings may be initiated against one or all?

A 8. In case of Joint Guarantors/sureties: As per the guarantee agreement. **IBC proceedings may be initiated against one or all** – based on joint and several liability.

Q 9. Does provisions of moratorium apply to a surety in a contract of personal guarantee for corporate debtor?

A 9. Section 14(3) of the IBC (introduced vide 2018 amendment) which states that provisions of **moratorium shall not apply** to a surety in a contract of personal guarantee for corporate debtor, is retrospective.

Note: Above sections are applicable where **Principal debtor is corporate debtor and guarantor is individual.**

Q 10. How application can be filed by creditor for initiation of Insolvency against personal guarantor of Corporate Debtor under IBC?

A 10. As per Rule 7 of **Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. :**

- (1) Prior to filing of application, the creditor must serve, a demand notice under clause (b) of sub-section (4) of section 95, on the guarantor demanding payment of the amount of default, in Form B.
- (2) The application under sub-section (1) of section 95 shall be submitted in Form C, along with a fee of two thousand rupees.
- (3) The creditor shall serve forthwith a copy of the application referred to in sub-rule (2) to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor.
- (4) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.

Application can be filed only if the debt stated in the demand notice is not repaid by the debtor within 14 days of service of the demand notice.

Unlike demand notice in Form 3 of the IBBI (Application to Adjudicating Authority) Rules, 2016, the demand notice in case of personal insolvency does not give a chance of disputing the notice.

Q 11. What is the Difference between Personal Insolvency Resolution and Bankruptcy?

A 11. Both (Personal Insolvency Resolution and Bankruptcy) are two different thing, below table will help is understanding.

Key Basic Area of Differences	Personal Insolvency Resolution	Bankruptcy
Basic Conditions	Default by the Corporate Debtor	Rejection of Application for Personal Insolvency Resolution OR Rejection of repayment plan.
Role of Resolution Professional	Appointed referred as “Resolution Professional”	Appointed IP referred as “Bankruptcy Trustee”
Vesting of Estate	No	Yes Assets of the bankrupt vest in the hands of Bankruptcy Trustee.
Moratorium	Yes including Restrictions on Creditors	Only Interim Moratorium commences on the date of making application.

Q 12. Who can initiate the case against Personal Guarantor to Corporate Debtor

A 12. The Case can be initiated by Debtor as mentioned in section 122 of IBC 2016 or by Creditor as mentioned in section 123 of IBC 2016. Section 122 and 123 of IBC is reproduced as below.

122. Application by debtor. -

- (1) The application for bankruptcy by the debtor shall be accompanied by-
 - (a) the records of insolvency resolution process undertaken

- under Chapter III of Part III;
- (b) the statement of affairs of the debtor in such form and manner as may be prescribed, on the date of the application for bankruptcy; and
 - (c) a copy of the order passed by the Adjudicating Authority under Chapter III of Part III permitting the debtor to apply for bankruptcy.
- (2) The debtor may propose an insolvency professional as the bankruptcy trustee in the application for bankruptcy.
 - (3) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.
 - (4) An application for bankruptcy by the debtor shall not be withdrawn without the leave of the Adjudicating Authority.
123. Application by creditor. –
- (1) The application for bankruptcy by the creditor shall be accompanied by-
 - (a) the records of insolvency resolution process undertaken under Chapter III;
 - (b) a copy of the order passed by the Adjudicating Authority under Chapter III permitting the creditor to apply for bankruptcy;
 - (c) details of the debts owed by the debtor to the creditor as on the date of the application for bankruptcy; and
 - (d) such other information as may be prescribed.
 - (2) An application under sub-section (1) made in respect of a debt which is secured, shall be accompanied with –
 - (a) a statement by the creditor having the right to enforce the security that he shall, in the event of a bankruptcy order being made, give up his security for the benefit of all the creditors of the bankrupt; or
 - (b) a statement by the creditor stating–
 - (i) that the application for bankruptcy is only in respect

of the unsecured part of the debt; and

- (ii) an estimated value of the unsecured part of the debt.
- (3) If a secured creditor makes an application for bankruptcy and submits a statement under clause (b) of sub-section (2), the secured and unsecured parts of the debt shall be treated as separate debts.
- (4) The creditor may propose an insolvency professional as the bankruptcy trustee in the application for bankruptcy.
- (5) An application for bankruptcy under sub-section (1), in case of a deceased debtor, may be filed against his legal representatives.
- (6) The application for bankruptcy shall be in such form and manner and accompanied by such fee as may be prescribed.
- (7) An application for bankruptcy by the creditor shall not be withdrawn without the permission of the Adjudicating Authority.

Q 13. Who is the Adjudicating Authority for filing application in the matter of Personal Guarantor to Corporate Debtor?

A 13. The Adjudicating Authority is National Company Law Tribunal (“NCLT”), for filing application against Personal Guarantor to Corporate Debtor.

Q 14. What is the Eligibility of Resolution Professional under Insolvency Resolution Process for Personal Guarantors to Corporate Debtors?

A 14. Regulation 4 of Insolvency and Bankruptcy Board Of India (Insolvency Resolution Process For Personal Guarantors To Corporate Debtors) Regulations, 2019 defines the eligibility

Eligibility of resolution professional.

- (1) An insolvency professional shall be eligible to be appointed as a resolution professional for a resolution process, if-
 - (a) he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;
 - (b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional

member; and

- (c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the resolution process.

Explanation.- For the purposes of this sub-regulation, -

- (i) a person shall be considered independent of the guarantor, if he-
 - (a) is not an associate of the guarantor;
 - (b) is not a related party of the corporate debtor; and
 - (c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor;
- (ii) the expression “related party” shall have the meaning assigned to it in sub-section (24) of section 5.

Q 15. What is the Eligibility of Bankruptcy Trustee under Bankruptcy for Personal Guarantors To Corporate Debtors?

A 15. Regulation 3 of Insolvency and Bankruptcy Board Of India (Bankruptcy For Personal Guarantors To Corporate Debtors) Regulations, 2019 defines the eligibility

Eligibility of bankruptcy trustee.

- (1) An insolvency professional shall be eligible to be appointed as a bankruptcy trustee for a bankruptcy process, if-
 - (a) he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;
 - (b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and
 - (c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such

insolvency professional entity does not represent any party in the bankruptcy process.

Explanation. - For the purposes of this sub-regulation, a person shall be considered independent of the guarantor, if he-

- (a) is not an associate of the guarantor;
 - (b) is not a related party of the corporate debtor; and
 - (c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor.
- (2) A bankruptcy trustee, who has been an auditor of the guarantor at any time during the preceding three years, shall make a disclosure of remuneration received, year-wise for such audit, to the committee.

Q 16. When is Letter of Guarantee / Guarantee Agreement obtained from the guarantors?

A 16. Bankers generally obtain **Letter of Guarantee/ Guarantee Agreement** from the guarantors at the time of sanction & Documentation / renewal of Loan. The Letter of Guarantee Agreement, should be well stamped and **enforceable** as per “**The Indian Contract Act**” and the Guarantee agreement has been **invoked** as per sections 126 to 147 of the Indian Contract Act.

Chapter 12

**Case laws under Insolvency and
Bankruptcy Code, 2016 on Insolvency
and Bankruptcy Process for Personal
Guarantors to Corporate Debtors**

Sr. No.	Case Laws	Date of Order/Court	Observation by the Court
1.	In The Matter of : Schweitzer Systemtek India Pvt. Ltd Appellant Vs. Phoenix ARC Pvt. Ltd. & Ors. Respondents	NCLAT NEW DELHI Company Appeal (AT) (Insolvency) No. 129 of 2017 Date of Order: 09.08.2017	5. At this stage, it will be desirable to refer to the relevant portion of Section 60 of the I&B Code, as quoted below: - "60. Adjudicating Authority for corporate persons- (1) The. Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located. (2) Without prejudice to subsection (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

			<p>corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal.</p> <p>(3) An insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.</p>
2.	<p>Petitioner :- Sanjeev Shriya</p> <p>Respondent :- State Bank Of India and 6 others</p>	<p>Case :- WRIT – C No. - 30285 of 2017</p> <p>Connected with Case :- WRIT - C No. - 30033 of 2017</p> <p>Date of Order: 06.09.2017</p>	<p>It has also been submitted that the entire proceeding before the DRT is completely without jurisdiction precisely in the backdrop that once the proceeding has already been commenced under the IBC 2016 and the Moratorium under Section 14 of IBC 2016 has already been issued and even the parties have put their appearance before the Insolvency Professionals, then the impugned proceedings only against the guarantors of a principal debtor are per se bad specially in the present situation where there is a legal</p>

Case laws under IBC, 2016 on Insolvency and BP for PG to CD

			<p>bar/moratorium against the principal debtor imposed by operation of law IBC 2016. The NCLT has already ceased of the process of insolvency resolution against the company (in liq.) under IBC 2016. Moreover, the SBI has also put their appearance in the said proceedings regarding its claim, and by no stretch of imagination the DRT could adjudicate any claims of alleged debt of the second respondent and without determination of debt the DRT cannot proceed against the guarantors. The SBI at no point of time had disassociated itself from the proceeding before the NCLT but it is actively participating in the proceeding.</p>
3.	<p>State Bank of India ... Appellant Vs. V. Ramakrishnan & Anr. ... Respondents</p>	<p>SUPREME COURT OF INDIA CIVIL APPEAL NO. 3595 OF 2018 WITH CIVIL APPEAL NO. 4553 OF 2018 Date of Order: 14.08.2018</p>	<p>Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and coextensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to</p>

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

			<p>them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor – often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor.</p>
4.	<p>In The Matter of : Lalit Mishra & Ors. ...Appellants Vs Sharon Bio Medicine Ltd. & Ors. ...Respondents</p>	<p>NCLAT NEW DELHI Company Appeal (AT) (Insolvency) No. 164 of 2018 Date of Order: 19.12.2018</p>	<p>It was not the intention of the legislature to benefit the 'Personal Guarantors' by excluding exercise of legal remedies available in law by the creditors, to recover legitimate dues by enforcing the personal guarantees, which are independent contracts. It is a settled position of law that the liabilities of guarantors is co-extensive with the borrower. This Appellate Tribunal held that the resolution under the 'I&B Code' is not a recovery suit. The object of the 'I&B Code' is, inter alia, maximization of the value of the assets of the 'Corporate Debtor', then to balance all the creditors and make availability of credit and for promotion of</p>

Case laws under IBC, 2016 on Insolvency and BP for PG to CD

			entrepreneurship of the 'Corporate Debtor'. While considering the 'Resolution Plan', the creditors focus on resolution of the borrower 'Corporate Debtor', in line with the spirit of the 'I&B Code'.
5.	In The Matter of : Ferro Alloys Corporation Ltd., ... Appellant Vs. Rural Electrification Corporation Ltd., ... Respondent	NCLAT NEW DELHI Company Appeal (AT) (Insolvency) No. 92 of 2017 Date of Order: 08.01.2019	The provision of the I&B Code do not bar a 'financial creditor' from initiating 'corporate insolvency resolution process' against the 'guarantor', who comes within the meaning of 'corporate debtor'. The aforesaid matter can be noticed from the statutory inter-se rights, obligations and liabilities of : (i) A surety qua the creditor (the relationship as defined under the Indian Contract Act); or (ii) Guarantor qua financial creditor.
6.	In The Matter of : Dr. Vishnu Kumar Agarwal ... Appellant Vs. M/s. Piramal Enterprises Ltd. ... Respondent	NCLAT-New Delhi, Appeal No.:346/2018, 347/2018 Date of Order: 08.01.2019	There is no bar in the 'I&B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'. However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

			<p>same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one Corporate Guarantor', or 'Principal Borrower' or two 'Corporate Guarantors' or one 'Corporate Guarantor' and other 'Corporate Guarantor'), till it is shown that the 'Corporate Debtors' combined are joint venture company.</p>
7.	<p>In The Matter of : Bijay Kumar Agarwal ... Appellant</p> <p>Vs. State Bank of India and Anr ... Respondents</p>	<p>NCLAT-New Delhi, Appeal No.: CA(AT)(I)- 993/2019- NCLAT Date of Order: 23.01.2020</p>	<p>NCLAT held that a contract of Guarantee is a contract to perform the promise or discharge the liability of 3rd party, in case of his default. In this connection, it is to be pointed out that it may not be necessary to start CIRP against the Principal Borrower before initiating against the Corporate Debtor. Even without resorting to CIRP against the Principal Borrower it is always open to the Financial Creditor to</p>

Case laws under IBC, 2016 on Insolvency and BP for PG to CD

			<p>commence CIRP u/s 7 of the Code against the Corporate Debtor / Guarantor. Further NCLAT held that there is no two opinion of a prime fact that there is no fetter in the Code for projecting simultaneously two applications u/s 7 of IBC against (i) the Principal Borrower as well as (ii) the Corporate Guarantor(s) or against both the Guarantors but if, for the same set of claim, when an Application filed by the Financial Creditor is admitted against one of the Corporate Debtor/Principal Borrower or Corporate Guarantor, the second application filed by the same Financial Creditor for the same set of claim and default is not to be admitted against the other Corporate Debtor (The Corporate Guarantor(s) or the Principal Borrower.</p>
8.	<p>In The Matter of : State Bank of India ... Appellant Vs. Adhunik Steels Ltd ... Respondent</p>	<p>NCLAT-New Delhi, Appeal No.:CA(AT)(I)-1192/2019-NCLAT Date of Order: 20.01.2020</p>	<p>Once the matter is settled Principal Borrower, the Guarantee, if any, given by one or other parties (such as Corporate Debtor) automatically stands extinguished</p>
9.	<p>In The Matter of : M/s. SEW Infrastructure Ltd</p>	<p>NCLAT-New Delhi, Appeal No.:CA(AT)(I)-</p>	<p>Once for same set of claim and default application u/s 7 against the Principal Borrower-</p>

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

	... Appellant Vs. M/s. Mahendra Investment Advisors Pvt. Ltd. ... Respondent	1500/2019- NCLAT Date of Order: 09.01.2020	M/s. Amrit Jal Ventures Private Limited is admitted, the application against the Corporate Guarantor is not maintainable. NCLAT not inclined to interfere with the impugned order of rejection of the application under Section 7
10.	Lalit Kumar Jain ... Petitioner(s) Vs. Union of India & Ors. ... Respondent (s)	IN THE SUPREME COURT OF INDIA Transferred Case (Civil) No. 245/2020 Date of Order: 21.05.2021	It is held that the impugned notification no. S.O. 4126(E) dated 15.11.2019 (relate to personal guarantors to corporate debtors) is legal and valid. The Hon'ble Court held that the impugned notification is not an instance of legislative exercise, or amounting to impermissible and selective application of provisions of the Code. There is no compulsion in the Code that it should, at the same time, be made applicable to all individuals, (including personal guarantors) or not at all. There is sufficient indication in the Code- by Section 2(e), Section 5(22), Section 60 and Section 179 indicating that personal guarantors, though forming part of the larger grouping of individuals, were to be, in view of their intrinsic connection with corporate debtors, dealt with differently, through the same adjudicatory process and by the same forum (though not insolvency provisions) as such corporate debtors. It is held that the impugned notification

Case laws under IBC, 2016 on Insolvency and BP for PG to CD

			<p>was issued within the power granted by Parliament, and in valid exercise of it. The exercise of power in issuing the impugned notification. under Section 1(3) is therefore, not ultra vires; hence the notification is valid.</p> <p>It is also held that approval of a resolution plan relating to a corporate debtor does not operate so as to discharge the liabilities of personal guarantors (to corporate debtors.</p>
--	--	--	--

Annexure

**Forms under IBC, 2016 related to the
Insolvency and Bankruptcy Process
for Personal Guarantors to Corporate
Debtors**

Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.”

FORM B

[See rule 7(1)]

FORM OF DEMAND NOTICE

[Under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019]

[Date]

To

[Name and address of the guarantor]

From

[Name and address of the creditor]

Subject: Demand notice in respect of unpaid debt in default due from [corporate debtor] under the Code.

Madam/Sir,

1. This letter is a demand notice of unpaid debt in default due from [name of corporate debtor].
2. Please find particulars of the unpaid debt in default below:

PARTICULARS OF DEBT		
1.	Total outstanding debt (including any interest or penalties)	

Annexure

2.	Amount of debt in default	
3.	Date when the debt was due	
4.	Date when the default occurred	
5.	Nature of the debt	
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable), and details of securities	
7.	Unsecured debt (as applicable)	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	
9.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	
10.	Record of default with the information utility, if any (attach a copy)	
11.	Details of succession certificate, or probate of a WILL, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	
12.	Provision of law, contract or other document under which debt has become due (attach a copy)	
13.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred	
14.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	

3. If you believe that the debt has been repaid before the receipt of this notice, please demonstrate such repayment by sending to us, within fourteen days of receipt of this notice, the following:--
- (a) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the guarantor; or
 - (b) evidence of encashment of cheque for the unpaid amount issued by the guarantor; or

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

- (c) an attested copy of any record that [name of the creditor] has received the payment.
- 4. The undersigned request you to unconditionally pay the unpaid debt in default in full within fourteen days from the receipt of this letter failing which insolvency resolution process, under the Code, shall be initiated against you.

Yours sincerely,

Signature of creditor/person authorized to act on behalf of the creditor [Please enclose the authorization document if this notice is being issued on behalf of the creditor]
--

Name in block letters

Address of person signing

Instructions

1. Please serve a copy of this notice on the guarantor, fourteen days in advance of filing an application under section 95 of the Code.
2. Please attach a copy of such served notice with the application made by the creditor to the Adjudicating Authority.

FORM C

[See rule 7(2)]

APPLICATION BY CREDITOR TO INITIATE INSOLVENCY RESOLUTION PROCESS

[Under rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

[Date]

To

The Adjudicating Authority

[Address]

From

[Name and address of the creditor]

In the matter of [name of the guarantor]

Subject: Application to initiate insolvency resolution process in respect of [name of the guarantor] under the Code.

Madam/Sir,

[Name of the creditor], hereby submits this application to initiate an insolvency resolution process in the case of [name of guarantor].

The details for the purpose of this application are set out below:

Part – I

PARTICULARS OF APPLICANT					
1.	Title and full name				
2.	Date of birth and e-mail address				
3.	Contact number(s)	Home	Mobile	Business	
4.	Identification number	Aadhaar number	CIN	PAN	GSTIN

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

5.	Address	Present	Permanent	Business
6.	Bank Account details (Joint and Several)	Account number	IFSC Code	Name of the Bank and Branch Address

Part – II

PARTICULARS OF THE GUARANTOR				
1.	Title and full name			
2.	Date of birth and e-mail address (to the extent known)			
3.	Any other name by which the guarantor is or has been known (as applicable) (to the extent known)			
4.	Address	Present	Permanent	Business
5.	Occupation/ Business/ Profession			
6.	Annual income (to the extent known)			
7.	List of associates of the guarantor, including relatives, who may be creditors (to the extent known)	Name	Age	Address
8.	Bank account details (Joint and Several)	Account number	IFSC Code	Name of the bank and Branch address
9.	Identification number	Aadhaar number	Passport number	PAN GSTIN

Annexure

10.	Contact number(s)	Home	Mobile	Business	
11.	List of assets of guarantor as on the application date (to the extent known) Note: this will include all assets of guarantor, irrespective of them being excluded assets.	Immovable	Description	Estimated value	Excluded asset or not
		Movable	Description	Estimated value	Excluded asset or not
		Vehicles			
		Shares in listed companies			
		Shares in other companies			
		Life insurance policy			
		Jewellery			
		Pension policy			
		Investment in mutual funds			
Investment in other funds					
Investment in partnerships and					

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

		other business concerns			
		Any other movable property			
12.	Number of directorships held in the preceding three years (along with name of company in which directorship is held) and CIN of such companies				
13.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other) (to the extent known)				
14.	Details regarding personal guarantor (in addition to information in serial numbers 1-13 of this part) -				
	Name of corporate debtor for which guarantee is given				
	Any current or past position held in the corporate debtor (to the extent known)				
	Identification number of the corporate debtor				
	Whether corporate debtor is an associate (to the extent known)				
	Any securities held in corporate debtor for whom guarantee is given				
15.	Where the guarantor is not resident in India, the name and address of person resident in India authorized to accept the service of process on guarantor's behalf				

Part-III

PARTICULARS OF DEBT		
1.	Total debt (including any interest or penalties)	
2.	Amount in default	
3.	Date on which debt was due	
4.	Date on which default occurred	
5.	Nature of the debt	
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	
7.	Unsecured debt (as applicable)	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	
9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	
10.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	
11.	Record of default with the information utility, if any (attach a copy)	
12.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

13.	Provision of law, contract or other document under which debt has become due (attach a copy)	
14.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred (attach a copy)	
15.	List of documents attached to this application in order to prove the existence of debt and the amount in default	
16.	Statement by creditor in respect of excluded debts	<p>I [creditor] hereby state that the debt(s) for which the insolvency resolution process application is filed does not include any-</p> <ul style="list-style-type: none"> (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; (v) any other debt prescribed under section 79(15)(e) of the Code.

17.	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the Code	<input type="checkbox"/> I agree to forfeit my right to enforce my security [insert description] during the period of the repayment plan. <input type="checkbox"/> I do not agree to forfeit my right to enforce my security [insert description] during the period of the repayment plan.
-----	--	---

Part-IV

PARTICULARS OF & DECLARATION BY INSOLVENCY PROFESSIONAL (IF APPLICATION FILED THROUGH INSOLVENCY PROFESSIONAL)				
1.	Title and full name			
2.	Address	Present	Permanent	Business
3. E-mail address(es)				
4.	Contact number	Home	Mobile	Business
5. Declaration by Insolvency Professional		<p>I, <i>[name of insolvency professional]</i>, an insolvency professional enrolled with <i>[name of insolvency professional agency]</i> having registration number <i>[registration number.]</i> have been proposed as the resolution professional by <i>[name of applicant guarantor]</i> in connection with the proposed insolvency resolution process of <i>[name of the guarantor]</i>.</p> <p>I hereby:</p> <p>(i) agree to accept appointment as the resolution professional if an order of appointment is passed</p>		

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

		<p>by the Adjudicating Authority;</p> <p>(ii) state that the registration number allotted to me by the Board is <i>[insert registration number]</i> and that I am currently qualified to practice as an insolvency professional;</p> <p>(iii) disclose that I am currently serving as an interim resolution professional / resolution professional / authorized representative / liquidator/ bankruptcy trustee in <i>[insert number and details of the proceedings]</i>;</p> <p>(iv) certify that there are no disciplinary proceedings pending against me with the Board or <i>[name of the insolvency professional agency he is a member of]</i>;</p> <p>(v) affirm that I am eligible to be appointed as a resolution professional in respect of the guarantor in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019;</p> <p>(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 <i>[insert disclosures, if any]</i>. (Signature of the insolvency professional)</p>
--	--	---

[Name of the creditor] has paid the requisite fee for this application through *[state means of payment]* on *[date]*.

Yours sincerely,

Signature of creditor/ person authorized to act on behalf of the creditor [Please enclose the authorization document if this application is being submitted on behalf of the creditor]
Name in block letters
Address of person signing

List of documents to be attached to the application:

- 1) All documents mentioned in serial number. 15 of Part III of this form.
- 2) Copy of the demand notice served on the guarantor in Form B.
- 3) Copy of the income tax returns with detailed computation of the income of the guarantor, or the firm, as the case may be, for the previous three years, if available.
- 4) Copy of the personal guarantee contract.
- 5) Copy of the authorisation, wherever required under this form.
- 6) Proof that the application fee has been paid.
- 7) Documents evidencing the debt and the default in relation to the debt, as may have been provided by the guarantor at any point in time, if available.
- 8) Documents evidencing the assets, liabilities, income and any other relevant information as may have been provided by the guarantor at any point in time, if available.
- 9) Documentary evidence of all information sought in each entry for each Part of the form.

FORM D

[See rule 11(2)]

APPLICATION FOR WITHDRAWAL OF INSOLVENCY RESOLUTION PROCESS

[Under rule 11 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019]

[Date]

To

The Adjudicating Authority

[Address]

From

[Name and address of the applicant]

In the matter of [name of the guarantor]

Subject: Withdrawal of application for insolvency resolution process of [name of guarantor] admitted on

1. [Name of applicant], had filed an application bearing [particulars of application, i.e, diary number/ case number] on [date of filing] before the Adjudicating Authority under [Section 94/ Section 95] of the Code. The said application was admitted by the Adjudicating Authority on [date] bearing [case number].
2. I hereby withdraw the application bearing [particulars of application i.e, diary number/ case number] filed by [name of applicant] before the Adjudicating Authority under [Section 94/ Section 95] of the Code.
3. The creditor(s) have approved the request for withdrawal of the application under rule 11.
4. I have been authorised by the applicant to file this application of withdrawal with the Adjudicating Authority. (*Strike out if not applicable*)
5. The required bank guarantee towards estimated cost incurred in the process by the resolution professional is attached.

(Signature of the applicant or person authorised by the applicant)

Date:

Place:

Extract of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019:

FORM B

[See rule 7(1)]

APPLICATION BY CREDITOR TO INITIATE BANKRUPTCY PROCESS

[Under rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

[Date].....

To,

The Adjudicating Authority

[Address]

From,

[Name and address of the creditor]

In the matter of [name of the guarantor]

Subject: Application to initiate bankruptcy process in respect of [name of the guarantor] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the creditor], hereby submits this application to initiate a bankruptcy process in the case of [name of guarantor]. The details for the purpose of this application are set out below:

Part - I

PARTICULARS OF APPLICANT				
1.	Title and full name			
2.	Date of birth and e-mail address			
3.	Contact number(s)	Home	Mobile	Business

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

4.	Identification number of creditor	Aadhaar number	CIN	PAN	GSTIN
5.	Address	Present	Permanent	Business	

Part – II

PARTICULARS OF THE GUARANTOR					
1.	Title and full name				
2.	Date of birth and e-mail address (to the extent known)				
3.	Any other name by which the guarantor is or has been known (as applicable) (to the extent known)				
4.	Address	Present	Permanent	Business	
5.	Occupation/Business/ Profession				
6.	Annual income (to the extent known)				
7.	List of associates of the guarantor, including relatives, who may be creditors (to the extent known)	Name	Age	Address	
8.	Bank account details (Joint and Several)	Account number	IFSC code	Name of the Bank and Branch address	

Annexure

9.	Identification numbers	Aadhaar number	Passport number	PAN	GSTIN
10.	Contact number(s)	Home	Mobile	Business	
11.	List of assets of guarantor as on the application date (to the extent known) Note: this will include all assets of debtor, irrespective of them being excluded assets.	Immovable	Description	Estimated value	Excluded asset or not
		Movable	Description	Estimated value	Excluded asset or not
		Vehicles			
		Shares in listed companies			
		Shares in other companies			
		Life insurance policy			
		Jewelry			
		Pension policy			
		Investment in mutual funds			
		Investment in other funds			
		Investment in partnerships and other business concerns,			

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

	Any other movable property			
12.	Number of directorships held in the last three years (along with name of company in which directorship is held and Director Identification Number) and CIN of such companies (to the extent known)			
13.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other) (to the extent known)			
14.	Details regarding guarantee given by guarantor (in addition to information in serial numbers 1-13 of this part)-			
	Name of corporate debtor for which guarantee is given			
	Any current or past position held in the corporate debtor (to the extent known)			
	Identification number of the corporate debtor			
	Whether corporate debtor is an associate (to the extent known)			
	Any securities held in corporate debtor for whom guarantee is given			

15.	Where the guarantor is not a resident in India, the name and address of the person authorised to accept the service of process on guarantor's behalf, along with the authority	
-----	--	--

Part-III

PARTICULARS OF DEBT		
1.	Total debt (including any interest or penalties)	
2.	Amount in default	
3.	Date on which debt was due	
4.	Date on which default occurred	
5.	Nature of the debt	
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	
7.	Unsecured debt (as applicable)	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	
9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	
10.	Particulars of an order of a court, tribunal or arbitral panel	

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

	adjudicating on the default, if any (attach a copy of the order)	
11.	Record of default with the information utility, if any (attach a copy)	
12.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	
13.	Provision of law, contract or other document under which debt has become due (attach a copy)	
14.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the debtor (attach a copy)	
15.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	
16.	Statement by the secured creditor under section 123(2) of the Code	<p>Tick whichever is applicable-</p> <ul style="list-style-type: none"> <input type="checkbox"/> In the event a bankruptcy order accepting the application is passed by the Adjudicating Authority, I shall relinquish my security mentioned in serial number 6 for the benefit of all the creditors of the debtor. <input type="checkbox"/> The application is only in respect of unsecured debt as per the details mentioned in serial number 7.

17.	Statement by creditor in respect of excluded debts	<p>I [<i>creditor</i>] hereby state that the debt(s) for which the bankruptcy process application is filed does not include any-</p> <p>(i) liability to pay fine imposed by a court or tribunal;</p> <p>(ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;</p> <p>(iii) liability to pay maintenance to any person under any law for the time being in force;</p> <p>(iv) liability in relation to a student loan;</p> <p>(v) any other debt prescribed under section 79(15)(e) of the code.</p>
-----	--	--

Part-IV

PARTICULARS OF & DECLARATION BY INSOLVENCY PROFESSIONAL (IF PROPOSED TO ACT AS BANKRUPTCY TRUSTEE)			
1.	Title and full name		
2.	Address	Present	Permanent
			Business
3.	E-mail address(es)		
4.	Contact number	Home	Mobile
			Business
5.	Declaration by insolvency professional	<p>I, [<i>name of insolvency professional</i>], an insolvency professional registered with [<i>name of insolvency professional agency</i>] having registration number [<i>registration number</i>] have been proposed as the insolvency professional by [<i>name of applicant guarantor</i>] in connection with the proposed</p>	

	<p>bankruptcy process of <i>[name of the guarantor]</i>.</p> <p>I hereby:</p> <ul style="list-style-type: none">(i) agree to accept appointment as the insolvency professional if an order of appointment is passed by the Adjudicating Authority;(ii) state that the registration number allotted to me by the Board is <i>[insert registration number]</i> and that I am currently qualified to practice as an insolvency professional;(iii) disclose that I am currently serving as an insolvency professional / resolution professional / liquidator/ bankruptcy trustee in <i>[insert number and details of the proceedings]</i>;(iv) certify that there are no disciplinary proceedings pending against me with the Board or <i>[name of the insolvency professional agency he is a member of]</i>;(v) affirm that I am eligible to be appointed as an insolvency professional in respect of the debtor in accordance with regulation 3 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019;(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 <i>[insert disclosures, if any]</i>. <p>(Signature of the insolvency professional)</p>
--	---

Yours sincerely,

Signature of creditor/ person authorised to act on behalf of the creditor [Please enclose the authorisation document if this application is being submitted on behalf of the creditor]
Name in block letters
Address of person signing

List of documents to be attached to the application:

- 1) All records of the insolvency resolution process in respect of the guarantor, including the following-
 - (i) Application for the insolvency resolution process;
 - (ii) Order(s) of the Adjudicating Authority-
 - a. accepting / rejecting the application under serial number (i) above, as the case may be;
 - b. approving / rejecting the repayment plan, as the case may be;
 - c. entitling the creditor to apply for bankruptcy;
 - (iii) any other order that may have been passed by the Adjudicating Authority in relation to the insolvency resolution process.
- 2) All documents mentioned in serial number 15 of Part III of this form.
- 3) Copy of the income tax returns with detailed computation of the income of the guarantor, or the firm, as the case may be, for the previous three years, if available.
- 4) Copy of the personal guarantee contract.
- 5) Copy of the authorisation, wherever required under this form.
- 6) Proof that the application fee has been paid.
- 7) Documents evidencing the debt and the default in relation to the debt, as may have been provided by the guarantor at any point in time, if available.
- 8) Documents evidencing the assets, liabilities, income and any other relevant information as may have been provided by the guarantor at any point in time, if available.
- 9) Documentary evidence of all information sought in each entry for each part of the form.

FORM C

[See rule 9 (1)]

Public Notice

[Under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

FOR THE ATTENTION OF THE CREDITORS OF [Full Name and title of Bankrupt (personal guarantor of (name of corporate debtor))]

Notice is hereby given that the [Debt Recovery Tribunal/National Company Law Tribunal in case of bankrupt under section 60 of the Code] has ordered the commencement of a bankruptcy process against the [name of bankrupt] residing at [last known address of the bankrupt] on [bankruptcy commencement date].

The creditors of [name of the bankrupt], are hereby called upon to submit their claims with proof on or before [insert the date falling seven days from date of issue of public notice] to the bankruptcy trustee at [address].

The last date for submission of claims of creditors shall be [date]. The creditors may submit their claims through electronic means, or by hand or registered post or speed post or courier.

Additional details of the bankruptcy trustee: [Name, last known address, e-mail address, phone number and the registration number of the bankruptcy trustee]

Note: Submission of false or misleading claims with proof shall attract penalties or imprisonment in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and any other applicable laws.

Date and Place:

FORM F
[See rule 12(1)]

CLAIM WITH PROOF BY A CREDITOR

[Under rule 12 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

[Date]

To

The Bankruptcy Trustee

[Name of the Bankruptcy Trustee]

[Address as set out in public notice]

From

[Name and address of the creditor]

Subject: Submission of claims with proof.

Madam/Sir,

[Name of the creditor], hereby submits this proof of claim in respect of the bankruptcy process in the case of [name of bankrupt]. The details for the same are set out below:

S. No.	Particulars				
1.	Title and full name of creditor				
2.	Identification number of creditor	Aadhar	PAN	CIN	GSTIN
3.	Address	Present	Permanent	Business	
4.	Total amount of claim (Including any interest as at the bankruptcy commencement date)				
5.	Details of documents by reference to which the debt can be substantiated.				

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

6.	Details of any dispute as well as the record of such dispute Note: 'Dispute' will include suits, arbitration proceedings, and other judicial proceedings contesting the existence or validity of the debt.	
7.	Details of how debt was incurred and the date when debt incurred	
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the bankrupt and the creditor which may be set-off against the claim	
9.	Details of any retention of title arrangements in respect of goods or properties to which the claim refers	
10.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a repayment plan	
11.	Details of any security held (including value and date when it was given)	
12.	For secured creditors only	
	Tick whichever is applicable – <input type="checkbox"/> security interest is being enforced <input type="checkbox"/> Security interest is being relinquished.	
	If security is being relinquished, please complete the statement of relinquishment of security	I, [<i>name of secured creditor</i>], hereby release and relinquish my security interest and any claim, right, lien or

Annexure

	interest in the column on the right.	interest in any property based on such security interest, other than the right to receive dividends as per the Code, in <i>[insert description of the subject and nature of security interest]</i> , which was created by <i>[name of bankrupt]</i> , on <i>[insert date of creation of security interest]</i> on account of <i>[insert description of circumstances leading to creation of security interest]</i> . <i>Signature of the secured creditor, or the authorised signatory.</i>
	If security is being realised, provide details of any action that has been taken to enforce / realise the security	
	If security is being realised, specify balance amount of debt which is being claimed.	
13.	List of documents attached to this proof of claim in order to prove the existence and non-payment of claim due to the creditor	
14.	Details of bank account to which the share of creditor's proceeds from bankruptcy can be deposited.	
Signature of creditor or person authorized to act on his behalf <i>[Please enclose the authority if this is being submitted on behalf of a creditor]</i>		
Name in block letters		
Address of person signing		

DECLARATION

I, *[name of claimant]*, currently residing at *[insert address]*, declare and state as follows:

1) *[Name of bankrupt]*, the debtor was, at the bankruptcy commencement date, being the day of _____ 20____, justly and truly indebted to me to the sum of INR *[insert amount of claim]*.

2) In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

[Please list the documents relied on as evidence of claim]

3) The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4) In respect of the said sum or any part thereof, I have not, nor has any person by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the bankrupt and the creditor which may be set-off against the claim.]

Date:

Place:

(Signature of the claimant)

VERIFICATION

I, *[Name]*, the claimant hereinabove, do hereby verify that the contents of this claim with proof are true and correct to my knowledge and belief and no material facts have been concealed therefrom.

Verified at _____ on this _____ day of _____ 201____

(Claimant's signature)

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) REGULATIONS, 2019:

FORM A

WRITTEN CONSENT TO ACT AS RESOLUTION PROFESSIONAL

(Under regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)

[Date]

To
The Adjudicating Authority
[Name of Bench]

From
[Name of the Insolvency Professional]
[Registration number of the Insolvency Professional]
[Address of the Insolvency Professional registered with the Board]

Subject: Written consent to act as resolution professional in the matter of [name of guarantor].

1. I, *[name]*, an insolvency professional enrolled with *[name of insolvency professional agency]* and registered with the Board, note that I have been proposed to be appointed as resolution professional for the resolution process of *[name of the guarantor]*.
2. In accordance with regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, I hereby give consent to the proposed appointment for the resolution process of *[name of the guarantor]*
3. I declare and affirm as under: -
 - (a) I am registered with the Board as an insolvency professional.
 - (b) I am not subject to any disciplinary proceedings initiated by the Board or the insolvency professional agency.
 - (c) I do not suffer from any disability to act as a resolution professional.
 - (d) I am eligible to be appointed as resolution professional of the guarantor under regulation 3 of the Insolvency and Bankruptcy

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 and other applicable provisions of the Code and regulations.

- (e) I shall make the disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
- (f) I am having the following processes in hand:

Sl. No.	Role as	No. of processes on the date of consent
1	Interim Resolution Professional	
2	Resolution Professional of: (a) Corporate debtors (b) Personal guarantors, individuals or partnership firms	
3	Liquidator of: (a) Liquidation Process (b) Voluntary Liquidation Process	
4	Bankruptcy Trustee	
5	Authorised Representative	
6	Any other (please state)	

Date:

Place:

(Signature of Insolvency Professional)

Registration No.....

FORM B
CLAIM WITH PROOF BY A CREDITOR

(Under regulation 7(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)

[Date]

To

[Name of the Resolution Professional]

[Address as set out in public announcement]

From

[Name and address of the creditor]

Subject: Submission of claim with proof in the matter of [name of guarantor].

Madam/Sir,

[Name of the creditor], hereby submits the claim with proof in respect of the resolution process of [name of guarantor]. The details for the same are set out below:

1.	Title and full name of creditor				
2.	Identification number of creditor	Aadhar Number	PAN	CIN	GSTIN
3.	Address	Present	Permanent	Business	
4.	Email				
5.	Total amount of claim (Including any interest as on the resolution process commencement date)				
6.	Details of documents by reference to which the debt is substantiated				

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

7.	Details of any dispute, as well as the record of such dispute with respect to claim (if any)	
8.	Details of how debt was incurred and the date when such debt was incurred	
9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim	
10.	Details of any retention of title arrangements in respect of goods or properties to which the claim refers	
11.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a repayment plan (Account Number, IFS Code, Branch and Bank)	
12.	Details of any security held (including value and date when it was given)	
13.	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the Code	<input type="checkbox"/> I agree to forfeit my right to enforce my security [insert description] during the period of the repayment plan. <input type="checkbox"/> I do not agree to forfeit my right to enforce my security [insert description] during the period of the repayment plan.
14.	(i) Amount claimed by me in the corporate insolvency resolution process / liquidation process of	

	the corporate debtor (ii) The amount admitted by the resolution professional / liquidator of said process. (iii) Amount realised by me in the said process, if any	
15.	Following information regarding the guarantor (to the extent known)-	
	Assets of the guarantor	
	Business of the guarantor	
	Firms in which guarantor is a partner	
	Bank account details of the guarantor	
	Name, age and address of spouse, children, parents and siblings of the guarantor	
Signature of creditor or person authorised to act on his behalf [Please enclose the authorisation document if this form is being submitted on behalf of a creditor]		
Name in block letters		
Address of person signing		

DECLARATION

I, [name of creditor], currently residing at [insert address], hereby declare and state as follows:-

1. [Name of guarantor], the guarantor was, at the resolution process commencement date, being the [date] of [year], indebted to me to the sum of Rs. [insert amount of claim].
2. In respect of my claim of the said sum or any part thereof, I have relied on the following documents:
 - (a)
 - (b)

(c)

(d)

3. The aforesaid documents are true, valid and genuine to the best of my knowledge, information and belief.
4. In respect of the said sum or any part thereof, I have not, nor has any person by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following-

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor which may be set-off against the claim.]

Date:

Place:

(Signature of the creditor)

VERIFICATION

I, [Name of creditor] the creditor hereinabove, do hereby verify that the contents of this proof of claim are true and correct to the best of my knowledge and belief and that no material facts have been concealed therefrom.

Verified at on this day of 20__

(Signature of the creditor)

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (BANKRUPTCY
PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS)
REGULATIONS, 2019:**

FORM A

WRITTEN CONSENT TO ACT AS BANKRUPTCY TRUSTEE

*(Under regulation 3(3) of the Insolvency and Bankruptcy Board of India
(Bankruptcy Process for Personal Guarantors to Corporate Debtors)
Regulations, 2019)*

[Date]

To
The Adjudicating Authority
[Name of Bench]

From
[Name of the Insolvency Professional]
[Registration number of the Insolvency Professional]
[Address of the Insolvency Professional registered with the Board]

Subject: Written consent to act as bankruptcy trustee.

- 1) I, *[name]*, an insolvency professional enrolled with *[name of insolvency professional agency]* and registered with the Board, note that I have been proposed to be appointed as bankruptcy trustee for the bankruptcy process of *[name of the bankrupt]*.
- 2) In accordance with regulation 3(3) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, I hereby give consent to the proposed appointment.
- 3) I declare and affirm as under: -
 - (a) I am registered with the Board as an insolvency professional.
 - (b) I am not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency.
 - (c) I do not suffer from any disability to act as a bankruptcy trustee.
 - (d) I am eligible to be appointed as bankruptcy trustee of the bankrupt under regulation 3 of the Insolvency and Bankruptcy Board of India

HB on Personal Guarantors to Corporate Debtors under IBC, 2016

(Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 and other applicable provisions of the Code and regulations.

- (e) I shall make the disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;
- (f) I have the following processes in hand:

Sl. No. Role as No. of processes on the date of consent

- 1. Interim Resolution Professional
- 2. Resolution Professional of:
 - (a) Corporate debtors
 - (b) Personal guarantors or individuals or partnership firms
- 3. Liquidator of:
 - (a) Liquidation Process
 - (b) Voluntary Liquidation Process
- 4. Bankruptcy Trustee
- 5. Authorised Representative
- 6. Any other (please state)

Date:

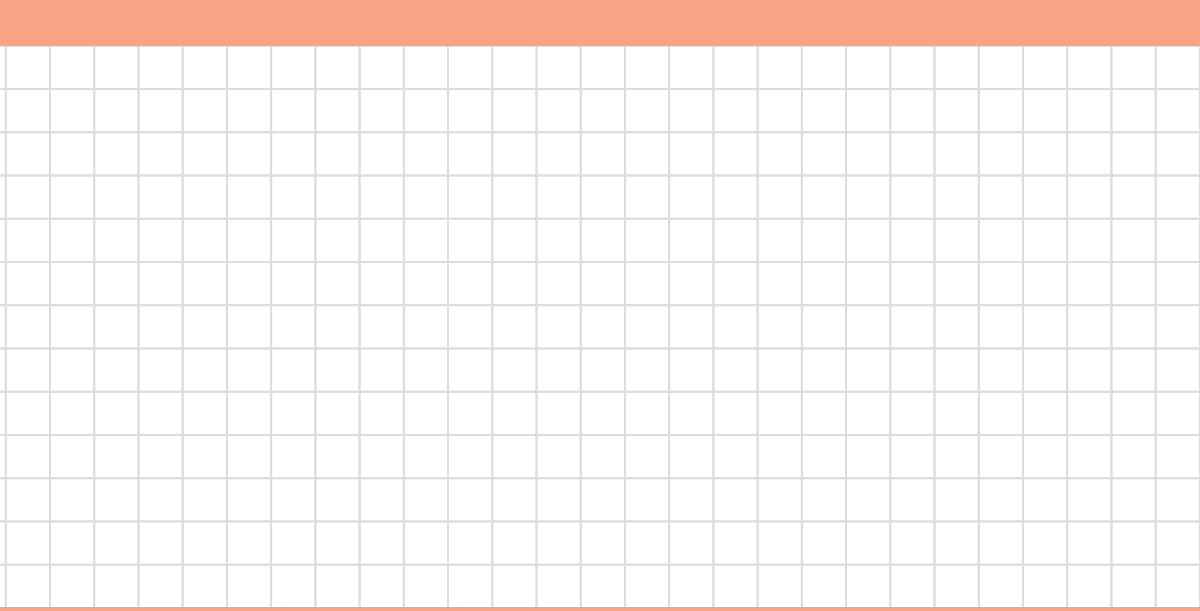
Place:

(Signature of Insolvency Professional)

Registration No.....

References

1. Report of the Working Group on Individual Insolvency (Regarding strategy and approach for implementation of the provisions of the Insolvency and Bankruptcy Code, 2016 in respect of Personal Guarantors to Corporate Debtors; Partnership Firms and Proprietorship Firms; and Other Individuals); October 2018
2. Report on bankruptcy process proposing rules and regulations for personal guarantors to corporate debtors by working group on individual insolvency, March – 2019
3. Relevant sections of Insolvency and Bankruptcy Code 2016
4. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019
5. Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019
6. Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019
7. Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019
8. Notification No. S. O. 4126(E) [F. No. 30/21/2018-Insolvency Section}, dated 15.11.2019.



ISBN :



www.icaai.org

