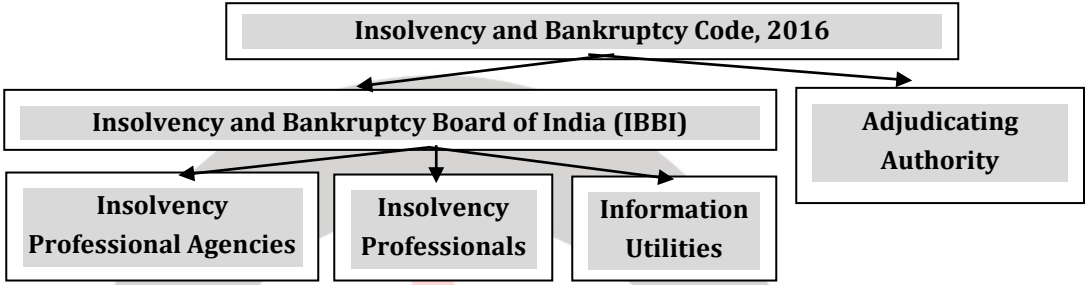


20.1 - INSOLVENCY VS BANKRUPTCY VS LIQUIDATION

Insolvency	<p>Insolvency is defined as a financial condition or state experienced when:</p> <ul style="list-style-type: none"> • a legal entity or a person's liabilities (debts) exceeds their assets, commonly referred to as 'balance-sheet' insolvency <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • when a legal entity or person can no longer meet their debt obligations on time as they become due, commonly referred to as 'cash-flow' insolvency. <p>Upon becoming insolvent immediate action must be taken to rectify the situation as soon as possible in order to avoid possible bankruptcy, by generating cash, minimizing overhead costs, cutting back on living expenses and settling or renegotiating current debts and debt repayments.</p>
Bankruptcy	<p>Bankruptcy is defined as a successful legal procedure that resulted from:</p> <ol style="list-style-type: none"> 1. an application to the relevant court by a legal entity or a person in order to have themselves declared bankrupt; or 2. an application to the relevant court by a creditor of a legal entity or a person in order to have the legal entity or person declared bankrupt; or 3. a special resolution which a legal entity files with the Registrar of Companies in order to be declared bankrupt.
Insolvency leads to bankruptcy	<p>Insolvency in this Code is regarded as a "state" where assets are insufficient to meet the liabilities. If untreated, insolvency will lead to</p> <ul style="list-style-type: none"> • bankruptcy for non-corporates <p style="text-align: center;">and</p> <ul style="list-style-type: none"> • liquidation of corporates. <p>A state of insolvency can lead to bankruptcy but the condition may also be temporary and fixable without legal protection from creditors.</p> <p>Hence, it is evident that insolvency is a state and bankruptcy is a conclusion. A bankrupt would be a conclusive insolvent whereas all insolvencies will not lead to bankruptcies. Typically, insolvency situations have two options:</p> <ul style="list-style-type: none"> • resolution and recovery <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • liquidation of corporates and bankruptcy of non-corporates.
Liquidation	<p>Liquidation is the winding up of a corporation or incorporated entity. There are many entities that can initiate proceedings that will lead to Liquidation, those being:</p> <ul style="list-style-type: none"> • the regulatory bodies; • the directors of a company; • the shareholders of a company; and • an unpaid Creditor of a Company
Relationship	<ul style="list-style-type: none"> • Insolvency is common to both bankruptcy and liquidation. • Insolvency leads to Bankruptcy in case of Natural persons (Individual) • Insolvency leads to Liquidation in case of corporation or Incorporated entity.

20.2 - INTRODUCTORY TOPICS OF IBC, 2016

<p>Regulatory Mechanism</p>	<p>The regulatory mechanism as per IBC, 2016 would be based on the following five pillars:</p> <ol style="list-style-type: none"> 1. Insolvency and Bankruptcy Board of India (IBBI) 2. Adjudicating Authority 3. Insolvency Professional Agencies (IPA) 4. Insolvency Professionals (IP) 5. Information Utilities (IU) 															
<p>Insolvency & Bankruptcy Board of India (IBBI)</p>	<p>Function of the Board is to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.</p>															
<p>Insolvency Professional Agencies (IPA)</p>	<p>These agencies will develop professional standards, code of ethics and be first level regulator for insolvency professional members. This will lead to development of a competitive industry for such professionals.</p>															
<p>Insolvency Professionals (IP)</p>	<p>In the resolution process, the insolvency professional verifies the claims of the creditors, constitutes a creditors committee, runs the debtor's business during the moratorium period and helps the creditors in reaching a consensus for a revival plan. In liquidation, the insolvency professional acts as a liquidator and bankruptcy trustee</p>															
<p>Information Utilities (IU)</p>	<p>The information utility shall provide services as may be specified by Board. Information Utility will collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.</p>															
<p>Adjudicating Authority</p>	<ul style="list-style-type: none"> • The adjudicating authority for corporate insolvency and liquidation is the NCLT. Appeals arising out of NCLT orders lie to the National Company Law Appellate Tribunal and, thereafter, to the Supreme Court of India. • For individuals and other persons, the adjudicating authority is the Debt Recovery Tribunal (DRT). Appeals arising out of DRT orders lie to the Debt Recovery Appellate Tribunal and thereafter, to the Supreme Court. 															
<p>Structure of the Code</p>	<p>The IBC has been divided in to Five parts comprising of 255 sections and 12 Schedules.</p> <table border="1" data-bbox="365 1606 1445 1900"> <tr> <td>Part I</td> <td>Preliminary</td> <td>Section 1-3</td> </tr> <tr> <td>Part II</td> <td>Insolvency Resolution & Liquidation for Corporate Persons</td> <td>Section 4 - 77</td> </tr> <tr> <td>Part III</td> <td>Insolvency Resolution & Bankruptcy for Individuals and Partnership firms</td> <td>Section 78 - 187</td> </tr> <tr> <td>Part IV</td> <td>Regulation of Insolvency Professionals, Agencies and Information Utilities</td> <td>Section 188 - 223</td> </tr> <tr> <td>Part V</td> <td>Miscellaneous</td> <td>Section 224-255</td> </tr> </table>	Part I	Preliminary	Section 1-3	Part II	Insolvency Resolution & Liquidation for Corporate Persons	Section 4 - 77	Part III	Insolvency Resolution & Bankruptcy for Individuals and Partnership firms	Section 78 - 187	Part IV	Regulation of Insolvency Professionals, Agencies and Information Utilities	Section 188 - 223	Part V	Miscellaneous	Section 224-255
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Part V	Miscellaneous	Section 224-255														

<p>Applicability of IBC, 2016 – Sec. 2</p>	<p>Provisions of IBC, 2016 applies to the following, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be:</p> <ol style="list-style-type: none"> Companies incorporated under Companies Act, 2013 or under any previous company law; Companies governed under special Act (so far as of IBC, 2016 is consistent with those special Acts i.e., provisions of Special Act will prevail over IBC, 2016); Limited Liability Partnership (LLP) Other body corporates as may be notified by Central Government Personal guarantors to corporate debtors; Partnership firms and proprietorship firms; and Individuals, other than persons referred to in clause (e). <p>Code not applicable to financial service providers</p> <ul style="list-style-type: none"> IBC is not applicable to corporates in finance sector. Section 3(7) of IBC, 2016 states that “Corporate person” shall not include any financial service provider. Thus, the Code does not cover Bank, Financial Institutions, Insurance Company, Asset Reconstruction Company, Mutual Funds, Collective Investment Schemes or Pension Funds. However, NBFC is engaged in various activities and hence NBFC is not ipso facto excluded from definition of 'corporate person' under section 3(7) of Insolvency Code. NBFC can be a 'corporate debtor' [Jindal Saxena Financial Services v. Mayfair Capital (2018)] <i>C.G. in consultation with the RBI notifies that the insolvency resolution and liquidation proceedings of the NBFC (which include housing finance companies) with asset size of ₹ 500 crore or more, as per last audited balance sheet, shall be undertaken in accordance with the provisions of the IBC, 2016 read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 and the applicable Regulations.</i> 																					
<p>Corporate Insolvency Resolution Process (CIRP)</p>	<ul style="list-style-type: none"> CIRP a process during which financial creditors assess whether the debtor's business is viable to continue and the options for its rescue and revival. The Insolvency Resolution Process provides a collective mechanism to lenders to deal with the overall distressed position of a corporate debtor. If the insolvency resolution process fails or financial creditors decide that the business of debtor cannot be carried on profitably and it should be wound up, the debtor will undergo liquidation process and the assets of the debtor are realized and distributed by the liquidator. Provisions relating to Insolvency and Liquidation process for corporate persons are covered in Part II of the code, which comprises of Sec. 4-77, divided into Seven Chapters. 																					
<p>Structure of IBC, 2016 – Part II</p>	<table border="1"> <tr> <td>Chapter I</td> <td>Preliminary</td> <td>Sec. 4-5</td> </tr> <tr> <td>Chapter II</td> <td>Corporate Insolvency Resolution Process</td> <td>Sec. 6-32</td> </tr> <tr> <td>Chapter III</td> <td>Liquidation Process</td> <td>Sec. 33-54</td> </tr> <tr> <td>Chapter IV</td> <td>Fast Track Insolvency Resolution Process</td> <td>Sec. 55-58</td> </tr> <tr> <td>Chapter V</td> <td>Voluntary Liquidation of Corporate Persons</td> <td>Sec. 59</td> </tr> <tr> <td>Chapter VI</td> <td>Adjudicating Authority for Corporate Persons</td> <td>Sec. 60-67*</td> </tr> <tr> <td>Chapter VII</td> <td>Offences and Penalties</td> <td>Sec. 68-77*</td> </tr> </table> <p>* Not in Syllabus</p>	Chapter I	Preliminary	Sec. 4-5	Chapter II	Corporate Insolvency Resolution Process	Sec. 6-32	Chapter III	Liquidation Process	Sec. 33-54	Chapter IV	Fast Track Insolvency Resolution Process	Sec. 55-58	Chapter V	Voluntary Liquidation of Corporate Persons	Sec. 59	Chapter VI	Adjudicating Authority for Corporate Persons	Sec. 60-67*	Chapter VII	Offences and Penalties	Sec. 68-77*
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<p>Applicability of Part II of IBC, 2016 – Sec. 4</p>	<p>Provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is Rs. 1 Lac or more. However, C.G. may, by notification, specify the minimum amount of default of higher value which shall not be more than Rs. 1 crore.</p> <p style="text-align: center;">Points to remember</p> <p>MCA vide notification dated 24-03-2020, specifies ₹ 1 crore as the minimum amount of default for the purpose of Sec. 4.</p>
<p>Bankruptcy of individuals and firms - Part III of IBC, 2016</p>	<p>Part III of IBC, 2016 (containing sections 78-187) deals with insolvency resolution and bankruptcy for individuals and partnership firms.</p> <p>This Part shall apply to matters relating to fresh start, insolvency and bankruptcy of individuals and partnership firms.</p> <p>Debt Recovery Tribunal (DRT) will be the Adjudicating Authority and Debt Recovery Appellate Tribunal (DRAT) will be the Appellate Authority for individuals and firms.</p> <p style="text-align: center;">Flow of insolvency resolution process for individuals</p> <ul style="list-style-type: none"> • The process will be managed by 'resolution professional' under the direction of 'Adjudicating Authority'. • Insolvency Resolution Process will be initiated. • Finalise 'repayment plan' with concurrence of debtor and committee of creditors. • Upon consensus on repayment plan the individual or firm will get a discharge order. • On failure to finalize the repayment plan, the creditors/debtor can file an application for 'bankruptcy' and the Adjudicating Authority may pass the bankruptcy order. • The resolution professional who is a bankruptcy trustee will take over estate of the bankrupt. He will sell or dispose it off and satisfy payments of creditors to the extent possible. • After that, the bankrupt will get a 'discharge order'. • The discharge order will be registered with Board (IBBI) in a register referred to in section 196 of the Code.

Important Questions

Q. No. 1: When will the provisions of insolvency and liquidation of corporate persons be applicable on a corporate person? [Study Material – ICAI]

HINT: Refer Sec. 4.

20.3 - Important Definitions (Section 3 and 5)

<p>Claim</p>	<p>Sec. 3(6)</p>	<p>means</p> <p>(a) a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.</p> <p style="text-align: center;">or</p> <p>(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.</p>
<p>Corporate Person</p>	<p>Sec. 3(7)</p>	<p>means</p> <p>(a) a company as defined u/s 2(20) of the Companies Act, 2013;</p> <p>(b) a LLP as defined u/s 2(1)(n) of Limited Liability Partnership Act, 2008; or,</p> <p>(c) any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.</p>

Corporate Debtor	Sec. 3(8)	means a corporate person who owes a debt to any person.
Creditor	Sec. 3(10)	means any person to whom a debt is owed and includes <ul style="list-style-type: none"> • a financial creditor, • an operational creditor, • a secured creditor, • an unsecured creditor and • a decree holder.
Debt	Sec. 3(11)	means a liability or obligation in respect of a claim which is due from any person and includes <ul style="list-style-type: none"> • a financial debt and • operational debt.
Default	Sec. 3(12)	means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.
Financial information	Sec. 3(13)	in relation to a person, means one or more of the following categories of information, namely: <ol style="list-style-type: none"> (a) records of the debt of the person; (b) records of liabilities when the person is solvent; (c) records of assets of person over which security interest has been created; (d) records, if any, of instances of default by the person against any debt; (e) records of the balance sheet and cash-flow statements of the person; and (f) such other information as may be specified.
Corporate applicant	Sec. 5(5)	means— <ol style="list-style-type: none"> (a) corporate debtor; or (b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or (c) an individual who is in charge of managing the operations and resources of the corporate debtor; or (d) a person who has the control and supervision over the financial affairs of the corporate debtor.
Corporate Guarantor	Sec. 5(5A)	means a corporate person who is the surety in a contract of guarantee to a corporate debtor.
Dispute	Sec. 5(6)	includes a suit or arbitration proceedings relating to— <ol style="list-style-type: none"> (a) the existence of the amount of debt; (b) the quality of goods or service; or (c) the breach of a representation or warranty.
Financial creditor	Sec. 5(7)	means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Financial Debt	Sec. 5(8)	<p>means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–</p> <ul style="list-style-type: none"> (a) money borrowed against the payment of interest; (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent; (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed; (e) receivables sold or discounted other than any receivables sold on non-recourse basis; (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing; 2 Explanation: For the purposes of this sub-clause, <ul style="list-style-type: none"> (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016, (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account; (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution; (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause.
Financial position	Sec. 5(9)	<p>in relation to any person, means the financial information of a person as on a certain date.</p>
Initiation date	Sec. 5(11)	<p>means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process.</p>
Insolvency commencement date	Sec. 5(12)	<p>means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority u/s 7, 9 or 10, as the case may be.</p> <p>Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority.</p>
Insolvency resolution process period	Sec. 5(14)	<p>means the period of 180 days beginning from the insolvency commencement date and ending on 180th day.</p>
Liquidation commencement date	Sec. 5(17)	<p>means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be.</p>

Operational creditor	Sec. 5(20)	means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.
Operational Debt	Sec. 5(21)	means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.
Related party in relation to a corporate debtor	Sec. 5(24)	means— (a) a director or partner or a relative of a director or partner of the corporate debtor (b) a KMP or a relative of a KMP of the corporate debtor; (c) a LLP or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner; (d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital; (e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital; (f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor; (g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor; (h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act; (i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary; (j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement; (k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement; (l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor; (m) any person who is associated with the corporate debtor on account of— (i) participation in policy making processes of the corporate debtor; or (ii) having more than two directors in common between the corporate debtor and such person; or (iii) interchange of managerial personnel between the corporate debtor and such person; or (iv) provision of essential technical information to, or from, the corporate debtor.

<p>Related Party in relation to an individual</p>	<p>Sec. 5(24A)</p>	<p>means-</p> <ul style="list-style-type: none"> (a) a person who is a relative of the individual or a relative of the spouse of the individual; (b) a partner of a LLP, or a LLP or a partnership firm, in which the individual is a partner; (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual; (d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital; (e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital; (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual; (g) a LLP or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual; (h) a person on whose advice, directions or instructions, the individual is accustomed to act; (i) a company, where the individual or the individual along with its related party, own more than 50% of the share capital of the company or controls the appointment of the board of directors of the company.
<p style="text-align: center;">Points to remember</p> <p>Meaning of Relative: For purposes of Sec. 5(24A),</p> <p>(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:</p> <ul style="list-style-type: none"> (i) members of a HUF, (ii) husband, (iii) wife, (iv) father, (v) mother, (vi) son, (vii) daughter, (viii) son's daughter and son, (ix) daughter's daughter and son, (x) grandson's daughter and son, (xi) granddaughter's daughter and son, (xii) brother, (xiii) sister, (xiv) brother's son and daughter, (xv) sister's son and daughter, (xvi) father's father and mother, (xvii) mother's father and mother, (xviii) father's brother and sister, (xix) mother's brother and sister; and <p>(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included.</p>		

Resolution Applicant	Sec. 5(25)	means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made u/s 25(2)(h).
Resolution Plan	Sec. 5(26)	means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II.
		Points to remember Explanation to Sec. 5(26) clarifies that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger

IMPORTANT QUESTIONS

Q.No. 2: The financial creditor, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' payable on maturity, was issued by the M/s Asset Ltd. (corporate debtor). The zero interest OCD bonds amounted to 2 crore matured in 2019. The liability to redeem the debentures on maturity along with a redemption premium lay on the debtor, which was not made. Mr. Raman filed the Corporate Insolvency resolution process before the NCLT. Advise in the light of the given facts, the following situations:

- (i) State whether Mr. Raman is eligible for filing of application for initiation of CIRP?
- (ii) Do the redemption of debenture payable on the maturity date amounts to debt?

[RTP-May 19]

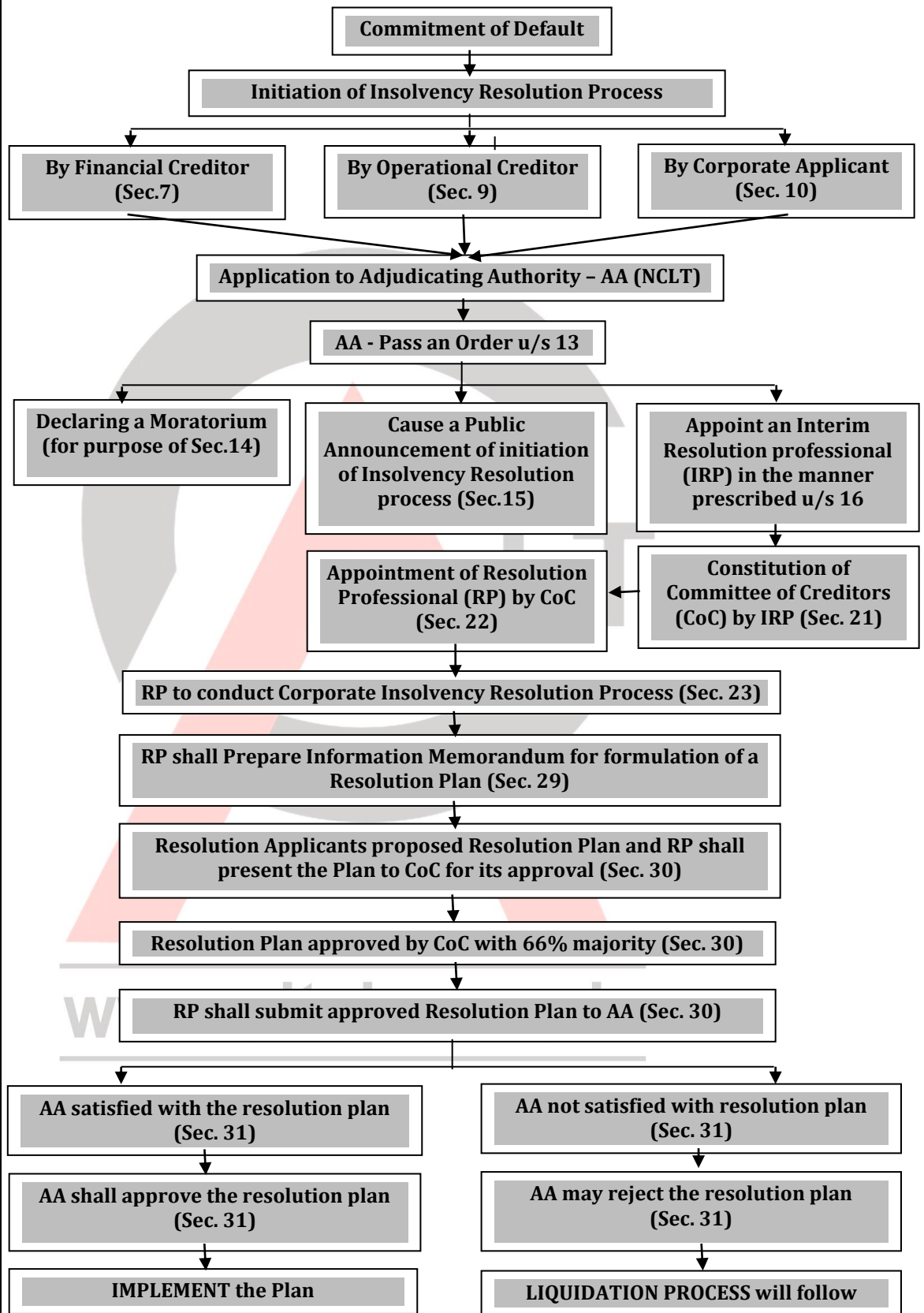
HINT: Refer Sec. 5(7) and 5(8). Mr. Raman is eligible for filing of application for initiation of CIRP.

Q.No. 3: MF Capital Private Limited accepted inter-corporate deposits from JS financial Services Private Limited. MF Capital Private Limited is a Non-banking financial company which has obtained a certificate from the Reserve Bank of India for carrying on the business of providing financial services. As there was a default in repayment of deposits. JS Financial Services Private Limited filed an application with the NCLT under Section 7 of the Insolvency and Bankruptcy Code, 2016. Examine the validity of the Application. [May 19 – Old Syllabus (4 Marks)]

HINT: Refer Sec. 3(7). Corporate Person as defined u/s 3(7) shall not include financial service providers. MF Capital Private Limited is a NBFC carrying on the business of providing financial services. Hence application filed u/s 7 will be treated as invalid.

20.5 - CORPORATE INSOLVENCY RESOLUTION PROCESS (SEC. 6 - SEC. 32)

Overview of Corporate Insolvency Process



Persons who may initiate corporate insolvency resolution process (CIRP) - Sec. 6	Where any corporate debtor commits a default, following persons: (a) a financial creditor (any person to whom a financial debt is owed & includes a person to whom such debt legally assigned or transferred); (b) an operational creditor (a person to whom an operational debt is owed & includes any person to whom such debt legally assigned or transferred); or (c) the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debt.	
Filing of application by Financial Creditor - Sec. 7	Persons eligible to file application - Sec. 7(1)	A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating CIRP against a corporate debtor before the Adjudicating Authority (NCLT) when a default has occurred.
	<p style="text-align: center;">Points to remember</p> <p>Central government notifies following persons who may file an application for initiating CIRP against a corporate debtor before the Adjudicating Authority, on behalf of the Financial Creditor:</p> <p>(i) a guardian; (ii) an executor or administrator of an estate of a financial creditor; (iii) a trustee (including a debenture trustee); and (iv) a person duly authorized by the Board of Directors of a Company.</p>	
	Explanation to Sec. 7(1)	For the purpose of Sec. 7(1), a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.
	Filing of Application - Sec. 7(2)	The financial creditor shall make an application u/s 7(1) in such form and manner and accompanied with such fee as may be prescribed.
	Evidence in support of default - Sec. 7(3)	The financial creditor shall, along with the application furnish— (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified; (b) the name of the resolution professional proposed to act as an interim resolution professional; and (c) any other information as may be specified by the Board.
Process by Adjudicating Authority - Sec. 7(4) to Sec. 7(7)	<ul style="list-style-type: none"> • The Adjudicating Authority shall, within 14 days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor. • Adjudicating Authority if, satisfied that a default has occurred and complying with other requirements of the section, it may, by order, admit such application; or if, default has not occurred, it may, by order, reject such application. Provided that the Adjudicating Authority shall, before rejecting the application, give a notice to the applicant to rectify the defect in his application within 7 days of receipt of such notice from the Adjudicating Authority. • The corporate insolvency resolution process shall commence from the date of admission of the application. 	

		<ul style="list-style-type: none"> The Adjudicating Authority shall communicate the order to the financial creditor within 7 days of admission or rejection of such application and to the corporate debtor.
<p>Insolvency resolution by operational creditor – Sec. 8</p>	<ul style="list-style-type: none"> An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed. The corporate debtor shall, within a period of 10 days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor— <ul style="list-style-type: none"> (a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute; (b) the payment of unpaid operational debt. 	<p style="text-align: center;">Points to remember</p> <p>For the purposes of Sec. 8 a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.</p>
<p>Application for initiation of CIRP by operational creditor – Sec. 9</p>		<ul style="list-style-type: none"> After the expiry of the period of 10 days from the date of delivery of the notice or invoice demanding payment u/s 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute u/s 8, the operational creditor may file an application before the Adjudicating Authority for initiating a CIRP. The operational creditor shall, along with the application furnish— <ul style="list-style-type: none"> (a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor; (b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt; (c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; (d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available*; and (e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed. The Adjudicating Authority shall, within 14 days of the receipt of the application, by an order: <ul style="list-style-type: none"> (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if: <ul style="list-style-type: none"> (a) the application made is complete; (b) there is no payment of the unpaid operational debt; (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and (e) there is no disciplinary proceeding pending against any Resolution Professional (RP) proposed, if any.

	<ul style="list-style-type: none"> (ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if— <ul style="list-style-type: none"> (a) the application made is incomplete; (b) there has been payment of the unpaid operational debt; (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor; (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or (e) any disciplinary proceeding is pending against any proposed RP.
<p>Initiation of CIRP by corporate applicant – Sec. 10</p>	<ul style="list-style-type: none"> • Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating CIRP with the Adjudicating Authority. • The corporate applicant shall, along with the application, furnish- <ul style="list-style-type: none"> (a) the information relating to its books of account and such other documents for such period as may be specified; (b) the information relating to the resolution proposed to be appointed as an interim resolution professional; and (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application. • The Adjudicating Authority shall, within a period of 14 days of the receipt of the application, by an order- <ul style="list-style-type: none"> (a) admit the application, if it is complete and no disciplinary proceeding is pending against the proposed resolution professional; or (b) reject the application, if it is incomplete or any disciplinary proceeding is pending against the proposed resolution professional. <p>Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within 7 days from the date of receipt of such notice from the Adjudicating Authority.</p>
<p>Suspension of initiation of CIRP – Sec. 10A*</p>	<p>Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of CIRP of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of 6 months or such further period, not exceeding 1 year from such date, as may be notified in this behalf:</p> <p>Provided that no application shall ever be filed for initiation of CIRP of a corporate debtor for the said default occurring during the said period.</p> <p><i>*inserted by IBC (Second Amendment) Act, 2020</i></p>
	<p>Points to remember</p> <p>Central Government vide notification dated 24.09.2020 notifies further period of 3 months from the 25th September, 2020 for the purposes of the Sec. 10A.</p>
<p>Persons not entitled to make Application – Sec. 11</p>	<p>The following persons shall not be entitled to make an application to initiate CIRP under this Chapter, namely:</p> <ul style="list-style-type: none"> (a) a corporate debtor undergoing a corporate insolvency resolution process; or (b) a corporate debtor having completed CIRP, 12 months preceding the date of making of the application; or (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 months before the date of making of an application; or (d) a corporate debtor in respect of whom a liquidation order has been made.

<p>Time-limit for completion of CIRP - Sec. 12</p>	<ul style="list-style-type: none"> • The CIRP shall be completed within a period of 180 days from the date of admission of the application to initiate such process. • The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond 180 days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 66% of the voting shares. • On receipt of an application, if the Adjudicating Authority is satisfied that the subject matter of the case is such that CIRP cannot be completed within 180 days, it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding 90 days. • Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once. • Provided further that the CIRP shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension of the period of CIRP granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor. 				
<p>Withdrawal of application admitted under section 7, 9 or 10 - Sec. 12A</p>	<p>The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of 90% voting share of the committee of creditors, in such manner as may be specified.</p>				
<p>Declaration of moratorium and public announcement - Sec 13</p>	<p>The Adjudicating Authority, after admission of the application u/s 7 or 9 or 10, shall, by an order:</p> <ul style="list-style-type: none"> (a) declare a moratorium for the purposes referred to in Sec. 14; (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims u/s 15; and (c) appoint an interim resolution professional in the manner as laid down in section 16. <p>The public announcement shall be made immediately after the appointment of the interim resolution professional.</p>				
<p>Moratorium - Sec. 14</p>	<table border="1"> <tr> <td data-bbox="391 1209 618 1703"> <p>Moratorium order - Sec. 14(1)</p> </td> <td data-bbox="618 1209 1482 1703"> <p>On the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:</p> <ul style="list-style-type: none"> (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002; (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. </td> </tr> <tr> <td colspan="2" data-bbox="618 1703 1482 1906"> <p style="text-align: center;">Point to remember</p> <p>For the purposes of Sec. 14(1), it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the C.G., S.G., local authority, sectoral regulator or any other authority constituted</p> </td> </tr> </table>	<p>Moratorium order - Sec. 14(1)</p>	<p>On the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:</p> <ul style="list-style-type: none"> (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002; (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. 	<p style="text-align: center;">Point to remember</p> <p>For the purposes of Sec. 14(1), it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the C.G., S.G., local authority, sectoral regulator or any other authority constituted</p>	
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		under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.
	Exemptions	<p>The following act shall not be prohibited during moratorium:</p> <ol style="list-style-type: none"> (1) Supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period. (2) Such transactions, agreements or other arrangement as may be notified by the C.G. in consultation with any financial sector regulator or any other authority. (3) A surety in a contract of guarantee to a corporate debtor. <p style="text-align: center;">Points to remember</p> <p>Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.</p>
	Date of effect of order	<ul style="list-style-type: none"> • The order of moratorium shall have effect from the date of such order till the completion of the CIRP. • Provided that where at any time during the CIRP, if the Adjudicating Authority approves the resolution plan u/s 31(1) or passes an order for liquidation of corporate debtor u/s 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
Public announcement of corporate insolvency resolution process – Sec. 15		<p>The public announcement of the corporate insolvency resolution process shall contain the following information, namely:</p> <ol style="list-style-type: none"> (a) name and address of the corporate debtor under the corporate insolvency resolution process; (b) name of the authority with which the corporate debtor is incorporated or registered; (c) the last date for submission of claims, as may be specified; (d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims; (e) penalties for false or misleading claims; and (f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be. <p style="text-align: center;">Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulation 6)</p>
	Time Limit to make public announcement	Interim Resolution Professional shall make the Public Announcement immediately after his appointment. "Immediately" refers to not more than 3 days from the date of appointment of the Interim Resolution Professional.

	<p>Protocol of the announcement</p>	<p>The public announcement shall:</p> <ul style="list-style-type: none"> (a) be in Form A of the Schedule to the Regulations; (b) be published: <ul style="list-style-type: none"> (i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the IRP, the corporate debtor conducts material business operations; (ii) on the website, if any, of the corporate debtor; and (iii) on the website, if any, designated by the Board for the purpose, (ba) state where claim forms can be downloaded or obtained from, as the case may be (bb) offer choice of three insolvency professionals identified under regulation 4A to act as the authorised representative of creditors in each class (c) provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.
	<p>Expenses of Public Announcement</p>	<p>The expenses of public announcement shall be borne by the applicant which may be reimbursed by the Committee of Creditors, to the extent, it ratifies them</p>
<p>Appointment and tenure of Interim Resolution professional (IRP) - Sec. 16</p>		<ul style="list-style-type: none"> • The Adjudicating Authority shall appoint an IRP within 14 days from the insolvency commencement date. • Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the IRP if no disciplinary proceedings are pending against him. • Where the application for corporate insolvency resolution process is made by an operational creditor and <ul style="list-style-type: none"> (a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an IRP; (b) a proposal for an IRP is made, the resolution professional as proposed, shall be appointed as the IRP if no disciplinary proceedings are pending against him. • The Board shall, within 10 days of the receipt of a reference from the Adjudicating Authority, recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending. • The term of the IRP shall continue till the date of appointment of the resolution professional u/s 22.
<p>Management of affairs of corporate debtor by IRP - Sec. 17</p>		<p>From the date of appointment of the IRP:</p> <ul style="list-style-type: none"> (a) the management of the affairs of the corporate debtor shall vest in the IRP; (b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the IRP; (c) the officers and managers of the corporate debtor shall report to the IRP and provide access to such documents and records of the corporate debtor as may be required by the IRP;

		(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the IRP in relation to such accounts and furnish all information relating to the corporate debtor available with them to the IRP.
Duties of IRP - Sec. 18		<p>The IRP shall perform the following duties, namely:</p> <p>(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor.</p> <p>(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;</p> <p>(c) constitute a committee of creditors;</p> <p>(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;</p> <p>(e) file information collected with the information utility, if necessary; and</p> <p>(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets.</p> <p>(g) to perform such other duties as may be specified by the Board.</p>
Committee of Creditors (CoC) - Sec. 21	Constitution of CoC by IRP - Sec. 21(1)	The IRP shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.
	Composition of CoC	<p>(a) Where Financial Creditors Exists - Sec. 21(2)</p> <ul style="list-style-type: none"> • The CoC shall comprise all financial creditors of the corporate debtor: • First proviso to Sec. 21(2) - A financial creditor or the authorised representative of the financial creditor referred to in Sec. 21(6), 21(6A) or Sec. 24(5), if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the CoC. • Second Proviso to Sec. 21(2) - First proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date. <p>(B) In case of Joint Financial creditors - Sec. 21(3), 21(6), 21(6A)</p> <ul style="list-style-type: none"> • Sec. 21(3) - Consortium Finance: Where the corporate debtor owes financial debts to 2 or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the CoC and their voting share shall be determined on the basis of the financial debts owed to them. • Sec. 21(6) - Single trustee to act for all financial creditors: Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility provide for a single trustee or agent to act for all financial creditors, each financial creditor may- <ul style="list-style-type: none"> (a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share; (b) represent himself in the CoC to the extent of his voting share;

	<p>(c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the CoC to the extent of his voting share; or</p> <p>(d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.</p> <ul style="list-style-type: none"> • Sec. 21(6A) - Nature of Financial Debt in case of Joint Financial Creditors: Where a financial debt— <ul style="list-style-type: none"> (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors; (b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under Sec. 21(6A)(a) or Sec. 21(6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the CoC; (c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors, and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.
<p>Where a person is both financial creditor and operational creditor - Sec. 21(4)</p>	<p>Where any person is a financial creditor as well as an operational creditor, -</p> <ul style="list-style-type: none"> (a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor; (b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.
<p>Assignment of operational debt - Sec. 21(5)</p>	<p>Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.</p>
<p>Voting in the meeting - Sec. 21(7) and 21(8)</p>	<ul style="list-style-type: none"> • The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered u/s 21(6) and 21(6A). • All decisions of the CoC shall be taken by a vote of not less than 51% of voting share of the financial creditors: Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.

	<p>Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 – Regulation 16</p>
<p>Committee with only operational creditors</p>	<p>Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall consist of members as under:</p> <ul style="list-style-type: none"> (a) 18 largest operational creditors by value (If the number of operational creditors is less than 18, the committee shall include all such operational creditors); (b) one representative elected by all workmen; and (c) one representative elected by all employees.
<p>Appointment of resolution professional (RP) – Sec. 22</p>	<ul style="list-style-type: none"> • The first meeting of the committee of creditors shall be held within 7 days of the constitution of the committee of creditors. • The committee of creditors, may, in the first meeting, by a majority vote of not less than 66% of the voting share of the financial creditors, either resolve to appoint the IRP as a RP or to replace the IRP by another RP. • Where the committee of creditors resolves to continue the IRP as RP subject to a written consent from the IRP in the specified form, it shall communicate its decision to the IRP, the corporate debtor and the Adjudicating Authority. • Where the committee of creditors resolves to replace the IRP, it shall file an application before the Adjudicating Authority for the appointment of the proposed RP, along with a written consent from the proposed resolution professional in the specified form. • The Adjudicating Authority shall forward the name of the RP to the Board for its confirmation and shall make such appointment after confirmation by the Board. • Where the Board does not confirm the name of the proposed RP within 10 days of the receipt of the name of the proposed RP, the Adjudicating Authority shall, by order, direct the IRP to continue to function as the RP until such time as the Board confirms the appointment of the proposed RP.
	<p>Eligibility for resolution professional – Regulation 3 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</p> <ul style="list-style-type: none"> • An insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor. • A person shall be considered independent of the corporate debtor, if he: <ul style="list-style-type: none"> (a) is eligible to be appointed as an independent director on the board of the corporate debtor u/s section 149 of the Companies Act, 2013, where the corporate debtor is a company; (b) is not a related party of the corporate debtor; or (c) is not an employee or proprietor or a partner: <ul style="list-style-type: none"> (i) of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor; or (ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to 5% or more of the gross turnover of such firm, in the last 3 financial years.

<p>Resolution professional to conduct CIRP - Sec 23</p>	<ul style="list-style-type: none"> • Subject to Sec. 27, the resolution professional shall conduct the entire CIRP and manage the operations of the corporate debtor during the CIRP period: Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the CIRP, until an order approving the resolution plan u/s 31(1) or appointing a liquidator u/s 34 is passed by the Adjudicating Authority. • The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional. • In case of any appointment of a resolution professional u/s 22(4), the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.
<p>Meeting of committee of creditors - Sec. 24</p>	<p>The members of the committee of creditors may meet in person or by such electronic means as may be specified.</p> <p>All meetings of the committee of creditors shall be conducted by the RP.</p> <p>The RP shall give notice of each meeting of the committee of creditors to—</p> <p>(a) members of Committee of creditors, including the authorised representatives;</p> <p>(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;</p> <p>(c) operational creditors or their representatives if the amount of their aggregate dues is not less than 10% of the debt.</p> <p>The directors, partners and representative of operational creditors, may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings.</p>
<p>Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</p>	
<p>Voting Rights - Regulation 16</p>	<p>A member of the committee formed under this Regulation shall have voting rights in proportion of the debt due to such creditor or debt represented by such representative, as the case may be, to the total debt.</p>
<p>Constitution of committee - Regulation 17</p>	<ul style="list-style-type: none"> • The IRP shall file a report certifying constitution of the committee to the Adjudicating Authority within two days of the verification of claims received under regulation 12(1). • The IRP shall hold the first meeting of the committee within 7 days of filing the report under this regulation. • Where the appointment of RP is delayed, the IRP shall perform the functions of the RP from the 14th day of the insolvency commencement date till a resolution professional is appointed u/s 22.
<p>Meetings of the committee - Regulation 18 & 19</p>	<ul style="list-style-type: none"> • A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing 33% of the voting rights. • A meeting of the committee shall be called by giving not less than 5 days' notice in writing to every participant, at the address it has provided to the resolution professional and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20. • The committee may reduce the notice period from 5 days to such other period of not less than 24 hours, as it deems fit. Provided that the committee may reduce the period to such other period of not less than 48 if there is any authorised representative.

<p>Contents of the notice for meeting - Regulation 21</p>	<ul style="list-style-type: none"> • The notice shall inform the participants of the venue, the time and date of the meeting and of the option available to them to participate through video conferencing or other audio and visual means, and shall also provide all the necessary information to enable participation through video conferencing or other audio and visual means. • The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through an authorised representative. • The notice of the meeting shall contain the following- <ul style="list-style-type: none"> (i) a list of the matters to be discussed at the meeting; (ii) a list of the issues to be voted upon at the meeting; and (iii) copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting. • The notice of the meeting shall: <ul style="list-style-type: none"> (a) state the process and manner for voting by electronic means and the time schedule, including the time period during which the votes may be cast; (b) provide the login ID and the details of a facility for generating password and for keeping security and casting of vote in a secure manner; and (c) provide contact details of the person who will address the queries connected with the electronic voting.
<p>Quorum at the meeting - Regulation 22</p>	<ul style="list-style-type: none"> • A meeting of the committee shall be quorate if members of the committee representing at least 33% of the voting rights are present either in person or by video conferencing or other audio and visual means. • Where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day. • In the event a meeting of the committee is adjourned, the adjourned meeting shall be quorate with the members of the committee attending the meeting.
<p>Duties of RP - Sec. 25</p>	<p>It shall be the duty of the RP to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor. For this purpose, the resolution professional shall undertake the following actions, namely:</p> <ul style="list-style-type: none"> (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor; (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings; (c) raise interim finances subject to the approval of the committee of creditors u/s 28; (d) appoint accountants, legal or other professionals in the manner as specified by Board; (e) maintain an updated list of claims; (f) convene and attend all meetings of the committee of creditors; (g) prepare the information memorandum in accordance with Sec. 29;

	<p>(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans;</p> <p>(i) present all resolution plans at the meetings of the committee of creditors; and</p> <p>(j) such other actions as may be specified by the Board.</p>	
<p>Rights and duties of authorised representative of financial creditors – Sec. 25A</p>	<p>Rights – Sec. 25A(1)</p> <p>Duties</p>	<p>The authorised representative shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.</p> <ul style="list-style-type: none"> • To circulate the agenda and minutes [Sec. 25A(2)]: It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents. • To act in accordance with instructions of the financial creditor [Sec. 25A(3)]: The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions: Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share: Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor. • To cast the vote in accordance with the decisions of financial creditors [Sec. 25A(3A)]: Notwithstanding anything to the contrary contained in Sec. 25A(3), the authorised representative u/s 21(6A) shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than 51% of the voting share of the financial creditors he represents, who have cast their vote: Provided that for a vote to be cast in respect of an application u/s 12A, the authorised representative shall cast his vote in accordance with the provisions of Sec. 25A(3). • Filing of instructions with the CoC [Sec. 25A(4)]: The authorised representative shall file with the CoC any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the IRP or resolution professional, as the case may be.
<p>Replacement of RP by committee of creditors (CoC) – Sec. 27</p>		<ul style="list-style-type: none"> • Where, at any time during the corporate insolvency resolution process, the CoC is of the opinion that a RP appointed u/s 22 is required to be replaced, it may replace him with another RP in the manner provided under this section. • The CoC may, at a meeting, by a vote of 66% of voting shares, resolve to replace the RP appointed u/s 22 with another RP, subject to a written consent from the proposed resolution professional in the specified form.

	<ul style="list-style-type: none"> • The CoC shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority. • The Adjudicating Authority shall forward the name of the proposed RP to the Board for its confirmation and a RP shall be appointed in the same manner as laid down in Sec. 16. • Where any disciplinary proceedings are pending against the proposed RP, the RP appointed u/s 22 shall continue till the appointment of another RP under this section.
<p>Approval of committee of creditors for certain actions – Sec. 28</p>	<p>The RP, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely:</p> <ul style="list-style-type: none"> (a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting; (b) create any security interest over the assets of the corporate debtor; (c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company; (d) record any change in the ownership interest of the corporate debtor; (e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting; (f) undertake any related party transaction; (g) amend any constitutional documents of the corporate debtor; (h) delegate its authority to any other person; (i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties; (j) make any change in the management of the corporate debtor or its subsidiary; (k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business; (l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.
<p>Preparation of information memorandum – Sec. 29</p>	<ul style="list-style-type: none"> • The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan. • The RP shall provide to the resolution applicant access to all relevant information in physical and electronic form. For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include <ul style="list-style-type: none"> (a) the financial position of the corporate debtor, (b) all information related to disputes by or against the corporate debtor and (c) any other matter pertaining to the corporate debtor as may be specified.
<p>Persons not eligible to be resolution applicant – Sec. 29A</p>	<p>A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person:</p> <ul style="list-style-type: none"> (a) is an undischarged insolvent; (b) is a wilful defaulter in accordance with the guidelines of the RBI (c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such

	<p>person is a promoter, classified as non-performing asset in accordance with the guidelines of the RBI or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of 1 year has lapsed from the date of such classification till the date of commencement of the CIRP of the corporate debtor:</p> <p>Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan:</p> <p>Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.</p> <p>(d) has been convicted for any offence punishable with imprisonment –</p> <p>(i) for 2 years or more under any Act specified under the Twelfth Schedule; or</p> <p>(ii) for 7 years or more under any law for the time being in force: Provided that this clause shall not apply to a person after the expiry of a period of 2 years from the date of his release from imprisonment:</p> <p>(e) is disqualified to act as a director under the Companies Act, 2013</p> <p>(f) is prohibited by the SEBI from trading in securities or accessing the securities markets;</p> <p>(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code.</p> <p>(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;</p> <p>(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or</p> <p>(j) has a connected person not eligible under clauses (a) to (i).</p>
	<p style="text-align: center;">Points to remember</p> <p>The expression "connected person" means:</p> <p>(i) any person who is the promoter or in the management or control of the resolution applicant; or</p> <p>(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or</p> <p>(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii).</p>
<p>Resolution Plan – Sec. 30</p>	<ul style="list-style-type: none"> • A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible u/s 29A to the RP prepared on the basis of the information memorandum. • The RP shall examine each resolution plan received by him to confirm that each resolution plan: <ul style="list-style-type: none"> (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor; (b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than: <ul style="list-style-type: none"> (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor u/s 53; or

	<p>(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in Sec. 53(1), whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with Sec. 53(1) in the event of a liquidation of the corporate debtor.</p> <p>Explanation 1: For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.</p> <p>Explanation 2: For the purpose of this clause, it is hereby declared that on and from the date of commencement of the IBC (Amendment) Act, 2019, the provisions of this clause shall also apply to the CIRP of a corporate debtor:</p> <p>(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;</p> <p>(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or</p> <p>(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan*;</p> <p>(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;</p> <p>(d) the implementation and supervision of the resolution plan;</p> <p>(e) does not contravene any of the provisions of the law for the time being in force;</p> <p>(f) conforms to such other requirements as may be specified by the Board.</p> <p>For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.</p> <ul style="list-style-type: none"> • The RP shall present to the committee of creditors for its approval the resolution plans. • The CoC may approve a resolution plan by a vote of not less than 66% of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board. • The RP shall submit the resolution plan as approved by the CoC to the Adjudicating Authority.
<p>Approval of resolution plan – Sec. 31</p>	<ul style="list-style-type: none"> • If the Adjudicating Authority is satisfied that the resolution plan as approved by the CoC meets the specified requirements, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the C.G., any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan. <p>Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan, satisfy that the resolution plan has provisions for its effective implementation.</p> <ul style="list-style-type: none"> • After the order of approval: <ul style="list-style-type: none"> (a) the moratorium order passed by the Adjudicating Authority u/s 14 shall cease to have effect; and

	<p>(b) the RP shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.</p> <ul style="list-style-type: none"> The resolution applicant shall, pursuant to the resolution plan approved, obtain the necessary approval required under any law for the time being in force within a period of 1 year from the date of approval of the resolution plan by the Adjudicating Authority or within such period as provided for in such law, whichever is later. <p>Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.</p> <ul style="list-style-type: none"> Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements, it may, by an order, reject the resolution plan. 		
<p>Appeal - Sec. 32</p>	<p>Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in Sec. 61(3).</p> <p>Sec. 61(3) - Grounds for appeal</p> <p>An appeal against an order approving a resolution plan u/s 31 may be filed on the following grounds, namely:</p> <ol style="list-style-type: none"> the approved resolution plan is in contravention of the provisions of any law for the time being in force; there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board; the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or the resolution plan does not comply with any other criteria specified by the Board. 		
<p>Liability for prior offences etc. - Sec. 32A* [*Inserted by IBC (Amendment) Act, 2020 w.e.f. 28.12.2020]</p>	<table border="1"> <tr> <td data-bbox="391 1167 618 1900"> <p>Ceasing of liability for prior offences - Sec. 32A(1)</p> </td> <td data-bbox="618 1167 1484 1900"> <p>Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force,</p> <ol style="list-style-type: none"> the liability of a corporate debtor for an offence committed prior to the commencement of the CIRP shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority u/s 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not— <ol style="list-style-type: none"> a promoter or in the management or control of the corporate debtor or a related party of such a person; or a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court. <p style="text-align: center;">Points to remember</p> <ul style="list-style-type: none"> If a prosecution had been instituted during the CIRP against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of Sec. 32A(1) having been fulfilled. </td> </tr> </table>	<p>Ceasing of liability for prior offences - Sec. 32A(1)</p>	<p>Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force,</p> <ol style="list-style-type: none"> the liability of a corporate debtor for an offence committed prior to the commencement of the CIRP shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority u/s 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not— <ol style="list-style-type: none"> a promoter or in the management or control of the corporate debtor or a related party of such a person; or a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court. <p style="text-align: center;">Points to remember</p> <ul style="list-style-type: none"> If a prosecution had been instituted during the CIRP against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of Sec. 32A(1) having been fulfilled.
<p>Ceasing of liability for prior offences - Sec. 32A(1)</p>	<p>Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force,</p> <ol style="list-style-type: none"> the liability of a corporate debtor for an offence committed prior to the commencement of the CIRP shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority u/s 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not— <ol style="list-style-type: none"> a promoter or in the management or control of the corporate debtor or a related party of such a person; or a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court. <p style="text-align: center;">Points to remember</p> <ul style="list-style-type: none"> If a prosecution had been instituted during the CIRP against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of Sec. 32A(1) having been fulfilled. 		

	<ul style="list-style-type: none"> • Every person who was a "designated partner" under the LLP Act, 2008, or an "officer who is in default", as defined in Sec. 2(60) of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased u/s 32A(1).
<p>Action against property of corporate debtor - Sec. 32A(2)</p>	<p>No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the CIRP of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority u/s 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets to a person, who was not:</p> <ul style="list-style-type: none"> (i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court. <p style="text-align: center;">Points to remember</p> <p>For the purposes of Sec. 32A(2), it is hereby clarified that,</p> <ul style="list-style-type: none"> (i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor; (ii) nothing in Sec. 32A(2) shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.
<p>Extending Assistance and Co-operation - Sec. 32A(3)</p>	<p>Subject to</p> <ul style="list-style-type: none"> • the provisions contained in Sec. 32A(1) and 32A(2), and • notwithstanding the immunity given in this section, <p>the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the CIRP.</p>

Important Questions

Q. No. 5: Who may initiate corporate insolvency process against a corporate person?

HINT: Refer Sec. 6

Q. No. 6: State the manner of initiation of corporate insolvency resolution process by financial creditor under the Insolvency and Bankruptcy Code, 2016. [MTP-March 18]

Or

What is the Insolvency Resolution Process for financial creditors?

[Study Material – ICAI, RTP-Nov. 18]

HINT: Refer Sec. 7

Q. No. 7: State the manner of initiation of corporate insolvency resolution process by operational creditor under the Insolvency and Bankruptcy Code, 2016.

Or

What is the Insolvency Resolution Process for operational creditors?

[Study Material – ICAI]

HINT: Refer Sec. 8 & 9.

Q. No. 8: What is the procedure of Insolvency Resolution Process for a Corporate Applicant?

[Study Material – ICAI]

HINT: Refer Sec. 10.

Q. No. 9: State the circumstances when persons are not entitled to make an application to initiate corporate insolvency resolution process.

Suppose a corporate debtor has committed a default and is undergoing a corporate insolvency resolution process. A corporate applicant Mr. X thereof files an application for initiating corporate insolvency resolution process with an Adjudicating Authority. State whether he (Mr. X) is entitled to make an application to initiate corporate insolvency resolution process?

HINT: Refer Sec. 11. Mr. X shall not be entitled to make an application to initiate corporate insolvency resolution process.

Q. No. 10: Is there any time limit for completion of the Insolvency Resolution Process?

[Study Material – ICAI]

Or

Explain in the light of the Insolvency and Bankruptcy Code, 2016, time limit for completion of the Corporate Insolvency Resolution Process? [MTP-Oct. 18]

HINT: Refer Sec. 12

Q. No. 11: Wisdom Ltd. commits a default against the debts taken from the financial creditors. Mr. F, a financial creditor initiated the corporate insolvency resolution process (CIRP) against the Wisdom Ltd. Mr. X, another financial creditor, thereof files an application for initiating corporate insolvency resolution process with the Adjudicating Authority. Examine with reference to the validity as to the filing of an application by Mr. X for initiation of corporate insolvency resolution process? [RTP-May 18, MTP-Oct.19]

HINT: Refer Sec. 13, 14 & 15. Application for initiation of CIRP cannot be initiated by Mr. X, however he is entitled under the law to raise his claim against the Wisdom Ltd.

Q. No. 12: What is the effect of order of moratorium?

[Study Material – ICAI]

HINT: Refer Sec. 14.

Q. No. 13: Mr. Madhyam, was appointed as an Interim resolution professional during the Corporate Insolvency Resolution Process. What are the duties to be performed by Mr. Madhyam in the given capacity?

HINT: Refer Sec. 18.

Q. No. 14: What are the eligibility criteria for appointment of an Insolvency Professional as a Resolution Professional for a corporate insolvency resolution process? [Study Material – ICAI]

HINT: Refer Regulation 3 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Q. No. 15: What is a Resolution plan? [Study Material – ICAI]

HINT: Refer Sec. 5(26) and 30.

Q. No. 16: Nature India Limited filed a petition under the Insolvency and Bankruptcy Code, 2016 with National Company Law Tribunal (NCLT) against Tulip Limited and the petition was admitted. After that, Nature India Limited wanted to withdraw the petition based on a settlement arrived between the parties. Whether it is permissible to withdraw the petition after it has been admitted? Decide.

Also explain the rules relating to the admission and rejection of application by an adjudicating authority under the Insolvency and Bankruptcy Code, 2016. [Nov. 17 (6 Marks)]

HINT: Petition may be withdrawn subject to compliance of conditions as stated in Sec. 12A. For provisions related to admission and rejection of application, refer Sec. 9.

Q. No. 17: Standard International Ltd. who is a foreign trade creditor having its office in Hong Kong wanted to file a petition under insolvency and bankruptcy code 2016 on default of the debtor in India. It moved a petition under section 9 of the code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it couldn't submit a "certificate from financial institution" as required under the code. Examine whether the petition is permissible under the Insolvency & Bankruptcy Code, 2016?

[Nov. 17 (4 Marks), RTP-May 18]

HINT: Petition u/s 9 of the Code is permissible, as furnishing of certificate from financial institution is not mandatory.

Q. No. 18: M/s TAS Constructions Private Limited, an operational creditor on 2nd April, 2019 being the default date issued a demand notice through speed post to M/s Dheeraj Constructions Private Limited, an unpaid operational/ corporate debtor demanding payment of its invoice dated 19th March, 2019 for Rs. 5,60,000 (15 days payment terms) towards supply of certain works contract services as per the provisions of section 8(1) of the insolvency and Bankruptcy Code, 2016 and rules framed there under/s.

Dheeraj Constructions Private Limited on receipt of the demand notice informed the operational creditor, that vide their e-mail dated 30th March, 2019, addressed to the company and all its directors, they have disputed the invoice on the quality of the services rendered and were withholding payment till the dispute is settled but without initiating any legal proceedings under any law for the time being in force. The operational creditor on expiry of the period of 10 days from the date of delivery of the demand notice and non-payment of its dues approached the Adjudicating Authority for the initiation of the corporate insolvency resolution process under section 9(1) insolvency and Bankruptcy Code, 2016. Will the application of the operational creditor filed u/s 9(1) of the read with section 8(2)(a) of the insolvency and Bankruptcy Code, 2016 be permitted? [May 18 – Old Syllabus (4 Marks)]

HINT: Application filed by TAS Constructions Private Limited, operational creditor is not maintainable due to existence of dispute.

Q. No. 19: Rose Garden Ltd. was incurring continuous losses and its financial position went bad to worse. Black Stone (Private) Ltd., a trade creditor, issued notice under section 271 of the companies Act, 2013 for winding up of Rose Garden Ltd. on the ground that Rose Garden Ltd. was unable to pay its debts. After some time, Black Stone (Private) Ltd. being an operational creditor filed a petition before the Adjudicating Authority to initiate insolvency process under the insolvency and Bankruptcy Code, 2016. Demand Notice and copy of invoice were not served to Rose Garden Ltd. since a notice was earlier issued for winding up. All other formalities were complied with. The adjudicating authority initiated insolvency resolution process by admitting the application and appointed resolution professional. After complying required formalities, the adjudicating

authority issued orders for moratorium and other relief within the stipulated time. Being aggrieved by the order of Adjudicating Authority, Rose Garden Ltd. (Corporate debtor) filed an appeal before NCLAT under the insolvency and bankruptcy Code, 2016. Determine will the company succeed in its appeal? [May 18 – New Syllabus (4 Marks), MTP-April 19]

HINT: Refer Sec. 8 & 9 of IBC, 2016. As demand notice and copy of invoice was not served, orders issued by adjudicating authority does not seem proper. Hence it may be concluded that Rose Garden Ltd. will succeed in its appeal.

Q. No. 20: M/s Systemtek India Private Limited (Appellant-Corporate Debtor) has challenged the order dated 3rd July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai, in the National Company Law Appellate Tribunal (NCLAT).

NCLT had admitted the application preferred by appellant under Section 10 of the Insolvency and Bankruptcy Code, 2016 and an order of Moratorium was passed and Insolvency Resolution Professional was ordered to be appointed by the Ld. Adjudicating Authority (NCLT).

The only grievance of the appellant in its challenge is that the movable and immovable property of Guarantor (promotor) has been attached pursuant to a Corporate Insolvency Resolution Process initiated u/s 10 against the Appellant by the Ld. Adjudicating Authority (NCLT) which is violative of section 14(I)(c) of the Insolvency and Bankruptcy Code, 2016 though the Code prescribes a Moratorium for certain types of transactions. Decide.

[May 18 – Old Syllabus (4 Marks)]

HINT: Appellant will not succeed as moratorium u/s 14(1)(c) of IBC, 2016 is limited to properties of corporate debtor, not its promoters.

Q. No. 21: You are appointed as Interim resolution professional in XYZ company Ltd. under the Insolvency and Bankruptcy Code, 2016. State the time limit to make public announcement? Also state the protocol for issuance of public notice. Who shall bear the expenses of public announcement?

[May 18 – New Syllabus (4 Marks)]

HINT: Refer Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with Sec. 15 of IBC, 2016.

Q. No. 22: Mr. Ramlal, an Insolvency professional was appointed as a resolution professional for a corporate insolvency process initiated against the corporate debtor, Monotech Ltd. Mr. Ramlal is a partner of consulting firm M/s supervision and company which is entity recognized under the IBBI. It was discovered that M/s supervision and company had a transaction with the Monotech Ltd. amounting to 11% of its gross turnover in the last financial year 2018-2019.

Analyse the given situation as per the Insolvency and Bankruptcy Code, 2016, and advise on the validity of appointment of Mr. Ramlal as resolution professional against Monotech Ltd.

What if, the creditor of the Monotech Ltd. opines that the resolution professional appointed is required to be replaced. [MTP-Aug. 18]

HINT: Refer Regulation 3 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with Sec. 27 of IBC, 2016. Appointment of Ramlal is not valid.

Q. No. 23: Best bank, a financial creditor sent a demand notice for a claim of Rs. 10.2 crores on XYZ Ltd., a corporate debtor on 6th February, 2019. When the petition was filed before NCLT under Insolvency and Bankruptcy Code, 2016, Best Bank claimed that the XYZ limited has defaulted Rs. 29.8 crores instead of original amount of Rs. 10.2 crores. NCLT appointed an interim insolvency resolution professional. XYZ Limited made an appeal with NCLAT demanding that the Best Bank's claim is Not maintainable as there is a difference in the amount mentioned in the demand notice and the application filled under the Code. Decide whether the contention of XYZ Limited is correct. Also, state who can file Corporate Insolvency Resolution process under the code.

[Nov. 18-Old Syllabus (6 Marks)]

HINT: Refer Section 6 & 7. Contention of XYZ Limited is not correct as there is no requirement of demand notice in case of financial creditor.

Q. No. 24: Mr. SP booked office space with Elegant Construction Limited. At the time of booking Rs. 136 lakhs was paid. Remaining amount of Rs. 710 lakhs was paid at the time of taking delivery. He entered into a Memorandum of Understanding (MoU) with the company having various terms and conditions of the sale/allotment. According to the MoU, Elegant Construction Limited was required to build and deliver the possession of the unit within 2 years from the date of execution of the MoU. It also stipulated payment of an assured return of Rs. 4,82,000 per month (subject to TDS u/s 194A of IT Act, 1961) till possession of the unit was delivered to MR. SP. Elegant Construction Limited failed to pay the assured return. Thereafter, Mr. SP filed an application for initiating insolvency resolution process. Decide about the validity of the said application on view of the provisions of Insolvency and Bankruptcy Code, 2016 as regards the definition of a "Financial Creditor" under Section 5(7) read with Section 5(8) of the Code.

[Nov. 18-Old Syllabus (4 Marks)]

HINT: Promise to pay the assured return makes Mr. SP as Financial creditor, hence application for initiating CIRP against elegant Construction Limited is valid.

Q. No. 25: XY Ltd. filed a petition under Insolvency and Bankruptcy Code, 2016 with NCLT against DF Ltd. (Corporate Debtor) and the petition was admitted. There were only three financial creditors including XY Ltd. During the corporate insolvency Resolution process, the Corporate Debtor settled the claims of all the 3 financial creditors. Whether such settlement agreement could be termed as a valid resolution plan? Also discuss whether a financial creditor in respect of whom there is no default can file an application before Adjudicating Authority (NCLT) for initiating corporate insolvency resolution process. Discuss.

[Nov. 18-New Syllabus (6 Marks)]

HINT: Refer Sec. 5(26) and Sec. 7. Settlement agreement cannot be termed as a valid resolution plan. A financial creditor in respect of whom there is no default can file an application before Adjudicating Authority (NCLT) for initiating corporate insolvency resolution process.

Note: Answer as given in Suggested Answers issued by ICAI is different stating that a financial creditor in respect of whom there is no default, cannot file an application for initiating insolvency resolution process.

Q. No. 26: Mr. IP was proposed to be appointed as a resolution professional for the insolvency resolution process initiated against BMR Ltd. Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. IP is partner. In the light of the given facts, examine the nature of the proposal of the appointment of Mr. IP for the conduct of the CIRP as per the Insolvency and Bankruptcy Code, 2016.

[MTP-March 19]

HINT: Refer Regulation 3 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Since Mr. R is a partner in IP Entity in which Mr. IP is also a partner, so Mr. IP is not eligible for appointment as Resolution Professional as he is not independent of the corporate debtor.

Q. No. 27: **Mr. Ram, an operational creditor filed an application for corporate insolvency resolution process. He does not proposed for appointment of an interim resolution professional in the application. State the provisions given by the Code in the given situation. State the period of IRP holding the said office.**

[Study Material - ICAI, MTP-March 19]

HINT: Refer Sec. 16. The Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional. The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within 10 days of the receipt of a reference from the Adjudicating Authority.

Q. No. 28: Mr. Atul was appointed as the Insolvency Resolution Professional for XYZ Ltd. An application to replace the Insolvency resolution professional was filed before the Adjudicating Authority by some Financial Creditors. The Financial Creditors propose to appoint Mr. K as the insolvency professional instead of Mr. Atul. Referring to the relevant provisions of the Insolvency and Bankruptcy Code 2016, decide whether Mr. Atul can be replaced and if so, state the procedure to be followed to appoint another IRP in place of existing one.

[May 19 - Old Syllabus (4 Marks)]

HINT: Refer Sec. 22. Mr. K can be appointed as Resolution Professional replacing Mr. Atul after complying with the requirements of Sec. 22.

Q. No. 29: Continental Rubber Limited is a supplier of raw materials to Smooth Latex Limited. It filed a petition before the NCLT for the recovery of Rs. 10,00,000 from Smooth Latex Limited. Smooth Latex Limited, the Corporate Debtor, has other financial creditors to the extent of Rs. 1,50,00,000 and they also joined together and filed petitions to NCLT. The Corporate Debtor has a total of 40 financial creditors and 2 operational creditors. Further, all the financial creditors are having equal voting rights/shares.

Notice was issued on 1st August, 2018 for the conduct of the first meeting to be held of 5th August, 2018 at a common venue. The meeting was attended by all 40 financial creditors and 2 operational creditors. A resolution was passed to appoint Mr. TK as a Resolution Professional. 25 of the financial creditors voted in favour of the resolution and 10 voted against the resolution and 5 financial creditors and 2 operational creditors abstained from voting. Decide whether the resolution passed is valid? In the light of the provisions of Insolvency and Bankruptcy Code, 2016 read with rules framed thereunder, explain the requirements of issue of notice and quorum for the conduct of the meeting. [May 19 – New Syllabus (3 Marks)]

HINT: Refer Sec. 22 and Regulations 19, 21 & 22. Resolution passed is not valid as resolution was not passed by majority of 66% of voting share of financial creditors.

Q. No. 30: Rose Garden Limited filed its financial statements for the year ending 31st March, 2019 with Registrar of Companies, Chennai which disclosed that the liabilities amounted to \$ 3.87 crores as against the assets of Rs. 1.37 crores. On the basis of the scrutiny of the financial statements, the Registrar filed an application for Corporate Insolvency Resolution Process under Insolvency & Bankruptcy Code, 2016 against the company that the company is unable to pay its debts on the ground that the value of liabilities far exceeded the value of assets. Examine whether the company has any case to defend against the application filed by the Registrar.

[Nov. 19 – Old syllabus (4 Marks)]

HINT: Refer Sec. 6. Registrar cannot initiate CIRP.

Q. No. 31: Venus Limited owes a sum of 12,00,000 to Mr. Khan, who assigns this debt to his two creditors Viz., Mr. Joseph - to an extent of 4,00,000 and Mr. Pratap to an extent of 8,00,000. Mr. Pratap makes a demand for his money from the company by giving a legal notice. The company could not meet Mr. Pratap's demand or otherwise satisfy him till the expiry of four weeks from the date of notice. Mr. Pratap, therefore, moves to NCLT with an application for initiation of insolvency of the company. Referring to the provisions of the Insolvency and Bankruptcy Code 2016, decide whether Mr. Pratap's application can be accepted by the NCLT. [Nov. 19 – Old syllabus (4 Marks)]

HINT: Refer Sec. 5(7). Application of Mr. Pratap can be accepted by NCLT. Application should be supported with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

Q. No. 32: In view of the deep recession prevailing in the market for the past three years, M/s. Infra Limited (Corporate Debtor), which was facing the brunt of financial crisis, could not pay salaries and wages to its workmen and employees for the past 6 months. The workmen and the employees, who are the members of a recognized Trade Union "Infra Labor Federation", made a complaint in this regard. Thereafter, the Trade Union approached and urged the Management of the Company in person and through representations in writing to settle the arrears of wages and salaries due to its members. The Corporate Debtor neither disputed nor took any actions to settle the amount. Under the circumstances, Infra Labor Federation filed an application before the Adjudicating Authority i.e. with the National Company Law Tribunal for initiating a Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.

In the light of the provisions of the Insolvency and Bankruptcy Code, 2016, examine the following:

(i) Validity of the Application.

(ii) What will be the "Initiation date" for initiating the Corporate Insolvency Resolution Process?

[Nov. 19 – New Syllabus (6 Marks)]

HINT: Refer Sec. 5(11), 5(21), 8 & 9. It was held by Supreme Court in *J.K. Jute Mill Mazdoor Morcha v Juggilal Kamalpat Jute Mills Company Ltd & Others* that a trade union is an operational creditor for the purpose of initiating the CIRP.

Q. No. 33: The Committee of Creditors of M/s XYZ Limited proposes to appoint Mr. Ajit, an Insolvency Professional, as Insolvency Resolution Professional in the matter of corporate insolvency process of M/s XYZ Limited. Mr. Ajit was a promoter of M/s ABC Limited which is a holding company of M/s XYZ Limited. Examine and decide whether Mr. Ajit is eligible for appointment as an Insolvency Resolution Professional under the Provisions of Insolvency and Bankruptcy Code, 2016. [Nov. 19 – New Syllabus (3 Marks)]

HINT: Refer Regulation 3 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Mr. Ajit is not eligible as he cannot be considered as independent of the corporate debtor.

Q. No. 34: NYM Garments Limited was incorporated under the Companies Act, 1956. Now, the company is under the Insolvency proceedings and the application is pending before the Adjudicating Authority. AVR Fabrics Limited is the supplier to NYM Garments Limited and a sum of 10,00,000 is outstanding as on 31st January, 2020. A notice was issued by the advocate of AVR Fabrics Limited to NYM Garments on 1st February, 2020 to make the payments. The notice was delivered at the registered office of NYM Garments Limited on 4th February, 2020. AVR Fabrics Limited has not received any payment or reply from the corporate debtor, NYM Garments Limited till 13th February, 2020. The Corporate Creditor, AVR Fabrics Limited, seeks your advice regarding the admission of application by NCLT on the following issues:

- (i) The procedure for filing the application and the documents submitted to the Tribunal.
- (ii) If the Corporate Debtor, NYM Garments Limited, disputed the amount of claim by a reply on 25th February, 2020, stating the amount outstanding was 8,00,000 only and not Rs. 10,00,000 as claimed by AVR Fabrics Limited.
- (iii) If the Corporate Debtor, NYM Garments Limited, has paid an amount of Rs. 7,00,000 in full settlement of the outstanding due. [Nov. 20 – Old Syllabus (6 Marks)]

HINT: Refer Sec. 8 & 9.

(ii) Application can be admitted as dispute was raised after the specified period.

(iii) Application will not be admitted as full settlement taken place.

Note: Alternate answers possible with different assumptions.

Q. No. 35: Abhi Limited entered into an agreement with Atulya Gas Limited for purchase of natural gas, which is not specified as an essential supply. On failure of Abhi Limited to make payments, Atulya Gas Limited issued notice to Abhi Limited that further supply of gas would be stopped if payments are not made immediately. On further non-payment, Atulya Gas Limited filed a petition before NCLT for initiating Corporate Insolvency Resolution process against Abhi Limited. On 15th March, 2020 the petition was admitted. On 30th April, 2020, Atulya Gas Limited disconnected gas supply to Abhi Limited for non-payment. As a result of disconnection of gas supply, operations of Abhi Limited came to a halt. The Resolution professional filed a petition to NCLT seeking Atulya Gas Limited to resume the supply of natural gas, as natural gas was an important material for production of electricity by Abhi Limited.

Referring to the provisions of Insolvency and Bankruptcy Code, 2016, answer the following:

- (i) When the moratorium period will expire in this case?
- (ii) Whether Resolution Professional will be successful in his petition filed with NCLT?

[Nov. 20 – New Syllabus (3 Marks)]

HINT: Refer Sec. 14. (i) Moratorium will expire on completion of CIRP. (ii) RP will not succeed as corporate debtor has not paid dues arising from the supply during the moratorium period.

Q. No. 36: Oil & Gas Energy Limited (Corporate Debtor) borrowed a loan of ₹ 100 crore for its expansion project from State Bank of India (SBI), Bank of India (BOI) and Punjab National Bank (PNB) under the consortium arrangement in the proportion of 50%, 30% and 20% respectively. The corporate insolvency process has begun by order of the Tribunal on an application made by the Financial Creditor. The Interim Insolvency Resolution Professional (IIRP) constituted a Committee of Creditor (CoC) which noted that total financial debt owed by the Corporate Debtor is ₹ 500 crore in aggregate. You are requested to state which of the members of the consortium shall be the member of CoC and what shall be their voting share in the CoC as per the provisions of the Insolvency and Bankruptcy Code, 2016. [Jan. 21 – Old Syllabus (4 Marks)]

HINT: Refer Sec. 21 of IBC, 2016. Each of the financial creditor shall be part of the CoC. Voting share shall be determined on the basis of the financial debts owed to financial creditors.

Q. No. 37: As at 31st March, 2020, XYZ Limited had the following debts:

Creditors Name	Nature of Debt	Amount (INR in Lakhs)
A	Financial Debt	200
B	Financial Debt	250
C	Financial Debt (Related Party) - Not Regulated by the Financial Sector Regulator.	150
D	Operational Debt	150
E	Operational Debt	250
	Total	1000

Due to impact of heavy losses and liquidity crunch, XYZ Limited could not pay the above debts. Since the debts were overdue for a long time, creditor A filed an application with the Adjudicating Authority (NCLT) to initiate a Corporate Insolvency Resolution Process against XYZ Limited and the application was accepted. Stating the provisions of The Insolvency and Bankruptcy Code, 2016 answer the following with reference to the above financial data:

- (i) Who will all form part of the Committee of Creditors ('COC') from the above list of Creditors?
- (ii) Whether the above Operational Creditors have a right to vote in CoC Meeting?
- (iii) What is the compulsory agenda to be discussed in the first meeting of CoC?
- (iv) What shall be the quorum of the CoC meeting if it is conducted through video conferencing?

[Jan. 2021 – New Syllabus (6 Marks)]

HINT: Refer Sec. 21 and 22 of IBC, 2016 and Regulations 16 and 22 of IBBI (Insolvency resolution Process for Corporate Persons) Regulations, 2016.

- (i) All financial creditors will form part of CoC.
- (ii) Operational creditors do not have a right to vote in CoC Meeting.
- (iii) To appoint IRP as RP or to replace IRP by another RP.
- (iv) Members representing 33% of voting rights.

20.6 - LIQUIDATION PROCESS

Initiation of Liquidation – Sec. 33	(1) Where the Adjudicating Authority: <ul style="list-style-type: none"> (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the CIRP u/s 12 or the Fast track CIRP u/s 56, as the case may be, does not receive a resolution plan u/s 30; or
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	<p>(b) rejects the resolution plan u/s 31 for the non-compliance of the requirements specified therein, it shall -</p> <p>(i) pass an order requiring the corporate debtor to be liquidated;</p> <p>(ii) issue a public announcement stating that the corporate debtor is in liquidation; and</p> <p>(iii) require such order to be sent to the authority with which the corporate debtor is registered.</p> <p>(2) Where the resolution professional, at any time during the CIRP but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than 66% of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order.</p> <p>For this purpose, explanation to Sec. 33(2) declares that the CoC may take the decision to liquidate the corporate debtor, any time after its constitution u/s 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.</p> <p>(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order.</p> <p>On receipt of such application, if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order.</p>
	<p style="text-align: center;">Other Points</p> <ul style="list-style-type: none"> • When a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor with the exception that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority. • The order for liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator. • Once the Adjudicating Authority passes an order of liquidation, a moratorium is imposed on the pending legal proceedings against the corporate debtor, and the assets of the debtor (including the proceeds of liquidation) vest in the liquidation estate.
<p>Appointment of liquidator - Sec. 34</p>	<p>(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor u/s 33, the resolution professional appointed for the CIRP shall, subject to submission of a written consent by the resolution professional to the Adjudicating Authority in specified Form, act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.</p> <p>(2) On the appointment of a liquidator, all powers of the board of directors, KMP and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.</p>
	<p style="text-align: center;">Other Points</p> <ul style="list-style-type: none"> • The Adjudicating Authority shall by order replace the resolution professional, if: <ul style="list-style-type: none"> (a) the resolution plan submitted by the resolution professional was rejected for failure to meet the requirements; or (b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or (c) the resolution professional fails to submit written consent.

	<ul style="list-style-type: none"> • For the purposes of clause (a) and clause (c) as stated above, the Adjudicating Authority may direct the Board to propose name of another IP to be appointed as a liquidator. • The Board shall propose the name of another IP along with written consent from the IP in the specified Form within 10 days of the directions. • The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an IP as liquidator, by an order appoint such IP as the liquidator.
<p>Powers and Duties of Liquidator - Sec. 35</p>	<p>Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:</p> <ol style="list-style-type: none"> (a) to verify claims of all the creditors. (b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor. (c) to evaluate the assets and property of the corporate debtor. (d) to take measures to protect and preserve the assets and properties of the corporate debtor. (e) to carry on the business of the corporate debtor for its beneficial liquidation. (f) to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract. (g) to draw, accept, make and endorse any negotiable instruments in the name and on behalf of the corporate debtor. (h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor. (i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities. (j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code. (k) to institute or defend any suit, prosecution or other legal proceedings, in the name of on behalf of the corporate debtor. (l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions. (m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator. (n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation and to report the progress of the liquidation process in a manner as may be specified by the Board. (o) to perform such other functions as may be specified by the Board.
	<p style="text-align: center;">Other Points</p> <ul style="list-style-type: none"> • The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds. • Any such consultation shall not be binding on the liquidator. • Records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

<p>Liquidation estate - Sec. 36</p>	<p>For the purposes of liquidation, the liquidator shall form an estate of the assets, which will be called the liquidation estate in relation to the corporate debtor. The liquidation estate shall comprise all liquidation estate assets which shall include the following:</p> <ol style="list-style-type: none"> (a) any assets over which the corporate debtor has ownership rights, including shares held in any subsidiary of the corporate debtor; (b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets; (c) tangible assets, whether movable or immovable; (d) intangible assets; (e) assets subject to the determination of ownership by the court or authority; (f) any assets or their value recovered through proceedings for avoidance of transactions (g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest; (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and (i) all proceeds of liquidation as and when they are realised.
	<p style="text-align: center;">Points to remember</p> <p>The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:</p> <ol style="list-style-type: none"> (a) assets owned by a third party which are in possession of the corporate debtor, including: <ul style="list-style-type: none"> • assets held in trust for any third party; • bailment contracts; • all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund; • other contractual arrangements which do not stipulate transfer of title but only use of the assets; and • such other assets as may be notified by the Central Government in consultation with any financial sector regulator; (b) assets in security collateral held by financial services providers; (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided; (d) assets of any Indian or foreign subsidiary of the corporate debtor; or (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.
<p>Powers of liquidator to access information - Sec. 37</p>	<p>The liquidator shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely:</p> <ol style="list-style-type: none"> (a) an information utility; (b) credit information systems regulated under any law for the time being in force; (c) any agency of the Central, State or Local Government including any registration authorities; (d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;

	<p>(e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;</p> <p>(f) any database maintained by the Board; and</p> <p>(g) any other source as may be specified by the Board.</p>
<p>Consolidation of claim - Sec. 38</p>	<p>(1) The liquidator shall receive or collect the claims of creditors within a period of 30 days from the date of the commencement of the liquidation process.</p> <p>(2) A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility: Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner provided for the submission of claims for the operational creditor.</p> <p>(3) An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.</p> <p>(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub-section (3).</p> <p>(5) A creditor may withdraw or vary his claim under this section within 14 days of its submission.</p>
<p>Verification of claims - Sec. 39</p>	<p>(1) The liquidator shall verify the claims submitted u/s 38 within such time as specified by the Board (30 days from the last date for receipt of the claims).</p> <p>(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.</p>
<p>Admission or rejection of claims - Sec. 40</p>	<p>(1) The liquidator may, after verification of claims u/s 39, either admit or reject the claim, in whole or in part, as the case may be: Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.</p> <p>(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within 7 days of such admission or rejection of claims</p>
<p>Determination of valuation of claims - Sec. 41</p>	<p>The liquidator shall determine the value of claims admitted u/s 40 in such manner as may be specified by the Board.</p>
<p>Appeal against the decision of liquidator - Sec. 42</p>	<p>A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within 14 days of the receipt of such decision.</p>
<p>Preferential Transactions - Sec. 43</p>	<p>(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.</p> <p>(2) A corporate debtor shall be deemed to have given a preference, if</p> <p>(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and</p>

	<p>(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.</p> <p>(3) A preference shall not include the following transfers:</p> <p>(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;</p> <p>(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that –</p> <p>(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and</p> <p>(ii) such transfer was registered with an information utility on or before 30 days after the corporate debtor receives possession of such property.</p> <p>Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.</p> <p>(4) A preference shall be deemed to be given at a relevant time, if</p> <p>(a) it is given to a related party (other than by reason only of being an employee), during the period of 2 years preceding the insolvency commencement date; or</p> <p>(b) a preference is given to a person other than a related party during the period of 1 year preceding the insolvency commencement date.</p>
	<p>Points to remember</p> <p>“New value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.</p>
<p>Orders in case of preferential transactions – Sec. 44</p>	<p>The Adjudicating Authority, may, on an application made by the resolution professional or liquidator u/s 43, by an order:</p> <p>(a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;</p> <p>(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;</p> <p>(c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;</p> <p>(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;</p> <p>(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;</p> <p>(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and</p> <p>(g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the CIRP for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference.</p>

	<p style="text-align: center;">Other Points</p> <ul style="list-style-type: none"> • An order u/s 44 shall not – <ul style="list-style-type: none"> (a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value; (b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional. • Where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference – <ul style="list-style-type: none"> (a) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor; (b) is a related party, <p>it shall be presumed that the interest was acquired, or the benefit was received otherwise than in good faith unless the contrary is shown.</p> • A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the CIRP has been made u/s 13.
<p>Avoidance of undervalued transactions – Sec. 45</p>	<p>(1) If the liquidator or the RP, as the case may be, on an examination of the transactions of the corporate debtor determines that certain transactions were made during the relevant period u/s 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction.</p> <p>(2) A transaction shall be considered undervalued where the corporate debtor—</p> <ul style="list-style-type: none"> (a) makes a gift to a person; or (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor.
<p>Relevant period for avoidable transactions – Sec. 46</p>	<p>In an application for avoiding a transaction at undervalue, the liquidator or the RP, as the case may be, shall demonstrate that:</p> <ul style="list-style-type: none"> (a) such transaction was made with any person within the period of 1 year preceding the insolvency commencement date; or (b) such transaction was made with a related party within the period of 2 years preceding the insolvency commencement date.
<p>Application by creditor in cases of undervalued transactions – Sec. 47</p>	<ul style="list-style-type: none"> • Where an undervalued transaction has taken place and the liquidator or the RP as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect. • Where the Adjudicating Authority, after examination of the application, is satisfied that— <ul style="list-style-type: none"> (a) undervalued transactions had occurred; and (b) liquidator or the RP, as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority, <p>it shall pass an order—</p> <ul style="list-style-type: none"> (a) restoring the position as it existed before such transactions and reversing the effects thereof; (b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

<p>Order in cases of undervalued transaction - Sec. 48</p>	<p>The order of the Adjudicating Authority may provide for the following:</p> <ul style="list-style-type: none"> (a) require any property transferred as part of the transaction, to be vested in the corporate debtor; (b) release or discharge (in whole or in part) any security interest granted by the corporate debtor; (c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or (d) require the payment of such consideration for the transaction as may be determined by an independent expert.
<p>Transactions defrauding creditors - Sec. 49</p>	<ul style="list-style-type: none"> • Where the corporate debtor has entered into an undervalued transaction as referred to in Sec. 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor, the Adjudicating Authority shall make an order – <ul style="list-style-type: none"> (i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and (ii) protecting the interests of persons who are victims of such transactions: • An order under this section – <ul style="list-style-type: none"> (a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
<p>Extortionate credit transactions - Sec. 50</p>	<p>Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within 2 years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.</p> <p style="text-align: center;">Points to remember</p> <p>As per the regulation 5 of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2017 and as per regulation 11 of the IBBI (Liquidation Process) Regulations, 2016, a transaction shall be considered an extortionate credit transaction under section 50(2) where the terms:</p> <ul style="list-style-type: none"> (a) require the corporate debtor to make exorbitant payments in respect of the credit provided; or (b) are unconscionable under the principles of law relating to contracts.
<p>Orders of Adjudicating Authority in respect of extortionate credit transactions - Sec. 51</p>	<p>Where the Adjudicating Authority after examining the application made u/s 50 is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order –</p> <ul style="list-style-type: none"> (a) restore the position as it existed prior to such transaction; (b) set aside the whole or part of the debt created on account of the extortionate credit transaction; (c) modify the terms of the transaction; (d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or (e) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

<p>Secured creditor in liquidation proceedings - Sec. 52</p>	<p>(1) A secured creditor in the liquidation proceedings may</p> <p>(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in Sec. 53; or</p> <p>(b) realise its security interest in the manner specified in this section.</p> <p>(2) Where the secured creditor realises security interest, he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.</p> <p>(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either –</p> <p>(a) by the records of such security interest maintained by an information utility; or</p> <p>(b) by such other means as may be specified by the Board.</p> <p>(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.</p> <p>(5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.</p> <p>(6) The Adjudicating Authority, on the receipt of an application from a secured creditor may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.</p> <p>(7) Where the enforcement of the security interest yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall –</p> <p>(a) account to the liquidator for such surplus; and</p> <p>(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.</p> <p>(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.</p> <p>(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in Sec. 53.</p>
<p>Distribution of assets - Sec. 53</p>	<p>Proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:</p> <p>(a) the insolvency resolution process costs and the liquidation costs paid in full;</p> <p>(b) the following debts which shall rank equally between and among the following:</p> <p>(i) workmen's dues for the period of 24 months preceding the liquidation commencement date; and</p> <p>(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Sec. 52;</p> <p>(c) wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date;</p> <p>(d) financial debts owed to unsecured creditors;</p>

	<p>(e) the following dues shall rank equally between and among the following:</p> <ul style="list-style-type: none"> (i) any amount due to the C.G. and the S.G. including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of 2 years preceding the liquidation commencement date; (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest; <p>(f) any remaining debts and dues;</p> <p>(g) preference shareholders, if any; and</p> <p>(h) equity shareholders or partners, as the case may be.</p>
	<p style="text-align: center;">Other Points</p> <ul style="list-style-type: none"> • Any contractual arrangements between recipients with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator. • The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients and the proceeds to the relevant recipient shall be distributed after such deduction. • At each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full. • Regulation 42 of The IBBI (Liquidation Process) Regulations, 2016: <ul style="list-style-type: none"> (1) Subject to the provisions of Sec. 53, the liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority. (2) The liquidator shall distribute the proceeds from realization within 90 days from the receipt of the amount to the stakeholders. (3) The insolvency resolution process costs, if any, and the liquidation costs shall be deducted before such distribution is made.
<p>Dissolution of corporate debtor – Sec. 54</p>	<ul style="list-style-type: none"> • Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor. • The Adjudicating Authority shall on application filed by the liquidator, order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly. • A copy of an order shall within 7 days from the date of such order, be forwarded to the authority with which the corporate debtor is registered. <p style="text-align: center;">Regulation 44 of The IBBI (Liquidation Process) Regulations, 2016:</p> <ul style="list-style-type: none"> • The liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date. • If the liquidator fails to liquidate the corporate debtor within one year, he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation.

Important Questions

Q. No. 38: Can a resolution professional act as a liquidator?

[Study Material – ICAI]

HINT: Refer Sec. 34. A resolution professional can act as a liquidator.

Q. No. 39: Mr. X, a Resolution professional in a liquidation process, on an examination of sale of property of Corporate debtor finds that a transaction was made by the corporate debtor to his relative within 6 months preceding the Insolvency Commencement date, was undervalued. Give the following answers in reference to the above situation:

- (a) State the validity of the conduct of such transaction by corporate debtor to his relative.**
- (b) What will be the consequences when resolution professional determines such transactions undervalue and fails to report that same to NCLT?**
- (c) What order NCLT shall pass when Corporate Debtor entered into an undervalued transaction?**

[MTP-April 18]

HINT: Refer Sec. 45 to Sec. 48.

Q. No. 40: The following particulars relate to Big Rammy (Private) Ltd. which has gone into Corporate Insolvency Resolution Plan (CIRP)

Sr. No.	Particulars	Amount in ₹
1	Amount realized from the sale of liquidation of assets	14,00,000
2	Secured creditor who has relinquished the security	5,00,000
3	Unsecured financial creditors	4,00,000
4	Income-tax payable within a period of 2 years preceding the liquidation commencement date	50,000
5	Cess payable to state government within a period of one year preceding the liquidation commencement date	20,000
6	Fees payable to resolution professional	75,000
7	Expenses incurred by the resolution professional in running the business of the Big Rammy (Private) Ltd. on going concern	25,000
8	Workmen salary payable for a period of 30 months preceding the liquidation commencement date. The workmen salary is equal p.m.	3,00,000
9	Equity shareholders	10,00,000

State the priority order in which the liquidator shall distribute the proceeds under the Insolvency and Bankruptcy Code.

[MTP-Oct. 18]

HINT: Refer Sec. 53. (i) Fees of RP – 75000 (ii) Expenses incurred by RP – 25,000 (iii) Workman salary – 2,40,000 (iv) Secured creditor – 5,00,000 (v) unsecured financial creditor – 4,00,000 (vi) Income Tax – 50000 (vii) Cess payable to State Govt – 20,000 (viii) Workman salary – 60,000 (ix) Equity Shareholder – 30,000.

Q. No. 41: The following particulars relate to M/s. Star House (P) Limited which has gone into Corporate Insolvency Resolution Process (CIRP):

S. No.	Particulars	Amount (₹)
1.	Amount realized from the sale of liquidation of Assets	7,00,000
2.	Secured Creditors who has relinquished the security	2,50,000
3.	Unsecured Financial Creditors	2,00,000
4.	Income Tax Payable within a period of two years preceding the liquidation commencement date.	25,000

5.	Cess Payable to State Government within a period of one year preceding the liquidation commencement date.	10,000
6.	Fees payable to resolution professional	37,500
7.	Expenses incurred by the resolution professional in running the business of M/s. Star House (P) Limited on going concern.	17,500
8.	Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen salary is equal per month.	1,50,000
9.	Equity Shareholders/	5,00,000

State the priority order in which the liquidator shall distribute the proceeds under the Insolvency & Bankruptcy Code, 2016. [Study Material – ICAI, May 19 – New Syllabus (6 Marks), MTP-Oct. 20]

HINT: Refer Sec. 53. (i) Fees of RP – 37500 (ii) Expenses incurred by RP – 17,500 (iii) Workman salary – 1,20,000 (iv) Secured creditor – 2,50,000 (v) unsecured financial creditor – 2,00,000 (vi) Income Tax – 25,000 (vii) Cess payable to State Govt – 10,000 (viii) Workman salary – 30,000 (ix) Equity Shareholder – 10,000.

Q. No. 42: Pursuant to Section 33 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) a liquidation order was passed against Luci Soya Limited (LSL) (Corporate Debtor) by the Adjudicating Authority (NCLT). Mr. Solanki, was appointed as the liquidator by the NCLT. Upon resuming his mantle, Mr. Solanki started collecting claims from all the creditors within the time frame as prescribed in the IBC, 2016. While initiating the liquidation process as per provisions of the IBC, 2016, Mr. Solanki proposed to include the equity shares of one of its subsidiary as part of the liquidation estate in relation to the corporate debtor. Besides this, one of the unsecured financial creditor demanded that, at the time of distribution of liquidation proceeds, his dues may be paid before the government dues are paid.' Mr. Solanki also observed that pending legal proceedings against the corporate debtor, 'A' Ltd, an operational creditor, has filed a case with the Arbitral Tribunal praying for an arbitral award against LSL.

On the basis of the above information and in the light of the Insolvency and Bankruptcy Code, 2016, answer the following:

- (i) Whether the proposal of Mr. Solanki to include the equity shares of the subsidiary Company of LSL as part of liquidation estate tenable?
- (ii) How should Mr. Solanki deal with the demand of the unsecured financial creditor?
- (iii) Whether 'A' Ltd will succeed in its prayer for an arbitral award against LSL?

[Nov. 20 – New Syllabus (6 Marks)]

HINT: (i) Refer Sec. 36 – Proposal to include the equity shares of the subsidiary Company of LSL as part of liquidation estate is tenable. (ii) Refer Sec. 53 – Dues of unsecured financial creditor will be paid before the payment of government dues. (iii) Refer Sec. 14 – A Ltd. will not succeed.

Q. No. 43: Omega Limited is undergoing a Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 (IBC Code, 2016). Ravi was appointed as the Resolution Professional. On perusal of the books of accounts of Omega Limited, Mr. Ravi noted a few undervalued transactions had taken place during a period of six months preceding the insolvency commencement date. However, despite having sufficient information, he did not report such transactions to the Adjudicating Authority. Now, the members of Corporate Debtors propose to make an application to the Adjudicating Authority to report the undervalued transactions. Referring to the provisions of IBC Code, 2016, answer the following:

- (i) Whether the members of Corporate Debtors have a legal right to do so?
- (ii) What orders the Adjudicating Authority can pass in such a situation?

[Jan. 2021 – New Syllabus (3 Marks)]

HINT: Refer Sec. 47 of IBC, 2016. Members of corporate debtors have a legal right to do so.

20.7 - FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS

Fast track CIRP
- Sec. 55

An application for fast track CIRP may be made in respect of the following corporate debtors, namely:

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

Points to remember

C.G. notifies that an application for fast track CIRP may be made in respect of the following corporate debtors, namely:

- (a) a small company as defined u/s 2(85) of Companies Act, 2013; or
- (b) a Startup (other than the partnership firm); or
- (c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding ₹ 1 crore.

Time period for completion of fast track CIRP
- Sec. 56

- Fast track CIRP shall be completed within a period of 90 days from the insolvency commencement date.
- The RP shall file an application to the Adjudicating Authority to extend the period of the fast track CIRP beyond 90 days if instructed to do so by a resolution passed at a meeting of the CoC and supported by a vote of 75% of the voting share.
- On receipt of an application, if the Adjudicating Authority is satisfied that the subject matter of the case is such that fast track CIRP cannot be completed within a period of 90 days, it may, by order, extend the duration of such process beyond the said period of 90 days by such further period, as it thinks fit, but not exceeding 45 days:

Points to remember

Any extension of fast track CIRP under this section shall not be granted more than once.

Manner of initiating fast track CIRP
- Sec. 57

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

- (a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and
- (b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track CIRP.

Points to remember

The process for conducting a CIRP shall apply to Fast Track CIRP.

Important Question

Q. No. 44: As on March 31, 2019, the audited balance sheet of M/s Sharp Industries Limited, revealed total assets of ₹ 1 crore. M/s Sharp Industries Limited, in the capacity of a Corporate Debtor, filed an application on July 1, 2019 with the Adjudicating Authority for initiating a fast track CIRP. Explain under the provisions of IBC, 2016 the following:

- (i) Whether the application made by M/s Sharp Industries Ltd. for initiating a fast track CIRP is admissible?
- (ii) The time period including the extension of time period, if any, within which the fast track CIRP shall be completed? [Nov. 18 - New Syllabus (4 Marks)]

HINT: Refer Sec. 55. M/s. Sharp Industries Ltd. can initiate a fast track CIRP as its total asset as reported in the financial statement of the immediately preceding financial year, not exceeding ₹1 crore.

Q. No. 45: XYZ Limited, an unlisted company with total assets of ₹ 90 lakh as per financial statement as on 31st March, 2019, defaulted in the payment of the financial debt against the financial creditor Mr. A.

Mr. A filed an application for initiation of insolvency process against XYZ Limited under the fast track corporate insolvency resolution process by 31st May, 2020. Discuss the relevancy for disposal through the mechanism of the fast track corporate insolvency resolution process and the legal position of holding of fast track corporate insolvency resolution process by Mr. A in terms of the IBC, 2016. Compute the time period for completion of the fast track process in the said situation. [Jan. 21 – Old Syllabus (4 Marks)]

HINT: Refer Sec. 55. Mr. A. can initiate a fast track CIRP as total asset of corporate debtor as reported in the financial statement of the immediately preceding financial year, not exceeding ₹1 crore.

Fast track CIRP shall be completed within a period of 90 days from the insolvency commencement date.

20.8 - VOLUNTARY LIQUIDATION OF CORPORATE PERSONS – SEC. 59

Persons who may initiate	A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter (Chapter V of Part II of the Code).
Conditions for Voluntary Liquidation	<p>Voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:</p> <p>(a) a declaration from majority of the directors of the company verified by an affidavit stating that—</p> <ul style="list-style-type: none"> (i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and (ii) the company is not being liquidated to defraud any person; <p>(b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely:</p> <ul style="list-style-type: none"> (i) audited financial statements and record of business operations of the company for the previous 2 years or for the period since its incorporation, whichever is later; (ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer; <p>(c) within 4 weeks of a declaration under sub-clause (a), there shall be:</p> <ul style="list-style-type: none"> (i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or (ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator: <p>Provided that the company owes any debt to any person, creditors representing 2/3rd in value of the debt of the company shall approve the resolution passed within 7 days of such resolution.</p>
Notification to the Registrar	The company shall notify the ROC and the Board about the resolution to liquidate the company within 7 days of such resolution or the subsequent approval by the creditors, as the case may be.

Commencement of liquidation proceedings	Subject to approval of the creditors, the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution.
Dissolution of corporate person	<ul style="list-style-type: none"> • Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person. • The Adjudicating Authority shall on an application filed by the liquidator, pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly. • A copy of an order shall within 14 days from the date of such order, be forwarded to the authority with which the corporate person is registered.

IMPORTANT QUESTIONS

Q. No. 46: When can a corporate person initiate voluntary liquidation process? [Study Material – ICAI]

HINT: Refer Sec. 59

Q. No. 47: X Ltd. was intending to initiate voluntarily liquidation proceedings. A declaration was made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company. They gave the opinion that the company will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation.

Analysing the given situation, comment whether X Ltd can initiate voluntary liquidation proceeding in compliance with the conditions given in the Insolvency and Bankruptcy Code, 2016. What are the required documents to be accompanied with the declaration?

Also, state the consequences, where if the articles fixed the period of duration for which company may be carried and that period expires. [MTP-March 18, Oct. 19]

HINT: Refer Sec. 59. Declaration made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company, is not in compliance as the majority was the requirement for initiation of the voluntary liquidation proceedings. And the further declaration that the company is not being liquidated to defraud any person is not given in the affidavit.

If the articles fixed the period of duration of continuation and that period expires, X Ltd. after making declaration, shall within 4 weeks pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration as fixed by its articles and appointing an insolvency professional to act as the liquidator.

Q. No. 48: BDLK Limited decided to go for voluntary winding up and accordingly the Board of Directors at a meeting of the Board are about to take the necessary steps to initiate the winding up proceedings. The Board of Directors of the company approached you for guidance in this regard. Please list out the steps required under the Insolvency & Bankruptcy Code 2016 before approval of such liquidation proposal with specific reference to meetings and actions of relevant stakeholders.

[May 18 – Old Syllabus (4 Marks)]

HINT: Refer Sec. 59 “Topic - Conditions for Voluntary Liquidation”

Scanner of Past Exam Questions – New Syllabus				
Attempt	Q. No.	Topic	Suggested Answer / Hints*	Marks
May 18	4(d)	Theory question on Public Announcement	Refer Q. No. 21	4
	5(c)	Practical illustration on Sec. 8 & 9	Refer Q. No. 19	6
Nov. 18	4(d)	Practical Illustration on Sec. 55 and theory question on Sec. 56	Refer Q. No. 38	4
	5(c)	Practical Illustration on Sec. 5(26) and Sec. 7	Refer Q. No. 25	6
May 19 [#]	5(b)	Practical Illustration on Sec. 53	Refer Q. No. 41	6
	6(c)(ii)	Requirements of Notice & Quorum for meeting of CoC	Refer Q. No. 29	3
Nov. 19 [#]	5(c)	Practical Illustration on Sec. 5(11), 5(21), 8 & 9	Refer Q. No. 32	6
	6(d)	Practical Illustration on Regulation 3	Refer Q. No. 33	3
May 20 [#]	Exams cancelled due to Covid-19			-
Nov. 20 [#]	5(c)	Practical Illustration on Sec. 14, 36 and 53	Refer Q. No. 42	6
	6(d)	Practical Illustration on Sec. 14	Refer Q. No. 35	3
Jan. 21 [#]	5(c)	Practical Illustration on Sec. 21 and 22; Regulations 16 and 22 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Refer Q. No. 37	6
	6(d)	Practical Illustration on Sec. 47	Refer Q. No. 43	3

**Detailed answers are given in Question Bank (Cracker).*

#From May 2019 exam, questions are covered only for Descriptive Part of Paper.

Notes

