INSOLVENCY AND BANKRUPTCY CODE 2016-IMPACT

ON

COMPANIES AND FINANCIAL INASTITUTION

DISSERTATION
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UNDER SUPERVISION OF :

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DECLARATION

I hereby declare that the dissertation entitled "Insolvency and Bankruptcy Code 2016-Impact on Companies And Financial Institution" is the outcome of my own work conducted under the supervision of Miss .Trishla Singh, at Babu Banarasi Das University , Lucknow (Uttar Pradesh) . I declare that the content of my dissertation is an original work prepared after careful research and due acknowledgement has been made in the text to all other material used and that the same has not been submitted in any university or college or any other programme for any other purpose.

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CERTIFICATE

This is to certify that the research work "Insolvency and Bankruptcy Code 2016-Impact on Companies And Financial Institution" is the work done a student of Bbu Banarasi Das University ,Lucnow under my guidance and supervision for the partial fulfillment of the requirement for the degree of LL.M in Babu Banarasi Das University ,Lucknow Uttar Pradesh. According to the best of my knowledge ,he/she has fulfilled all the necessary requirement prescribed under the university guideline with regard to the submission of this dissertation.

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LIST OF ABBREVIATION

IBC	INSOLVENCY AND BANKRUPTCY CODE
IP	INSOLVENCY PROFESSIONAL
IPA	INSOLVENCY PROFESSIONAL AGENCY
IBBI	INSOLVENCY BANKRUPTCY BOARD OF INDIA
CR	CORPORATE DEBTOR
NCLT	NATIONAL COMPANY LAW TRIBUNAL
NCLAT	NATIONAL COMPANY LAW APPLETTE TRIBUNAL

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CHAPTER-1

INTRODUCTION

Insolvency and bankruptcy code 2016 is most crucial code in the area of insolvency of company and financial institutions.

Insolvency and bankruptcy code 2016 is considered as one of the powerful insolvency reforms in the economic sector of India. [t is enacted for reorganization and insolvency resolution of corporate persons ,partnership firms ,and individual in a manner which provided a best value of assets of such persons .the central government introduced the insolvency and bankruptcy (ibc) 2016 to solve the claims involving insolvent companies and financial institutions etc.

The insolvency and bankruptcy code 2016 was enacted and came into force with effect from 28th may 2016.

It is the bankruptcy law of India which consolidate the existing framework by creating a single law for insolvency and bankruptcy .

This law was introduced in lok sabha in december 2015.it was passed by lok sabha on 5th may 2016 and by rajya sabha on 11th may 2016.on 28th may 2016 the president grant his consent on the insolvency and bankruptcy code in India. Certain provision of the code have came into force from 5aug 2016 and 19 august 2016. The code is a one stop to solved the problem in respect of insolvencies which previously was a long process that did not offer on economically viable arrangement.

The most crucial objective of the code is to protect the interest of small investors and make the process of doing business in a good manner.

The ibc 2016 has 255 sections 11 schedules.

Under the code the first insolvency resolution order was passed by national company law tribunal in the case of synergies doovay automotive limited on 14 august 2016 and thereafter resolution plan was submitted in the case of process international private limited.

The plea in order to insolvency was submitted to national company law tribunal on 23 january 2017 within a period of 180 days as required by code and the period may be extended subject to sufficient cause . In the code separate insolvency resolution process has been formed in order to individual ,companies and partnership firm .the recess of insolvency may be initiated by either parties whether or debtor or creditor . A maximum time limit has been given in the insolvency and bankruptcy code 2016 for the completion of the insolvency resolution process this time limit has been proceed for corporates and individual and time limit are different for corporates and individual.

For companies – the insolvency resolution process will have to completed within 180 days which may be extended by 90 days subject to the consent of te creditors otherwise time period can not extended .

Once effective , this code shall repeal the presidency town insolvency act, 1909 .the provincial individual act 1920 and sica act 1994 ,companies act 2013,finance act 1994 ,recovery of debt due to banks and financial institution act 1993 and payment and settlement system act 2007.

HYPOTHESIS :- Insolvency And Bankruptcy Code 2016 Covered All The Area In Respect Of Winding Up And Revival Of The Company And Financial Institution. Any person whether creditors or others empowered by the insolvency and bankruptcy code 2016 in order to revival of a company and has reduced the time taken for winding up . The degree of corruption made by the company and financial institution in respect of debts has reduced .

RESEARCH PROBLEM :- I have done extensive research of impact of insolvency and bankruptcy on the company and financial institution in regarding to npa of banks and winding up of company.
The reasearch which is available in the area of winding of company and financial institution and npa of banks are very very little research. In the company law or other law has taken more time in order to revival and winding up of a company and financial institution , and the time is unreasonable . Npa is declared in the wrongeful manner.
To find out the impact of Insolvency and Bankruptcy code on macro environment of India.

OBJECTIVE OF RESEARCH:- THE OBJECTIVE OF THIS RESEARCH IS-

To identify and examine the revival and winding up of a company and financial inastitution.

To identify and examine the emerging trends of Non-performing assets.

To study Insolvency & Bankruptcy code, 2016.

To find out impact of IBC, 2016.

RESEARCH METHODOLOGY:- this research **is** based on doctrinal type pattern.doctrinal research is also known as traditional research .doctrinal research is divided into different type such as analytical and descriptive method. This research is based on information which has been already available and analyzed those facts to make a evolution of this research .this research involve secondary data. In this research the researcher mostly used books, articles ,journals etc.

CHAPTER -2

INSOLVENCY PROFESSIONAL AGENCY

MEANING -Insolvency professional agency(IBC) means any person registered with the Insolvency bankruptcy Board of india (IBBI) under section 201 of Insolvency Code, 2016 as an insolvency professional agency – section 3(20) of Insolvency Code, 2016.

The Insolvency Professional Agencies will develop professional standards, code of conduct and be first level regulator for Insolvency professionals members. This will lead to development of a competitive industry for such professionals.

ICAI, ICSI and ICMA have already formed section 8 companies and have applied for registration with IBBI as Insolvency Professional Agency.

Save as otherwise provided in this Code, no person shall carry on its

business as insolvency professional agencies under this Code and enrol insolvency professionals as its members except under and in accordance with a certificate of registration issued in this behalf by the Board.

According to section 200 of ibc 2016 The Board shall have regard to the following principles while registering the
insolvency professional agencies under this Code, namely:—

(*a*) to promote the professional development of and regulation of insolvency professionals

(*b*) to promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified;

(*c*) to promote good professional and ethical conduct amongst insolvency professionals;

(*d*) to protect the interests of debtors, creditors and such other persons as may be specified

(*e*) to promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code

.

Registration of insolvency professional agency- (1)Every insolvency professional agency must make a application in prescribed form and manner in order to registration and accompanied by such fee, as may be specified by regulations.

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Provided that every application received by the Board shall be acknowledged within 7 days of its receipt.

(*2*) On receipt of the application under sub-section (*1*), the Board may, on being satisfied that the application conforms with all requirements specified under sub-section (*1*)

grant a certificate of registration to the applicant or else, reject, by order, such application.

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Provided that no order rejecting the application shall be made without giving an opportunity of being heard to the applicant:

Provided further that every order so made shall be communicated to the applicant within a period of 15 days.

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(*3*) The Board may issue a of registration certificate to the applicant in such form which is prescribed and subject to such terms and conditions as may be specified.

(*4*) The Board may renew the certificate of registration from time to time in such manner and on payment of such fee as may be specified

.

(*5*) The Board may, by order, suspend or cancel the certificate of registration granted to

an insolvency professional agency on any of the following grounds, namely:—

(*a*) that it has obtained registration by making a false statement or misrepresentation or by any other unlawful means;

(*b*) that it has failed to comply with the requirements of the regulations made by the Board or bye-laws made by the insolvency professional agency;

(*c*) that it has contravened any of the provisions of the Act or the rules or the

regulations made thereunder;

(*d*) on any other ground as may be specified by regulations:

Provided that no order shall be made under this sub-section unless the insolvency professional agency concerned has been given a reasonable opportunity of being heard:
Provided further that no such order must be passed by any member except whole-time members of the boards.

Section 202 provides that any insolvency professional agency which is aggrieved from the order passed by the insolvency bankruptcy board of india may file an appeal before NCLT in the prescribed manner under the code within a period, and in such manner, as may be specified by rules and regulations.
The Board may, for the purposes of ensuring that every insolvency professional agency takes into account the purposes sought to be achieved under this Code, make regulations to specify —

(1) the setting up of a governing board of an insolvency professional agency;

(*2*) the minimum number of members should be on the governing board of the insolvency professional agency; and

(*3*) the number of the insolvency professionals must be members who shall be on the governing board of the insolvency professional agency[1].

Function of insolvency professional agency: There are following functions of the insolvency professional agency-

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(1) Grant membership to persons who fulfil all requirements set out in its byelaws
on payment of membership fee.

(2) Make a standards of professional conduct for its members.

(3) Investigate the performance of its members

(4) safeguard the rights, privileges and interests of insolvency professionals

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who are its members;

(*5*) suspend or cancel the membership of insolvency professionals who are its
members on the grounds set out in its bye-laws;

(*6*) redress the grievances of consumers against insolvency professionals who
are its members; and

(*7*) publish information about its functions, list of its members, performance of
its members and such other information as may be specified by regulations.

Subject to the provisions of this insolvency code and any rules or regulations made thereunder
and after obtaining the approval of the Board,every insolvency professional agency(IPA) shall
make bye-laws consistent with the bye-laws specified by the Board under section 196(2).

Chapter IV provides the provision in respct of the insolvency professional and also the section 206. Section 206 provides that the No person shall render his services as insolvency professional under this Code without being enrolled as a member of an insolvency professional agency and registered with insolvency bankruptcy board of india.

Every insolvency professional shall, after obtaining the membership of any insolvency professional agency, register himself with the Board within such time, in such
manner and on payment of such fee, as may be specified by regulations.

(*2*) The Board may specify the categories of professionals or persons possessing such qualifications and experience in the field of finance, law, management, insolvency.

Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions
as may be necessary, in the following matters, namely:—

(*a*) a fresh start order process under Chapter II of Part III;

(*b*) individual insolvency resolution(IIR) process under Chapter III of Part

(*c*) corporate insolvency resolution process under Chapter II of Part II;

(*d*) individual bankruptcy process under Chapter IV of Part III; and

(*e*) liquidation of a corporate debtor firm under Chapter III of Part II

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(*2*) Every insolvency professional shall abide by the following code of conduct:

(*a*) to take reasonable care and diligence while performing his duties;

(*b*) to comply with all requirements and terms and conditions specified in the

bye-laws of the insolvency professional agency of which he is a member.

(*c*) to allow the insolvency professional agency to inspect his records.

(*d*) to submit a copy of the records of every proceeding before the Adjudicating

Authority to the Board as well as to the insolvency professional agency of which he is

a member; and

(*e*) to perform his functions in such manner and subject to such conditions as may be specified.

Every insolvency professional must take a reasonable care during the performance of his duties and must comply all the requirement and condition which is specified in the bye-laws of the insolvency professional agency.

On receipt of the application under sub-section (*1*), the Board may, on being satisfied that the application conforms to all requirements specified under sub-section (*1*),
grant a certificate of registration to the applicant or else, reject, by order, such application. The Board may issue a certificate of registration to the applicant in such form and
manner and subject to such terms and conditions as may be specified. The Board may renew the certificate of registration from time to time in such manner and on payment of such fee as may be specified by regulations.

The Board may, by order, suspend or cancel the certificate of registration granted to
an information utility on any of the following grounds, namely:

* that it has been obtained registration by making a misrepresentation or any other wrongful means

* that it has failed to comply with the requirements of the regulations made by the Board
;
* that it has contravened any of the provisions of the Act or the rules or the regulations made thereunder;

* on any other ground as may be specified by regulations:

Provided that no order shall be made under this sub-section unless the information utility concerned has been given a reasonable opportunity of being heard.

Any person aggrieved from the act of an insolvency professional agency or insolvency professional or an information utility may file a complaint to the insolvency bankruptcy board in such form, within such time and in such manner as may be specified.

Where the Board, on receipt of a complaint under section 217 or has reasonable grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may, at any time by an order
in writing, direct any person or persons to act as an investigating authority to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility.

The inspection or investigation carried out under sub-section (*1*) of this section shall be conducted within time and in such manner as may be specified by regulations.
The Investigating Authority may, in the course of such inspection or investigation,
require any other person who is likely to have any relevant document, record or information
to furnish the same, and such person shall be bound to furnish such document, record or information.

Provided that the Investigating Authority shall provide detailed reasons to such person before requiring him to furnish such document, record or information.
The Investigating Authority may, in the course of its inspection or investigation, enter any building or place where they may have reasons to believe that any such document, record or information relating to the subject-matter of the inquiry may be found and may
to the provisions of section 100 of the Code of Criminal Procedure, 1973, insofar as they may be applicable
.

The Investigating Authority shall keep in its custody the books, registers, other documents and records seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the concerned person from whose custody or power they were seized: Provided that the Investigating Authority may, before returning such books, registers other documents and record as aforesaid, place identification marks on them or any part thereof.

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The Board may, upon completion of an inspection or investigation under section 218, issue a show cause notice to such insolvency professional agency or insolvency professional or information utility, and carry out inspection of such insolvency professional agency or insolvency professional or information utility in such manner, giving such time for giving reply, as may be specified by regulations.[2]

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The Board shall constitute a disciplinary committee to consider the reports of the investigating Authority submitted under sub-section (*6*) of section 218: Provided that the members of the disciplinary committee shall consist of whole-time
members of the Board only.

On the examination of the report of the Investigating Authority, if the disciplinary
committee is satisfied that sufficient cause exists, it may impose penalty as specified in
sub-section (*3*) or suspend or cancel the registration of the insolvency professional or,
suspend or cancel the registration of insolvency professional agency or information utility
as the case may be.

Where any insolvency professional agency or insolvency professional or an information utility has contravened any provision of this Code or rules or regulations made
thereunder, the disciplinary committee may impose penalty which shall be—
* three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention; or
* three times the amount of the unlawful gain made on account of such contravention,
whichever is higher:
Provided that where such loss or unlawful gain is not quantifiable, the total amount of
the penalty imposed shall not exceed more than one crore rupees.

Notwithstanding anything contained in sub-section (*3*), the Board may direct any

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person who has made unlawful gain or averted loss by indulging in any activity in contravention of this Code, or the rules or regulations made thereunder, to disgorge an amount
equivalent to such unlawful gain or aversion of loss.
The Board may take such action as may be required to provide restitution to the person who suffered loss on account of any contravention from the amount so disgorged, if the person who suffered such loss is identifiable and the loss so suffered is directly attributable to such person.

The Board may make regulations to specify—

(a) the procedure for claiming restitution under section 218(5).

(b) the period within which such restitution may be claimed.

(*c*) the manner in which restitution of amount may be made.

CHAPTER-3

CORPORATE INSOLVENCY AND RESOULATION PROCESS

CORPORATE PERSONS- corporate persons' defined as companies, limited liability partnerships, or any other person incorporated with limited liability under any law for the time being in force Insolvency resolution and liquidation of financial service providers is excluded from the scope of Code. This is because such entities require a special insolvency regime that is specialized .Given the interconnectedness between such entities and the systemic risk implications for the economy the insolvency resolution and liquidation process of such entities must take into account the interest of the financial system and the economy. The provisions of this part shall apply where the minimum amount of the default is 1 lakh rupees. However, the Central Government may specify the minimum amount of default of higher value upto Rs. **1 Cr.**

Persons who may initiate corporate insolvency resolution process

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution

process in respect of such corporate debtor in the manner as provided under this Chapter

This section provides that where a corporate debtor has defaulted in paying a debt that has become due and payable but not repaid, the corporate insolvency resolution process may be initiated in the manner as provided in this Chapter in respect of such corporate debtor by a financial creditor, an operational creditor or the corporate debtor itself. Early recognition of financial distress is very important for timely resolution of insolvency. Any financial creditor to initiate the corporate insolvency resolution process where the corporate debtor has defaulted in paying a debt that has become due and payable but not repaid. Financial creditors are those creditors to whom a financial debt is owed. The corporate debtor itself to initiate the insolvency resolution process once it has defaulted on a debt. Operational creditors are also permitted to initiate the insolvency resolution process. This will bring the law in line with international practices, which permit unsecured creditors to file for the initiation of insolvency resolution proceedings.

Initiation of corporate insolvency resolution process by financial creditor:- 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 corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has happened..

PROVIDED that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

PROVIDED FURTHER that for financial creditors who are allottee under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall filed jointly by not less than one hundred of such allottee under the same real estate project or not less than ten per cent. of the total number of such allottee under the same real estate project, whichever is less:

PROVIDES ALSO that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, such application shall be modified to comply with the requirements of the first or

second provisos, as the case may be, within thirty days of the commencement of the said Ordinance, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation : For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed

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(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.[3]

Application for initiation of corporate insolvency resolution process :- After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under section 8(1) , if operational creditor does not receive payment from the corporate debtor notice of the dispute under section 8(2) ,the operational creditor may file an application before the Authority for initiatinon of corporate insolvency resolution process.
The application under sub-section (1) shall be filed in such form ana manner and accompanied with such fee as may be prescribed
The operational creditor shall, along with the application furnish
a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor; and an affidavit the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt; and a copy of the certificate from the financial institutions maintaining an accounts of the operational creditor confirming that there is no payment of an unpaid operational debt

a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed. An operational creditor initiating a corporate insolvency resolution

[3] The Institute of Company secretaries of India, Companies Restructuring & Insolvency.

process under this section, may propose a resolution professional to act as an interim resolution professional.

The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order
(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,,

(a) the application made under section 9(2) is complete.

(b) there is no payment of the unpaid operational debt.

This section provides that on the expiry of the period of ten days from the date of receipt of the invoice or demand notice under Section 8, if the operational creditor does not receive either the payment of the debt or a notice of existence of dispute in relation to the debt claim from the corporate debtor, he can file an application with the adjudicating authority for initiating the insolvency resolution process in respect of such debtor. He also has to furnish proof of default and proof of non-payment of the debt along with an affidavit verifying that there has been no notice regarding the existence of a dispute in relation to the debt claim. Within fourteen days from the receipt of the application, if the adjudicating authority *or* Tribunal is satisfied as to the existence of a default, and the other criteria laid down in Section 9(5) being met, it shall admit the application. The adjudicating authority *or* Tribunal is not required to look into any other criteria for admission of the application. It is important that parties are not allowed to abuse the legal process by using delaying tactics at the admissions stage.

Initiation of insolvency *r*esolution process by corporate applicant :- Where a corporate debtor has committed a default, a com applicant thereof may file an application for initiating con insolvency resolution process with the Adjudicating Authority.

The application filed u/s 10 must be in prescribed manner and with the prescribed fees.

The application must furnish the information in corporate application,such information as follows-

*** the information which relating to books of account.**
* the information in respect of the resolution professional which proposed to be appointed as an interim resolution professional.
* Special resolution passed by the corporate debtor.

the Adjudicating Authority shall admit the application within a period of fourteen days of the receipt of the application and Adjudicating Authority may reject the application within a period of fourteen days of the receipt of the application such application is incomplete and not in prescribed manner and also if disciplinary proceeding is pending against the proposed resolution professional.

PROVIDED that Adjudicating Authority shall, before rejecting an application, intimate to the applicant to rectify the defects or error in the application within 7 days from the date of receipt of such notice from the Adjudicating Authority (AA).

The process of corporate insolvency resolution shall commence from the date of admission of the application u/s 10(4).
This section provides for the initiation of corporate insolvency resolution process by the corporate debtor itself. A corporate applicant (defined as a specific set of persons linked to the corporate debtor) may make an application to the adjudicating authority along with the corporate debtor's books of accounts and such other documents (as may be specified), and the name of a person proposed to be appointed as the interim resolution professional.
The adjudicating authority shall admit the application within fourteen days from the date of receipt of the application if it is complete. Since the management of the corporate debtor (and o*n*e persons covered in the definition of a corporate applicant) are likely to have the best *in*for*m*at*i*o*n* about the financial affairs of the corporate debtor, permitting such applicants to initiate corporate insolvency resolution process would ensure timely intervention that is crucia*l* in order to *any* corporate insolvency resolution process to succeed. In such cases, the management would have sufficient incentives to cooperate with the resolution professional and the creditors and agre*e o*n a resolution plan swiftly and efficiently. Since the corporate applicant can only initiate *th*e corporate insolvency resolution process upon the occurrence of a default and not on m*e*re likelihood of inability to pay debts, the corporate applicant cannot trigger the cor*p*ora*te* insolvency resolution process prematurely to abuse the moratorium provisions.

<u>The persons who not entitled to make application</u>:- There are following persons who are not entitled to make an application-

* Corporate debtor undergoing a corporate insolvency resolution process.

* Corporate debtor having completed corporate insolvency resolution process within 12 month fro the date of making application.

*A corporate debtor or financial creditor who has violated the terms of planof resolution.

* a liquidation order has been in regarding of corporate debtor.

This section lists out the persons who are not eligible to make an application to initiate the corporate insolvency resolution process. A corporate debtor

which is undergoing a corporate insolvency resolution process (at the time of such application) or has completed a corporate insolvency resolution process in the preceding twelve months is not entitled to file an application for initiating the corporate insolvency resolution process. A corporate debtor or a financial creditor who has violated any of the terms of the resolution plan that was approved twelve months before making an application for initiating the process is also not entitled to make an application for initiating the corporate insolvency resolution process again. A corporate debtor in respect of which a liquidation order has been passed is not allowed to initiate the insolvency resolution process again. This is to ensure finality of the liquidation order.

The *corporate insolvency r*esolution must be completed within a *peri*od *of o*ne 180 *d*ays fr*om the* date of admission of the application *for* initiate such p*roce*ss. The professional has entitled to make an Adjudicating Authority for extend the period of the corpora*te* insolvency resolution process beyond 180 days, if instruction passed by a resolution at a meeting of th*e comm*itt*e o*f creditors by a of 60%of the voting shares..[4]

On receipt of an application u/s 10(2), if the Adjudicati Authority is satisfied that the subject matter of the case is such this corporate insolvency resolution process cannot be completed within m hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty 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 (cirp) under this section shall not be granted more than once
:
PROVIDED FURTHER that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and 30 days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

PROVIDED ALSO that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the ibc (Amendment) Act, 2019[5].

This section prescribes a tirne limit of 180 days, extendable by a further 90 days, for the completion of corporate insolvency resolution process. The application for the extension can only be made by the resolution professional and has to be supported by a resolution passed at a meeting of the committee of creditors by a majority of 66 per cent of the voting shares. No other person is entitled to seek such an extension of

[4] IBC LAW WEBSITE.
[5] IBC LAW WEBSITE.

time. The adjudicating authority/ Tribunal shall have no discretion to extend these time-lines

The Adjudicating Authority has entitled to allow any persons for withdrawal of application which is admitted under section 7, under section 9, under section 10 on the application made by a applicants within the time period and with the voting share of creditors.

This section allows withdrawal of applications admitted under section *7*, 9 or *1*0 with the approval of 90% voting share of the committee of creditors in the manner as **m**ay be prescribed.

After accepting the application under section 7 or 9 or 10 the Adjudicating Authority shall make an order moratorium in order to purposes of section 14 and also make a public announcement for the initiation of corporate insolvency resolution process(CIRP).

The Adjudicating Authority may call for the submission of claim u/s 15.

The Adjudicating Authority may appoint an interim resolution professional in the manner as laid down in section 16. (2).

This section lists the actions that the adjudicating authority shall take once an application for initiating the corporate insolvency resolution process has been admitted. The adjudicating authority shall (a) declare a moratorium in accordance with section 14, (b) cause a public announcement of the initiation of corporate insolvency resolution process with respect to the corporate debtor to be made and call for claims in the manner laid down in section 15, and (c) appoint the interim resolution professional for the corporate debtor in accordance with section 16.

The Board shall, within ten days fro the date of receipt of a reference from the Adjudicating Authority u/s 17(3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.
The term of the interim resolution professional shall continue till the date of appointment of the resolution professional u/s 22.

This section provides for the appointment of the interim resolution professional by the adjudicating authority within fourteen days from the date of admission of the application under Section 7, 9 or 10. Where the corporate insolvency resolution process has been initiated in respect of a corporate debtor on an application by a financial creditor or the corporate debtor itself, the insolvency professional whose name has been proposed in the application shall be appointed by the adjudicating

authority. Where the corporate insolvency resolution process has been initiated on an application by an operational creditor and no resolution professional has been proposed, then the adjudicating authority shall make a reference to the Insolvency and Bankruptcy Board of India for recommending the name of a person to be appointed as the interim resolution professional. If the operational creditor proposes a resolution professional, the adjudicating authority may appoint such professional as the interim resolution professional subject to compliance with necessary conditions. The Board shall recommend the name of a resolution professional who meets the criteria stipulated in section 16(3) within ten days from the receipt of the reference. The interim resolution professional is a significant actor in the corporate insolvency resolution process. He performs various functions such as the collection of claims, the collection of information about the corporate debtor, the constitution of the committee of creditors and the interim management of the company's affairs and monitoring of the company's assets till a resolution professional is appointed. The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22.

From the date of appointment of the interim resolution professional the management must vest in the interim resolution professional also vest the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional; the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional.

The financial institutions maintain the account which belongs to corporate debtor and shall act on the instructions of the interim resolution professional in respect of the such accounts and funish information regarding to the corporate debtor which is available with the the interim resolution professional.

The interim resolution professional vested with the management of corporate debtor shall act and execute in the name and on behalf of the corporate debtor all deeds, , and other documents, if any and The interim resolution professional take such actions, in the manner and subject to such restriction.

The interim resolution professional have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor; and have the authority to access the books of accounts, records and other relevant documents of corporate debtor available other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor. This section provides

that once the interim resolution professional has been appointed, the management of the corporate debtor is taken over by him. The powers of the board of directors or the partners of the corporate debtor, as the case may be. are suspended. The officers and managers of the corporate debtor shall report to the interim resolution professional and cooperate with him in providing access to documents and records of the corporate debtor. For effectively discharging the responsibilities, the interim resolution professional is empowered to do all acts and execute documents in the name of the corporate debtor.

Duties of interim resolution professional:- There are following duties of interim resolution professional-

The interim resolution professional shall collect the all information in respect of the assets, finances and operation of the corporate debtor in order to determining the financial position of the corporate debtor. Such information in respect of the business operations for the previous two years and financial and operational payments for the previous 2 years.

Collect to all claims which submitted by the creditors to him.

constitute a committee of creditors

monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors; lel file information collected with the information utility, if necessary.

take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor or with information utility or the depository of securities or any other registry that records the ownership of assets including assets over which the corporate debtor has ownership

rights which may be located in a foreign country assets that may or may not be in possession of the corporate debtor, tangible assets, whether movable or immovable, intangible assets .assets of any Indian or foreign subsidiary of the corporate and such other assets as may be notified by the Central Government

This section lists out the various duties of an interim resolution professional. These include collection of all financial information relating to the corporate debtor, receipt and collation of debt claims, constitution of a committee creditors, taking control over and monitoring the assets of the corporate debtor, an information utility, if required This and filing the information collected with an information utility, if requires section specifies the assets that cannot be taken over.

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

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

The Adjudicating Authority, on receiving an application under sub section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

This section imposes an obligation on the personnel and promoters of the corporate debtor to extend all assistance and co-operation required by the interim resolution professional in the management of the affairs of the corporate debtor. Where the personnel of the corporate debtor or any other person required to co-operate with the interim resolution professional do not extend co-operation or assistance to the interim resolution professional, the interim resolution professional may apply to the adjudicating authority for an order. The adjudicating authority may, by order, direct the person to comply with the instructions of the interim resolution professional or to provide information to the interim resolution professional.

The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.in order to the purposes of u/s 20(1), the interim resolution professional shall have the authority, to appoint accountants, legal or other professionals as may be necessary and also to enter into contracts on behalf of the corporate debtor.

corporate debtor must entered into before the commencement of insolvency resolution process and to make interim finance provided that no security interest and also must created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property: PROVIDED that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt and to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and to take all such actions as are necessary to keep the corporate debtor as a going concern.

This section lays down that the interim resolution professional has to manage the operations of the corporate debtor as a going concern to enable him to protect and preserve the value of the property of the corporate debtor. These include the power to appoint accountants, legal counsel or such other professionals who may provide specialist advice to the interim resolution professional. The interim resolution professional is empowered to raise interim finance and to enter into, amend or modify contracts on behalf of the corporate debtor. However, any interim finance raised by providing security of an encumbered property of the corporate debtor will require prior permission of the concerned creditor. If a financially distressed corporate debtor is to be able to successfully pull itself out of insolvency resolution proceedings, continued trading during the course of proceedings is to be facilitated..

The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.
The committee of creditors shall comprise all financial creditors of the corporate debtor:
PROVIDED that a *[financial creditor or the authorised representative of the financial creditor referred to in u/s 21 (6) or u/s21 (6A) or u/s 21 (5) of section 24, if it is a related party of the corporate debtor) shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

FURTHER PROVIDED that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.
Subject to u/s 21 (6) and 21 (6A), where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.
Where any person is a financial creditor as well as an operational creditor, 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, such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate to the extent of the operational debt owed by the corporate to the extent of the operational debt owed by the corporate.
This section provides for the constitution of a committee of creditors by the ir resolution professional. The committee of creditors is composed of all the

financial crer of the corporate debtor, excluding related parties of the corporate debtor. The comm has to be composed of members who have the capability to assess the commercial vich of the corporate debtor and who are willing to modify the terms of the debt contra negotiations between the creditors and the corporate debtor. Operational credito typically not able to decide on matters relating to commercial viability of the con debtor, nor are they typically willing to take the risk of restructuring their debts in oro make the corporate debtor a going concern. Similarly, financial creditors w*h*o are also operational creditors will be given representation on the committee of creditors only to IT extent of their financial debts. Nevertheless, in order to ensure that the financial cred do not treat the operational creditors unfairly, any resolution plan must ensure that operational creditors receive an amount not less than the liquidation value of their debt all decisions of the Committee shall be taken by a vote of not less than seventy-five per cent of the voting share. In the event there are no financial creditors for a corporate debtor, the composition and decision-making processes of the corporate debtor shall be specified by the Insolvency and Bankruptcy Board. The Committee shall also have the power to call for information from the resolution professional debtor to such creditor. 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.

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 [6]

(a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share
(b) represent himself in the committee of creditors to the extent of his voting share.
(c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or
(d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.
The committee of creditors, may by 60% majority vote of the financial creditors appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.
The committee of creditors resolves with the written consent from the interim resolution professional in the specified form], as resolution professional, it shall communicate its decision to the interim resolution professional the corporate debtor and the Adjudicating Authority.

[6] IBC LAW WEBSITE.

To replace the interim resolution professional, it shall file an application application before the Adjudicating Authority for the appointment of the proposed resolution professional along with a written consent from the proposed resolution professional in the specified. The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of u/s 23 (3) 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 resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

This section provides that one of the functions of the committee of creditors to the appointment of the resolution professional. At the first meeting which shall be held within seven days of the constitution of the committee of creditors, the committee may decide, by a majority of 60 per cent of voting share of the financial creditors to appoint the interim resolution professional as the resolution professional or propose the name of another insolvency professional to be appointed as the resolution professional Where the committee of creditor decides not to appoint the interim resolution professional as the resolution professional, it has to file an application with the adjudicating authority for the appointment of the proposed resolution professional The adjudicating authority shall, upon receipt of a confirmation from the Insolvency and Bankruptcy Board of India, appoint the proposed insolvency resolution professional as the resolution professional. Where no confirmation is received from the Insolvency and Bankruptcy Board of India within ten days of the date of receipt of the name of the proposed resolution professional, the interim resolution professional is to continue as the resolution professional until the receipt of the confirmation.

Insolvency professional to conduct insolvency resolution

process :- Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

PROVIDED that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the period.

The resolution professional shall exercise powers and performance his duties as are vested or conferred on the interim resolution professional under this Chapter.

In case of any appointment of a resolution professional u/s 22(4) the interim resolution professional provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

This section provides that the resolution professional shall be responsible for carrying out the entire corporate insolvency resolution process and managing the operations of the corporate debtor during such process. For this purpose,

he shall have the same powers and shall perform the same duties as the interim resolution professional. Where the interim resolution professional has not been appointed as the resolution professional, the interim resolution professional shall records relating to the corporate debtor provide all information, documents and records relating to the resolution professional to facilitate a smooth transition.

Meeting of committee of creditors:- The committee of creditors has been held by members in person or by any electronics means as may be specified under the code.

All meetings of the creditors shall be conducted by the resolution professional and each notice of the meeting of the committee of creditors shall be given by resolution professional to each members of committee and also authorized representatives which is provided u/s 24(6).

Notice has been given to the members of Board of Directors who has suspended and also to the partner of the corporate persons.

Send the notice to operational creditors or or their representatives if the amount of their aggregate dues is not less than 10% of the debt by the resolution professional.

PROVIDED that the resolution professional shall, if the resolution plan u/s 30(6) has been submitted, continue to manage the operations the corporate debtor after the expiry of the corporate insolvency resolution period until an order is passed by the Adjudicating Authority. The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Section 25 provides for rights and duties of authorised representative of financial creditors.

The filing of an avoidance application u/s 25(2) by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process. This section provides for application for avoidance of transactions not to affect proceedings of the corporate insolvency process.[7]

Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced. It may replace him with another resolution professional in the manner provided under this section.

[7] MANU/NC/5257/2018.

The committee of creditors may, at a meeting, by a vote of 60%. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.

The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.
The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16. Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.
This section states that a resolution professional may be replaced at any time during the corporate insolvency resolution process by the committee of creditors by a 66 per cent majority of voting shares. This power is particularly relevant where a corporate debtor may have initiated the corporate insolvency resolution process and may have appointed a resolution professional of their choice. The committee of creditors have the right to replace such resolution professional, in the manner provided under this section. The committee of creditors shall then forward the name of the insolvency professional proposed to be appointed as the resolution professional to the adjudicating authority. The adjudicating authority shall appoint the proposed insolvency professional as the resolution professional after receipt of a confirmation from the Insolvency and Bankruptcy Board of India regarding the appointment. This provision, like section 22, provides for creditor involvement in the replacement of the resolution professional.

Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely-[8]

Raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting.

Create any security interest over the assets of the corporate debtor.

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.

Record any change in the ownership interest of the corporate debtor.

[8] IBC LAW WEBSITE.

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.

undertake any related party transaction.

amend any constitutional documents of the corporate debtor

delegate its authority to any other person.

financial debts or operational debts under material contracts otherwise than in the ordinary course of business.

The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions u/s 28(1).

The committee of creditors shall not be approved action unless approved by a vote of 60%of the voting shares.

If ant action taken by theis taken by the resolution professional u/s 28(1) without the approval of the committee of creditors then in such case such action shall be void.

The actions of the resolution professional may be report by members of committee u/s 28(1) to board in order to take action against professional under the code.

This section lists out certain actions that may be taken by the resolution professional only with the prior approval of the committee of creditors by a 66 per cent majority of voting shares. The aim of this provision is to seek consent of the committee of members.

U/s 29 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 resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes-

to comply with provisions of law in respect of insider trading.

to protect the intellectual property in respect of corporate debtor.

Any information should not share with third parties unless provided under exceptional cases.

In respect of this section,relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.

This section lays down one of the main functions of the resolution professional preparation of an information memorandum, which shall enable a resolution applicant to prepare a resolution plan. Such an information memorandum is envisaged to be prepared in order for the market participants to provide solutions for resolving the insolvency of the corporate debtor. To this end, the resolution professional is also required to provide access to all relevant information about the corporate debtor to the resolution applicant, subject to the resolution applicant complying with certain restrictions relating to confidentiality and compliance with law.

If any person do any act with any other persons who is -

(a) is an insolvent

(b) is a defaulter under the guidelines of RBI issued under the Banking Regulation Act, 1949, at the time of FILING of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing assets (NPA)in accordance with the guidelines of the RBI.
PROVIDED that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan.

The applicants may submit his resolution plan with an affidavit stated that he is eligible u/s 29A to the resolution professional prepared on the basis of the information receipt.
each resolution plan shall be investigate by the resolution professional .on the basis of received information .Such resolution plan shall be examine in proper manner and must be provided the cost of such exmine.
The proper manner must be prescribed by the board and abide by professional.
The insolvency resolution professional shall present before the committee of creditors in order to approval of resolution plans which confirm the conditions referred to in u/s30 (2).
The resolution plans must be approved by the resolution professional subject to 60% voting share of financial creditors.
If before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, the resolution plan shall not approved by the insolvency resolution professional then must be approved by the authority.

PROVIDED FURTHER that where the resolution applicant referred to in thefirst proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:
PROVIDED ALSO that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section:]
[PROVIDED ALSO that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]
The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:
PROVIDED that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.
The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority[9].

This section provides for the manner in which a resolution plan may be submitted by a resolution applicant. It may be noted that there are no restrictions on who can be a resolution applicant, subject to compliance with all applicable laws. This may even include promoters of the corporate debtor. This provision would facilitate proposals from persons interested in commercially viable but insolvent businesses to rescue such entities, creating value for all stakeholders in the process. The resolution professional shall submit each resolution plan, which conforms to the criteria , provided under clauses (a) to (f) in u/s 30(2) to the committee of creditors who shall approve a resolution plan by a 66% majority of voting shares. The plan must provide for payment of insolvency costs in priority to other debt, repayment of operational creditors, compliance law and meet such other conditions as may be specified by the Insolvency *an*d bankruptcy Board of India. Once the resolution plan has been approved by the co*mmi*ttee of creditors, it is then presented to the adjudicating authority for its approval.

Approval of resolution plan :- if the resolution plan is approved by the committee of creditors u/s 30(4) and full fil the requirements u/s 30(2) and after satisfied by the Adjudicating Authority then in such case order must approve the resolution plan which shall be binding on the corporate debtor and its employees any members, creditors, including the Central government, any State Government or any local authority to whom a debt in respect of the

[9] REGISTERED NO. DL—(N)04/0007/2003—16, BARE ACT

payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed.

Before passing an order for approval of resolution plan ,the Adjudicating Authority must satisfy that resolution plan has the provision for effective implementation.

After the order of approval u/s 31(1)

Adjudicating Authority.

The resolution professional shall send all records the conduct of the corporate insolvency resolution process to insolvency bankruptcy board of india

The resolution applicant shall, pursuant to the resolution plan after approved u/s 31(1) 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 Authority u/s 31 (1) or within such period as provided for in such law, whichever is later.
PROVIDED that where the resolution plan contains a provision for combination as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the Committee of Creditors. This section provides that the adjudicating authority is required to revise resolution plan sanctioned by the committee of creditors for ensuring that the re plan (a) meets the criteria set out in section 30(2), (b) pr*o*vides *f*or the repayment operational creditors of at least the amount which they would have been entitled to corporate debtor were to be liquidated and (c) satisfies such other c*o*nditions as m prescribed by the Insolvency and Bankruptcy Board of India. Criterion (b) set out at is intended to provide protection to operational creditors. The Adjudicatory Authority also required to be satisfied that the resolution plan is approved by the committee creditors under section 3014) meets the requirements as referred in clauses (a) to *le* section 3012). Thereafter resolution plan shall be approved which shall be binding, the corporate debtor, etc. involved in the resolution plan. Further, the moratoris imposed under section 14 ceases to have effect upon approval of the plan [10]

u/s 32 of ibc 2016 ,any appeal may be filed against the order passed of resolution plan on the grounds of u/s 61(3).The appeal must be in proper form and in prescribed manner and the application filed before the authority.

[10] REGISTERED NO. DL—(N)04/0007/2003—16 ,BARE ACT.

Section 32A provides the liability for prior offences-
Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate offence committed prior to the commencement of the corporate insolvency resolution process 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 under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

a promoter or in the management or control of the corporate debtor or a related party of such a person.

a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:
PROVIDED that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled: PROVIDED FURTHER that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008[11].

FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS (u/s 55) :-

A corporate insolvency resolution process carried out in accordance with This Chapter shall be called as fast track corporate insolvency resolution process. An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely[12]-

(1) a corporate debtor with assets and income below a level as may be notified by the Central Government; or

(2) a corporate debtor with such creditors or the amount of debts by the central government.

(3) Any others category of corporate persons which are notified by the CG.

[11] REGISTERED NO. DL—(N)04/0007/2003—16 BARE ACT
[12] REGISTERED NO. DL—(N)04/0007/2003—16 BARE ACT

This section provides for a fast track insolvency resolution process, to be completed within the prescribed time, i.e., 90 days as prescribed under section 56 (subject to an extension of 45 days for certain categories of corporate debtors. This process will provide a speedy insolvency resolution process for corporate debtors with assets or income below a prescribed level or corporate debtors with a prescribed class of creditors or prescribed amount of debt.

a small company as defined u/s 2(85) Companies Act, 2013 (18 of 2013); or (b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017 published in the Gazette of India.

The fast track corporate insolvency resolution process must be completed within a period of 90 days from the date of commencement of insolvent date but such period must be Subject to the provisions of u/s 56 (*3*).
In order to extend the period of the fast track corporate insolvency resolution process beyond 90 days ,the resolution professional shall file an application before the Adjudicating Authority if instructed to do so by a resolution passed at a meeting of the committee of creditors and must be approved by 75% majority of voting share.

When the Adjudicating Authority received application and after satisfied from the application that fast track corporate insolvency resolution process cannot be completed within a period of 90 days then in such case extend the period of such process beyond the period of 90 days but
such extend period can not extend 45 days.

Provided that u/s 56 the period can not extend more than one times in order to fast track corporate insolvency resolution process.
In order to fast track corporate insolvency resolution process ,the creditors or debtor can filed application as the case may be but subject to the following documents ,such documents are as follows-

(a) Any proof in respect of existence of default as evidenced available with an information utility or any other means which are specified by the Board.
(b) Any other information as may be specified by the Board and which is eligible for fast track corporate insolvency resolution process.

All the process in respect of a corporate insolvency resolution process under Chapter II and any provision in respect to offences and penalties under Chapter VII shall apply to this Chapter as the context may require.
This applicability has been given.

CHAPTER IV
LIQUIDION PROCESS

In India, the bad debts are going on increasing. Compared to any other country, the process of resolving the insolvency is time consuming. This makes our country to become weak in economy. Among the total bad debts, the corporate debts constitute 56%. These all lead to pending of thousands of litigations before the courts for recovery of money. The existed Acts such as the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 dealing with the insolvency in case of individuals are centuries old. These issues were solved by the enactment of Insolvency and Bankruptcy Code, 2016. The Code mainly focused on maximisation of the value of debtor's assets. The Code gives a clear idea about the insolvency resolution process. This article mainly focuses on the concept of voluntary liquidation of company. It explains about the procedure involved in the process of voluntary liquidation of a corporate person. This is mainly distinguished from the voluntary winding up of companies under the Companies Act, 2013. The main focus of the article is declaration of solvency, general meeting for initiating voluntary winding up, intimation to other regulatory authorities, effect of voluntary liquidation, the dissolution of corporate debtor and finally the punishment under the code for fraudulent or malicious initiation of proceedings.

Under Chapter V, Section 59 of the Insolvency and Bankruptcy Code, 2016 deals with voluntary liquidation of corporate persons. Section 59(1) of the Code explains that, a corporate person who is intending to liquidate it voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this chapter. Section 59(2) states that the voluntary liquidation in case of corporate person under sub-section (1) shall follow the procedural requirements and meet the conditions as may be prescribed by the Insolvency and Bankruptcy Board.

Provisions required to be referred for Voluntary Winding Up of a company:

- Section 59 of Insolvency and Bankruptcy Code, 2016

- Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

- Section 35 to 53 of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and

- Bankruptcy (Liquidation Process) Regulations, 2016

- Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

The Regulatory authorities for dealing with Voluntary Winding Up of companies:

The Insolvency and Bankruptcy Board of India[11]

Registrar of Companies[12]

National Company Law Tribunal (NCLT)[13]

Section 59(3)(a)(i) of the Insolvency and Bankruptcy Code, 2016 says that a declaration from majority of the Directors stating that they have made a full enquiry about the affairs of the company and they have formed the opinion that the company has no debt or in case it has debts it will be able to pay its debts completely from the value obtained from the assets to be sold in the voluntary liquidation. Section 59(3)(a)(ii) states that in case of voluntary winding up of a company, the company must state that it is not being liquidated to defraud any person. In this case, an affidavit verifying the above must be submitted from the majority of the directors.

The declaration under sub-section (a) must be accompanied with the following documents. They are specified under Section 59(3)(b) of the Code.

The documents are:
i) Audited financial statements and record of business operations of the company for previous two years or for a period since its incorporation, whichever is later.
ii) A report of valuation of the assets of the company, in case if it is prepared by a registered valuer.

After the declaration is filed, a board meeting shall be held to approve the declaration and proposal for winding up of the company. Then the company's bank account shall be closed and a liquidation account will be opened. There is no provision under the Code for filing a declaration with the authority like the Companies Act, 1956[14] which gives the prescribed provision for this. However, it is recommended to file the same with RoC in Form GNL-2.

Section 59(3)(c) explains about the general meeting for initiating voluntary winding up of corporate persons. Within four weeks of the declaration under sub-section (a),

i) There shall be a special resolution by the members of the company in a general meeting requiring the company to be liquidated voluntarily and also it empowers the appointment of insolvency professional[16] to act as a liquidator.

ii) There shall also be a resolution of the members of the company in a general meeting requiring that the company to be voluntarily liquidated as a result of expiry of the period of its duration if it is fixed by the articles of association[17]

of the company or on the occurrence of any event which the articles provide, that the company shall be dissolved and if it is dissolved, the company may appoint an insolvency professional to act as the liquidator.

It also provides that, if a company owes any debts to any person, creditors representing two-thirds in value of the debts of the company, then the company shall approve the resolution passed under sub-clause (c) and such approval must be made within seven days of such resolution.

Intimation to other regulatory authorities:
Under sub-section (4), it is held that the company shall inform to the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or on the subsequent approval by the creditors. If the creditors approved under sub-section (3), then the voluntary liquidation shall be commenced from the date of passing of the resolution under sub-section (3)(c) which is explained under Section 59((5).

Application of Sections 35 to 53 of the Code:
Sub-section (6) of Section 59 says that, Sections 35 to 53 of Chapter III and VII shall apply to voluntary liquidation proceedings of corporate persons. Chapter III deals about liquidation process of a corporate person in case of incompletion of insolvency resolution process and the NCLT orders for liquidation of corporate persons. Chapter VII deals with offences and penalties. It is also provided that the liquidator in case of voluntary winding up of companies shall prepare a report on quarterly basis and submit the report to the Registrar of Companies or to the Board.

Sub-section (7) of Section 59 explains that where the affairs of the company have been completely wound up and the company's assets are completely liquidated, then the liquidator[18] shall make an application to the Adjudicating authority[19] for the dissolution of such corporate person.

This section provides for the liquidation of the corporate debtor such as — (a) where the adjudicating authority is of the opinion that the resolution plan does not meet the criteria set out in section 30(2); (b) where the adjudicating authority does not receive a resolution plan on or before the expiry of the maximum period permitted for the completion of the insolvency resolution plan; (c) where, at any time before the confirmation of a resolution plan, the committee of creditors resolve by a 66 %_majority of voting shares that the corporate debtor is to be liquidated; or (d) where the corporate debtor violates the terms of the resolution plan and on an application by a person whose interests are adversely affected by such violation, the adjudicating authority determines that the corporate debtor has violated the terms of the resolution plan. The liquidation in specified form, order shall result in a moratorium on the initiation or continuation of any suit or legal proceeding by or against the corporate debtor. However, a liquidator may initiate a suit or legal proceeding on behalf of the corporate debtor with the prior

permission of the adjudicating authority. The liquidation order shall also 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.

Regulation 14(1) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, deals about the public announcements and claims. The liquidator shall make a public announcement in Form A of Schedule within five days from his appointment about the liquidation of the company. Sub-regulation (2) states that the Public announcement shall call upon the stakeholders to submit their claims as on the liquidation commencement date and he must provide the last date for submission of claim, that is thirty days from the commencement of liquidation date. Sub-regulation (3) states that the announcement shall be published in the official Gazette, in one English and one regional language newspaper, on the website of the corporate person if it is available and on the website, if any, designated by the board for this purpose.

Chapter VI of the Regulation 2017 deals with the realisation of assets under regulations 31[24] to 33[25]. The liquidator may value the property of the corporate person and sell it in any manner and through any mode that is approved by the corporate person. Chapter VII deals with Proceeds of liquidation and distribution of proceeds under regulations 34[26], 35[27] and 36[28]. The liquidator shall distribute the proceeds to the stakeholders[29] within six months from the receipt of amount.

Regulation 10 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process), 2017 explains about the Registers and books of accounts to be maintained by the Liquidator. Regulation 10(2) states that the liquidator shall maintain the books and registers in case of voluntary liquidation of the corporate person. The liquidator must preserve the books and the registers for a period of eight years after the dissolution of the corporate person. The books and registers to be maintained

Regulation 37 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017 deals with completion of liquidation. The liquidator shall aim to wind up the affairs of the corporate person within one year from the voluntary liquidation commencement date. If the voluntary liquidation is continuing for more than one year, then the liquidator shall call a meeting of the contributories of the corporate person. He shall call for a meeting within 15 days from the end of the year in which he is appointed as a liquidator and also at the end of each succeeding year. The liquidator shall also present a status report indicating the progress in the liquidation. It shall include settlement of list of stakeholders, details of any property that remains to be sold and realized,

distribution made to the stakeholders, development in any material litigation etc. The Status Report shall be enclosed with an audited account of the voluntary liquidation and the report must show the receipts and payments relating to liquidation from the liquidation commencement date[13].

[13] IBC LAWS WEBSITE.

Section 44 provides that The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (*1*) of section 43, by an order-

(a)Transferred any property in respect of the giving preference which vested in the hand of corporate debtor

.

(b)Require any property which is to be vested represents the application as proceeds of sale of property so transferred or of money so transferred.

(c) security interest release if such security interest is vested in hands of the corporate debtor.

(d) require any person to pay such amount in respect of benefits received by him from the corporate debtor, such amount to the liquidator or the resolution professional as the Adjudicating Authority as may direct.

(e) direct any guarantor if any person has financial debts or operational debts of the guarantor must released in preference under such new or revived financial debts or operational debts to the who has right as the Adjudicating Authority deems appropriate.

(f) The Authority can give order for providing security charge on the property for the discharge of any financial debt or operational debt and the security and charge must be in priority which is as a security or charge released or discharged wholly or in part by the giving of the preference.

(g)direct in order to providing to the extent which any person whose property is vested in the hand of corporate debtor, or on whom financial debts or operational debts are imposed by the order, is to be proved in the liquidation or the corporate insolvency resolution process in order to

financial debts or operational debts which arises from, or were released or discharged wholly or in part by the giving of the preference.

In the some cases the order has following effect which are as follows-

If any interest in property has acquired by a person other than corporate debtor or any interest derived from such interest and was acquired in good faith and for value then in such case the order shall not be effective.

If any benefit received from the preferential transaction in good faith then in such case the order shall not require under thid section to pay a sum to the liquidator or the resolution professional.

Explanation:- For the purpose of this section, it is clarified that where a person,who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference.

,

(i) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor

.

(ii) is a related party

it shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown.

.

Explanation II :- A **person** shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13[14].

This section specifies the orders that may be passed in relation to the avoidance of a preferential transaction. The orders are aimed at reversing the effects of the preferential transaction and requiring the person to whom the preference is granted to pay back any gains he may have made as a result of such preference..

When the examination of the transactions of the corporate debtor conduct by the liquidator or the resolution professional, as the case may be u/s 43(3) and seeks in examination of the transactions of the corporate debtor that certain transactions were undervalued he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

A transaction shall be considered undervalued where the corporate debtor—

(a) makes a gift to a person; or

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(b) enters into a transaction with a person which involves the transfer of one or more 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.[15]

This section provides for the avoidance of transactions at under is gifts, or transactions where the value of the consideration m corporate debtor is significantly less than the value provided by the corporate debtor. This section aims to prevent the siphoning away of corporate by the management of the corporate debtor, which has knowledge debtor's poor financial condition and may enter into such transaction in the vicinity of insolvency.

Section 46(1) provides that ,in order to avoiding a transaction which is undervalued the liquidator or the resolution professional, as the case may be, shall demonstrate that-

such transaction was made within a period of 1 year from the date of preceding the insolvency commencement and and such transaction made with any other persons.

The transaction was made within a period of 2 years preceding the insolvency commencement date and transaction was made with a related party.

The Adjudicating Authority may appoint an independent expert in order to assess evidence relating to the value of the transactions mentioned in the section 46.

. This section 46 provides the relevant period during which a transaction must be entered into for it to be challenged as a transaction at undervalue. The relevant period is prescribed as 2 years preceding the insolvency commencement date for undervalued transactions entered into with related parties and 1 year preceding the insolvency commencement date for under-valued transactions entered into with all other persons which are prescribed under the ibc 2016.

The management of the corporate debtor which has better knowledge of the corporate debtor's financial affairs can enter into transactions with related parties to strip the corporate debtor of value upon receiving expectations of financial trouble.

Section 47 provides that where the any transaction has been undervalued and the liquidator or the resolution professional do not take any action and not to reported it to the Adjudicating Authority then in such case a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter.

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After the examination of the application made u/s 47(1) and the Adjudicating Authority is satisfied that –

(a) undervalued transactions had occurred
(b) liquidator or the resolution professional do not take any action and not to reported it to the Adjudicating Authority after availing information of such transactions.

In such case the Adjudicating Authority shall pass an order—

(a)restoring the position as it existed before such transactions and the effects thereof in the manner as stated in u/s 45,and u/s 48.
(b)requiring the Insolvency and bankruptcy Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

This section permits creditors, shareholders or partners of the corporate debtor to make an application to the adjudicating authority to set aside a transaction at undervalue where the liquidator or resolution professional has not reported such transaction to the adjudicating authority.

The order of the Adjudicating Authority under sub-section (*1*) of section 45 may provide for the following:—

(i) require any property transferred as part of the transaction, to be vested in the corporate debtor.
(ii) release or discharge (in whole or in part) any security interest granted by the corporate debtor.
.
(iii) 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 Adjudicating Authority may direct.
(iii) require the payment of such consideration for the transaction as may be determined by an independent expert[16].

This section sets out the orders that may be passed by adjudicating authority setting aside the transaction at undervalue. The orders that may begiven are aimed at reversing the effect of the undervalued transaction and requiring the person from the such transaction to pay back any gains he may have made as a result of such transaction.

Where the corporate debtor has entered into an undervalued transaction as Referred to in sub-section (*2*) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor.
for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor.

[16] www.icsi.edu.com

In order to adversely affect the interests of such a person in relation to the claim.

the Adjudicating Authority shall make an order—

(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and

(ii) protecting the interests of persons who are victims of such transactions.

Provided that an order under this section—

(a)Shall not affect any interest in property which was acquired from a person

other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(b)shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.[17]

This section strikes at transactions entered into with the intention of putting the assets of the corporate debtor beyond the reach of, or otherwise prejudicing the interests of a person who is making or may make a claim against the corporate debtor. This section does not set any time limit during which the transaction must have been entered into for it to be challenged as a transaction defrauding creditors.

If the corporate debtor has been a party to an extortionate credit transaction and in such transaction involve the receipt of financial or operational debt at the time of period within 2 years preceding the insolvency commencement date ,the liquidator or the resolution professional may make an application before the Adjudicating Authority in order to avoiding such transaction if the terms of such transaction made by the corporate debtor.

There are following transaction which are covered u/s 50(1) and specified by the insolvency bankruptcy board of India.

For the objective of this sectin, if any debt extended by
any person providing financial services which is for the compliance any law for the time being in force in respect to such debt shall in no event be considered as an extortionate credit transaction.

This section strikes at extortionate credit transactions entered into by the corporate debtor in the period of two years preceding the insolvent commencement date. This provision shall enable the liquidator or the resolution professional to apply to court for credit transactions to be set aside or modified in circumstances where the corporate debtor has been required to make extortionate payments to the lender of such credit. The provision also clarifies that any debt extended by a regulated financial service provider in compliance with law shall not be treated as an extortionate credit transaction.

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Order of Adjudicating Authority in respect of extortionate credit transactions

Where the Adjudicating Authority after examining the application made u/s 51 is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order-

- restore the position as it existed prior to such transaction.
- set aside the whole or part of the debt created on account of the extortionate credit Transaction.
- modify the terms of the transaction.
- require any person who is, or was, a party to the transaction to repay any amount received by such person.
- 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[18].

This section prescribes the orders that may be passed by the adjudicating authority setting aside extortionate credit transactions. These may include restoring the position prior to such transaction, setting aside the transaction wholly or in part and modifying the terms of the transaction.

Section 52 provides that any secured creditor may relinquish its security interest to the liquidation property and receive his interest from the sale of assets by the liquidator in the manner specified in section 53.and realise its security interest according to the manner which is specified in this section.

After the secured creditor realises security interest u/s 52(1)(b) he must inform the liquidator of such security interest and identify the asset.
The liquidator shall verify such security interest before any security interest is realised by the secured creditor u/s 52 thereafter the liquidator permit the secured creditor to realize only such security interest, the existence of which may be proved either—

(a) by the records of such security interest maintained by an information utility; or
(b) by such other means as may be specified by the Board

A secured creditor may enforce ,settle ,compromise or any other act do or deal with the secured assets in according with the law which is applicable to the security interest and also apply the proceeds to recover the debts due to it.

[18] www.icsi.edu.com

If in the course of realising a secured asset, any secured creditor faces Resistance from the corporate debtor or any other person connected therewith in taking possession of, selling or otherwise disposing off the security and the secured creditor can make an application to the Adjudicating Authority has to facilitate the secured creditor to realise such security interest in according with the law .

The Adjudicating Authority after the receipt of application from a secured creditor u/s 52(5) can pass an order which is necessary in order to permit a secured creditor to realise security interest in according with law for the time being in force.

Any costs of insolvency resolution process which is due from secured creditors who realise their security interests in accordance with law and in the manner which are provided in the law and the costs shall be deducted from the proceeds of any realisation by such secured creditors and transfer the costs to the liquidator to be included in the liquidation estate

If the amount of realisation of the secured assets are not adequate for repaying debts owed to the secured creditor then in such case the unpaid amount secured creditor shall be paid by the liquidator in the manner which is specified u/s53.

This section provides that in a liquidation proceeding ,the secured may Choose to relinquish his security interest and participate in the distribution of assets or release security interest outside the liquidation proceeding if a secured realize its security the insolvency resolution process costs payable by the secured creditor shall be deducted from the realized proceeds .where there is surplus realized from the enforcement of security interest ,the secured has to account for the same to the liquidator .

if the *p*roceeds of the realisation of the secured assets are not sufficient to repay the debts owned to rhe secured creditor ,he may clai in accordance with the priority of payment u/s 53.

Section 53 provides that Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, [19]namely :—

(a) the insolvency resolution process costs and the liquidation costs paid in

(b) the following debts which shall rank equally between and among the following :—

[19] www.icsi.edu.com

(i)workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii)debts owed to a secured creditor in the event such secured Creditor has relinquished security in the manner set out in section 52

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

(d)financial debts owed to unsecured creditors .

(e) the following dues shall rank equally between and among the following

-any amount due to the Central Government and the State Government 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 two years preceding the liquidation commencement.
- debts owed to a secured creditor for any amount unpaid following the enforcement of security interest

(*f*) any remaining debts and dues.

(*g*) preference shareholders, if any; and

(*h*) equity shareholders or partners, as the case may be

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

(4) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (*1*), and the proceeds to the relevant recipient shall be distributed after such deduction.

This section deals with distribution of assets in liquidation ,the cost of insolvency resolution process liquidation costs have first priority, followed by debts owed to a creditor and workmen's dues for a period of twelve months preceding the commencement date liquidation.
wages and unpaid dues for a period of twelve months preceding the liquidation commencement date owed to employees are paid.

After such financial debts owed to unsecured creditors are repaid .
Any amount due to Government and the Central Government in respect of the whole or any part of of two years before the liquidation commencement date and the amount of debt owing to a secured creditor following the enforcement of security interest are repaid. Any remaining debts and dues are repaid and finally, surplus, if any, is distributed to the shareholders or partners of the corporate debtor, as the case may be.

Where the assets belongs to the corporate debtor have been completed then in such case the liquidator shall make an application before the Adjudicating Authority for the dissolution of such corporate debtor.
This power has been given under section 54 of the insolvency and bankruptcy code 2016.
The Adjudicating Authority after receipt of application under section 54(1) make an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

The copy of an order u/s 54(2) must be send to to the authority with which the corporate debtor is registered the copy of the order must send within 7 days after the orderd.

This section provides that once the affairs of the corporate debtor have been wound up and its assets completely liquidated, the liquidator shall make an application to the adjudicating authority for the dissolution of the corporate debtor. This section also states that the distribution of assets shall be completed within such period as may be specified by the Insolvency and Bankruptcy Board of India.

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

Section 59 provides the liquidation of corporate persons and also covered under chapter v.
Any corporate persons are entitled to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under section 59. Corporate person may make voluntarily liquidation on the condition and the procedure which are specified by the insolvency bankruptcy board of india under the chapter of v.

If a corporate person which is registered as a company voluntary liquidation proceedings without prejudice to section 59(2) on the following condition which are specified-

Voluntary liquidation proceedings must be declare by the directors of the company and the declaration must be by the majority of the director of the company and verified by an affidavit and in the affidavit stating that make a full inquiry in regarding 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 assets after the sold of assets in the liquidation proceding and the company is not making liquidated in order to defraud any person.

the declaration of the majority of the director of the company shall be accompanied with the following documents namely:—

audited financial statements of the company for the previous two years or for the period since its incorporation whichever is later.

If any registered valuer make any report in respect of valuation of the assets of the company.

After making the declaration for voluntary liquidation proceedings the company full fill the following condition within the period of 4 weeks ,the condition which is to be full fill are as follows-

(a) 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.

(b) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved as the case may be and appointing an insolvency professional to act as the liquidator.
Provided that the company owes any debt to any person, creditors representing 2/3 in value of the debt of the company shall approve the resolution passed under sub-clause (*c*) within seven days of such resolution.[20]

About the resolution of the liquidation of the company ,the company must inform about such to the Registrar of Companies and the Board within 7 days of such resolution or the subsequent approval by the creditors, as the case may be.

the voluntary liquidation proceedings in regarding of a company shall be commence from the date of passing of the resolution u/s 59(3).

[20] **registered no. dl—(n)04/0007/2003—16**

The provision in respect of section35 and section 53 shall apply on the voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.
After the affairs of voluntary liquidation proceedings of a corporate persons have been completely wound up and also assets completely liquidated thereafter the liquidator will make an application before the adjudicating authority for the dissolution of such corporate person.

The Adjudicating Authority shall pass an order after the receipt of application under section 59(7) 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 under section 59(9) shall within 14 from the date of such order, be forwarded to the authority with which the corporate person is registered.

This section provides for the initiation voluntary liquidation proceedings by the cororate debtor which is not defaulted on any debt due on any person .a corporate debor being a company may chose to be wound up voluntarily under several circumstances including as a winding up as a result of expiry of period of operation fixed in its constitutional documents for its dissolution.
While the procedure to be followed for voluntary liquidation proceedings is largely similar to the procedure to be followed for insolvent liquidation, there are some differences. To initiate voluntary liquidation proceedings, where the corporate debtor is a company, the directors have to provide a declaration of solvency and a declaration that the company is not being liquidated to defraud any person. The declarations have to be accompanied by (a) the audited financial statements of the company and (b) a record of its business operations for the previous two years or the period since its incorporation. Further, a report of the valuation of the assets of the company prepared by a registered valuer has to be provided. Within four weeks of the declarations, a member's resolution in favour of the voluntary winding up of the company and appointment of an insolvency professional as the liquidator has to be passed. Further, where the corporate debtor is a company, creditors representing two-thirds in value of the debt owed to the company have to support the resolution within a specified period
.
The company also has to notify the Registrar of Companies and the Insolvency and Bankruptcy Board of India of the passage of the resolution and subsequent approval by the creditors. Once the affairs of the corporate debtor have been wound up and its assets completely liquidated, the liquidator shall make an application to the adjudicating authority for the dissolution of the corporate debtor and the corporate debtor shall be dissolved by the order of the adjudicating authority

Section 34 provides for the appointment of liuidator and its fees .when the the Adjudicating Authority passed an order in order to liquidation of the corporate debtor u/s 33 thereafter the resolution professional appointed

As liquidator for the corporate insolvency resolution process under Chapter II.

When the liquidator has been appointed under section 34 for the purpose of liquidation process thereafter all the powers of the board of directors key managerial personnel and the partners of the corporate debtor shall cease to effect and all the powers of the board of directors and key managerial personnel and the partners shall be vested in the hand of the liquidator.
The personnel of the corporate debtor must co-operate with the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of section 19 shall also apply on liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.

The insolvency bankruptcy board of india must propose the name of another insolvency professional within ten days of the direction issued by the Adjudicating Authority under sub-section (*5*).

on receipt of the proposal of the Board the adjudicating authority appoint an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.
An insolvency professional proposed to be appointed as a liquidator shall Charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the insolvency bankruptcy board of india.

The fees for the process of liquidation process u/s 34(8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

This section provides for the resolution professional of the corporate debtor appointed as the liquidator unless replaced by the adjudicating authority.

Power and duties of liquidator:- there are following power and duties of the liquidator but subject to the directions of the Adjudicating-

(a) to verify claims of all the creditors

(b) to take into his custody or control all the assets, property, effects and actionable claims in respect of corporate debtor.

(c) to evaluate the assets and property of the corporate debtor in the manner as prescribed by the board.

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary.

(e) to carry on the business belongs to the corporate debtor for its beneficial liquidation as he considers necessary.

(f) subject to the provision of section 52, to sell the immovable and movable property and actionable claims belongs to the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified.

(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange or promissory note in the name which is provided under the code and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business.

(h) to take in his custody and in his official name, letter of administration to any contributory which deceased and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself.

(i) To take any professional assistance from any person or appoint any Professional for discharge of his duties, obligations and responsibilities.

(j) to invite for settle claims of creditors and claimants and distribute The claims in accordance with the provisions of this Code.

(k) to defend any suit, prosecution or other legal proceedings whether criminal or civil in the name of on behalf of the corporate debtor.

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions.

(m)to take all such actions, steps, or to sign, execute and verify any paper, deed receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation,

distribution of assets and in discharge of his duties and obligations and functions as liquidator.

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o)to perform such other functions as may be specified by the Board.

Setion 35 (2) provides that the liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53.

Provided that any such consultation shall not be binding on the liquidator. Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

This section provides a list of powers and duties of the liquidator to ensure orderly completion of the liquidation proceedings. These powers include the power to appoint any professional to assist the liquidator in discharge of his duties. The liquidator also has the power to consult stakeholders entitled to distribution of assets of the corporate debtor. The adjudicating authority may also prescribe certain duties, which the liquidators must discharge.

For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in u/s 36(3) which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:—

a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor.

b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets.

(b) tangible assets, whether movable or immovable;

(c) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(d) assets subject to the determination of ownership by the court or authority;

(e) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(f) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest

(g) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(h) all proceeds of liquidation as and when they are realized.

(5) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation-

(a) assets owned by a third party which are in possession of the corporate debtor, including—

(i) assets held in trust for any third party.

(j) bailment contracts.

(k) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund.[21]

NCLAT in the matter of ***State Bank of India Vs. Moser Baer Karamchari Union & Anr.*** 113(IBC)19/2019 held that once the liquidation estate/ assets of the 'Corporate Debtor' under Section 36(1) read with Section 36(3), do not include all sum due to any workman and employees from the provident fund, the pension fund and the gratuity fund, for the purpose of distribution of assets under Section 53, the provident fund, the pension fund and the gratuity fund cannot be included. The Adjudicating Authority having come to such finding that the aforesaid funds i.e., the provident fund, the pension fund and the gratuity fund do not come within

[21] registered no. dl—(n)04/0007/2003—16,bare act.

the meaning of 'liquidation estate' for the purpose of distribution of assets under Section 53, we find no ground to interfere with the impugned order dated 19th March, 2019.

NCLAT in the matter of ***Mr Savan Godiwala(the liquidator of Lanco Infratech Limited) Vs. Mr. Apalla Siva Kuma***r 98(IBC)67/2020 held that It is the settled position of law, that the provident fund, the pension fund and the gratuity fund, do not come within the purview of liquidation estate for the purpose of distribution of assets under Section 53 of the Code. Based on this, the only inference which can be drawn is that Pension
Fund, Gratuity Fund and Provident Fund can't be utilised, attached or distributed by the liquidator, to satisfy the claim of other creditors. Sec 36(2) of the Code 2016 provides that **the Liquidator shall hold the Liquidation Estate in fiduciary for the benefit of all the Creditors.** The Liquidator has no domain to deal with any other property of the corporate debtor, which is not the part of the Liquidation Estate. **In a case, where no fund is created by a company, in violation of the Statutory provision of the Sec 4 of the Payment of Gratuity Act, 1972, then in that situation also, the Liquidator cannot be directed to make the payment of gratuity to the employees because the Liquidator has no domain to deal with the properties of the Corporate Debtor, which are not part of the liquidation estate.**
assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter.
NCLAT in the matter of ***The Assistant Provident Fund Commissioner & Recovery Officer Vs. Florind Shoes Pvt. Ltd. (CD) & Ors.*** 38(IBC)38/2020 has held that as in terms of provisions of Section 36(4)(d) of the Code assets of its subsidiary did not fall within the ambit of liquidation Estate. Learned counsel for the Appellant vehemently tried to stress that under sub-Section 3(a) of section 36 of the Code assets over which the Corporate Debtor has ownership right including all rights and interests herein as evidenced in the balance sheet of the Corporate Debtor or an information utility etc. comprise the liquidation Estate of Corporate Debtor. However, the provision itself has been subjected to the exclusion clause engrafted in sub-Section 4 and assets of subsidiary of the Corporate Debtor are not included in the liquidation Estate.

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.[22]

This section provides for the creatio in order to the creation of an estate comprising assets of the corporate debtor vest in section 36(3). *This* section also

[22] ibc laws website

prescribes ti assets, which are to be excluded from the liquidation estate. The liquidator hold the assets belongs to the corporate debtor for the benefit of all the creditors of the corporate debt and shall be the fiduciary of the liquidation estate. The Central Government has given the power to notify assets, which will be excluded from the estate in the efficient functioning of the financial markets.

Powers of liquidator to access information:- section 37 provides that the liquidator has the power to access any information systems in order to the purpose of admission and proof of claims and identification of the liquidation estate assets belongs to the corporate debtor from the following sources, namely-

(a) an information utility

(b) credit information systems regulated under any law for the time being in,

(c) any agency belongs to the central government , state government ,or local authority including any registration authorities.

(d) Any information systems which is for the financial and non-financial liabilities regulated under any law for the time being in force.

(e) Any information systems for the securities and assets vested as security interest prescribed under the law .

(f) Any database which maintained by insolvency bankruptcy board of India.

(g) any other source as may be specified by the Board

The liquidator provide any financial information relating to the corporate debtor on the demanding of the creditors .the information provide in such manner as may be specified under the law.

The liquidator has provide financial information relating to the corporate debtor when the creditor requested to liquidator within a period of 7 days from the date of such request or provide reasons for not providing such information.

This section provides that the liquidator shall have the power to access any information system for the purpose of admission and proof of claims and identification of assets to be held in the liquidation estate. This power shall ensure that the liquidator is able to access information held over a wide range of credit

information systems including agencies of the Central, State or local government authorities and shall assist in the easier verification of claims and identification of assets and liabilities of the corporate debtor .
This section also empowers the creditors to call for financial information of the corporate debtor from the liquidator.

Section 38 provides that the liquidator shall receive the all claims belongs to the creditor within the period of 30 days from the date of the commencement of the liquidation process.

A financial creditor can submit the 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 can submit the claim in the manner *as* provided for the submission of claims for the operational creditor u/s 38(3).

An operational creditor can submit the claim to the liquidator in the prescribed form and prescribed manner under the insolvency and bankruptcy code along with such supporting documents required to prove
the claim as may be specified by the Board.

Any creditors who are partly a financial creditor and also partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner which is prescribed under section 38 of the insolvency and bankruptcy code 2016.

A creditor can withdraw or vary his claim under section 38 within the period of 14 days of its submission.
This section stipulates a time period of 30 days from the date of Commencement of the liquidation process for the collection of claims by the liquidator. It also specifies the methods by which different categories of creditors can submit and prove their claims. Notably, financial creditors can prove their claims by providing the record of the claim as stored in an information utility.

Section 39 provides that the liquidator shall proceed the claim after the
verify the claims submitted under section 38 within such time as specified by the Board.

The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which are relating to the claim and which he thinks necessary for the purpose of
verifying the whole or any part of the claim.

In this section the liquidator must satisfied about the claim thereafter the claim verified by the liquidator which is submitted under section 38 within such time as specified by the Board.

Section 40 provides that the liquidator can, after verification of claims u/s 39, either admit or reject the all claim in whole or in part, as the case may be under the ibc 2016.
If the liquidator rejects any claim then in such situation the liquidator must record in writing the reasons for such rejection and the rejection must be in prescribed manner under the board.

Section 40(2) provides that the liquidator shall communicate his decision about the admission or rejection of claims to the creditor and corporate debtor within 7 days of the admission or rejection of claims.

Section 41 empowered to the liquidator shall determine the value of claims receipt u/s 40 in such manner as may be specified by the insolvency bankruptcy board of india.

If the creditor aggreevied against the decision of the liquidator rejecting the claims within fourteen days of the receipt of such decision then in such case the creditor may filed an appeal before the adjudicating authority.
This power has given to creditor under section 42 of the insolvency bankruptcy code 2016.

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.

A corporate debtor shall be deemed to have given a preference, if—
there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

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.

For the purposes of sub-section (2), a preference shall not include the following transfer-

transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
any transfer creating a security interest in property acquired by the corporate debtor to the extent that-

- 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

- such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property.

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation.—For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.. A preference shall be deemed to be given at a relevant time, if it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

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CHAPTER- V

ADJUDICATING AUTHORITY FOR CORPORATE PERSONS

[23] ibc laws website

Section 60 provides that The Adjudicating Authority in respect of the insolvency resolution and liquidation in order to corporate persons including corporate debtors and personal guarantors thereof shall be
the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate personis situated.

NCLT is quasi- judicial body and constituted under section 204 of the company act 2013.
Without prejudice to sub-section (*1*) and notwithstanding anything to the contrary contained in this ibc Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending in the National Company Law Tribunal, an application in respect to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal(NCLT).
An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.
The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2). Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—
any application or proceeding by or against the corporate debtor or corporate person, any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code. Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal, Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed 15 days.
An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

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

An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

Section 62 provides that Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.
No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.

Where an application is not disposed of or an order is not passed within the period specified in this Code, the National Company Law Tribunal or the National Company Law Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the President of the National Company Law Tribunal or the Chairperson of the National Company Law Appellate Tribunal, as the case may be, may, after taking into account the reasons so recorded, extend the period specified in the Act but not exceeding ten days.

No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the National Company Law Tribunal or the National Company Law Appellate Tribunal under this Code.

Section 65 was incorporated in the Insolvency and Bankruptcy Code, 2016 (the "Code") so that the provisions thereof cannot be misused by any person who has initiated the insolvency resolution process or liquidation proceedings with a

fraudulent or malicious intent, and for any purpose other than for the resolution of insolvency or liquidation, as the case may be. This post will be particularly focusing on the effect of this provision on persons who have fraudulently or maliciously initiated insolvency proceedings. It will also be relying on a recent case law, wherein the National Company Law Tribunal ("NCLT") has advanced a broad and sweeping interpretation in consonance with the spirit of law.

In *Shobhnath v. Prism Industrial Complex Ltd.*, the NCLT Allahabad (in an order dated 5 July 2018) discussed a very pertinent question: whether an insolvency petition can be entertained in a case where financial fraud exists. The petitioner, being a financial creditor, contended that the petition is complete in all aspects, and in conformity with section 7 of the Code. There was existence of a debt duly acknowledged by the corporate debtor, and subsistence of default duly fulfilling the conditions laid down under sections 3(11) and 3(12). In addition, the financial creditor filed an affidavit stating that the proceedings will be in the interest of the stakeholders (debenture holders/ depositors, in the instant case) and the corporate debtor. A similar affidavit was also filed by the corporate debtor stating that the insolvency proceedings will be in the best of interests of the corporate debtor as well as its stakeholders, as the claims of various classes of creditors can only be satiated by disposing the assets of the corporate debtor. However, considering the adverse market position, the value derived from the asset may not be sufficient to repay all the debts.

Consideration of the Issues Involved

While examining the matter, the considered several aspects-

(a) Report of Amicus Curiae: The Bench relied on the report of the Amicus Curiae appointed in another matter (against the same corporate debtor) and considered the possibility of diversion of funds to group companies and/ or directors and/ or associates, and also raised suspicion that all the properties and assets of the corporate debtor might have been sold or disposed of illegally.
(b) Perusal of financial statements of the corporate debtor**:**The NCLT relied on the balance sheet of the corporate debtor for determination of several issues.

The recent updated balance sheet of the corporate debtor was not available; hence, it was difficult to ascertain the current state of affairs of the corporate debtor and its properties.

On perusal of the last available balance sheet, it was observed that land is the sole tangible asset of the corporate debtor, which was highly inadequate to quench all the claims.

The fact that there was no information available about the area, location or market value of the land was taken on record.

Odds of diversion/ siphoning of funds: It was also evident from the study of the balance sheet that, having raised money from numerous investors, the promoters and directors have siphoned the funds out into various affiliated companie
In the instant case, the interests of a large number of retail investors was involved; however, none of these retail investors could be intending to be benevolent to consider a resolution or revival of the corporate debtor.

(d) The after- effects of admission of petition: The consequential impact of commencement of insolvency proceedings was analysed:

(i) Initiation of moratorium: This means the creditors will not be able to take legal action against the corporate debtor.

(ii) Constitution of committee of creditors and the system of voting on the basis of majority in value: The NCLT could not rule out the probability that the corporate debtor might have created creditors with high value, who may care least for the interest of retail investors, from whom money has been raised, and hence, the so-called resolution plan may harm the interest of such investors.

The intent of the corporate debtor was regarded as suspicious, mala fide and intended to divert the attention of the NCLT from the main issue and to prolong the proceedings. The NCLT further went on to state that on perusal of the report of the Amicus Curiae, it appears that the corporate debtor has committed a financial fraud.

The enactment of insolvency resolution process under the Code is a step towards resolution or rectification of an insolvency, wherein a company is under financial distress and the creditors are proposing to collectively bail the company out. The intent of insolvency proceedings cannot be to interfere in cases where there are financial irregularities, illegalities or indication of a financial fraud. Considering the object for which the Code was formulated, public interest involved, and for meeting ends of justice, it was held that the petition cannot be admitted only on the ground that the corporate debtor has not opposed the petition.

The NCLT regarded that while section 65 only stipulates punishment for fraudulent and malicious initiation of insolvency proceedings, the intent is very clear that while a petition is filed under the Code fraudulently with malicious initiation of insolvency proceedings, then in that case, the petition should not be admitted. Thus, the petition was dismissed and a show cause notice was issued under section 65 of the Code against the financial creditor as well as the corporate debtor.

Conclusion- There may be several instances where the application is filed at the behest of the corporate debtor itself, or the applicant is a mere puppet in the hands

of the corporate debtor. The adjudicating authority in such cases should place the matter under strict scrutiny and declare that the parties are acting hand-in-glove.

Suppose the corporate debtor has availed funding from its related party and paid the dues of the workmen and secured financial creditors, who are to get priority during liquidation (or during resolution for that matter), and has instead created another class of secured financial creditors, replacing all the other secured financial creditors. In such a situation, the operational creditors and the unsecured financial creditors may not be paid. However, it might so happen that due to some unavoidable circumstances, the very new category of secured creditors, who are also related party to the corporate debtor, initiate insolvency proceedings against the corporate debtor. The intent may be for resolution of the corporate debtor, however, there will only be either of the two consequences:

(a) a resolution plan be submitted as regards the corporate debtor: in such a case, operational creditors and dissenting unsecured financial creditors will be obtaining only liquidation value, which is equivalent to nil in most cases; or

(b) the corporate debtor goes into liquidation: again, the operational creditors and unsecured financial creditors will not be able to recover anything, since the liquidation estate might not be sufficient and there might not be anything left for the unsecured financial creditors and the operational creditors, after discharge of liabilities towards the secured creditors.

Can the above scenario be consider to be round- tripping of funds? Consider another situation, where the loan agreement itself states that the corporate debtor is in distress, and the loan is needed for making urgent payments required to be made by the corporate debtor. Considering that the corporate debtor was admittedly in financial distress, such a lending, and that too by way of an unsecured loan, would not be intuitively expected from an arms-length lender. Therefore, there is a natural reason to explore whether there existed a relationship between such lender and the corporate debtor, more so if the amount is payable on demand and there is no tenure for claiming back the amount. Now, if such a distress lender seeks repayment by way of a demand notice within few months of granting of such loan, and thereafter on non- payment within stipulated time, initiates insolvency proceedings under Section 7 of the Code, whether such an application can be considered to be one in good faith or whether the case will be considered to be a fit case for fraudulent initiation of insolvency proceedings according to section 65 of the Code is an open question.

Even if the applicant is able to demonstrate that the application complies with all the requirements of law, and regardless of whether the corporate debtor has acknowledged the debt and is not resisting the insolvency proceedings, the adjudicating authority, before admitting any such application, should examine the prima facie facts and material available on record. Whether the loan amount was transferred via proper banking channels or was the debt only a balance sheet

entry, with no nexus to actual lending, is another point, which should be considered while framing a decision.

Corporate insolvency and bankruptcy has been the subject matter of various legislations in India, some of which are the Companies Act 2013/1956, SARFAESI Act 2002 and Sick Industrial Companies Act 1985. However, these legislations failed to comprehensively address the issues surrounding the insolvency process specifically amongst others the time taken to resolve insolvency, investor confidence and the situation of non-performing assets. The implementation of the Insolvency and Bankruptcy Code 2016 ("**IBC 2016**") is a significant reform which provides for a robust framework and time-bound road map to deal with distressed or failed businesses; a welcome contrast from the previous, seemingly never-ending process.

While for the layman the words insolvency and bankruptcy may be interchangeable, these stand as two different financial conditions in the legal world. Insolvency can be mere short term inability of the company to meet its liabilities during the course of their business whereas bankruptcy takes place when the courts get involved to determine insolvency and gives an order to resolve the same. IBC 2016 provides a very clear distinction between both the processes. A corporate entity faces insolvency on account of cash flow insolvency or balance sheet insolvency. In case of cash flow insolvency the company is unable to pay debt as it falls due and in balance sheet insolvency the total liability exceeds its realisable assets.

IBC 2016 prescribes new approach towards insolvency which helps in early determination of insolvency by moving from erosion of net worth to payment defaults. Thus, default of payment of more than INR 1 Lakh can invoke the insolvency process against the debtor under IBC 2016. Further, IBC 2016 seeks to reorganise corporations within the prescribed timeframe, failing which the entity shall be liquidated and wound up. During the insolvency resolution process there may arise circumstances pointing towards dubious transactions conducted by the corporate debtor which may seem to contribute towards its own insolvency

IBC 2016 vests power in the resolution professional to question such transactions of the corporate debtor and inform the NCLT accordingly. Further, NCLT has the power to scrutinize the questioned transaction and extend liabilities as arising from such transaction on any person so involved. This article focuses only on the extension of liability on directors and parent company, therefore only such statutory provisions have been analysed.[24]

Statutory Extension of Liability

IBC 2016 ensures to safeguard the interest of the creditors and in doing so it extends the liability to the persons involved in transactions leading otherwise. IBC

[24] ibc laws website.

2016 extends the liability on two kinds of transactions namely, preferential transactions undertaken before the commencement of insolvency but during the twilight period and fraudulent or wrongful trading carried out during the corporate insolvency resolution process.

General extension of liability

As per Section 48 read with Section 45 and Section 46, if the liquidator or resolution professional on an examination of a preferential transaction of the corporate debtor held during the twilight period determines that such transaction was undervalued, in that case it shall inform the adjudicating authority. Adjudicating authority in case of such applications shall make an order to declare the transaction void and reverse the effect of such transactions.

Twilight period as detailed out in Section 46 shall mean such transaction made with any related party within two years and with any other person within one year preceding the insolvency commencement date. Section 5(24) of the IBC Code 2016 provides for broad and extensive definition of related party which includes the director of the corporate debtor and a body corporate which is a holding company of the corporate debtor.

As per section 48(1)(c), the adjudicating authority may direct 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. Thereby, it is evident that the order of the adjudicating authority is aimed at reversing the effect of the undervalued transaction and requiring the person who benefits from such transaction to pay back any gains made as a result of such transaction. Section 48(1)(c) uses the word "such person" wherein there seems no distinction between natural and legal person. Therefore, both directors and parent company can be brought in the ambit of the order passed under this section in case it is established that either of them have made benefits from such preferential transaction.

In the case of *Tristar Consultants vs. M/s. VCustomer Services India Pvt. Ltd. & Anr.*[1] the Delhi High Court has clearly held that directors are agents of the company to the extent they have been authorized to perform certain acts on behalf of the company. They owe no fiduciary or contractual duties or any duty of care to third parties who deal with the company and liability would arise only if they derive any personal benefit while purporting to act on behalf of the company. Therefore, the judiciary has accepted the extension of liability as a general norm in cases where the directors obtain personal gain/benefit from any transactions while acting on behalf of the company.

Section 66 deals with the second transaction under scrutiny by this Code i.e. fraudulent or wrongful trading during the corporate insolvency resolution process. As per section 66(1), if during the corporate insolvency resolution process or liquidation process, it is found that any business of the corporate debtor was carried out with the intention of defrauding creditors or for any fraudulent purpose

then, the resolution professional shall make an application to the adjudicating authority informing the fraudulent transaction. Adjudicating authority upon receiving such application may pass an order that any person who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtors as it may deem fit. Section 66(1) extends liability on "any person" who were knowingly party to such transaction, thereby bringing both directors and parent company under its ambit if it is proved before the adjudicating authority that either of them were knowingly party to such fraudulent/wrongful transaction. In case the same is proved, they may be called upon to make "such contribution" as the adjudicating authority deems fit. The word "such contribution" has been left to the discretion of the adjudicating authority thereby not limiting the liability in any manner.

Section 66 (2) unlike Section 48 and 66(1), specifies the extension of liability to the directors. As per Section 66(2) the adjudicating authority may pass an order directing the director of the corporate debtor as the case may be to be liable for making such contributions to the assets of the corporate debtor as it may deem fit. Such extension of liability is subject to the fact that the director knew or ought to have known that there was no reasonable prospect of avoiding commencement of insolvency process and they failed to exercise due diligence in minimising the potential loss to the creditors. For the purpose of Section 66 (2), general presumption is in favour of the director i.e. it is presumed that they have exercised the due diligence as is reasonably expected out of a person carrying out the same function as are carried out by such director.

In the case of *LIC vs. Escort Limited and Ors*[2] the Supreme Court held that the corporate veil may be lifted where a statute itself contemplates it or in case of prevention of fraud or improper conduct. As the provisions of IBC 2016 clearly contemplates the extension of liability on its director and parent company, therefore the intention of the legislation would remain unfulfilled if the same is not accompanied with the power to pierce the corporate veil as and when such case arises.

Further, in the case of *IDBI Bank Limited vs. Jaypee Infratech Limited*[3] a petition was filed to declare the transaction entered into by promoters and directors of corporate debtor creating mortgage of property as illegal. It is pertinent to mention that when the account of the corporate debtor was declared as NPA, the directors of the corporate debtor, in utter disregard to their fiduciary duties and duty of care to the creditors of the corporate debtor, mortgaged 858 acres of unencumbered land owned by the Corporate Debtor to secure the debt of the related party i.e. Jaiprakash Associates Ltd (parent company). The value of the land mortgaged by the corporate debtor was estimated to be in the range of 5000 to 6000 crores approximately, as per the valuation report prepared at the time of mortgage of the said land. The mortgage of land was created without any counter guarantee from a related party. The mortgage of land is in nature of asset stripping and entered into with the intent to defraud the creditors of the corporate

debtor.[4] The impugned transactions, was declared as fraudulent, preferential and undervalued transactions as defined under section 66, 43 and 45 of IBC 2016 as it was carried on during the period of two year preceding the commencement of insolvency. Therefore, the Tribunal passed the order for release and discharge of the security interest created by the corporate debtor in favour of lenders of the parent company and the properties mortgaged by way of preferential and undervalued transactions were made to be deemed to be vested in the corporate debtor.

Therefore, the Allahabad National Company Law Tribunal may not have extended the liability to the directors under Section 48 and 66 however, the intention to reverse the transaction was definitely fulfilled. It is pertinent to note that an assumption that the Tribunal may never extend liability to the directors and parent company shall be an early miscalculation especially when IBC 2016 itself provides such an exclusive right to the Tribunal.

Restriction on extension of liability

It is important to understand whether liabilities extended under Section 48 and 66 are unlimited and whether the extension of the same can be avoided by directors and parent company.

The liabilities extended under Section 48 and 66 are made with an intention to reverse the position of the corporate debtor as it would have stood had the transaction not taken place. Therefore, it can be safely assumed that the extension of liability shall be limited to the amount of such reversal of transaction and not more.

For the purpose of Section 48, in order to avoid the extension of liability one may have to prove that there were no benefits received by them as a result of such undervalued transaction. In case of absence of any benefit, the adjudicating authority cannot pass an order for payment of any amount for such benefits incurred.

For the purpose of section 66, it is important for the person to prove the absence of intention of defrauding the creditors or any such similar fraudulent intentions in relation to such transaction. Further, while the general presumption under 66(2) is in favour of the directors, in case the same becomes questionable, the director needs to ensure to evidence the reasonable due diligence exercised by them in minimizing the potential loss and the lack of foreseeability on the commencement of corporate insolvency

We observe that IBC 2016 has provided for a crystal clear extension of liability on the directors and parent company of the corporate debtor as and when a transaction involving them is brought under question. Such an extension of liability can be made to the extent of reversing the transaction or making reasonable contribution to the assets of the corporate debtor to ensure

safeguarding of the creditor's interest. However, same can be avoided if the twilight period is kept in mind and reasonable due diligence is undertaken with lack of fraudulent intention. While there exists no precedent under IBC 2016 extending personal liability on directors or parent company till date, it would not be farfetched to see a judgement on these lines in the near future, given that the cases of Jaypee infrastructure and Religare are still awaiting a verdict

On examination of a Corporate Debtor's transactions during the process of liquidation, the most commonly used types of vulnerable transactions liquidator are Preferential Transactions (Section 43), Undervalued Transactions (Section 45), Transactions to defraud creditors (Section 49) and Extortionate Credit Transactions (Section 50), as provided under the Insolvency and Bankruptcy Code, 2016. However, one of the most potent and efficient tools for holding directors liable for their misconduct under Section 66 is ignored and underused. Section 66 of the Code provides for fraudulent trading under sub-section 1 and wrongful trading under sub-section 2. The introduction of separate provisions for fraudulent trading and wrongful trading was one of the most significant turning points in the history of insolvency laws in both UK and Indian jurisdictions. This note examines fraudulent trading and wrongful trading as provided under UK Legislations as well as Section 66 of the Code, while looking into the intent of such provisions and history of director's liability to contribute to assets of a corporate debtor, to highlight its importance and efficiency in being used as a tool to enforce director's liability.

The concepts of fraudulent trading and wrongful trading in India were derived from the provisions in the UK Insolvency Act 1986. Hence, it is necessary to examine the background and intent with which such provisions were introduced in the UK Laws. Directors were always protected under the cloak of limited liability and hence, there was a high possibility of 'indifference and lack of concern' on their part, especially in times of financial distress. High monitoring costs and informational asymmetries disallowed creditors from keeping a check on such actions, which when combined with the abuse of limited liability, ultimately led to market failure.

The Report of the Insolvency Law Review Committee, Insolvency Law and Practice ("The Cork Report") was of the opinion that the provisions of fraudulent trading under Section 332 of the Companies Act 1948 had significant inadequacies in dealing with irresponsible trading. While there was always a liability imposed on directors who had the intention to defraud creditors, the Committee preferred the inclusion of a provision which held directors liable for mere failure to take steps in minimizing creditor losses on anticipation of insolvency. Concerned with the lack of protection for unsecured creditors, the Cork committee sought for a "radical extension" in civil liability for directors whose fraudulent, reckless and negligent actions during financial distress, affected the interest of creditors. The Committee wanted a legislation which would ensure company directors to satisfy themselves about the company's ability to discharge

its liabilities. While the Government agreed to tighten the reins on directors' activities in its paper titled "A Revised Framework for Insolvency Law"63, it did not take up the recommendations of the Cork Report entirely. Subsequently, provisions were inserted for "fraudulent trading" under Section 213 and "wrongful trading" under section 214 of the Insolvency Act 1986.

Suspicion is a word that can be used to describe a state-of-mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect a firm belief in the existence of the relevant facts. In my opinion, in order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe." The Judge held that the pre-requisite for "dishonesty" under Section 213 does not have high thresholds. In Morris v. Bank of America, the court held that the extraordinary nature of the transactions and the paucity of the paperwork are a few things that the court checks to conclude dishonesty65 References to "fraudulent" in the legislation connotes "actual dishonesty involving, according to current notions of fair trading amongst commercial men, real moral blame." In the case of Morphitis v. Bernasconi, 66 the court held that dishonesty is incurring company debt by those in charge, with the knowledge that it will not be repaid, or there is a substantial and unreasonable risk of default. The requirement of dishonesty presents the problem of evidence and proof.

In Bank of India v. Christopher Morris67, the court analysed the circumstances in which an individual's knowledge of fraud is to be treated as corporate knowledge for the purposes of Section 213. It is not a simple matter of identifying the person who authorised the transaction in accordance with the system of authorisation operated by the company in question. The scheme of delegation of authority might provide only an incomplete picture of what was done and may not be sufficient for attribution of corporate knowledge. The company cannot be liable for the activities of an individual when it itself is the victim of such wrong. Usually, the illegal act of a company officer's is attributable to the company, however, it is not so when a company is making a claim against its directors. The directors owe a duty to the company and the conduct of directors is different .

Section 332 of the 1948 Act extended liability beyond past or present directors of the company carrying on its business fraudulently to any persons, including other companies, who were knowingly parties to that fraudulent trading. In Morris v. Bank of India, the court held that "outsider" companies can be made liable under section 213, provided that it is established they were "knowingly" parties to the fraudulent trading. A creditor may also be liable under the section68 Both types of liability extends beyond the company which actually carried on its business with intent to defraud creditors, to its directors and to "outsiders" who are individuals and corporate third parties who have knowingly been parties to the fraudulent trading in question.

In case of Etivia S.A. & Anor v. Bilta (UK) Limited (in liq)69 the issue was whether the corporate debtor could bring a claim against the fraudulent directors as it itself had been a party to the illegal acts through its directors and shareholders. The UK Supreme Court held that a director cannot use his dishonesty as a defence.

The phrase 'any persons' suggest that 'outsiders' can also be liable for fraudulent trading, as long as they had a dishonest intention of fraudulently carrying on such trade. The provision is not only restricted to 'insiders' like employees, directors or partners. It is wide enough to include fraud on behalf of third parties like other corporate persons and creditors.

The court has the power to demand contribution to the assets of the corporate debtor, from the defrauding party. The party would be personally responsible, without any limitation of liability, for the losses cause due to their fraudulent trading. One examination of the transactions of a corporate debtor, the liquidator of the company has the power to "claw back" and hold directors responsible for their actions even pre liquidation. Directors can be held liable for their actions usually within the 'look-back period'. While a look- back period is specifically provided for undervalued transactions, one of the biggest advantage of using fraudulent trading as a tool is that there is no specified look- back period under section 66. Keeping in mind the maxims, "once a fraud, always a fraud" and "fraud vitiates every transaction into which it enters, the primary reason of not having a look back period is that if any person has acted intentionally or dishonestly against the interest of creditors, he should not be allowed to get away by using the defence of lapse of time.

The offence is constituted when a director or partner knowingly incurs debt on behalf of the company without any reasonable or probable ground of paying off such debt. Recklessness or unreasonableness is sufficient to establish the offence. The directors cannot plead ignorance or lack of knowledge under Section 66 (2). Section 66 (2) imposes a liability only on the director or partner of a company. It has a lower threshold for imposing liability, than clause (1), due to the specific fiduciary duty of the director towards the company. Directors are given immense powers in the management of the company and hence they must not misuse their position of authority. They must not misappropriate the assets of the company or subordinate the interests of the company or shareholders for their personal interest.

Section 66 (1) imposes a liability on any person including outsiders, while section 66 (2) imposes a liability only on the director or partner of a company. Under Section 66, sub-section 1 of deals with fraudulent trading in the time period when the business is functioning normally, while sub- section 2 deals specifically with the duties of a director in the twilight period. Although not specifically differentiated, Section 66 (1) deals with fraudulent trading since there is a mandatory requirement of knowledge, while section 66 (2), deals with wrongful trading since it includes an element of negligence.

Section 67 specifically deals with proceedings under Section 66, where the Adjudicating Authority may provide for the liability of any person responsible, to

be a charge on any debt or obligation due from the corporate debtor to him and make further directions which may be necessary for the enforcement of any such charge mentioned under this section. Sub-section 2 also allows for the Adjudicating Authority to direct that the debt or part of debt owed to the defrauded creditor shall rank in the order of priority of payment under Section 53 after all other debts owed by the Corporate Debtor. In cases where the Code is read with the Companies Act 2013, criminal liability can be imposed as well. 5. Comparison of Section 66 with Section 49 and Section 69 of the Code Section 49 of the Code deals with undervalued transactions entered into with the purpose of defrauding and affecting the interests of creditors, while Section 69 provides for punishment for transactions defrauding creditors. The similarity between Section 49 and Section 66 is that both Section 49 and Section 66(1) include acts which are carried on with the intent to defraud creditors. However, while Section 49 requires the deliberate intention to defraud creditors by entering into such transactions, sub- section 2 of Section 66 also punishes negligent acts which affect the interests of the creditors as well. Section 49 also deals specifically with the corporate debtor itself entering into fraudulent transactions while Section 66 punishes any person responsible (sub-section 1) or director/partner (sub-section 2) specifically by imposing personal liability.

Section 69 provides for the punishment of an officer of the corporate debtor or the corporate debtor itself, for carrying transactions defrauding creditors. However, there are primarily three differences between these sections: a. An application under Section 66 can be made only during the corporate insolvency resolution process or liquidation process, by the resolution professional. However, the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2018 brought about a change in Section 69 which now allows an application to be filed at any time when such transactions occur. b. The consequence of acts committed under Section 66 is the contribution by the director or any person responsible, to the assets of the corporate debtor. There is no criminal liability imposed under this section. However, the consequence under Section 69 is both civil as well as criminal. The punishment under Section 69 shall be either imprisonment for a term.

One of the defences provided under Section 69 is if the acts mentioned under this section were committed more than 5 years prior to the insolvency commencement date and if it is proved that such acts were committed with no intent to defraud the creditors of the corporate debtor. One of the defences for the transactions provided under Section 66 (1) is if there was no dishonest intention or if due diligence was exercised under Section 66 (2).

the company or even increase its liability towards creditors, especially if done in the twilight period. This was because directors used the cloak of limited liability to get away with the actions that might have affected the functioning of the company risking liquidation, or even exposed the company into further losses. Section 66 not only brings about a huge shift by making the liability of a director unlimited but also provides for a new dimension of imposing civil liability, where the losses caused by the misconduct and negligence of creditors can be made up by their contribution. Unlike the tools used for other types of transactions

provided under the Code, there is no specified look-back period for fraudulent trading under section 66. Hence the resolution professional is allowed to "claw back" without any limitation of time and correct all the wrongs done by insiders or outsiders at any point of time since they became directors of the company. Hence, realising the advantages and intention of bringing such provisions into the Insolvency Code, 2016, Section 66 must be used more commonly to ensure that the losses cause to the creditors are recovered in the event of liquidation and that the directors who caused such losses are made. personally liable to make up for such losses. One perspective that remains unanswered is through the perspective of sick industries. The right of voluntary initiation of the resolution process was available even before the commencement of the Code. However, the Sick Industries Companies Act, 1985 (SICA) was repeatedly abused by promoters who enjoyed the unending moratorium and protection provided under SICA, while remaining in possession of the assets of the company. Directors have a duty to take steps with due diligence to minimise losses and one such step might be the initiation of Corporate Insolvency Resolution Process under section 10. Hence, can the existence of sick industries or a reference thereunder be used as a defence for Section 66? This question still remains.

Twilight zone is the period between the time when the director knew or ought to have known that there was no reasonable possibility of avoiding the commencement of resolution of the company, till the time the company actually enters into resolution. During such period, an additional responsibility is added onto the directors to exercise due diligence, where he must act in a way to minimise the losses or potential losses to creditors of the Company. Directors must be wary of the possible effects their actions might have in reducing the value of the assets of the company. The decisions taken in the twilight period by the directors could adversely impact the outcome of the insolvency provisions and hence, directors must not be negligent while taking decisions or performing acts on behalf of the company. There is a shift in the end result to be achieved by the actions of the directors, from maximising the interest of the shareholders to protecting the interest of the creditors.
Claims for wrongful trading also include the secret profits or benefits that the directors may have earned in breach of their duties. The civil liability claims are for the purpose of benefitting the corporate debtor and not the creditors. However, the creditors benefit out of it indirectly.

A director may avoid civil liability by proving that he had taken every step with a view to minimising the potential loss to the company's creditors as he ought to have taken.
The provisions for fraudulent and wrongful trading specifically under the insolvency laws have been adopted from the UK Insolvency Act, 1986. However, wrongful trading and fraudulent trading are provided together under Section 66 of the Code, which is divided into two sub-section.
Section 66 (1) imposes a liability on any persons who were knowingly parties to the carrying on of business with a dishonest intent to defraud creditors, to make

contributions to the assets of the corporate debtor as per the order of the Adjudicating Authority. 1.1. Dishonest intention The provision only applies when the person 'knowingly' carries out fraudulent activities. In Grantham v. R, it was held that it is not necessary that the person accused must believe that there is no reasonable prospect of ever paying the creditor, but it is sufficient to show that he believed that the debt could not be paid when it became due or shortly thereafter. A person would knowingly be a party to the business of a company having been carried on with intent to defraud creditors if (a) at the time when debts were incurred by the company he had no good reason for thinking that funds would be available to pay those debts when they became due or shortly thereafter and (b) there was dishonesty involving real moral blame according to current notions of fair trading.

The phrase 'any persons' suggest that 'outsiders' can also be liable for fraudulent trading, as long as they had a dishonest intention of fraudulently carrying on such trade. The provision is not only restricted to 'insiders' like employees, directors or partners. It is wide enough to include fraud on behalf of third parties like other corporate persons and creditors.

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

Where any officer of the corporate debtor—

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

he shall be punishable with imprisonment for a term which shall not be less than three years, but may extend to five years or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both[25].

[25] indiacorplaw website.

CONCLUSION

The IBC has taken its first steps to regularize the insolvency process in India. It has amended over 11 legislations in India, bringing about one of the most significant change to commercial laws in India in recent times. However, the 22 months of this nascent legislation have been ridden with controversies and speedy resolutions. It has also become a very important tool for banks to regularize multitudes of non-performing assets plaguing the country's economy. Within 7 months of the enactment of the IBC, the Reserve Bank of India released a list of 12 companies which held about 25% of the gross non-performing assets of the country.

SUGGESTIONS:-

- The only hope to recover the amount which is credited from an insolvent company is from the proceeds of the sale of the properties of insolvent companies. So that the sale and disbursement of properties of companies under liquidation should be made transparent.

- Affix the accountability will act as a deterrent against mismanagement of companies that jeopardize the interest of the creditors.

-I would like to suggest that for the system to work it should attract the best and brightest minds. And to attract them, adequate infrastructure has to be provided and the judges and administrative staff need to be compensated appropriately.

-I would like to suggest establish more nclt benches.

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