

Matters having Jurisdiction of NCLT / NCALT

Sr. No	Types of cases under Insolvency & Bankruptcy Code – IBC, 2016.
1.	<p>IBC Section 7 - Insolvency petition under section 7 of IBC by Financial Creditor i.e Banks etc. against the corporate debtor company.</p> <p><u>IBC - Section 5(8)</u></p> <p>“financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes–</p> <ul style="list-style-type: none"> (a) money borrowed against the payment of interest; (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent; (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed; (e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

IBC Section - 3(11)

“**debt**” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

IBC Section - 3(12)

“**default**” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1 [paid] by the debtor or the corporate debtor, as the case may be;

<p>2.</p>	<p>IBC Section 9 - Insolvency petition under section 9 by the operational creditor / trade creditor against the corporate debtor company.</p> <p><u>IBC Section - 5(21)</u></p> <p>“operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;</p> <p><u>IBC Section - 5(22)</u></p> <p>“operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the 2 [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;</p>
<p>3.</p>	<p>IBC Section 10 - Insolvency petition under section 10 by the corporate debtor company itself for self- declared insolvency.</p>
<p>4.</p>	<p>Under Section 33 of IBC – liquidation in case insolvency resolution process (CIRP) failed.</p>

<p>5.</p>	<p>Under Section 30 of IBC – Approval of Resolution Plan</p> <ul style="list-style-type: none"> • FORM G – EOI • EOI Submission with EMD & relevant docs • Provisional List of PRA • Final List of PRA • Information Memorandum (IM) • Request for Resolution Plan (RFRP) • Drafting of Resolution Plan • Swiss Challenge mechanism in approving plan • Approval by COC – minimum 66% of COC voting • Approval of plan by NCLT • Implementation of plan as approved by NCLT • Monitoring committee
<p>6.</p>	<p>Under Section 43, 45, 49 and 66 of IBC – PUFETransactions.</p> <p>Preferential / Undervalued / Fraudulent / Extortionate</p>
<p>7.</p>	<p>Various <i>Interlocutory Applications</i> in the CIRP / Liquidation Process to obtain directions from the NCLT / NCALT.</p>
<p>8.</p>	<p>Under Section 59 of IBC – Voluntary Liquidation of the solvent company as may be required by the management for any just reason.</p>

	<ul style="list-style-type: none"> • Solvent company • Board Meeting • Declaration of solvency of company by all the directors • Audited Financials as on commencement of liquidation • Extra Ordinary General Meeting • Appointment of Liquidator who is an IP • Public Announcement inviting claims -30 days • Opening of new bank account for liquidation process • Closing of all existing bank accounts • Intimation to all regulator – ROC / IT / GST / SEBI / STOCK EXCHANGE / RBI / etc. • Filing of e-forms with ROC – FORM MGT 14 & GNL 2 • Preliminary Report by liquidator to management • Liquidation of assets • Payment of all liabilities • Distribution of remaining funds to shareholders • Final Report by liquidator to management • FORM H – Certificate by Liquidator • Petition to NCLT seeking dissolution of the company.
9.	Under Section 54 of IBC – Pre-packaged insolvency resolution process (PIRP) for insolvency resolution of MSME companies.

<p>10.</p>	<p>Under section 94 of IBC – Self declared Insolvency by person who is a guarantor to corporate debts / loans taken by companies.</p> <p>– Moratorium from the date of filing of the petition.</p>
<p>11.</p>	<p>Under Section 95 of IBC – Insolvency petition by guarantee holder against person who is a guarantors to corporate debts / loans taken by companies.</p> <p>– Moratorium from the date of filing of the petition.</p>
<p>12.</p>	<p>Insolvency Professionals or IP:</p> <p>CA/CS/CMA/Advocate having more than 10 years post qualification experience can become the Insolvency Professional by passing the exam & training completion.</p> <p>In all IBC matters IP is to be appointed as IRP / RP / Liquidator / Authorised Representative etc. to conduct the entire processes.</p>

	Matter under the Companies Act, 2013 before NCLT / NCALT
13.	<p>Mergers under section 230 – 232 of the Companies Act:</p> <ul style="list-style-type: none"> • Valuation report by the registered valuer for swap ratio • Drafting of scheme of merger • Board Resolutions • 1st MOTION Application to NCLT seeking to dispense or hold the shareholders / creditors meeting. • Service upon all the regulator as per the 1st motion NCLT Order. • Filing form GNL 1 with ROC • Compliance of 1st motion NCLT ORDER – meetings / service to regulator etc. • Filing of compliance affidavit with NCLT • 2nd MOTION Petition to NCLT seeking the approval of the scheme • Admission of the petition by NCLT

	<ul style="list-style-type: none"> • Service to all regulators – ROC / RD/ OL / STOACK EXCHANGE / SEBI / RBI / IT / GST / etc. • Public notice for final hearing • Filing of compliance affidavit with NCLT • Obtaining REPORTS from ROC / RD/ OL etc. • Final hearing of the matter • Obtaining certified copy of the Final NCLT ORDER with approved Scheme. • Filing of FORM INC 28 with ROC • Application to Stamp Duty Adjudication Authority within 60 days – 5% of immovable assets / 0.7 % of shares issued.
14.	<p>Demerger of a company under section 230 – 232 of the Companies Act.</p> <ul style="list-style-type: none"> • Transfer of undertaking / unit from demerged company to the resulting company • NCLT process is same as merger
15.	<p>Restructuring with the creditors of the company if any</p>
16.	<p>Capital reduction of company under section 66 of companies act 2013 – writing off losses / repayment of capital to shareholders.</p>

	<ul style="list-style-type: none"> • writing off losses / repayment of capital to shareholders • Valuation of shares • Scheme of reduction • Board meeting • Shareholders meeting – special resolution • Petition to NCLT • Admission of petition • Public Notice of 3 months • Filing of compliance affidavit to NCLT • Final hearing • Filing of NCLT Order in FORM INC 28 to ROC • Execution of reduction of shares as allowed by the NCLT
17.	<p>Section 441 - Compounding of offences for violation of the provisions of company's act having penalty of Rs. more than 25 lacs.</p> <p>Fine – Compounding (US 441 / 450) Penalty – Adjudication (US 454)</p>
18.	<p>Under Section 450 - Compounding of any offense punishable with penalty for which nothing is specified under Companies Act 2013.</p>
19.	<p>Restoration of struck off Company / LLP under section 252 of companies act 2013.</p>
20.	<p>Oppression and mismanagement matter in companies – under section 241-242 of Companies Act 2013.</p>



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21.	Investigation into the affairs of companies by affected person(s) u/s 213
22.	Petition under section 71-73 of companies act 2013 for default in making repayment of deposits by the company.
23.	Revision of audited financials of the company in case there is any mistake has happened in finalization of the audited financials Under section 131 of Companies Act 2013.
24.	There would be many other matters which falls before NCLT Jurisdiction under the companies act to be dealt with as per the respective provisions and objectives of the petitioner(s).

Thank You...!!

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