



SUPPLEMENT PROFESSIONAL PROGRAMME (NEW SYLLABUS)

for

December, 2020 Examination

**CORPORATE RESTRUCTURING,
INSOLVENCY, LIQUIDATION AND
WINDING-UP**

MODULE 2

PAPER 5

Lesson No. and Name	Particulars of Change	Remarks
Lesson 14: Insolvency	To initiate an insolvency process for corporate debtors, the default should be at least INR 1, 00, 00,000. This limit was increased from INR 1, 00,000 to INR 1, 00, 00,000 vide MCA notification dated 24 th March, 2020.	Amendment in Section 4 of IBC
Lesson 14: Insolvency	<p>“Interim Finance” means any financial debt raised by the resolution professional during the insolvency resolution process period and such other debt as may be notified [Section 5(15)].</p> <p>[The words “and such other debt as may be notified” was inserted vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019]</p> <p>Ministry of Corporate Affairs vide notification dated 18th March, 2020 notified that a debt raised from the Special Window for Affordable and Middle-Income Housing Investment Fund I, for the purposes of the said clause.</p> <p>Explanation.—For the purposes of this notification, the expression “Special Window for Affordable and Middle-Income Housing Investment Fund I” shall mean the fund sponsored by the Central Government for providing priority debt financing for stalled housing projects, as an alternate investment fund and registered with the Securities and Exchange Board of India, established under sub-section (1) of section 3 of the Securities and Exchange Board of India Act, 1992, to provide financing for the completion of stalled housing projects that are in the affordable and middle-income housing sector</p>	Amendment in Section 5(15) of IBC
Lesson 14: Insolvency	<p>Case Law on Constitutionality of the Code</p> <p>In the matter of <i>Innovative Industries Ltd. v. ICICI Bank</i>, the Supreme Court for the first time explained the paradigm shift in law by virtue of the newly enacted Insolvency and Bankruptcy Code, 2016 which consolidates and amends all the laws relating to the insolvency and bankruptcy process in India.</p> <p><i>Facts of the case</i></p> <p>ICICI Bank had taken Innovative Industries Ltd. to NCLT for the recovery of its due as the company had defaulted on loan</p>	Case law for more understanding

repayment. The NCLT had given a verdict in favour of the ICICI Bank, which Innovative Industries challenged in the National Company Law Appellate Tribunal (NCLAT), where it received yet another setback. The company later filed an appeal in the Supreme Court seeking relief under the Maharashtra Act, which states that if a company is facing bankruptcy, protection needs to be provided for the employees.

Judgement

On a bare reading of the judgement, it seems that the case involved more adjudication on grounds related to Constitutional Law than on the Code. This case related to the first-ever application filed for initiating insolvency proceedings under the new Code. The Court was cognizant of the fact and hence wanted to settle the law so that all 'Courts and Tribunals take notice of the paradigm shift in the Law'.

The case involved contradictory provisions in the Code and a state law of Maharashtra state, Maharashtra Relief Undertakings (Special Provisions) Act, 1958. This state law provided for overtaking of industries by the state by declaring them 'relief undertakings'. Such overtaking can be done through government notifications to that effect under the Act. This is done to protect employment of the people who are working in such an undertaking.

The Code instead provides for overtaking of an undertaking's business by an 'Insolvency Professional' through a committee of creditors. In the instant case, insolvency application was filed against Innovative Industries which later claimed to be a relief undertaking under the Maharashtra Act. This brought the two legislations on a collision course, for the simple reason that enforcement of one will hinder the enforcement of the other.

Supreme Court dealt with the constitutional law doctrine of repugnancy. This doctrine stems from the operation of Article 254 of the Constitution. As per this doctrine, whenever central and state laws are framed on the same subject and are contradictory to each other, it is the central law which prevails and the state law is rendered void.

A plain reading of Article 254 gives an impression that if both central and state governments frame laws on a same entry under the concurrent list, only then the Central law will prevail. In the instant case, however, the laws even though coming in conflict with each other, were framed under different entries of the concurrent list. This involved adjudication by the Supreme Court on this point. The National Company Law Tribunal (NCLT) had ruled that Innoventive Industries cannot claim any relief under Maharashtra Act. It also decided that there is no repugnancy between the two laws, as they operate in different fields.

The appeal to the Supreme Court, hence involved two major questions. One was, whether the petitioner can seek relief under the Maharashtra Act at the cost of the Code. The second was, whether both the laws are repugnant to each other.

Invoking a lot of international cases, especially of the Commonwealth countries and previous judgments of the Supreme Court, the bench ruled that there is indeed repugnancy between the two laws. The court held that even if the two legislations are framed on different entries of the concurrent list, the Central law will always prevail if it comes in conflict with the State law. The State law, therefore was held inoperable to the extent that it was in contradiction to the Code.

The court delved into great detail of the provisions of the Code and held it to be intended as an 'exhaustive legislation' by the Parliament, to cover the whole field of its operation. In such instances involving an exhaustive law, even though the State law may not be in strict violation of the Code, it will even then be rendered inoperative to give way to implement the exhaustive law on the point.

With respect to the Code, being acknowledged as an exhaustive law on the point is definitely a very progressive step. It also, now brings in more clarity that the provisions of the Code will have supremacy over every other law, whenever and wherever any conflict arises.

Lesson 15: Petition for Corporate Insolvency Resolution Process	To initiate an insolvency process for corporate debtors, the default should be at least INR 1, 00, 00,000. This limit was increased from INR 1, 00,000 to INR 1, 00, 00,000 vide MCA notification dated 24 th March, 2020.	Amendment in Section 4 of IBC
Lesson 15: Petition for Corporate Insolvency Resolution Process	<p><i>Furnishing of information by the financial creditor.</i>– Section 7(3) of the Code mandates that the financial creditor shall, along with the application for initiating corporate insolvency resolution process, furnish a proof of default and the name of a resolution professional proposed to act as the interim resolution professional in respect of the corporate debtor.</p> <p>The NCLT vide Order dated 12th May, 2020 stated that default record from Information Utility must be filed with all new petitions filed under Section 7 of the Code and no new petition shall be entertained without record of default.</p> <p><i>Time frame for ascertaining the existence of default.</i>– After the filing of the application, the National Company Law Tribunal shall ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor within fourteen days of the receipt of the application.</p> <p>Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same. [Section 7(4)].</p> <p>Supreme Court judgment: time period of 14 days is directory and not mandatory held in the matter of <i>Surendra Trading Company v. Juggilal Kamlatpat Jute Mills Company Limited and Others</i>.</p>	NCLT Order & Case law for more understanding
Lesson 15: Petition for Corporate Insolvency Resolution Process	<p>The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 amended the Insolvency and Bankruptcy Code 2016.</p> <p>The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 inserted a new section 10A and new sub-section (3) in Section 66.</p> <p><i>Section 10A read as under:</i></p> <p>Section 10A. Suspension of initiation of corporate insolvency resolution process: Notwithstanding anything contained in</p>	The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 inserted a new section 10A and new sub-section (3) in Section 66.

	<p>sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:</p> <p>Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.</p> <p>Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.</p> <p><i>Section 66(3) read as under:</i></p> <p>Section 66(3): Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.</p>	
Lesson 16 Role, Function and Duties of IP, IRP and RP	<p>IBBI Circular</p> <p>The IBBI vide circular dated 03rd January, 2018 stated that an insolvency professional shall not outsource any of his duties and responsibilities under the Code, He shall not require any certificate from another person certifying eligibility of a resolution applicant. Another circular dated 03rd January, 2018 stated that the insolvency professional shall exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person undergoing any process under the Code complies with the applicable laws.</p> <p>Regulation 40B of CIRP Regulations, 2016 prescribes certain forms to be submitted by insolvency professional.</p>	<p>IBBI Circular for More Understanding</p>
Lesson 16 Role, Function and Duties of IP, IRP and RP	<p><i>Moratorium</i></p> <p>(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -</p> <p>(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;</p> <p>(b) transferring, encumbering, alienating or disposing off by the</p>	<p>Section 14 as per Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019</p>

	<p>corporate debtor any of its assets or any legal right or beneficial interest therein;</p> <p>(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;</p> <p>(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.</p> <p>Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.</p> <p>(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.</p> <p>(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.</p> <p>(3) The provisions of sub-section (1) shall not apply to —</p> <p>(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;</p> <p>(b) a surety in a contract of guarantee to a corporate debtor.</p> <p>(4) The order of moratorium shall have effect from the date of</p>	
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	such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.	
Lesson 16 Role, Function and Duties of IP, IRP and RP	<p>Section 16 provides for the appointment and term of the Interim Resolution Professional by the adjudicating authority. The section reads as follows:</p> <p>(1) The Adjudicating Authority shall appoint an interim resolution professional on the insolvency commencement date.</p> <p>(2) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.</p> <p>(3) Where the application for corporate insolvency resolution process is made by an operational creditor and-</p> <p>(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;</p> <p>(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.</p> <p>(4) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.</p> <p>(5) The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under</p>	Section 16 as per Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019

	section 22.	
Lesson 16 Role, Function and Duties of IP, IRP and RP	In the case of <i>M/s. Subasri Realty Private Limited v. Mr. N. Subramanian & Anr</i> , the NCLAT directed that after the appointment of the RP and declaration of moratorium, the Board of Directors stands suspended, but that does not amount to a suspension of Managing Director, or any of the directors or officers or employees of the Corporate Debtor ('CD'). To ensure that the CD remains a going concern, all the directors/employees are required to function and to assist the RP who manages the affairs of the CD during the moratorium. If one or other officer or employee had the power to sign a cheque on behalf of the CD prior to the order of moratorium, such power does not stand suspended on suspension of Board of Directors nor can it be taken away by the RP. If the person empowered to sign cheque refuses to function on the direction of the RP or misuse the power, it is always open to the RP to take away such power, after issuing notice to the person concerned.	Case law inserted in Section 17
Lesson 16 Role, Function and Duties of IP, IRP and RP	Section 5 (15): "interim finance" means any financial debt raised by the resolution professional during the insolvency resolution process period and such other debt as may be notified.	Section 5(15) as per Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019
Lesson 16 Role, Function and Duties of IP, IRP and RP	Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states the following: (1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier. (2) The information memorandum shall contain the following details of the corporate debtor-	Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

	<p>(a) assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values</p> <p>Explanation: 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details.</p> <p>(b) the latest annual financial statements;</p> <p>(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;</p> <p>(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;</p> <p>(e) particulars of a debt due from or to the corporate debtor with respect to related parties;</p> <p>(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;</p> <p>(g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;</p> <p>(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;</p> <p>(i) the number of workers and employees and liabilities of the corporate debtor towards them;</p> <p>(j) [omitted by Notification No. IBBI/2017-18/GN/REG022, dated 31st December, 2017 (w.e.f. 31-12-2017). Prior to its omission, it stood as "(j) the liquidation value;"]</p> <p>(k) [omitted by Notification No. IBBI/2017-18/ GN/ REG022, dated 31st December, 2017 (w.e.f. 31-12-2017). Prior to its omission, it stood as, "(k) the liquidation value due to operational creditors;"]</p> <p>(l) other information, which the resolution professional deems relevant to the committee.</p> <p>(3) A member of the committee may request the resolution professional for further information of the nature described in</p>	
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	<p>this Regulation and the resolution professional shall provide such information to all members within reasonable time if such information has a bearing on the resolution plan.</p> <p>(4) The resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.</p>	
Lesson 16 Role, Function and Duties of IP, IRP and RP	<p>Lawyer can issue Demand Notice on behalf of Operational Creditor</p> <p>In the matter of <i>Macquarie Bank Limited v. Shilpi Cable Technologies Ltd.</i>, the Supreme Court settled the legal proposition under the Insolvency and Bankruptcy Code, 2016 to hold that:</p> <ul style="list-style-type: none"> (i) Section 9(3)(c) of the Code is directory and not mandatory in nature (ii) Demand notice under the Code can be issued by the Lawyer on behalf of the operational creditor <p>The two issues that were raised in this case pertained to Insolvency and Bankruptcy Code, 2016. Firstly, whether, in relation to an operational debt, the provision contained in Section 9(3)(c) of the Code is mandatory and secondly, whether a demand notice of an unpaid operational debt can be issued by a lawyer on behalf of the operational creditor.</p> <p>With reference to the aforesaid issues, two-Judge Bench of the Supreme Court made the following observations:</p> <ul style="list-style-type: none"> (i) Under section 9(3)(c) of the Code a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor is certainly not a condition precedent to triggering the insolvency process under the Code. The expression “confirming” makes it clear that this is only a piece of evidence, albeit a very important piece of 	Case Laws

evidence, which only “confirms” that there is no payment of an unpaid operational debt. Therefore, section 9(3)(c) of the Code would have to be construed as being directory in nature.

- (ii) Supreme Court observed that Section 8 of the Code speaks of an operational creditor delivering a demand notice and if the legislature wished to restrict such demand notice being sent by the operational creditor himself, the expression used would perhaps have been “issued” and not “delivered”. Delivery, therefore, would postulate that such notice could be made by an authorized agent.

Flat buyers can initiate insolvency proceedings against builders under the Code

In the matter of *Nikhil Mehta & Sons (HUF) & Ors. v. AMR Infrastructures Ltd.*, the NCLAT has ruled that a purchaser of real estate, under an ‘assured-return’ plan, would be considered as a ‘Financial Creditor’ for the purposes of Code and is, therefore, entitled to initiate corporate insolvency process against the builder, in case of non-payment of such ‘Assured/Committed return’ and non-delivery of unit. NCLAT further went on to rule that the ‘debt’ in this case was disbursed against the consideration for the ‘time value of money’ which is the primary ingredient that is required to be satisfied in order for an arrangement to qualify as ‘Financial Debt’ and for the lender to qualify as a ‘Financial Creditor’, under the scheme of Code.

The Insolvency and Bankruptcy Code (Second Amendment) Act of 2018 has however, added an Explanation to sub-clause (f) of Section 5(8) of IBC clarifying that for the purposes of sub-clause (f), any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing. In the matter of *Pioneer Urban Land and infrastructure Ltd. & Ans vs. UOI*, Hon’ble Supreme Court has held that amounts raised from allottees under a real estate project would be subsumed within Section 5(8)(f) even without advertent to the Explanation

	<p>introduced by the Amendment Act. As such, all the allottees under real estate projects, whether under assured return plan or not, shall fall under the definition of “Financial Creditor”.</p> <p>Time-limit for completion of insolvency resolution process</p> <p>The Supreme Court, in the matter of ‘<i>Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors.</i>’ while interpreting Section 29A(c) of the Insolvency and Bankruptcy Code, 2016, has observed the stage of ineligibility attaches when the resolution plan is submitted by a resolution applicant and not at any anterior stage. The bench further held that the time limit for completion of the insolvency resolution process as laid down under Section 12 of the Code is mandatory and it cannot be extended beyond 270 days.</p>	
Lesson 17: Resolution Strategies	<p>Sub-regulation (2A) was added to regulation 10 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 vide Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2020 on 22nd June, 2020 which states the following:</p> <p>“(2A) Any acquisition of shares or voting rights or control of the target company by way of preferential issue in compliance with regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be exempt from the obligation to make an open offer under sub-regulation (1) of regulation 3 and regulation 4.</p>	Regulation 10(2A) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2020
Lesson 18: Convening and Conduct of Meetings of Committee of Creditors	<p>Section 21(2): The committee of creditors shall comprise all financial creditors of the corporate debtor:</p> <p>Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors:</p> <p>Provided further 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</p>	Section 21(2) as per the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019

	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.	
Lesson 18: Convening and Conduct of Meetings of Committee of Creditors	The Hon'ble Supreme Court of India in the matter of 'Committee of Creditors of <i>Essar Steel India Limited vs. Satish Kumar Gupta & ors.</i> ', while upholding the constitutional validity of the Code made, <i>inter - alia</i> , important ruling with regard to the role of the Committee of Creditor in the CIR process. It had emphasized the primacy of the commercial wisdom of the CoC in the resolution process as to whether to rehabilitate the corporate debtor or not by accepting a particular resolution plan. It also states that prior to approving the resolution plan, the Committee is required to assess the "feasibility and viability" of the resolution plan, which takes into account "all the aspects of the resolution plan, including the manner of distribution of funds among various class of creditors." In this regard, the Committee is free to negotiate with the resolution applicant by suggesting modifications in the commercial proposal on a case to case basis.	Case Law
Lesson 19: Preparation and Approval of Resolution Plan	<p>Regulation 36A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 [substituted by Notification No. IBBI/2018-19/GN/REG031, dated 03rd July, 2018] prescribes the following with regard to invitation for EOI:</p> <p>(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.</p> <p>(2) The resolution professional shall publish Form G-</p> <p>(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;</p>	Regulation 36A & 36B of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for more clarity.

	<p>(ii) on the website, if any, of the corporate debtor;</p> <p>(iii) on the website, if any, designated by the Board for the purpose; and</p> <p>(iv) in any other manner as may be decided by the committee.</p> <p>(3) The Form G in the Schedule shall - (a) state where the detailed invitation for expression of interest can be downloaded or obtained from, as the case may be; and (b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.</p> <p>(4) The detailed invitation referred to in sub-regulation (3) shall-</p> <p>(a) specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section (2) of section 25;</p> <p>(b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;</p> <p>(c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and</p> <p>(d) not require payment of any fee or any non-refundable deposit for submission of expression of interest.</p> <p>(5) A prospective resolution applicant, who meet the requirements of the invitation for expression of interest, may submit expression of interest within the time specified in the invitation under clause (b) of sub-regulation (3).</p> <p>(6) The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.</p> <p>(7) An expression of interest shall be unconditional and be accompanied by-</p> <p>(a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25;</p>	
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	<p>(b) relevant records in evidence of meeting the criteria under clause (a);</p> <p>(c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;</p> <p>(d) relevant information and records to enable an assessment of ineligibility under clause (c);</p> <p>(e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;</p> <p>(f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and</p> <p>(g) an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.</p> <p>(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-</p> <p>(a) the provisions of clause (h) of sub-section (2) of section 25;</p> <p>(b) the applicable provisions of section 29A, and</p> <p>(c) other requirements, as specified in the invitation for expression of interest.</p> <p>(9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub regulation (8).</p>	
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(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.

(12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

Regulation 36B of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 [Inserted by Notification No. IBBI/2018-19/GN/REG031, dated 3rd July, 2018] lays down the provision for request for resolution plans by the Resolution Professional. The said regulation states the following:

(1) The resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans, within five days of the date of issue of the provisional list under sub-regulation (10) of regulation 36A to –

(a) every prospective resolution applicant in the provisional list; and

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

(2) The request for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.

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

resolution plan(s).

(4) The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.

(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

Explanation I. – For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

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

(5) Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3).

(6) The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.

(7) The resolution professional may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is

	made to all prospective resolution applicants in the final list: Provided that provisions of sub-regulation (3) shall not apply for submission of resolution plans under this sub-regulation.”	
Lesson 19: Preparation and Approval of Resolution Plan	<p>Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 lays down the detailed procedure for the approval of Resolution Plan. The said Regulation states the following:</p> <p>“(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with:</p> <p>(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;</p> <p>(b) [Omitted by Notification No. IBBI/2018-19/GN/REG032, dated 5th October, 2018 (w.e.f.05-10-2018). Clause (b), before omission, stood as under: “(b) an undertaking that it will provide for additional funds to the extent required for the purposes under sub-regulation (1) of regulation 38; and”]</p> <p>(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.</p> <p>(1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.</p> <p>(2) The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him: -</p> <p>(a) preferential transactions under section 43;</p> <p>(b) undervalued transactions under section 45;</p> <p>(c) extortionate credit transactions under section 50; and</p> <p>(d) fraudulent transactions under section 66,</p>	Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for more clarity.

	<p>(3) The committee shall-</p> <p>(a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;</p> <p>(b) record its deliberations on the feasibility and viability of each resolution plan; and</p> <p>(c) vote on all such resolution plans simultaneously.</p> <p>(3A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.</p> <p>(3B) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved:</p> <p>Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting:</p> <p>Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.</p> <p>(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.</p> <p>(5) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.</p> <p>(6) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.</p> <p>(7) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case</p>	
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	<p>may be, for any actions of the corporate debtor, prior to the insolvency commencement date.</p> <p>(8) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.</p> <p>(9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions.</p>	
Lesson 19: Preparation and Approval of Resolution Plan	<p>Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was inserted vide the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020 dated 20th April, 2020 which came into force from 29th March, 2020. The said Regulation came in light of the COVID-19 situation persisting in the country. It reads as follows:</p> <p>“Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”</p> <p>It must be noted that the model timelines for corporate insolvency resolution process is laid down in Regulation 40A.</p>	Regulation 40C of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for more clarity.
Lesson 19: Preparation and Approval of Resolution Plan	<p>Principles for a Resolution Plan</p> <p>The National Company Law Appellate Tribunal (NCLAT), in the matter of <i>Binani Industries Limited v. Bank of Baroda & Anr.</i> while approving the revised resolution plan submitted by Ultratech Cement Limited in the insolvency resolution process initiated against the corporate debtor - Binani Cement Limited, laid down certain principles that a resolution plan should comply with. These include, <i>inter alia</i> that:</p> <p>(a) Functionally, the resolution plan shall resolve</p>	Added case laws for more understanding.

	<p>insolvency, maximise the value of assets of the corporate debtor, and promote entrepreneurship, availability of credit, and balance the interests of all the stakeholders. The resolution plan is not a sale, or auction, or recovery or liquidation but a resolution of the Corporate Debtor <i>as a going concern</i>.</p> <p>(b) A resolution process under IBC is not an auction. Feasibility and viability of a 'Resolution Plan' are not amenable to bidding or auction. It requires application of mind by the 'Financial Creditors' who understand the business well.</p> <p>(c) A resolution process under IBC is not recovery. Recovery is an individual effort by a creditor to recover its dues through a process that has debtor and creditor on opposite sides. The 'I&B Code' prohibits and discourages recovery</p> <p>(d) A resolution process is not a liquidation. The IBC does not allow liquidation of a Corporate Debtor directly and permits liquidation only on failure of the resolution process.</p> <p>(e) The IBC aims to balance the interests of all stakeholders and does not maximise value for financial creditors. Therefore, the dues of operational creditors must get at least similar treatment as compared to the due of financial creditors.</p> <p>(f) Any resolution plan if shown to be discriminatory against one or other financial creditor or the operational creditor, can be held to be against the provisions of IBC</p> <p>The Supreme Court, dismissed an appeal against the NCLAT order. The NCLAT order is significant since it clarifies the underlying principles that a resolution plan should comply with.</p> <p>Former directors of Corporate Debtor are entitled to receive Resolution Plan</p> <p>In the matter of <i>Vijay Kumar Jain v. Standard Chartered Bank and others</i>, an appeal was filed with Supreme Court against</p>	
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	<p>orders rejecting the prayer of an erstwhile director for getting copy of the resolution plans from the RP. Both the NCLT and NCLAT ruled that appellant had no right to receive the resolution plans.</p> <p>The Resolution Professional (RP) has contended that only the members of CoC are entitled to have resolution plans, as per Section 30(3) IBC read with Regulation 39(2) CIRP Regulations. Relying on the Notes on Clauses to Section 24 of the Code, they argued that the members of suspended Board of Directors are permitted to participate in CoC meetings only for the purpose of giving information regarding the financial status of the debtor.</p> <p>The Supreme Court expressly rejected the argument based on Notes on Clauses to Section 24 of the Code and noted that every participant is entitled to a notice of every meeting of the committee of creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3)(iii). Court said the expression “documents” is a wide expression which would certainly include resolution plans.</p> <p>The judgment also clarified that the RP can take an undertaking from the erstwhile director to maintain confidentiality of the information.</p>	
Lesson 22: Debt Recovery & SARFAESI	<p>In 2013, the government amended the Act to include co-operative banks formally under the definition of banks eligible to use it. However, petitions were filed questioning the authority of the notification and the power of Parliament to amend the SARFAESI Act.</p> <p>The Supreme Court vide order dated 05th May, 2020 in the matter of '<i>Pandurang Ganpati Chaugule vs Vishwasrao Patil Murgud Sahakari Bank Limited</i>' held that co-operative banks under the State legislation and multi-State co-operative banks are 'banks' under section 2(1)(c) of SARFESI Act, 2002. The order also stated that it is permissible for the Parliament to enact the law to provide recovery procedures for bank dues that have been done by providing speedy recovery of secured interest without</p>	Added case law for more clarity

	<p>intervention of the court/tribunal,</p> <p>This move helps the co-operative banks to avoid inordinate delays in the recovery of their bad loans due to the involvement of civil courts and co-operative tribunals. The Indian banking system has 1,544 urban co-operative banks (UCBs) and 96,248 rural co-operative banks, with substantial deposits from retail investors. Considering their size, for the smooth functioning of these co-operative banks, speedy recovery of defaulting loans is critical.</p>	
<p>Lesson 22: Debt Recovery & SARFAESI</p>	<p>In the case of <i>Canara Bank v. Sri Chandramoulisvar Spg. Mills (P) Ltd.</i>, the NCLAT while referring to Supreme Court's verdict in Innoventive case has ruled that when two proceedings are initiated, one under the Insolvency and Bankruptcy Code, 2016 (the Code) and the other under the SARFAESI Act, 2002, then the proceeding under the Code shall prevail.</p> <p>The appeal in the case was preferred by the Financial Creditor i.e. Canara Bank against the NCLT's (National Company law Tribunal) order, whereby the application preferred by Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (application for initiation of corporate insolvency resolution process by operational creditor) against the Corporate Debtor i.e. M/s. Sri Chandra Moulisvar Spinning Mills Private Limited was admitted by the Tribunal. The Appellant's main grievance in the case was that he had already initiated proceedings under the SARFAESI Act, 2002 for recovery against the Corporate Debtor.</p> <p>The NCLAT in view of the issue involved in the case, made reference to Supreme Court's verdict in the case of Innoventive Industries Ltd. v. ICICI Bank, whereby the Apex Court was of the view that if the application under Section 9 is complete and there is no 'existence of dispute' and there is a 'debt' and 'default' then the Adjudicating Authority is bound to admit the application.</p> <p>Thus, NCLAT upheld NCLT's decision and also noted that such action cannot continue as the Code will prevail over SARFAESI Act, 2002.</p>	<p>Added case law for more clarity</p>

Lesson 24: Liquidation on or after Failing of Resolution Plan	<p>The Hon'ble Supreme Court in the matter of <i>'Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.'</i>, observed:</p> <p><i>"What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. ...</i></p> <p><i>It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation."</i></p>	<p>Added case law for more clarity</p>
	<p>In the matter of <i>Vedikat Nut Crafts Pvt. Ltd.</i>, after perusing records, the AA could not see any reason for not inviting resolution plan despite the fact that even a period of one month as balance period of 180 days was still available. NCLT observed that there was no reason for the Committee of Creditors to jump to the conclusion of seeking liquidation of the company without seeking extension of time of 90 days, without inviting expression of interest by the prospective resolution plan applicant as it falls foul of legal provisions and fair play. It presents a tell-tale story of the irregularity committed by the CoC. To say the least such a decision is arbitrary and should not be sustained.</p>	<p>Added case law for more clarity</p>
Lesson 24: Liquidation on or after Failing of Resolution Plan	<p>In the matter of <i>Small Industries Development Bank of India v. Tirupati Jute Industries Limited</i> [CP (IB) 508/KB/18 and connected matters], the Adjudicating Authority noted that the resolution plan, which has been submitted for its approval, was subject to extinguishment of all claims (except criminal proceedings) against the Corporate Debtor, exemption of all taxes/dues by the Government/local authorities, and closure of all proceedings pending against the Corporate Debtor relating to such dues. The Adjudicating Authority rejected the plan and ordered for liquidation. It observed that such a plan should not have been approved by the CoC, as it was not</p>	<p>Added case law for more clarity</p>

	<p>consistent with the provisions of section 30(2)(e) of the Code. It also observed that the Resolution Professional did not give correct advice when he submitted the plan for approval of CoC and therefore, it would not be proper to appoint him as the Liquidator.</p>	
Lesson 24: Liquidation on or after Failing of Resolution Plan	<p>The matter of replacing the Resolution Professional (RP) was considered by the National Company Law Appellate Tribunal (NCLAT) in the matter of <i>Devendra Padamchand Jain v. State Bank of India</i>. This case dealt with an appeal by the then RP of VNR Infrastructures, against the order of the National Company Law Tribunal (NCLT), Hyderabad bench, removing him and appointing another liquidator.</p> <p>The NCLAT held that apart from the committee of creditors, the NCLT is also empowered to remove the RP, but it should be for the reasons and in the manner provided under the relevant section. In this case, RP had failed to properly examine the resolution plan and had not stated that the plan he submitted met all the requirements of section 30(2) of the Code. The NCLAT held that the NCLT has jurisdiction to remove the RP if it is not satisfied with its functioning, which amounts to non-compliance with section 30(2) of the Code.</p>	<p>Added case law for more clarity</p>
Lesson 24: Liquidation on or after Failing of Resolution Plan	<p>Section 36 provides for the creation of a liquidation estate comprising the assets of the corporate debtor as set out in section 36(3). Section 36 also lists out the assets which are to be excluded from the liquidation estate. The Central Government has been given the power to notify assets, in consultation with the appropriate financial sector regulators, which will be excluded from the estate in the interest of efficient functioning of the financial markets.</p> <p>Section 36(1) provides that for the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.</p> <p>Section 36(2) further provides that the liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the</p>	<p>Elaborate liquidation estate</p>

creditors.

Liquidation estate shall comprise all liquidation estate assets – Section 36(3) provides that 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;
- (c) tangible assets, whether movable or immovable;
- (d) 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;
- (e) assets subject to the determination of ownership by the court or authority;
- (f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
- (g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;
- (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and
- (i) all proceeds of liquidation as and when they are realised.

What shall not be included in the liquidation estate assets – According to section 36(4), 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;
 - (ii) bailment contracts;
 - (iii) all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund;
 - (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
 - (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
- (d) assets of any Indian or foreign subsidiary of the corporate debtor; or
- (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

The liquidator should not declare the dues in respect to Provident Fund/Pension Fund/Gratuity Fund as part of the liquidation estate.

In the case of *Precision Fasteners Ltd. Vs. Employees Provident Fund Organisation*, the liquidator sought a declaration regarding attachment of movable and immovable properties of the CD (under liquidation) under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 as null and void to enable him to dispose of these properties alongside other

	assets of the CD. The AA noted that in terms of the Code, the dues in respect to Provident Fund/Pension Fund/Gratuity Fund are not part of the liquidation estate. The AA vacated the attachment with a direction to the liquidator to sell the assets and pay off the provident fund dues in priority to all claims payable by the CD in liquidation.	
Lesson 25: Voluntary Liquidation	<p>Reporting</p> <p>(1) The liquidator shall prepare and submit-</p> <ul style="list-style-type: none"> (a) Preliminary Report; (b) Annual Status Report; (c) Minutes of consultations with stakeholders; and (d) Final Report <p>in the manner specified under these Regulations.</p> <p>(2) Subject to other provisions of these Regulations, the liquidator shall make the reports and minutes referred to sub-regulation (1) available to a stakeholder in either electronic or physical form, on receipt of-</p> <ul style="list-style-type: none"> (a) an application in writing; (b) cost of making such reports available to it; and (c) an undertaking from the stakeholder that it shall maintain confidentiality of such reports and shall not use these to cause an undue gain or undue loss to itself or any other person 	Added Reporting by liquidator
Lesson 25: Voluntary Liquidation	<p>Completion of liquidation</p> <p>(1) The liquidator shall endeavour to complete the liquidation process of the corporate person within twelve months from the liquidation commencement date.</p> <p>(2) In the event of the liquidation process continuing for more than twelve months, the liquidator shall</p> <ul style="list-style-type: none"> (a) hold a meeting of the contributories of the corporate person within fifteen days from the end of the twelve months from the liquidation commencement date, and at the end every succeeding twelve months till dissolution of the corporate 	Added Annual Status Report

	<p>person; and</p> <p>(b) shall present an Annual Status Report(s) indicating progress in liquidation, including-</p> <ul style="list-style-type: none"> (i) settlement of list of stakeholders, (ii) details of any assets that remains to be sold and realized (iii) distribution made to the stakeholders, and (iv) distribution of unsold assets made to the stakeholders; (v) developments in any material litigation, by or against the corporate person; and (vi) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code. <p>(3) The Annual Status Report shall enclose the audited accounts of the liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.</p>	
Lesson 25: Voluntary Liquidation	<p>The petition was filed by Nippei Toyoma India Private limited to initiate voluntary liquidation proceedings under section 59 of Insolvency and Bankruptcy Code, 2016 (IBC) before NCLT, Mumbai Bench.</p> <p>Facts of the case The Company was incorporated under the provisions of Companies Act, 1956 on 27.04.2007. It was engaged in the business of providing engineering services and trading of automotive components for automotive industries. The Company does not have any operations as not carrying on any business activities. Considering the cost and time involved in ensuring compliances regarding the Company, the members of the Company in their Extra Ordinary General Meeting held on 28.09.2017 resolved to voluntary liquidate the Company.</p> <p>Judgement The directors of the Company declared on affidavit dated 27.09.2017 that they have made full inquiry into the affairs of the Company, and are of the opinion that the Company has no debts/will be able to pay its debt in full from the proceeds of assets to be sold in the voluntary liquidation and that it is not</p>	Added case law for more clarity

being wound-up to defraud any person. The directors have appended to the aforesaid affidavit, audited financial statements and record of business operations of the company of previous two financial years viz. year ending on 31.03.2016 and 31.03.2017. The statement of payment to stakeholders, annexed to the petition, detailed the payment made to various stakeholders and Dividend Distribution Tax. Post the aforementioned payment, the accumulated profit of Rs. 53,06,973/- as dividend and investment in share capital of Rs. 1,00,00,000/- were paid to the members of the Company, thereby, the assets of the company were fully liquidated.

The Independent Auditor certified that during the liquidation period 28.09.2017 to 23.07.2018, the proper books of accounts were kept and the said financial statements comply with the accounting standards under section 133 of Companies Act 2013. Further, it certified that there is no pending litigation involving the Company, there are no long term contracts with the Company for which there may be any foreseeable losses and there is no amount which is to be transferred to the Investor Education and Protection Fund by the Company.

The copy of the final report of the Liquidator dated 12.09.2018 was annexed to the petition, stating how the liquidation process has been conducted from 28.09.2017 to 12.09.2018, that all the assets of the Company have been discharged to the satisfaction of the creditors and that no litigation is pending against the company. The said Final Report of the Liquidator was submitted with the Registrar of Companies vide Form GNL-2 dated 13.09.2018. The Liquidator had filed this petition before the Tribunal under section 59(7) of The Code seeking order of dissolution of the Company.

NCLT noted that on examining the submission made by the counsel appearing for the petitioner and the documents annexed to the petition, it appears that the affairs of the company have been completely wound-up, and its assets completely liquidated.

NCLT in view of the above facts and circumstances and Final Report of the Liquidator directed that the Company shall be dissolved from the date of its order. The Petitioner was further directed to serve a copy of the order upon the Registrar of Companies, with which the Company is registered, within fourteen days of receipt of the order.

<p>Lesson 26: Winding-up by Tribunal under the Companies Act, 2013</p>	<p>In the matter of <i>Indiabulls Housing Finance Ltd. v. Shree Ram Urban Infrastructure Ltd.</i>, the Indiabulls Housing Finance Ltd. (Appellant) had initiated Corporate Insolvency Resolution Process against Shree Ram Urban Infrastructure Ltd. (Corporate Debtor) under Section 7 of the Insolvency and Bankruptcy Code, 2016.</p> <p>The National Company Law Tribunal, Mumbai Bench by impugned order dated 18th May, 2018 dismissed the application as not maintainable in view of the fact that the winding-up proceeding against the Corporate Debtor had already been initiated by the High Court of Bombay.</p> <p>Thus, the issue that fell for consideration before the National Company Law Appellate Tribunal was whether an application under Section 7 of the Code is maintainable when winding-up proceeding against the Corporate Debtor has already been initiated?</p> <p>NCLAT Decision</p> <p>In the said appeal, the NCLAT examined judgments governing the issue to hold that the High Court of Bombay has already ordered for winding-up of Corporate Debtor, which is the second stage of the proceeding, thus question of initiation of 'Corporate Insolvency Resolution Process' which is the first stage of resolution process against the same Corporate Debtor does not arise.</p> <p>While arriving at its judgment, the NCLAT relied on the case of <i>Forech India Pvt. Ltd. Vs. Edelweiss Assets Reconstruction Company Ltd. & Anr.</i>, wherein the NCLAT observed that if a Corporate Insolvency Resolution has started or on failure, if liquidation proceeding has been initiated against the Corporate Debtor, the question of entertaining another application under Section 7 or Section 9 against the same very Corporate Debtor does not arise, as it is open to the 'Financial Creditor' and the 'Operational Creditor' to make claim before the Insolvency Resolution Professional/Official Liquidator.</p> <p>The NCLAT further opined that once second stage i.e. liquidation (winding-up) proceedings has already been initiated, the question of reverting back to the first stage of Corporate Insolvency Resolution Process or preparation of Resolution Plan does not arise.</p> <p>In view of the facts of the present case, the NCLAT concluded that as the High Court of Bombay had already ordered winding-up of Corporate Debtor and the same has been initiated, therefore, initiation of Corporate Insolvency Resolution Process against the Corporate Debtor did not arise.</p>	<p>Added case law for more clarity</p>
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