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for

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INSOLVENCY-LAW AND PRACTICE

MODULE 3

ELECTIVE PAPER 9.8

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Lesson No. and Name	Particulars of Change	Remarks
Lesson 2: Introduction to Insolvency and Bankruptcy Code	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
	<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 3: Corporate Insolvency Resolution Process	Section 4 of the insolvency and Bankruptcy Code, 2016 provides that Part II of the Code shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one crore rupees.	Amendment in Section 4 of IBC
	<p>Section 7 of the Insolvency and Bankruptcy Code, 2016 lays down the procedure for the initiation of the corporate insolvency resolution process by a financial creditor or two or more financial creditors jointly.</p> <p>Section 7 of the Insolvency and Bankruptcy Code, 2016 reads</p>	Amendment in Section 7(1) of IBC

as follows:

(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the 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 allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided 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) Act, 2020, 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 Act, 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.

Lesson 3: Corporate Insolvency Resolution Process	<p>Section 10A was inserted vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 which came into effect from 05th June, 2020 in light of COVID-19 pandemic that has impacted business, financial markets and economy all over the world, including India, and created uncertainty and stress for business for reasons beyond their control. Section 10A reads as follows:</p> <p>“Notwithstanding anything contained in 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>The aforesaid section covers the default of a corporate debtor which arises after the 25th March 2020 emerging due to the impact of COVID 19 and shall remain suspended for six months or up to a period of one year. However, the defaults prior to this date are enforceable under the Code,</p> <p>The section also states 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” which means that no financial creditor, operational creditor or corporate applicant can file an insolvency application for the defaults occurring between 25th March, 2020 and the next six months or one year,</p>	<p>Section 10A was inserted vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020</p>

	<p>This was a necessary measure considering the national lockdown in force since 25th March, 2020 to combat COVID-19 and also the difficulty in finding adequate number of resolution applicants to rescue the corporate person who may default in discharge of their debt obligation.</p>	
<p>Lesson 3: Corporate Insolvency Resolution Process</p>	<p>Section 14 describes the effect of the moratorium declared under section 13 of the Code. Section 14 reads as follows:</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 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</p>	<p>Section 14 as per Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019</p>

	<p>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 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.</p>	
Lesson 3: Corporate Insolvency Resolution Process	<p>Regulation 16B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 deals with situations where the corporate debtor has only creditors in a class and no financial creditor. Regulation 16B reads as follows:</p> <p>“Where the corporate debtor has only creditors in a class and no other financial creditor eligible to join the committee, the committee shall consist of only the authorised representative(s).” [Inserted by Notification No. IBBI/2018-19/ GN/ REG031, dated 03rd July, 2018]</p>	<p>Added Regulation 18 for more clarity</p>

<p>Lesson 3: Corporate Insolvency Resolution Process</p>	<p>Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states the following:</p> <p>(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.</p> <p>(2) The information memorandum shall contain the following details of the corporate debtor-</p> <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</p>	<p>Added Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</p>
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	<p>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 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 3: Corporate Insolvency Resolution Process	<p>Regulation 40C of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was inserted vide notification No. IBBI/2020-21/GN/REG059 dated 20th April, 2020 which stated the following:</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</p>	<p>Added Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</p>

	<p>completed due to such lockdown, in relation to corporate insolvency resolution process.</p> <p>Regulation 40A provides the model time-line for corporate insolvency resolution process.</p>	
Lesson 3: Corporate Insolvency Resolution Process	<p>The Hon'ble Supreme Court of India in the matter of '<i>Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & ors.</i> ', while upholding the constitutional validity of the Code made, inter alia, 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.</p>	Added Case law for more clarity
Lesson 4: Insolvency Resolution of Corporate Persons	<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</p>	<p>Inserted Regulation 36A & 36B of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for more clarity.</p>

the resolution professional, the corporate debtor conducts material business operations;

(ii) on the website, if any, of the corporate debtor;

(iii) on the website, if any, designated by the Board for the purpose; and

(iv) in any other manner as may be decided by the committee.

(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.

(4) The detailed invitation referred to in sub-regulation (3) shall-

(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;

(b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;

(c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and

(d) not require payment of any fee or any non-refundable deposit for submission of expression of interest.

(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).

(6) The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.

(7) An expression of interest shall be unconditional and be accompanied by-

(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;

(b) relevant records in evidence of meeting the criteria under clause (a);

(c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;

(d) relevant information and records to enable an assessment of ineligibility under clause (c);

(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;

(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

(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.

(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-

- (a) the provisions of clause (h) of sub-section (2) of section 25;
- (b) the applicable provisions of section 29A, and
- (c) other requirements, as specified in the invitation for expression of interest.

(9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under subregulation (8).

(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

	<p>provisional list under sub-regulation (10) of regulation 36A to –</p> <p>(a) every prospective resolution applicant in the provisional list; and</p> <p>(b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.</p> <p>(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.</p> <p>(3) The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).</p> <p>(4) The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.</p> <p>(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.</p> <p>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.</p> <p>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</p>	
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	<p>term of the resolution plan, amount payable to creditors under the resolution plan, etc.</p> <p>(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).</p> <p>(6) The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.</p> <p>(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:</p> <p>Provided that provisions of sub-regulation (3) shall not apply for submission of resolution plans under this sub-regulation.”</p>	
Lesson 4: Insolvency Resolution of Corporate Persons	<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</p>	<p>Inserted Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for more clarity.</p>

	<p>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> <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</p>	
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	<p>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 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 4: Insolvency Resolution of Corporate Persons	<p>Section 32A was inserted vide The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 to provide immunity against prosecution of the corporate debtor, to prevent action against the property of such corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions. The said Section reads as follows:</p> <p>(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior</p>	Added Section 32A for more understanding

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

(b) 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 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 or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

(i) a promoter or in the management or control of the

corporate debtor or a related party of such a person; or
(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.- For the purposes of this sub-section, it is hereby clarified that,-

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.”

Thus, this Section provides relief to the resolution applicant or the persons who shall be in charge of the management of the company in the future by way of immunity from the liability of offences that the promoters or the persons in charge of the corporate debtor had committed prior to the initiation of CIRP, subject to certain conditions. The Section also bars any action being taken against the property of the corporate debtor pursuant to an offence committed prior to the CIRP, subject to the condition that the property is covered under the resolution plan approved by the AA or sale under liquidation and the resolution plan should have resulted in change in management/control of the corporate debtor such that debarred persons are not in management/control of the corporate debtor post resolution. However, the immunity is not provided for the property of any other person, other than

	the corporate debtor. The Section further provides that notwithstanding the immunity given in sub-sections (1) & (2), the corporate debtor or any person who may be required to extend assistance/co-operation to any authority investigating an offence committed prior to the commencement of CIRP, has been mandated to assist and co-operate accordingly.	
Lesson 4: Insolvency Resolution of Corporate Persons	<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>	Inserted Regulation 40C of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for more clarity
Lesson 5: Resolution Strategies	<p>The Resolution Applicant may provide for the substantial acquisition of the shares of the Corporate Debtor or the merger or consolidation with one or more persons as may be beneficial to the Corporate Debtor to fetch the maximized value of its assets and resolve the state of insolvency. The prohibition set out under the proviso to Regulation 3(2) of the Takeover Regulations, which restricts an acquirer from acquiring shares or voting rights in a target company, resulting in aggregate shareholding of the acquirer, along with persons acting in concert, exceeding the maximum permissible non-public shareholding of 75%, will not be applicable to an acquirer acquiring shares pursuant to a resolution plan approved under Section 31 of the Code.</p>	Added Regulation 10(2A) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

	<p>The following sub-regulation (2B) 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>	
Lesson 7: Liquidation of Corporate Person	<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>	Added case law for more clarity
Lesson 8 Voluntary Liquidation of Companies	<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 	Added Reporting by liquidator for more clarity

	<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> <p>(a) an application in writing;</p> <p>(b) cost of making such reports available to it; and</p> <p>(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</p>	
Lesson 8 Voluntary Liquidation of Companies	<p>Annual Status Report(s) indicating progress in liquidation, including-</p> <p>(i) settlement of list of stakeholders,</p> <p>(ii) details of any assets that remains to be sold and realized</p> <p>(iii) distribution made to the stakeholders, and</p> <p>(iv) distribution of unsold assets made to the stakeholders;</p> <p>(v) developments in any material litigation, by or against the corporate person; and</p> <p>(vi) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.</p> <p>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>	Added Annual Status Report for more clarity
Lesson 10 : Debt Recovery & Securitization	<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</p>	Added case law for better understanding

	<p>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 intervention of the court/tribunal, 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>	
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