

# Corporate Insolvency Resolution Process and Liquidation Process under IBC (Corporate Rescue and Insolvency)

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# Agenda of the session

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- Part II of the code:
  - **Corporate Insolvency Resolution Process (CIRP)**
  - **Liquidation Process**
- Rules, Regulations, Ordinances and Guidelines recently issued
- Case Laws

# The Insolvency and Bankruptcy Code, 2016 - I

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- 5 Parts- 7 chapters in each Part II,III,IV
- 255 Sections
- 11 Schedules (Sections 245 to 255)

# The Insolvency and Bankruptcy Code, 2016

## - II

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- Part I – Preliminary – Sections 1 to 3
- **Part II - Insolvency resolution and liquidation for corporate persons – Sections 4 to 77**
- Part III – Insolvency resolution and bankruptcy for individuals and partnership firms – sections 78 to 187
- Part IV – Regulation of Insolvency Professionals, agencies and information utilities – sections 188 to 223
- Part V – Miscellaneous- Sections 224 to 255



# Regulations under the IBC 2016 under Section 240

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- 1. The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016- notified on 21<sup>st</sup> November, 2016 w.e.f. 22<sup>nd</sup> November, 2016
- 2. The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016- notified on 21<sup>st</sup> November, 2016 w.e.f. 22<sup>nd</sup> November, 2016
- 3. The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016- notified on 23<sup>rd</sup> November, 2016, w.e.f. 29<sup>th</sup> November, 2016
- 4. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016- notified on 30<sup>th</sup> November, 2016, w.e.f. 1<sup>st</sup> December, 2016
- 5. The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016- notified on 15<sup>th</sup> December, 2016

# Continued...

- 6. The Insolvency and Bankruptcy Board of India (Advisory Committee) Regulations, 2017- notified on 30<sup>th</sup> January, 2017 w.e.f. 31<sup>st</sup> January, 2017
- 7. The Insolvency and Bankruptcy Board of India (Engagement of Research Associates and Consultants) Regulations, 2017- notified on 30<sup>th</sup> January, 2017 w.e.f. 31<sup>st</sup> January, 2017
- 8. The Insolvency and Bankruptcy Board of India (Procedure for Governing Board Meetings) Regulations, 2017- notified on 30<sup>th</sup> January, 2017 w.e.f. 31<sup>st</sup> January, 2017
- 9. The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017- notified on 30<sup>th</sup> March 2017 w.e.f. 1<sup>st</sup> April 2017
- 10. Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations, 2017- notified on 30<sup>th</sup> March 2017 w.e.f. 1<sup>st</sup> April 2017
- 11. The Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017- notified on 14<sup>th</sup> June, 2017 w.e.f. 14<sup>th</sup> June, 2017
- 12. The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017- notified on 12<sup>th</sup> June, 2017

# Rules relevant to the IBC 2016 under Section 239

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- 1. The Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016- notified on 29<sup>th</sup> August, 2016 w.e.f. 29<sup>th</sup> August 2016
- 2. The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- notified on 30<sup>th</sup> November 2016, w.e.f. 1<sup>st</sup> December, 2016

## Part II of the Code:

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- Chapter- I Preliminary- Section 4 & 5
- **Chapter- II Corporate Insolvency Resolution Process (CIRP)- Sections 6 to 32**
- **Chapter- III Liquidation Process- Sections 33 to 54**
- Chapter- IV Fast Track Corporate Insolvency Resolution Process- Sections 55 to 58 (notified on 14<sup>th</sup> June, 2017)
- Chapter- V Voluntary Liquidation of Corporate Persons- Section 59
- Chapter- VI Adjudicating Authority for Corporate Persons- Sections 60 to 67
- Chapter- VII Offences and Penalties- Sections 68 to 77



# Part II applies to Corporate Person other than Financial Service Provider

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- Whether multi state cooperative society is corporate person??

- Corporate Person – 3(7)

"corporate person" means

- a company as defined in clause (20) of section 2 of the Companies Act, 2013,
- a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or
- any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

# Who is a financial service provider??

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- Section 3(17) of the IBC, 2016 defines “Financial Service Provider” as follows

"financial service provider" means

- a person
- engaged in the business of
- providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;

# Draft “Financial Resolution and Deposit Insurance Bill, 2017”

- The Insolvency and Bankruptcy Code, 2016 is not applicable to financial service providers. A separate legislation for financial service providers is in draft stage.
- Status: Cabinet approves the proposal to introduce the “Financial Resolution and Deposit Insurance Bill 2017”
- The Bill would provide for a comprehensive resolution framework for specified financial sector entities to deal with bankruptcy situation in banks, insurance companies and financial sector entities.
- It will result in the repealing of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 and proposed to amend 13 other Acts.

# CIRP- Applicable Framework:

Part –II, Chapter – II, Sections 6-32 [w.e.f. December 1, 2016]

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 [w.e.f. December 1, 2016]

Insolvency and Bankruptcy (Application to AA) Rules, 2016 [w.e.f. November 30, 2016]



# Time bound

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- Normal Insolvency Resolution Process shall be completed within a period of 180 days from date of admission of the application.
- The period can be extended if resolution passed at a meeting of the committee of creditors by a vote of 75% of the voting shares. It can be extended for a period not exceeding 90 days.
- Such extension cannot be granted more than once

# Who may initiate corporate insolvency resolution process?

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- Financial Creditor defined u/s 5(7)
- Operational Creditor defined u/s 5(20)
- Corporate Applicant defined u/s 5(5)

**Minimum amount of default is Rs. 1,00,000/- (Rupees One Lakh)**

# Financial Creditor and Operational Creditor

S.No	Details	Financial Creditor	Operational Creditor
1	Definition	Any person to whom Financial Debt is owed	A person to whom Operational Debt is owed.
2	Includes	A person to whom such debt is legally assigned or transferred	Any person to whom the debt is legally assigned or transferred
3	Initiating Corporate Insolvency Resolution Process	Can Initiate	Can Initiate

# Application by Financial Creditor u/s 7

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- Application in **Form 1** under section 7 along with a fee of **Rs. 25,000** shall be made by the Financial Creditor individually or jointly, as the case may be, to the Adjudicating Authority.
- A copy of the application shall also be delivered to the Registered Office of the Corporate Debtor.
- Financial Creditor shall propose the name of an Insolvency Professionals in the application



# Application by Operational Creditor u/s 8 & 9

- The pre-requisite of filing an application is to serve a demand notice of 10 days for unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default, at the registered office of CD.
- Within 10 days, the CD shall intimate the OC about the payment or dispute of the concerned invoice or demand notice.
- The demand notice shall be in **Form 3** and the Copy of Invoice shall be in **Form 4**.
- The Copy of both the forms shall be filed to the Information Utility.

## Continued.....

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- After the expiry of period of 10 days from the delivery of notice or invoice demanding payment, if the OC does not receive payment from the CD or notice of the dispute, the OC may file an application before the AA for initiating CIRP in **Form 5** along with a **fee of Rs. 2,000**.
- It is optional for the operational creditor to propose the name of the interim professional

# Application by Corporate Debtor u/s 10

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- In case of default committed by the CD, then he may file an application for CIRP under Section 10 of the Code in **Form 6** along with a fee of **Rs. 25,000**.
- Information to be provided with application:
  - Books of account and other documents
  - resolution professional to be appointed as interim resolution professional.

# Practical Issues!!!

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- Bank Certificate
- Conflict of Interest
- Role of IP - Whether due diligence required before signing Form No. 2 ??
- Fee to be charged and at which stage of the proceedings
  - Before issuing Form 2
  - Immediately after issuing Form 2



# What will be the action of the AA on receipt of Application?

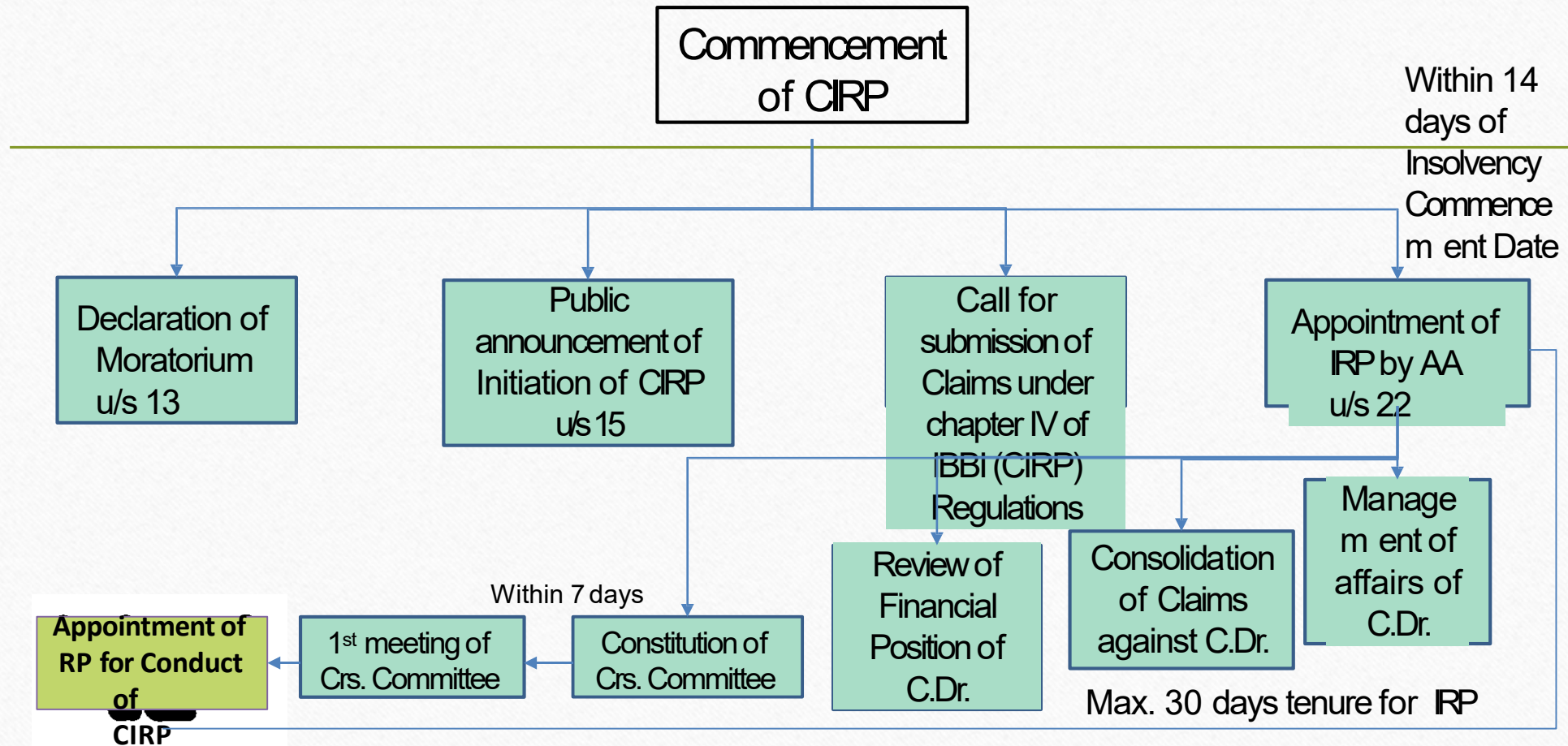
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- The AA on receipt of the application shall **within 14 days accept or reject the application**. The acceptance or rejection of the application shall be communicated within a period of **7 days**.
  - In case of **application** filed has any **defect**, then, the AA will give a period of **7 days** to rectify the defect.
  - On acceptance of the application, the CIRP shall commence.

# Who is not entitled to make application?

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- a CD undergoing CIRP; or
- a CD having completed CIRP 12 months preceding the date of making of the application; or
- a CD or a FC who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- a CD in respect of whom a liquidation order has been made.

# Once CIRP commences . . .



# Declaration of Moratorium u/s 13

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On acceptance of the Application:

- Moratorium order will come into effect from the insolvency commencement date.
- This order shall prohibit institution/continuation of proceedings/suits against CD, transfer, recovery of any property of CD.
- However, essential goods and services shall be out of purview of moratorium order.



# Appointment of Interim Resolution Professional u/s 16

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- AA shall appoint IRP within **14 days** of insolvency commencement date.
- In case OC, does not propose name of RP in his application, AA shall refer to the Board and Board within **10 days** shall recommend a name of RP.
- The **term of the interim resolution professional shall not exceed thirty days** from date of his appointment and he can access all the books of accounts, records and other relevant information as may be necessary for discharging his duty.

# Role and Duties of IRP u/s 17

- the management of the affairs of the Corporate Debtor shall vest in the IRP;
- the powers of the BOD or the partners of the Corporate Debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;
- the officers and managers of the Corporate Debtor shall report to the interim resolution professional and provide access to such documents and records of the Corporate Debtor as may be required by the interim resolution professional;
- the financial institutions maintaining accounts of the Corporate Debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the Corporate Debtor available with them to the interim resolution professional.

Appoint **2 registered valuers** to determine the liquidation value of the corporate debtor

Note: In case, IRP is obstructed from performing his duties, he can file an application under section 19 to AA for necessary directions

# Public Announcement u/s 15

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- IRP shall make a public announcement in **Form A** of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- not later than **3 days** from his appointment
- in two newspapers, one English newspaper and one regional language newspaper.

# Submission of Claims

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- The claims against the Corporate Debtor shall be submitted to the IRP within **14 days** of his appointment as the last date provided in the Public Announcement.
  - If not provided within the specified time then, it shall be submitted before the approval of Resolution Plan by the Committee of Creditors.
  - The FC shall be on the Committee of Creditors from the date of admission of his claim.



# Forms prescribed for submission of claims

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- OC (Other than Workmen and Employees): **Form B**
- FC: **Form C**
- Workmen and Employees: **Form D**
- In case of numerous employees and workmen, an authorized representative can make application on behalf of them in: **Form E**

# Verification and Determination of amount of Claims

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- The IRP shall verify every claim and determine the amount of claim, as on the insolvency commencement date **within 7 days** from the last date of the receipt of the claims
- The IRP shall maintain a list of creditors which shall be filed with the AA and kept open for inspection.
- The same shall be made available in the first meeting of the Committee of Creditors.

# Constitution of Committee of Creditors u/s 21

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- After the collation of all claims received, the IRP shall constitute a committee of creditors
- Within 30 days report of appointment report to the AA
- first meeting of the CoC shall be held **Within 7 days** of its constitution.

# What will be the case if the FC is also an OC?

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- In such a case, he shall be considered as FC upto the extent of the Financial Debt and shall be included in the CoC, with voting share proportionate to the extent of financial debts owed to such creditor.
- In case of assignment of the Operational Debt by the OC to the FC, then the FC will hold the right as on OC and not an FC.
- If any creditor (Member of CoC), wishes to appoint any IP, to represent him, he can do so, he will have to bear the cost of such IP.



# What will be the situation if there is no FC?

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Where the Corporate Debtor has no financial debt or where all FCs are related parties of the Corporate Debtor, the committee shall consist of the members as under:

- eighteen largest OCs by value;
- one representative elected by all workmen other than those workmen included in OC; and
- one representative elected by all employees other than those employees included in OC.

## Appointment of RP u/s 22

- At the first meeting of CoC, by a majority vote of not less than 75% of voting share of the FC.
- Either resolve to appoint IRP as RP or appoint any other person as RP.
- AA on receipt of such application shall forward recommendation to the Board, Board shall confirm the RP **within 10 days**.
- In case of assignment of debt, the same shall be communicated to the RP, who shall notify each participant and the AA of any resultant change in the committee **within 2 days** of such change.
- He shall sale the assets, with the approval of CoC, which are not in the Ordinary Course of business, not exceeding 10% of the claims for the better realization.

# Preparation of Information Memorandum u/s 29

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- Prepared by IRP or RP
- within **14 days** of first meeting
- submitted in electronic form to all the members of the CoC and any other potential resolution applicant containing:
- at least the matters listed in paragraphs (a) to (i) above, **before its first meeting;** and
- matters listed in paragraphs (j) to (l) above, within **fourteen days** of the first meeting.
- Preparation of Information Memorandum for formulating a Resolution Plan

# Preparation of Resolution Plan

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- A resolution plan shall provide:
- the term of the plan and its implementation schedule;
- the management and control of the business of the CD during its term; and
- adequate means for supervising its implementation.



# Submission of Resolution Plan u/s 30

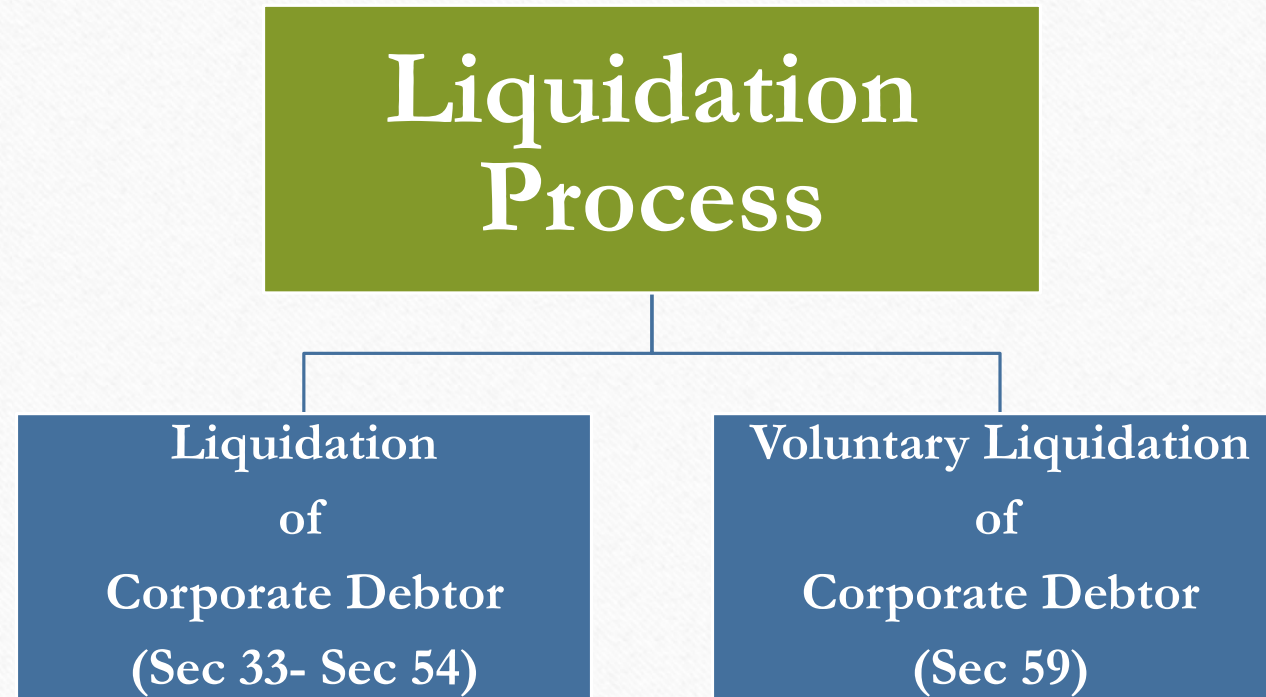
- The RP shall present all resolution plans that meet the requirements of the Code and Regulations to the committee for its consideration.
- approval of resolution plan by a vote of not less than 75% of voting share of the FCs.
- Submission of Resolution Plan to AA after the approval of CoC
- AA may accept or reject the resolution plan
- Appeal to NCLT within **30 days (additional 15 days may be provided by Appellate Authority)**

# Fast Track Insolvency Resolution Process

- **Part II - Chapter IV - Sections 55 to 58 (w.e.f. 14<sup>th</sup> June, 2017)**
- Applicable to the following categories of corporate debtors:
  - a small company, or
  - a startup (other than the partnership firm), or
  - an unlisted company with total assets, not exceeding Rs.1 crore.
- Default completion time is 90 days from the insolvency commencement date as against 180 days in other cases.
  - One-time extension of a maximum of 45 days permissible
  - Necessity of extension to be determined by AA.

# Commencement of the Liquidation Process

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# Liquidation Process- Applicable Framework



Part II, Chapter III, Sections 33-54 [w.e.f. December 15, 2016]

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 [w.e.f. December 15, 2016]



# Voluntary Liquidation – Applicable Framework

Sec 255 of IBC, 2016 repeals part II of chapter XX -sections 304 to 323 on Voluntary winding up under Companies Act, 2013

Sec 59 of IBC, 2016 (on Voluntary winding up applicable w.e.f 1<sup>st</sup> April 2017). The IBBI (Voluntary Liquidation Process) Regulations, 2017 comes into force w.e.f 1<sup>st</sup> April 2017

As per Sec 468(3) of the Companies Act, 2013, the 1956 Act does not apply anymore given Sec 59 of the IBC, 2016 is notified.

# Voluntary Liquidation – Section 59

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**Time limit- 12 months from the voluntary liquidation commencement date**

- **Steps involved-**

- Step – 1: Filing of application
- Step – 2: Commencement of voluntary liquidation
- Step – 3: Appointment of Liquidator and Public Announcement
- Step – 4: Submission of Preliminary Report and Completion of Books of Account
- Step – 5: Appointment of Professionals
- Step – 6 Consultation with Stakeholders
- Step – 7: Claims by creditors
- Step – 8: Determination and Verification of Claims
- Step – 9 Preparation of List of Stakeholders
- Step – 10: Realisation and Distribution
- Step – 11: Submission of Final Report
- Step -12: Dissolution

# Formats Prescribed under IBBI (Voluntary Liquidation Process) Regulations, 2017

Form Name	Particulars
Form A	Public Announcement
Form B	Proof of claim by Operational creditors except by workmen & employees
Form C	Proof of claim by financial creditors
Form D	Proof of claim by workmen & employees
Form E	Proof of claim by authorised representative of workmen & employees
Form F	Proof of claim by any other stakeholder

# List of Books maintained by a Liquidator- Corporate Liquidation

Cash Book;

Ledger;

Bank Ledger;

Register of Fixed Assets and Inventories;

Securities and Investment Register;

Register of Book Debts and Outstanding Debts;

Tenant Ledger;

Suits Register;

Decree Register;

Register of claims and dividends;

Contributories Ledger;

Fee Register;

Suspense Register;



# Cont....

Documents Register;

Books Register;

**Register of unclaimed dividends & undistributed properties deposited in accordance with Regulation 39;**

Such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor;

S. No.	Aspects	The IBBI (Liquidation Process) Regulations, 2016	The IBBI (Voluntary Liquidation) Regulations, 2017
1.	Regulations	46	40
2.	Chapter	7	7
3.	Schedules	3	2
4.	When does it apply?	Under Part II - Chapter III on Liquidation Process – Where time exceeds as per sec 12 or sec 56 or the plan is rejected by the adjudicating authority (AA) then the AA shall pass an order for insolvency resolution under Chapter III of part II the IBC 2016	Section 59 of the IBC 2016 (Notified w.e.f 1 <sup>st</sup> April 2017)
5.	Who is the AA? <small>rajkmarradukia@caaa.in</small>	NCLT	NCLT (sec 59 is notified w.e.f 1 <sup>st</sup> April 2017)

# Tabulating Liquidation and Voluntary Liquidation Process under the IBC, 2016

S.No	Particulars	Part/Regulation	Liquidation of Corporate Persons	Voluntary Liquidation of Corporate Persons
1	Sections applicable	Both fall under Part II of the Code on INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS	Chapter III Sections 33-54	Chapter V Section – 59
2	Offence and Penalties	Chapter VII of Part II – on Offences and Penalties	69 to 77 for Liquidation – for the penal provision.	Applicable Chapter VII
3	Regulations Applicable and w.e.f Dr Rajkumar S Adukia		IBBI (Liquidation Process) Regulations, 2016 W.e.f 15 <sup>th</sup> December 2016	IBBI (Voluntary Liquidation Process) Regulations, 2017 W.e.f 1 <sup>st</sup> April 2017

4	Number of Regulations		41 Regulations Schedules I&II I – Proof of Claims II – Books	46 Regulations Schedules I, II and III
5	Liquidation Commencement Date		<p>Defined under IBC code 2016 Section 3(17) - "Liquidation commencement date" means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be;</p> <p>Insolvency Commencement Date( Sec 50, Sec 46, Sec 43, Sec 36, Date of the Commencement of the Liquidation (Sec 38), Liquidation Commencement Date (Sec 53).</p> <p>Definition of Insolvency Commencement Date – Sec 3(12) of the IBC Code 2016 - "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be;</p>	<p>Defined under Regulation 2(1)© -</p> <p>The date on which the proceedings for voluntary liquidation commence as per section 59(5) and Regulation 3(4)</p>
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6	Stakeholders		<p><b>Regulations 2(1)(k)</b></p> <ul style="list-style-type: none"> <li>- “stakeholders” means the stakeholders entitled to distribution of proceeds under section 53.</li> </ul>	<p><b>Regulations 2(1)(f) - “stakeholders” mean the stakeholders entitled to proceeds from the sale of liquidation assets under section 53.</b></p>
7.	<p>Creditor’s Approval</p> <p>Dr Rajkumar S Adukia</p>		<p>There is no question of approval of creditors in a regular liquidation process from section 33 to 54, though it can be initiated by them</p>	<p>Section 59 – Regulations Proviso to Regulation 3(1)© - Creditors representing 2/3rds of the value of debt shall approve within seven days from the date of passing of the resolution</p> <p>49</p>

8	<p>Initiation of Liquidation Process</p>		<p>Liquidation of a Corporate Person Is Initiated under Section 33 of IBC, 2016 by an order of the Adjudicating Authority</p> <ul style="list-style-type: none"> <li>- When Resolution plan is not received or</li> <li>- When the Resolution Plan is rejected</li> <li>- Decision of the Committee of Creditors to liquidate the Corporate Debtor</li> <li>- On Contravention of the Resolution Plan approved by AA, application to AA by those whose interest is affected</li> </ul>	<p>Voluntary Liquidation Proceedings of a corporate person is initiated by a declaration, resolution, approval and information</p> <ul style="list-style-type: none"> <li>-Of a company given under Section 59 (3) of the IBC 2016</li> <li>-Other than a company under Regulation 3</li> </ul>
9	<p>Appointment of Liquidator</p> <p>Dr Rajkumar S Adukia</p>		<p>Section 34 of the IBC, 2016</p> <ul style="list-style-type: none"> <li>- Resolution Professional appointed for CIRP under Chapter II of Part II shall act as a Liquidator</li> </ul>	<p>Resolution passed in the General meeting for Voluntary liquidation and appointment of the Liquidator</p> <p>50</p>

10	Replacement of Liquidator		<p>Under section 34(4) of the IBC, 2016 the AA replaces the liquidator on two grounds</p> <ul style="list-style-type: none"> <li>- The Resolution plan submitted u/s 30 fails to meet the requirement</li> <li>- The board recommends replacement of liquidator</li> </ul>	No specific provision
11.	Liquidator's Fee		<p>Section 34(9) states that the Liquidator's fee shall be paid from the proceeds of liquidation estate.</p> <p>According to Regulation 4</p> <ul style="list-style-type: none"> <li>- Fee agreed upon by the Committee of Creditor before Liquidation order passed under 33(1)(a) and 33(2). (Reg 4(2))</li> <li>- Fee as a percentage of assets realized in all other cases (Reg 4(3))</li> </ul>	According to regulation 7 the liquidator remuneration will form part of Liquidation Cost

12	<b>Powers and Duties of the Liquidator</b>	Section 35 of the IBC 2016	<p>Section 35(1) (a) to (o) defines 15 duties and powers of the Liquidator</p> <p>Chapter III covering regulations 5-11</p> <ol style="list-style-type: none"> <li>1. Reporting</li> <li>2. Books to be maintained</li> <li>3. Appointment of Professionals</li> <li>4. Consultation with Stakeholders</li> <li>5. Personnel to extend co-operation</li> <li>6. Disclaimer of Onerous property</li> <li>7. Extortionate Credit transactions</li> </ol>	<p>Chapter IV covering regulations 8-14</p> <ol style="list-style-type: none"> <li>1. Reporting</li> <li>2. Books to be maintained</li> <li>3. Appointment of Professionals</li> <li>4. Consultation with Stakeholders</li> <li>5. Extortionate Credit transactions</li> <li>6. Public Announcement</li> </ol>
13	<b>Power of the Liquidator to access information</b>	Section 37 of the IBC 2016	<p>Notwithstanding anything contained in any other law for the time being in force, the liquidator can access information from</p> <ul style="list-style-type: none"> <li>- an information utility</li> <li>- credit information systems</li> <li>- agency of Central, State or Local Government</li> <li>- Financial/Non- Financial information utility</li> <li>- Information systems for securities</li> <li>- Database of the board</li> <li>- Any other source specified by the board</li> </ul>	<p>Same thing applicable for Voluntary liquidation due to application of section 59(6)</p>
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14	Liquidation Estate	Section 36 (1) to (4) – The liquidator holds it in a fiduciary capacity	Estate of the assets listed under section 36 mainly those on which it has ownership rights. It also includes assets that do not form part of the assets under 36(4) mainly assets owned by a third party	Section 59 (6) - The provisions of sections 35 to 53 of Chapter III shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.
15	Consolidation and Verification of Claims	Section 38 & 39 of the IBC 2016	<ul style="list-style-type: none"> <li>- The liquidator shall receive or collect claims within 30 days from the date of commencement of Liquidation</li> <li>- Both financial and operational creditors shall submit claims with supporting documents</li> <li>- Financial creditor (Form</li> <li>- Claims can be withdrawn within 14 days from the date of submission</li> <li>- The claims are verified and further supporting evidence may be requested by the liquidator</li> </ul>	<ul style="list-style-type: none"> <li>- Same provisions- Section 59(6)</li> <li>- Claims shall be proved by the stakeholder (Reg 15)</li> </ul> <p>Following forms are submitted</p> <ul style="list-style-type: none"> <li>- Operational Creditor Form B of Schedule I (Reg 16)</li> <li>- Financial Creditor Form C Schedule I (Reg 17)</li> <li>- Workmen and employees – Form D of Schedule I (Reg 18)</li> <li>- Other stakeholder Form E of Schedule I</li> <li>- The claimant shall bear the cost of proving its claims</li> <li>- Foreign Currency debts are converted into Indian Rupees on the liquidation commencement date</li> <li>- The claims shall be verified within 30 days by the liquidator</li> <li>- The liquidator shall prepare a list of stake holders within 45 days from the last date for receipt of claims</li> </ul>
Dr Rajkumar S Adukia				

# Liquidation Order

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- On happening of certain circumstances, liquidation order can be passed by the AA
- issue a public announcement stating that the CD is in liquidation.

# Appointment of Liquidator u/s 34

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- The RP appointed for the CIRP under Chapter II of Part II shall act as the liquidator for the purposes of liquidation unless replaced by the AA.
- The AA may direct the Board to propose the name of other IP to be appointed as liquidator.
- The Board shall process the same within a period of **10 days**.
- An IP shall be eligible to be appointed as a liquidator if he, and every partner or director of the IP entity of which he is a partner or director, is independent of the CD.

# Reports prepared and submitted by liquidator

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- a preliminary report;
- an asset memorandum;
- progress report(s);
- sale report(s);
- minutes of consultation with stakeholders; and
- the final report prior to dissolution



# Public Announcement by the Liquidator

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- in **Form B of Schedule II within 5 days**
- in two newspapers (one English and one regional) and on the website of the CD and website designated by the Board for calling stakeholders to submit their claims as on the liquidation commencement date.
- provide for the last day of the claim, which shall be **30 days** from the liquidation commencement date.

# Claims of Creditors

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- The liquidator shall receive or collect the claims of creditors within a period of **30 days** from the date of the commencement of the liquidation process.
- A creditor may **withdraw or vary his claim** within **14 days** of its submission.
- A claim accepted or rejected shall be communicated to the creditor and the Corporate Debtor within **7 days**.

# Forms prescribed for claim of creditors

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- **OC - Form C**
- **FC - Form D**
- **Claims by workmen and employees - Form E**
- **In case of numerous workmen or employees – Form F by the authorized representative**
- **Claims by other stakeholders - Form G**

# Liquidation Estate u/s 36

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- Include:
  - any assets over which the corporate debtor has ownership rights,
  - encumbered assets,
  - tangible and intangible assets,
  - assets issued as collateral over which creditors have relinquished rights
  - all proceeds of liquidation as and when they are realized

# Determination and Verification of Claim and preparation of List of Stakeholders

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- The liquidator shall verify the claims submitted within **30 days** from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be.
- In case of acceptance or rejection of the claim, the same should be communicated within a period of **7 days** of such effect.
- A creditor may appeal to the AA against the decision of the liquidator rejecting the claims within **14 days** of the receipt of such decision.



# Order in case of preferential / undervalued / extortionate transactions

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- On an application made by the RP or liquidator, AA may pass an order for avoidance of preferential transaction.
- Where an undervalued transaction has taken place and the liquidator or the RP as the case may be, has not reported it to the AA, a creditor, member or a partner of a CD, as the case may be, may make an application to the AA to declare such transactions void and reverse their effect.
- On examination of the application if the AA is satisfied that the terms of a credit transaction required exorbitant payments to be made by the CD, it shall pass an order.

# Selling of secured assets by the Secured Creditor

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- The liquidator shall inform the secured creditor within 21 days of receipt of the intimation if a person is willing to buy the secured asset before the expiry of 30 days from the date of intimation, at a price higher than the price intimated.
- Where the liquidator informs the secured creditor of a person willing to buy the secured asset, the secured creditor shall sell the asset to such person.

# Realisation of assets

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- Through:
  - Auction
  - Private Sale
- Valuation of assets to be sold: by the two registered valuers

# Order of priority for distribution of assets u/s 53

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- The order is as follows:
  - Insolvency resolution costs & liquidation cost
  - Secured creditors (who have relinquished their security interest) and workmen dues upto 24 months
  - Other employee's salaries/dues up to 12 months
  - Financial debts (unsecured creditors)
  - Government dues (up to 2 years)
  - Any remaining debts and dues
  - Preference Shareholders
  - Equity Shareholders

# Difference between Part II and Part III of the Code

Noticeable differences	Part II - Corporates & LLP	Part III - Individual & Partnership
Adjudicating Authority	NCLT	DRT
Interim Moratorium	Not available	From the date of Application
Professionals	Interim Resolution Professional & Resolution Professional	Resolution Professional
Demand Notice	10 days	14 Days
Public Notice to be issued	Applicant	Adjudicating authority
Public Notice to be Given	3 days	7 days
Claims	14 Days	21 Days



# Continued...

CoC Meeting	7 days from the date of Constitution of CoC	Nil
IM	14 Day from the date of Constitution of CoC	Nil
Plan	Resolution Plan	Repayment plan
Notice of the Meeting	7 days	14 days
Adjournment of Meeting	Next day	7 days
Publication Notice	5 days	10 days
Consolidation of Claims	30 days	7 days
List of Creditors	30 days	14 Days
Meeting of Creditors	Nil	21 Days

# Case Study: Uttam Galva Steel Ltd

- DF Deutsche Forfait AG and Anr. V/s. Uttam Galva Steel Ltd.
- Petition filed u/s 9
- Default amount-USD 16,542,886.33
- Petition is admitted
- Various terminologies discussed-
- **Section 3(6): "Claim"** means-
- a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;
- right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.

# Continued.....

- **Section 3(7): "corporate person"** means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.
- **Section 3(11): "debt"** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

# Continued.....

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- **Section 3(12): "default"** means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.
- **Section 5(6): "dispute"** includes a suit or arbitration proceedings relating to-
  - the existence of the amount of debt;
  - the quality of goods or service; or
  - the breach of a representation or warranty;



# The Draft Companies (Registered Valuers and Valuation) Rules, 2017

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- May come into force with effect from 15th July, 2017
- 5 Chapters, 20 Rules and 3 Schedules
- Deals with eligibility, qualifications and registration of valuers, recognition of valuation professional organizations, valuation standards, disciplinary proceedings.
- valuation examination has to be passed to become a registered valuer
- Eligibility other than by passing valuation examination:

Age limit- 50 years

Substantially involved in at least 10 valuation assignments of the assets amounting to ₹ 5 crores or more, during the past 5 years



# The Draft Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017

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- Issued as per the powers conferred under sections 5,7,7,14,15,17,18,21,24,25,29,30,55,196 and 208
- Contains 4 Regulations-
- “fast track corporate insolvency resolution process” means the insolvency resolution process for corporate persons under Chapter IV of Part II of the Code.

# The Banking Regulation (Amendment) Ordinance, 2017 - Notified on 4th May, 2017

- Dealing with bank's stressed assets
- The two new Sections has been inserted (viz. 35AA and 35AB)
- It enables:
  - 1) RBI is authorised to issue directions to any bank to initiate insolvency resolution process in respect of a default under the Insolvency and Bankruptcy Code, 2016.
  - 2) The RBI has also been empowered to issue other directions for resolution, and appoint or approve for appointment, authorities or committees to advise banking companies for stressed asset resolution.

## Removal of difficulties: the Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017- (Notified on 24th May, 2017)

- The following proviso shall be inserted Section 4(b) after the second proviso of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003-

“Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code:

Provided also that in case, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order.”

# Insolvency Professionals to act as Interim Resolution Professionals (Recommendation) Guidelines, 2017

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- Issued on 25th May, 2017

Provides:

- Who can act as IRP?
- Determination of Vicinity
- Expression of Interest of IPs in Form A
- Eligible IPs
- Process of selection of IP



# The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017- (notified on 12th June, 2017)

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## Inspection & Investigation- Part-IV, Chapter VI, S 217 to 220

- 5 Chapters, 14 Regulations & FORM A (submission of claims)
- The IBBI announced the regulations in exercise of its powers conferred by sections 196, 217, 218, 219, 220 read with section 240 of the Insolvency and Bankruptcy Code, 2016.
- These regulations provide the power to conduct inspections of records of service provider, procedure of inspection, investigation of a service provider, procedure for conducting the investigation, submission of an interim and final investigation report, issuance of a show-cause notice and the requirements for a valid show-cause notice.



# IAC Recommendation

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- The IAC also arrived at an objective, non-discretionary criterion for referring accounts for resolution under IBC. In particular, the IAC recommended for IBC reference all accounts with fund and non-fund based outstanding amount greater than ₹ 5000 crore, with 60% or more classified as non-performing by banks as of March 31, 2016. The IAC noted that under the recommended criterion, 12 accounts totalling about 25 per cent of the current gross NPAs of the banking system would qualify for immediate reference under IBC.

# Continued....

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- As regards the other non-performing accounts which do not qualify under the above criteria, the IAC recommended that banks should finalise a resolution plan within six months. In cases where a viable resolution plan is not agreed upon within six months, banks should be required to file for insolvency proceedings under the IBC.
- The Reserve Bank, based on the recommendations of the IAC, will accordingly be issuing directions to banks to file for insolvency proceedings under the IBC in respect of the identified accounts. Such cases will be accorded priority by the National Company Law Tribunal (NCLT).

# Professional Opportunities

1. Studying the business of the Company and the various business verticals in which it operates.
2. Studying and understanding the entire debt profile of the Company with specific focus on the debt owed to the financial creditor, operational creditor and other stake holders.
3. Analysing the financial statements of the company for the last 3 years.
4. Preparation and filing of the Corporate Insolvency Resolution Process Application with the Adjudicating Authority.
5. Appointing the Interim Resolution Professional / Resolution Professional in consultation with the clients.
6. Assisting on Public Announcement as required under the Code.
7. Advising on the preparation of Information Memorandum and Statement of Affairs as may be desired by the Insolvency Professional in terms of the code.

# Continued....

8. Studying the sanction letters and the correspondences with the financial creditors, operational creditors, committee of creditors and Insolvency and Bankruptcy Board of India during the Corporate Insolvency Resolution Process.
9. Assisting the client in all correspondences with the Lenders, Committee of Creditors, Corporate, NCLT, NCLAT and IBBI.
10. Assisting the client in appointing the Registered Valuers, Legal and other Professionals.
11. Reviewing the Minutes of meeting of Committee of Creditors and any other Meetings of similar nature by creditors and advising the Company on the contents therein.
12. Assisting the Company in evolving strategy from Legal/ financial point of view in the meeting of Committee of Creditor/ various other similar meeting with creditors.
13. Exploring the various available restructuring options. Conceptualize and thereafter strategize a best fit restructuring options or a combination of two or more options for the best possible fast recovery of SEFL dues.
14. Preparation of the financial model and a Resolution Plan based on the mutually agreed commercial viable financial structure.



# Continued....

15. Meeting, conference and discussion with the Insolvency Professional on the resolution plan and making the necessary changes as suggested therein.
16. Drafting, settling and filing all representations, petitions, replies, rejoinders and all other such pleading as may be necessary before the Adjudicating Authority and appearances for hearing before the Adjudicating Authority.
17. Conferences, consultations, legal opinions and advice etc. with respect to any issues relating to proceeding under the code.
18. Filing and defending of any Applications which may be filed by the company or against the company with NCLT/ NCLAT.
19. Performing all Duties of an Interim Resolution Professional/ Resolution Professional by the Partner/ Director/ Empanelled Resolution Professionals in their individual capacity.
20. Any other assignment under Insolvency and Bankruptcy Code 2016.



# Case Laws

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## NCLT

- M/s. DF Deutsche Forfait AG and Anr. Vs. M/s Uttam Galva Steel Ltd. –Sec 9
- Nicco Corporation Ltd- Sec 14 (Moratorium)
- M/s. Edelweiss Asset Reconstruction Company Ltd. Vs. M/s Bharti Defence and Infrastructure Ltd- Sec 7
- P & S Jewellery Ltd.- Sec 7
- Pine Forest Products and Investment Ltd. Vs Zenith Computers Ltd.- Sec 7
- Mr. Lalit Dhanrajbhai Kella Vs. Shri Saikrupa sugar & Allied Industries- Sec 9
- M/s. Futuristic Offshore Services and Chemical Ltd- Sec 10

# Case Laws

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## NCLAT

- M/s Starlog Enterprise Ltd Vs. ICICI Bank Ltd- Sec 7
- Kaliber Associates Pvt Ltd. Vs. Mrs. Tripat Kaur- Sec 7
- JK Jute Mills Co. Ltd Vs. Surendra Trading company- Sec 9
- Smart Timing Steel Ltd. Vs. National Steel and Agro Industries Ltd.- Sec 9
- ASTRA offshore SDN BHD Vs Swiber Offshore India Pvt Ltd. - Sec 9

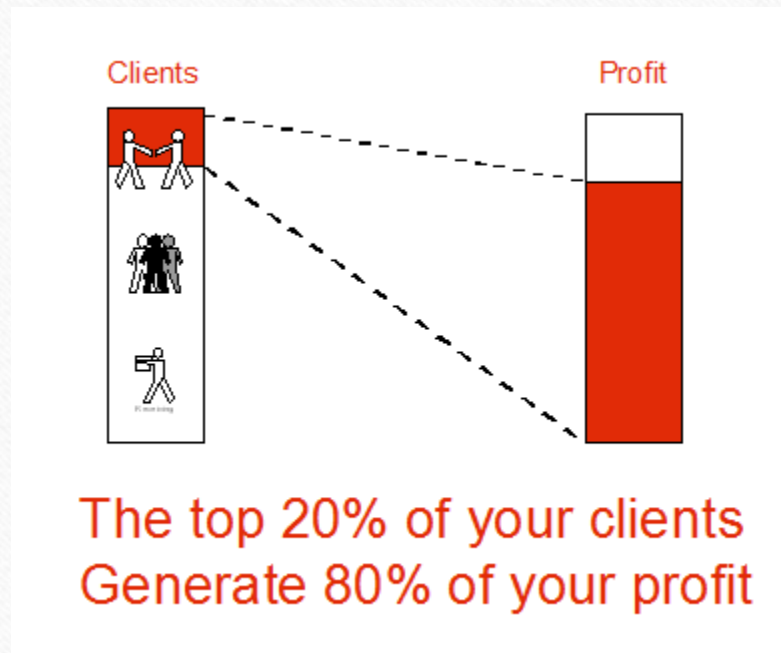
# Attitude



He is able ,who  
thinks he is able.”-  
Buddha

# The Principle of Wilfredo pareto –French Economist

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Conscious  
Mind

10%

Subconscious  
Mind

90%



**90% of our actions and results are determined by our subconscious mind**

Dr Rajkumar S Adukia



# Parkinson's law



“The amount of time which one has to perform a task ...  
... is the amount of time it will take to complete the task.”

# How to master the subject???

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- Buy all books available in market
- Read the act , rules, regulations, BLRC report , websites
- Repealed laws, allied laws
- Be positive, have time bound goal
- Increase rapport with authors, speakers and regulators
- Give observations on draft regulations
- Attend conferences & seminars
- Visit tribunals and DRTs
- Discuss with peers
- Address programmes
- Be a life time student

# How to Develop Practice???

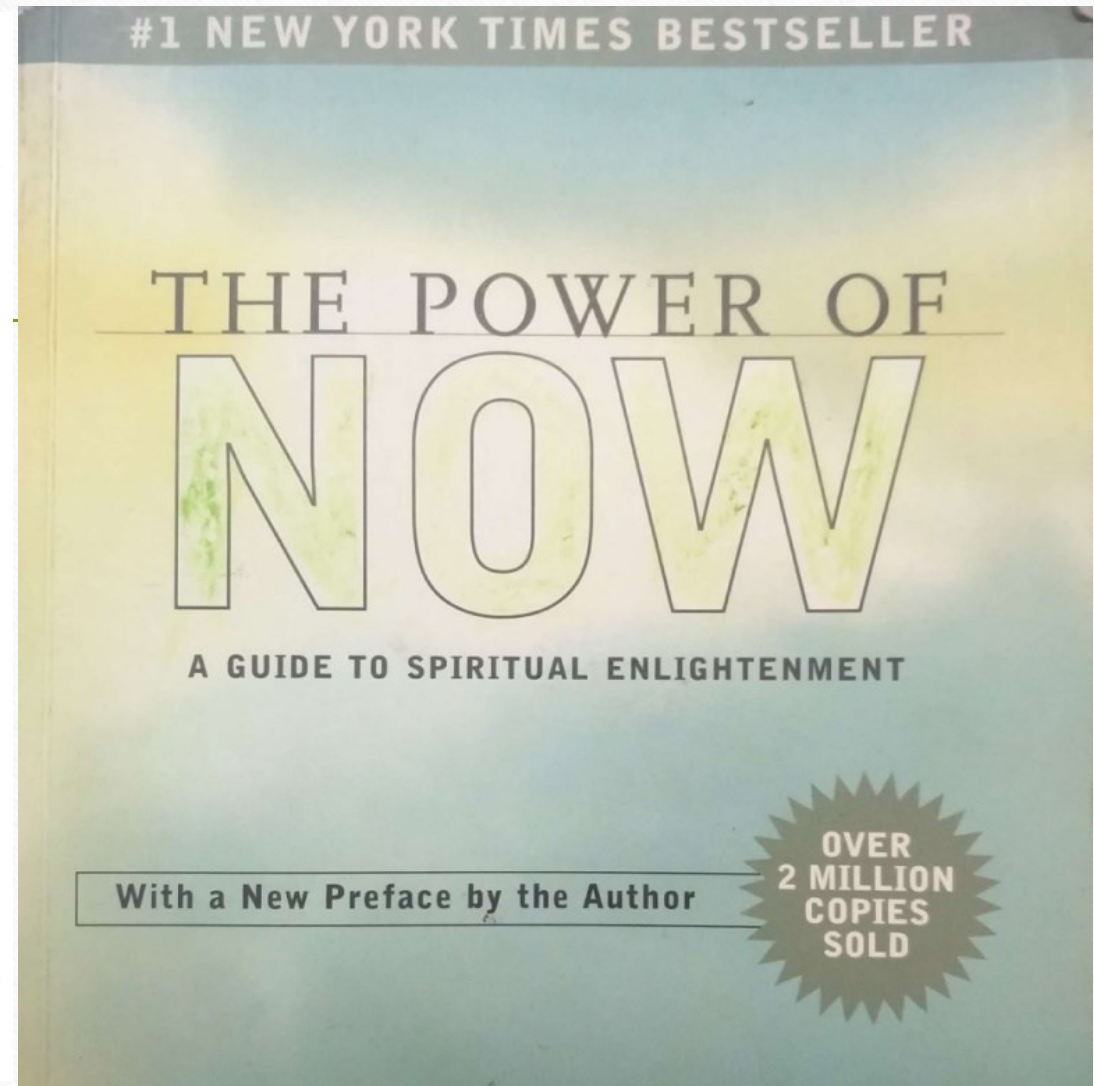
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1. Make your presence felt – advisory panel at trade forum
2. Participate in seminars / programmes as speakers, panelists, querists
3. Exchange visiting cards
4. Make website / use social media
5. Write article, books
6. Give suggestions to ministry, regulator, trade bodies
7. Make IPE ,network / joint venture in different areas

# WHAT TO SAY WHEN YOU TALK TO YOUR SELF


Powerful New Techniques  
to Program Your Potential  
for Success!

Dr Rajkumar S Adukia





DON'T  
SPRINT  
THE  
MARATHON

A small illustration of a runner in a white tank top and orange shorts running on a path. The path is represented by a series of pink dots that form a curved line across the bottom of the text.

Your  
27  
hour day



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# Thank You