

# Contents

---

---

	PAGE
◆ <i>Chapter-heads</i>	<i>I-5</i>
◆ <i>Acronyms</i>	<i>I-21</i>
◆ <i>Section Index</i>	<i>I-25</i>

## ***1***

---

### **DECLINING STAGE OF AN ORGANISATION**

<b>1.1</b>	Background	<i>1</i>
<b>1.2</b>	Overall scheme of the Insolvency and Bankruptcy Code	<i>6</i>
<b>1.3</b>	Insolvency Code has overriding effect	<i>11</i>
<b>1.4</b>	Limitation Act applies to proceedings before NCLT or NCLAT	<i>13</i>
<b>1.5</b>	Provisions in Companies Act, 2013 relating to winding up are applicable to the extent not contrary to Insolvency Code	<i>20</i>
<b>1.6</b>	Insolvency and Bankruptcy Board of India (IBBI)	<i>20</i>
<b>1.7</b>	Adjudicating Authority (AA) and Appellate Authorities	<i>24</i>
<b>1.8</b>	Information Utility (IU)	<i>25</i>
<b>1.9</b>	Insolvency and Bankruptcy Fund	<i>26</i>
<b>1.10</b>	Winding up provisions under Companies Act revamped	<i>27</i>
<b>1.11</b>	Transitory provisions for shifting from winding up proceedings to Insolvency	<i>27</i>
<b>1.12</b>	Lenders may apply under SARFAESI and DRT and in addition they can go for Insolvency resolution	<i>28</i>
<b>1.13</b>	Parallel proceedings under SARFAESI/RDBA, Civil Court and Insolvency Code permissible	<i>28</i>
<b>1.14</b>	Income tax provisions for corporate debtors where application for CIRP has been admitted	<i>30</i>

## CONTENTS

**I-10**

	PAGE
<b>1.15</b> Promoter/director can be Resolution applicant if Corporate Debtors is MSME	31
<b>1.16</b> Special provisions under GST relating to companies under Insolvency Process	35
<b>1.17</b> Institution and/or continuation of proceedings under FTDR against companies against whom proceedings have been instituted under Insolvency Code	38
<b>1.18</b> Role of Government and its agencies in CIRP and Liquidation Process	38

## **2**

### **INSOLVENCY PROFESSIONAL**

<b>2.1</b> Background	39
<b>2.2</b> Insolvency Professional Agency (IPA)	39
<b>2.3</b> Insolvency Professional (IP)	41
<b>2.4</b> Panel of Insolvency Professionals to recommend to NCLT as Interim Resolution Professional or Liquidator	52
<b>2.5</b> Insolvency Professional Entities	53

## **3**

### **INSOLVENCY RESOLUTION OF CORPORATE PERSONS**

<b>3.1</b> Background	56
<b>3.2</b> Initiation of corporate insolvency resolution process	56
<b>3.3</b> Who can initiate insolvency resolution process	65
<b>3.4</b> Initiation of proceedings by financial creditor	68
<b>3.4A</b> Real Estate Projects - Special provisions	80
<b>3.5</b> Insolvency proceedings can be initiated against corporate guarantor or personal guarantors	82
<b>3.6</b> Initiation of insolvency resolution by operational creditor	86
<b>3.7</b> Initiation of insolvency resolution process by corporate applicant himself	98
<b>3.8</b> Appointment of Interim Resolution Professional	101
<b>3.9</b> Further procedure before NCLT	104

	PAGE
<b>3.10</b> Withdrawal of application after admission with approval of 90% voting by CoC	104

#### 4

### CONDUCTING CORPORATE INSOLVENCY RESOLUTION PROCESS

<b>4.1</b> Background	105
<b>4.2</b> Moratorium and public announcement	109
<b>4.3</b> Public announcement of corporate insolvency resolution process	120
<b>4.4</b> Appointment and tenure of interim resolution professional	120
<b>4.5</b> Submission of proof of claims to interim resolution professional	125
<b>4.6</b> Committee of Creditors (CoC)	129
<b>4.7</b> Appointment of resolution professional in first meeting of CoC	138
<b>4.8</b> Powers and functions of Committee of Creditors (CoC)	140
<b>4.9</b> Duties of resolution professional	143B
<b>4.10</b> Prior approval of committee of creditors for certain actions by resolution professional	147
<b>4.11</b> Preparation of information memorandum	148
<b>4.12</b> Protection to insolvency resolution professional in respect of earlier transactions	149
<b>4.13</b> Special Provisions in respect of NBFC with assets of Rs. 500 crore or more	149

#### 5

### RESOLUTION PLAN BY RESOLUTION APPLICANT

<b>5.1</b> Background	154
<b>5.2</b> Ineligible Resolution Applicant	155
<b>5.3</b> Invitation for expression of interest	163
<b>5.4</b> Submission of resolution plan by resolution applicant to insolvency professional	165
<b>5.5</b> Insolvency resolution process costs	173
<b>5.6</b> Approval of resolution plan by Committee of Creditors	176
<b>5.7</b> Submission of plan to Adjudicating Authority	181

## CONTENTS

**I-12**

	PAGE
<b>5.8</b> Assistance of district administration in implementing the resolution plan	187
<b>5.9</b> Effect if resolution plan rejected by NCLT	187
<b>5.10</b> Appeal against order of adjudicating authority	187
<b>5.11</b> Immunity from prosecution of corporate debtor after approval of CIRP	187
<b>5.12</b> No action against property of corporate debtor in respect of offence committed prior to CIRP if there was change in management or sale of assets	189
<b>5.13</b> Corporate debtor and new management to provide assistance to investigating agency	189B
<b>5.14</b> Preservation of records of CIRP by RP	189B

## **6**

### **FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS**

<b>6.1</b> Speedy process for insolvency resolution	190
<b>6.2</b> Application for fast track process	190
<b>6.3</b> Procedure for fast track process	191
<b>6.4</b> NCLT can recall its order in interest of justice	192

## **6A**

### **PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PPIRP)**

<b>6A.1</b> Background of the PPIRP (Pre-Packaged Insolvency Resolution Process)	193
<b>6A.2</b> Basic design of Pre-Packaged Insolvency Resolution Process (PPIRP)	197
<b>6A.3</b> Application of provisions of CIRP to PPIRP	201
<b>6A.4</b> Priority to PPIRP over CIRP, except where CIRP proceedings have already commenced	203
<b>6A.5</b> Eligibility and conditions to apply for PPIRP	205
<b>6A.6</b> Initiation of PPIRP by Corporate Debtor	207
<b>6A.7</b> Duties and authorities of Insolvency Professional proposed to be appointed as Resolution Professional	209
<b>6A.8</b> Procedure prior to application to AA for approval to initiate PPIRP	211

	PAGE
<b>6A.9</b> Filing of application by Corporate Applicant with Adjudicating Authority	213
<b>6A.10</b> Admission or rejection of application by Adjudicating Authority (NCLT)	215
<b>6A.11</b> Moratorium during PPIRP period	216

## **6B**

### **PROCEDURE FOR PPIRP AFTER ADMISSION OF APPLICATION**

<b>6B.1</b> Formal process of PPIRP starts only after admission of application	217
<b>6B.2</b> Conduct of PPIRP by Resolution Professional	218
<b>6B.3</b> Powers of Resolution Professional during initial stages of PPIRP	220
<b>6B.4</b> Filing of Application for avoidance of transactions	221
<b>6B.5</b> Prior approval of Committee of Creditors (CoC) for certain actions by corporate debtor	223
<b>6B.6</b> Information to be supplied by financial institutions to Resolution Professional	225
<b>6B.7</b> Submission of List of claims and its updation in PPIRP	225
<b>6B.8</b> Conduct of business of Corporate Debtor during PPIRP	228
<b>6B.9</b> Constitution and functioning of Committee of Creditors in PPIRP	229
<b>6B.10</b> Meeting of Committee of Creditors in PPIRP	232

## **6C**

### **SUBMISSION AND APPROVAL OF RESOLUTION PLAN UNDER PPIRP**

<b>6C.1</b> What is a resolution plan	239
<b>6C.2</b> Submission of Base Resolution Plan by RP to CoC	243
<b>6C.3</b> Invitation to Resolution Applicants if CoC does not approve base resolution plan or operational creditors cannot be satisfied	245
<b>6C.4</b> Furnishing of information to Resolution Applicants	247
<b>6C.5</b> Submission of resolution plan by resolution applicant and its evaluation	249

## CONTENTS

**I-14**

	PAGE
<b>6C.6</b> Submission of Resolution Plans by Resolution Professional to CoC	250
<b>6C.7</b> Submission of Resolution Plan approved by CoC for approval by AA	253
<b>6C.8</b> Termination of PPIRP which ultimately results in liquidation of corporate debtor	255
<b>6C.9</b> CoC may terminate PPIRP if corporate debtor eligible for CIRP	257

### **7**

#### **LIQUIDATION OF CORPORATE PERSON**

<b>7.1</b> Initiation of Liquidation	259
<b>7.2</b> Appointment of Liquidator and his fees	263
<b>7.3</b> Powers and duties of Liquidator	267
<b>7.4</b> Liquidation Estate	271
<b>7.5</b> Realization of security interest by secured creditor	274
<b>7.6</b> Distribution of unsold assets	275
<b>7.7</b> Liabilities of contributory in liquidation	275

### **8**

#### **ADMISSION AND PROOF OF CLAIMS BY LIQUIDATOR**

<b>8.1</b> Liquidator has powers to access information	279
<b>8.2</b> Ascertaining claims against corporate debtor	280
<b>8.3</b> Avoidance of preferential transactions by liquidator	283
<b>8.4</b> Avoidance of undervalued transactions	286
<b>8.5</b> Action if corporate debtor had defraud creditors	287
<b>8.6</b> Protection to corporate debtor against extortionate credit transactions	288
<b>8.7</b> Position of secured creditor in liquidation proceedings	289

### **9**

#### **REALISATION AND DISTRIBUTION OF ASSETS BY LIQUIDATOR**

<b>9.1</b> Realisation of assets by Liquidator	292
<b>9.2</b> Mode of sale	292

	PAGE
9.3 All money to be paid into bank account except petty cash	293
9.4 Distribution of assets	293
9.5 Distribution of cash to stakeholders	297
9.6 Completion of liquidation within one year	297
9.7 Final report by Liquidator prior to dissolution	297
9.8 Unclaimed proceeds of liquidation or undistributed assets to be transferred to Corporate Liquidation Account	298
9.9 Dissolution of corporate debtor	299

## **10**

### **PAYMENT OF DUES TO STAKEHOLDERS AFTER LIQUIDATION OR DURING FORMULATION OF RESOLUTION PLAN**

10.1 Insolvency Code is complete code in respect of distribution of assets	301
10.2 Money held in trust has priority over all dues	302
10.3 Statutory dues under other laws	303
10.4 Workmen's portion of Workmen's dues previous for two years have overriding priority	304
10.5 Provisions relating to secured creditors	307
10.6 Priority of tax dues in winding up over secured creditors	307
10.7 Preferential Payments under Companies Act	310
10.8 Distribution of surplus amount members	310
10.9 Tax liability under Income Tax in respect of distribution of assets to equity shareholders	310

## **11**

### **VOLUNTARY LIQUIDATION OF COMPANIES**

11.1 Voluntary liquidation by corporates with no default	311
11.2 Procedure for Voluntary Liquidation	311
11.3 Notification to Registrar after resolution	312
11.4 Application to NCLT after assets wound up	312
11.5 Procedure for voluntary liquidation	312
11.6 Claim by various creditors Proof of claim	313
11.7 Realisation of Assets	315

	PAGE
11.8 Completion of liquidation	316
11.9 Cases where voluntary liquidation was allowed	317

## **12**

---

### **ADJUDICATION AND APPEALS FOR CORPORATE PERSONS**

12.1 Adjudicating Authority in relation to insolvency resolution and liquidation for corporate persons	318
12.2 Appeals and Appellate Authority	320
12.3 Appeal to Supreme Court on question of law	322
12.4 Civil Court not to have jurisdiction where NCLT or IBBI has jurisdiction	323
12.5 Expeditious disposal of applications	323
12.6 Penalty for fraudulent or malicious initiation of proceedings	324
12.7 Penalty of carrying on business fraudulently to defraud traders	324

## **13**

---

### **CROSS BORDER INSOLVENCY AND BANKRUPTCY**

13.1 Enabling provisions for cross border transactions	326
13.2 Agreements with foreign countries	326
13.3 Letter of request to a country outside India in respect of assets	326

## **14**

---

### **OFFENCES AND PENALTIES IN RELATION TO CORPORATE INSOLVENCY**

14.1 Punishments for offences	328
14.2 Punishment for concealment of property	328
14.3 Punishment for transactions defrauding creditors	329
14.4 Punishment for misconduct in course of corporate insolvency resolution process	330
14.5 Offences by insolvency professional	331
14.6 Punishment for falsification of books of corporate debtor	331

	PAGE
<b>14.7</b> Punishment for wilful and material omissions from statements relating to affairs of corporate debtor	331
<b>14.8</b> Punishment for false representations to creditors	331
<b>14.9</b> Punishment for contravention of moratorium or the resolution plan	331
<b>14.10</b> Punishment for false information furnished in application	332
<b>14.11</b> Punishment for non-disclosure of (a) dispute, or (b) payment of debt by operational creditor	332
<b>14.12</b> Punishment for providing false information in application made by corporate debtor	332
<b>14.13</b> Residual punishment of fine for violation of provisions of Insolvency Code	333
<b>14.14</b> NCLT can ask Government to investigate and Government can file complaint before Special Court	333
<b>14.15</b> Punishment for providing false information in Pre-Packaged Insolvency Resolution Process	333
<b>14.16</b> Punishment in case of contravention of provisions of Chapter III-A (Pre-Packaged Insolvency Resolution Process)	334
<b>14.17</b> When the application shall be deemed to be false in material particulars	334

## **15**

### **BANKRUPTCY FOR INDIVIDUALS AND PARTNERSHIP FIRMS**

<b>15.1</b> Background	335
<b>15.2</b> Adjudicating Authority	336
<b>15.3</b> Civil Court not to have jurisdiction	337
<b>15.4</b> Appeal against order of DRT	337
<b>15.5</b> Appeal to Supreme Court	337

## **16**

### **FRESH START PROCESS**

<b>16.1</b> Introduction	338
<b>16.2</b> Interim moratorium	340
<b>16.3</b> Procedure after receipt of application	340
<b>16.4</b> Objections by creditor	341
<b>16.5</b> Discharge order	342

**17****INSOLVENCY RESOLUTION OF  
INDIVIDUAL AND FIRM**

<b>17.1</b>	What is insolvency resolution?	344
<b>17.2</b>	Creditor can initiate insolvency resolution process	345
<b>17.3</b>	Interim moratorium	346
<b>17.4</b>	Admission or rejection of application by Adjudicating Authority	348
<b>17.5</b>	Moratorium if application is admitted by Adjudicating Authority	348
<b>17.6</b>	Registering of claims by creditors after public notice	349
<b>17.7</b>	Repayment plan by debtor in consultation with resolution professional	349
<b>17.8</b>	Summoning of meeting of creditors	350
<b>17.9</b>	Rights of secured creditors in relation to repayment plan	351
<b>17.10</b>	Approval of repayment plan by creditors by more than 75% voting	351
<b>17.11</b>	Order of Adjudicating Authority on repayment plan	352
<b>17.12</b>	Report of Completion of repayment plan	352
<b>17.13</b>	Discharge order	353
<b>17.14</b>	Special provisions for insolvency resolution for personal guarantors of corporate debtors	353

**18****BANKRUPTCY ORDER FOR  
INDIVIDUALS AND FIRMS**

<b>18.1</b>	Bankruptcy if insolvency resolution process fails	358
<b>18.2</b>	Interim moratorium as soon as application is filed	359
<b>18.3</b>	Bankruptcy order by Adjudicating Authority	360
<b>18.4</b>	Statement of financial position by bankrupt	361
<b>18.5</b>	Settlement of claims of creditors	362
<b>18.6</b>	Administration and distribution of estate of bankrupt	363
<b>18.7</b>	Discharge order	363
<b>18.8</b>	Modification or recall of bankruptcy order	364
<b>18.9</b>	Disqualification of bankrupt from bankruptcy commencement date till he is discharged	364

	PAGE
<b>18.10</b> Bankruptcy process for personal guarantors to Corporate Debtors	365

## **19**

### **BANKRUPTCY TRUSTEE**

<b>19.1</b> Standard of conduct of bankruptcy trustee	371
<b>19.2</b> Release of bankruptcy trustee	372
<b>19.3</b> Administration and distribution of estate of bankrupt by bankruptcy trustee	372
<b>19.4</b> Approval of creditors for certain acts to be done by bankruptcy trustee	374
<b>19.5</b> Estate of bankrupt	374
<b>19.6</b> Onerous property of bankrupt can be disowned	376
<b>19.7</b> Challenge against disclaimed property	377
<b>19.8</b> Undervalued transactions	378
<b>19.9</b> Preference transactions	379
<b>19.10</b> Extortionate credit transactions	380
<b>19.11</b> Proceedings continue even if bankrupt dies	380

## **20**

### **SETTLEMENT OF CLAIMS AGAINST BANKRUPT**

<b>20.1</b> Proof of debt	382
<b>20.2</b> Distribution of interim dividend	383
<b>20.3</b> Distribution of property among creditors	383
<b>20.4</b> Final dividend	383
<b>20.5</b> Claims of creditors who had not proved their debt	384
<b>20.6</b> Priority of payment of debts	384

## **21**

### **REGISTERED VALUERS**

<b>21.1</b> Background	386
<b>21.2</b> Qualifications and eligibility and registration as valuer	388
<b>21.3</b> Methods of valuation	392
<b>21.4</b> Liability of valuer is as 'expert'	392
<b>21.5</b> Valuation Report Identification Number on valuation report	392

CONTENTS

I-20

PAGE

**22**

**NCLT AND NCLAT**

<b>22.1</b>	Background	393
<b>22.2</b>	Constitution of Tribunal (NCLT)	393
<b>22.3</b>	National Company Law Appellate Tribunal	395
<b>22.4</b>	Provisions common to NCLT and NCLAT	396
<b>22.5</b>	Procedural aspects of NCLT and NCLAT	397
<b>22.6</b>	Appeal to Supreme Court against order of NCLAT	400
	<b>SUBJECT INDEX</b>	401