

INDIVIDUAL INSOLVENCY AND BANKRUPTCY UNDER THE IBC

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ADVOCATE



CONTENTS

- ✓ Application for Insolvency Resolution – Admission Stage
- ✓ Insolvency Resolution
- ✓ Bankruptcy Order
- ✓ Administration & Distribution of the Estate of the Bankrupt
- ✓ Discharge

THRESHOLD FOR INITIATING OF PROCEEDINGS

- **Section 78-**

This Part shall apply to matters relating to fresh start, insolvency and bankruptcy of individuals and partnership firms where the amount of the default is not less than one thousand rupees:

*Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which **shall not be more than one lakh rupees.***

WHO IS THE ADJUDICATING AUTHORITY?

- For Chapter III, the Adjudicating Authority prescribed under the IBC is the DRT.
- But under section 60 of the IBC, the NCLT is to act as the Adjudicating Authority, where a personal guarantee has been issued and the CD is undergoing process under IBC
- When does the NCLT and when does the DRT have jurisdiction?

APPLICATION BY A DEBTOR – SECTION 94

- A debtor may file for his/her default.
- Default for the purpose of section 94 should be in relation to the debt of the CD for which the personal guarantor has issued a personal guarantee
- Partnership Debt – Cannot be the basis of initiation of a proceeding for personal insolvency

PERSONS DISENTITLED TO FILE PROCEEDINGS FOR PERSONAL INSOLVENCY – SECTION 94(4) AND 94(5) OF THE IBC

- An undischarged bankrupt
- Undergoing a fresh start process
- Undergoing an insolvency resolution process
- Undergoing a bankruptcy process

APPLICATION BY CREDITOR – SECTION 95

- Creditor can file jointly or individually.
- Creditor, for this purpose, must be one, who is owed monies in his capacity as beneficiary of a guarantee and not otherwise.

CONDITIONS FOR MAKING AN APPLICATION UNDER SECTION 95

- Section 95(4)
- Documents required –
 - (i) Amount owed by the debtor to the creditor on the date of the application being filed;
 - (ii) Showing failure of debtor to pay within 14 days of receiving the notification.
 - (iii) relevant evidence of such default or non-repayment of debt.
- AAIRP Rules- Rule 7 –

“7. Application by creditor. —

 - (1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B.
 - (2) The application under sub-section (1) of section 95 shall be submitted in Form C, along with a fee of two thousand rupees.
 - (3) The creditor shall serve forthwith a copy of the application referred to in sub-rule (2) to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor.
 - (4) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.”

PARTNERS, PARTNERSHIP DEBT AND APPLICATIONS UNDER SECTION 95

- State Bank of India vs Nathella Sampath Chetty & Co, IBA/763/2020 – Firm cannot apply under section 95.

“6... Combined reading of Section 60(5) and 5(22) makes clear that to file the application against the Personal Guarantors of the Corporate Debtor before this Adjudicating Authority; the Personal Guarantor must be an individual. Moreover, the definition of 'firm' in Section 79(16) clarifies that a firm is a body of individual, which implies the expression 'individual' does not include partnership firm.

7. It can be seen that the deeds of guarantee dated 25.02.2013 and 12.10.2015, have been executed between the Applicant and Nathella Sampath Chetty & Co., Respondent herein who is a partnership firm.

8. From the above discussions, it is clear that the Respondent who is a guarantor of the Corporate Debtor is a partnership firm and this application is not under the purview of this Adjudicating Authority. Further, the provisions relating to partnership firm is yet to come into force”

INTERIM MORATORIUM



RAVI AJIT KULKARNI V. STATE BANK OF INDIA

- 46. The observations have been made by the Adjudicating Authority that the Corporate Guarantor (should have been only "Guarantor") has not filed any submission and on date of hearing there was no representation. It appears that the Adjudicating Authority was of the view that service of "Form C" on 29th August, 2020 and "Amended Form C" on 28th January, 2021 was the notice. Having gone through the Form and Rules and Regulations, we do not find that anywhere it is provided that when the Form is submitted it would also contain notice of date as to when the matter is coming up before the Adjudicating Authority. In the absence of any such requirement, we find, as above, that there has to be limited notice for presence conveying the 'filing' of application and commencing of Interim Moratorium under Section 96 from date "filling (to be mentioned)"

FILING IS COMPLETE WHEN CASE IS E-FILED

In the case of Dinesh Kumar Basia v. State Bank of India, the Hon'ble NCLAT decided as follows -

18. When as per Rule 10, sub-rule (2), when an electronic facility is available and an Application is filed in electronic form, the filing is complete as soon as it is registered electronically, we do not find any support from the statutory scheme to the submission of learned Counsel for the Appellant that petition would be treated as filed when it is numbered by the Registry. Numbering of an Application by Registry is a process, which is undertaken by the Registry as per the relevant rules and instructions. Several consequences ensue on filing of the Application in the Registry, if it is accepted that the filing shall be dependent on numbering of the Application by the Registry. It will lead to uncertainty regarding date of filing. When statutory consequences are provided, there has to be certainty regarding such consequences. We cannot accept any interpretation, which may lead to uncertainty regarding the date of filing, resulting in uncertainty, regarding enforcement of the Interim Moratorium has serious consequences, which consequences flow immediately after filing of the Application. If we accept the submission of the Appellant that filing is postponed till it is numbered, it will lead to uncertainty and allow the Guarantors and other Respondents to delay the moratorium by pleading that filing is not complete, since the Application has not yet numbered. The statutory scheme, thus, does not in any manner support the submission of learned Counsel for the Appellant. Numbering of Application is essential for different purpose and cannot be equated with the filing as contemplated by the Rules."

CASE IS FILED WHEN DEEMED TO BE WITHOUT DEFECTS?

In the case of State Bank of India vs. Krishan Kumar Basia CP(IB) 111 (ND)/2022, the Hon'ble NCLT decided as follows-

Mere plain reading of the provisions referred to supra show that an interim moratorium under Section 96(1)(a) shall commence on the date of the applications in relation to all the debts and shall as cease to have effect on the date of admission of such application. Therefore, the date of filing of the application is the prime consideration so far applicability of Section 96 of IBC, 2016 is concerned. Here in the case in hand, as we have already observed that the application filed by the Applicant was prior to the date of filing of the application by the respondent. Hence the interim moratorium in terms of Section 96 of the IBC, 2016 shall commence on the date of the filing of application in terms of Rule 2(14) of the NCLT Rules and not on the date when the application was numbered or listed for hearing.

DIFFERENCE BETWEEN 'FILING' AND 'NUMBERING'

The difference between Filing and Numbering was brought up in the case of PNB Housing Finance Ltd. vs. Mohit Arora , I.A. 4750/ND/2021 in Company Petition No. (IB)-395(ND)/2021 by the Hon'ble NCLT in a manner as stated below-

As per the above Rules, it is clear that "filing", "scrutiny" and "numbering" are separate consequential stages. At the time an application is filed, the same is allotted a diary number and date of filing. Thereafter, the application is sent for scrutiny and if found defect-free, then numbered and registered. Pertinently, the date of filing remains the same, i.e., the first date on which the application is presented before the filing-counter of the Registry.

PURPOSE OF SECTION 99(1) AND 99(2)

In the case of Ravi Ajit Kulkarni, Personal Guarantor of Pratibha Industries Limited vs. State Bank of India, MANU/NL/0331/2021, the Hon'ble NCLAT stated as follows -

"Section 99 require the Resolution Professional to "examine the application" and to "submit the report" to the Adjudicating Authority "recommending for approval or rejection of the application". What the Resolution Professional does under Section 99(2) is to "require the Debtor to prove repayment of the debt claimed as unpaid by the Creditor" by furnishing (a) evidence of electronic transfer of the unpaid amount from the bank account of the Debtor; (b) evidence of encashment of a cheque issued by the Debtor; or (c) a signed acknowledgement by the Creditor accepting receipt of dues. This is mere collection of evidence."

- In the same case, the Hon'ble NCLAT continued to explain the context of the neutrality of the resolution professional appointed by the creditor or a debtor in a manner as follows –

“The Rules show that the IBBI follows a procedure of maintaining a panel of Insolvency Professionals with information about disciplinary proceedings against them from time to time. Under the Regulations relating to Resolution Professionals various safeguards have been provided and the Resolution Professionals are creatures of IBC read with Rules and Regulations and subject to discipline through IBBI. As mentioned the legislature has confidence in the Resolution Professionals under the system that they will act as Professionals in terms of IBC, its Rules and Regulations. IBC provides that the Creditor may, himself or through Resolution Professional file application under Section 95. Section 97 of IBC does not bar the same Resolution Professional from being appointed as Resolution Professional by the Adjudicating Authority. The safeguard for the Debtor is in Section 98 where the Debtor may seek replacement of the Resolution Professional. Thus, we are not accepting the fear expressed by the Appellant that how could the Resolution Professional appointed by the Creditor itself if appointed by the Adjudicating Authority deal with the application filed by himself for the Creditor and give Report. What the Resolution Professional under Section 99 would be doing was requiring the Debtor to furnish proof of repayment as per Section 99(2) and after doing the necessary spade work Resolution Professional has to recommend acceptance or rejection of the application with reasons. The decision making whether to admit or reject the application would be only by the Adjudicating Authority.”

NATURE OF REPORT

In the case of Sri. Babu A. Dhammanagi & 2 Ors. v. Union of India, W.P. No.21626 of 2021, the Karnataka High Court decided as follows -

From perusal of the report of resolution professional, it is evident that the insolvency proceedings initiated against the personal guarantor under the Code is a time bound process. The aforesaid procedure contains filing of application under Section 95 of the Code for appointment of resolution professional by the Adjudicating Authority under Section 99 of the Code, submission of the report by the resolution professional under Section 99 of the Code recording reasons for recommending the request for acceptance or rejection of the application and finally the admission or rejection of the application by the Adjudicating Authority. The resolution professional is required to give reasons in support of its recommendation. The Adjudicating Authority is the body, which takes the final decision on the recommendation submitted by the resolution professional. The Adjudicating Authority is not bound by the recommendation made by the resolution professional. There is no element of adjudication on the part of the resolution professional...

...Therefore, the contention raised by the petitioner that the impugned provisions are arbitrary as no person can be allowed to be a judge in his own case is misconceived. The Supreme Court in Gujarat Urja Vikas Nigam Ltd vs. Amit Gupta (2021) 7 SCC 209 has negated the contention of the petitioner and has held that the role of Adjudicating Authority is that of a rubber stamp in the context of Section 95, 97, 99 and 100 of the Code. It has further been held by the Supreme Court that Section 95, 97, 99 and 100 of the Code do not suffer from any illegality or any unconstitutionality. As per the procedure prescribed under Section 95 to 100 of the Code, the role of resolution professional is limited to make the appropriate recommendation to the Adjudicating Authority and the final decision of the admission or rejection of the application referred to under Section 95 solely lies with the Adjudicating Authority. It is also pertinent to note that Section 5(27) of the Code read with the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 defines the expression 'resolution professional'. The aforesaid rule lays down the guidelines for appointment of insolvency professionals including their eligibility criteria and a code of conduct to be followed by insolvency professional. Second application has been made through the resolution professional. It is pertinent to note here that he does not have any personal interest in the application.

SECTION 100

(1) The Adjudicating Authority shall, within fourteen days from the date of submission of the report under section 99 pass an order either admitting or rejecting the application referred to in section 94 or 95, as the case may be.

(2) Where the Adjudicating Authority admits an application under sub-section (1) , it may, on the request of the resolution professional, issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan.

(3) The Adjudicating Authority shall provide a copy of the order passed under sub-section (1) along with the report of the resolution professional and the application referred to in section 94 or 95, as the case may be, to the creditors within seven days from the date of the said order.

(4) If the application referred to in section 94 or 95, as the case may be, is rejected by the Adjudicating Authority on the basis of report submitted by the resolution professional that the application was made with the intention to defraud his creditors or the resolution professional, the order under sub-section (1) shall record that the creditor is entitled to file for a bankruptcy order under Chapter IV.

- *There are 2 main ingredients in section 100 -*

(1) that a decision be rendered within 14 days from the receipt of the report from the RP.

(2) such decision may be one of admission or rejection of the application under section 94 or 95 of the IBC.

PRESCRIBED 14 DAY PERIOD – MANDATORY OR DIRECTORY?

In the case of Surendra Trading Co v Juggilal Kamlapat Jute Mills Co Ltd, the Hon'ble Supreme Court of India decided as follows -

Further, we are of the view that the judgments cited by the NCLAT and the principle contained therein applied while deciding that period of fourteen days within which the adjudicating authority has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to Sub-section (5) of Section 7, Section 9 or Sub-section (4) of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible. Thus, we hold that the aforesaid provision of removing the defects within seven days is directory and not mandatory in nature.

POWER TO ADMIT OR REJECT -

- As per section 100 for the furtherance and acceptance of
- Requirements as provided under section 94 and 95 are to be satisfied.
- In addition to the above, the facts of each case may raise certain defenses, which may result in the consideration of the following questions:
 - I. Proceedings barred by limitation.
 - II. Guarantee not valid/ guarantee stands discharged/ guarantee not executed – Questioning the validity of the underlying guarantee.
 - III. Liability extinguished by previously approved resolution plan.
 - IV. Liability is disputed and disputed debts cannot be subject matter of personal insolvency proceedings.
 - V. No proceeding for corporate insolvency pending or ongoing.
 - VI. Guarantor Dead and Guarantee lapses with guarantor.
 - VII. Liability not arisen in terms of the contract inter se parties

SECTION 101 - MORATORIUM

(1) When the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

(2) During the moratorium period—

(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

(3) Where an order admitting the application under section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.

(4) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.


SECTION 102 – PUBLIC NOTICE

102. (1) The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty-one days of such issue.

(2) The notice under sub-section (1) shall include—

- (a) details of the order admitting the application;
- (b) particulars of the resolution professional with whom the claims are to be registered; and
- (c) the last date for submission of claims.

(3) The notice shall be—

- (a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;
 - (b) affixed in the premises of the Adjudicating Authority; and
 - (c) placed on the website of the Adjudicating Authority.
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SECTION 103 – REGISTERING OF CLAIMS BY RP

Section 103: Registering of claims by creditors.

(1) The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.

(2) In addition to the claims referred to in sub-section (1) , the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

SECTION 104 – PREPARATION OF LIST OF CREDITORS

Section 104: Preparation of list of creditors.

104. (1) The resolution professional shall prepare a list of creditors on the basis of—

(a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;

(b) claims received by the resolution professional under section 102.

(2) The resolution professional shall prepare the list mentioned in sub-section (1) within thirty days from the date of the notice.


SECTION 105 – REPAYMENT PLAN

Section 105: Repayment plan.

- (1) The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs.
- (2) The repayment plan may authorise or require the resolution professional to—
 - (a) carry on the debtor's business or trade on his behalf or in his name; or
 - (b) realise the assets of the debtor; or
 - (c) administer or dispose of any funds of the debtor.
- (3) The repayment plan shall include the following, namely:—
 - (a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
 - (b) provision for payment of fee to the resolution professional;
 - (c) such other matters as may be specified.

REGULATION 17 - CONTENTS OF REPAYMENT PLAN.

(1) The repayment plan shall provide the following –

- (a) the term of the repayment plan and its implementation schedule, including the amounts to be repaid and dates of repayment to creditors;
 - (b) the source of funds that will be used to pay resolution process costs and that such payment shall be made in priority over any creditor;
 - (c) a minimum budget for the duration of the repayment plan, to cover the reasonable expenses of the guarantor and members of his immediate family to the extent they are dependent on him, provided that at least ten percent of the realisable income of the guarantor shall be utilised for repayment of debts;
 - (d) financing required for implementation of the repayment plan;
 - (e) if the guarantor has any business, the manner in which it is proposed to be conducted during the course of the repayment plan, and the role of the resolution professional;
 - (f) the manner in which funds held for the purposes of the repayment plan, invested or otherwise dealt with, pending repayment to creditors;
 - (g) the functions which are to be undertaken by the resolution professional, including supervision and implementation of the repayment plan;
 - (h) variation of onerous terms of a contract or transaction involving the guarantor;
 - (i) the details of excluded assets and excluded debts of the guarantor; and
 - (j) terms and conditions for the discharge of the guarantor.
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(2) The repayment plan may provide for the following-

(a) transfer or sale of all or part of the assets of the guarantor along with the mode and manner of such sale;

(b) administration or disposal of any funds of the guarantor;

(c) satisfaction or modification of any security interest;

(d) reduction in the amount payable to creditors;

(e) curing or waiving of any breach of a debt due from the guarantor;

(f) modification in the terms of repayment of any debt due from the guarantor;

(g) part of the income of the guarantor to be used for the repayment of the debt, and the manner of calculating the income of the guarantor;

(h) the manner in which funds held for the purpose of repayment to creditors, and not so repaid at the end of the repayment plan, are to be dealt with; and

(i) such other matters as may be required by the creditors.

SECTION 106 – REPORT ON THE REPAYMENT PLAN

Section 106: Report of resolution professional on repayment plan.

(1) The resolution professional shall submit the repayment plan under section 105 along with his report on such plan to the Adjudicating Authority within a period of twenty-one days from the last date of submission of claims under section 102.

(2) The report referred in sub-section (1) shall include that—

- (a) the repayment plan is in compliance with the provisions of any law for the time being in force;
- (b) the repayment plan has a reasonable prospect of being approved and implemented; and
- (c) there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:

Provided that where the resolution professional recommends that a meeting of the creditors is not required to be summoned, reasons for the same shall be provided.

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(3) The report referred to in sub-section (2) shall also specify the date on which, and the time and place at which, the meeting should be held if he is of the opinion that a meeting of the creditors should be summoned.

(4) For the purposes of sub-section (3)—

(a) the date on which the meeting is to be held shall be not less than fourteen days and not more than twenty eight days from the date of submission of report under sub-section (1);

(b) the resolution professional shall consider the convenience of creditors in fixing the date and venue of the meeting of the creditors.

NOTE: There is no adjudication by the Hon'ble NCLT at this stage and this report, is merely for providing information to the DRT/ NCLT, which is the jurisdictional authority to supervise the process

SECTION 108 - CONDUCT OF MEETING OF CREDITORS.

- (1) The meeting of the creditors shall be conducted in accordance with the provisions of this section and sections 109, 110 and 111.
- (2) In the meeting of the creditors, the creditors may decide to approve, modify or reject the repayment plan.
- (3) The resolution professional shall ensure that if modifications are suggested by the creditors, consent of the debtor shall be obtained for each modification.
- (4) The resolution professional may for a sufficient cause adjourn the meeting of the creditors for a period of not more than seven days at a time.

SECTION 109: VOTING RIGHTS IN MEETING OF CREDITORS.

109. (1) A creditor shall be entitled to vote at every meeting of the creditors in respect of the repayment plan in accordance with the voting share assigned to him.

(2) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(3) A creditor shall not be entitled to vote in respect of a debt for an unliquidated amount.

(4) A creditor shall not be entitled to vote in a meeting of the creditors if he—

(a) is not a creditor mentioned in the list of creditors under section 104; or

(b) is an associate of the debtor.

SECTION 110: RIGHTS OF SECURED CREDITORS IN RELATION TO REPAYMENT PLAN.

- (1) Secured creditors shall be entitled to participate and vote in the meetings of the creditors.
- (2) A secured creditor participating in the meetings of the creditors and voting in relation to the repayment plan shall forfeit his right to enforce the security during the period of the repayment plan in accordance with the terms of the repayment plan.
- (3) Where a secured creditor does not forfeit his right to enforce security, he shall submit an affidavit to the resolution professional at the meeting of the creditors stating—
 - (a) that the right to vote exercised by the secured creditor is only in respect of the unsecured part of the debt; and
 - (b) the estimated value of the unsecured part of the debt.
- (4) In case a secured creditor participates in the voting on the repayment plan by submitting an affidavit under sub-section (3), the secured and unsecured parts of the debt shall be treated as separate debts.
- (5) The concurrence of the secured creditor shall be obtained if he does not participate in the voting on repayment plan but provision of the repayment plan affects his right to enforce security.

Explanation.—For the purposes of this section, “period of the repayment plan” means the period from the date of the order passed under section 114 till the date on which the notice is given by the resolution professional under section 117 or report submitted by the resolution professional under section 118, as the case may be.

SECTION 111: APPROVAL OF REPAYMENT PLAN BY CREDITORS.

Section 111: Approval of repayment plan by creditors.

111. The repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.

SECTION 112: REPORT OF MEETING OF CREDITORS ON REPAYMENT PLAN.

112. (1) The resolution professional shall prepare a report of the meeting of the creditors on repayment plan.

(2) The report under sub-section (1) shall contain—

- (a) whether the repayment plan was approved or rejected and if approved, the list the modifications, if any;
- (b) the resolutions which were proposed at the meeting and the decision on such resolutions;
- (c) list of the creditors who were present or represented at the meeting, and the voting records of each creditor for all meetings of the creditors; and
- (d) such other information as the resolution professional thinks appropriate to make known to the Adjudicating Authority.

SECTION 115: EFFECT OF ORDER OF ADJUDICATING AUTHORITY ON REPAYMENT PLAN

115. (1) Where the Adjudicating Authority has approved the repayment plan under section 114, such repayment plan shall—

(a) take effect as if proposed by the debtor in the meeting; and

(b) be binding on creditors mentioned in the repayment plan and the debtor.

(2) Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.

(3) A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196.

SECTION 116: IMPLEMENTATION AND SUPERVISION OF REPAYMENT PLAN

116. (1) The resolution professional appointed under section 97 or under section 98 shall supervise the implementation of the repayment plan.

(2) The resolution professional may apply to the Adjudicating Authority for directions, if necessary, in relation to any particular matter arising under the repayment plan.

(3) The Adjudicating Authority may issue directions to the resolution professional on the basis of an application under sub-section (2).

SECTION 118: REPAYMENT PLAN COMING TO END PREMATURELY.

(1) A repayment plan shall be deemed to have come to an end prematurely if it has not been fully implemented in respect of all persons bound by it within the period as mentioned in the repayment plan.

(2) Where a repayment plan comes to an end prematurely under this section, the resolution professional shall submit a report to the Adjudicating Authority which shall state—

- (a) the receipts and payments made in pursuance of the repayment plan;
- (b) the reasons for premature end of the repayment plan; and
- (c) the details of the creditors whose claims have not been fully satisfied.

(3) The Adjudicating Authority shall pass an order on the basis of the report submitted under sub-section (2) by the resolution professional that the repayment plan has not been completely implemented.

(4) The debtor or the creditor, whose claims under repayment plan have not been fully satisfied, shall be entitled to apply for a bankruptcy order under Chapter IV

(5) The Adjudicating Authority shall forward to the persons bound by the repayment plan under section 115, a copy of the—

(a) report submitted by the resolution professional to the Adjudicating Authority under sub-section (2); and

(b) order passed by the Adjudicating Authority under sub-section (3).

(6) The Adjudicating Authority shall forward a copy of the order passed under sub-section (4) to the Board, for the purpose of recording entries in the register referred to in section 196.

SECTION 119: DISCHARGE ORDER.

(1) On the basis of the repayment plan, the resolution professional shall apply to the Adjudicating Authority for a discharge order in relation to the debts mentioned in the repayment plan and the Adjudicating Authority may pass such discharge order.

(2) The repayment plan may provide for—

(a) early discharge; or

(b) discharge on complete implementation of the repayment plan.

(3) The discharge order shall be forwarded to the Board, for the purpose of recording entries in the register referred to in section 196.

(4) The discharge order under sub-section (3) shall not discharge any other person from any liability in respect of his debt.

I. APPLICATION STAGE

- Application for Bankruptcy of a Debtor to the Adjudicating Authority can be made by a:
 - i. creditor – individually or jointly with other creditors; or
 - ii. Debtor
- Following are the circumstances in which such an Application can be made:

REJECTION of the Application for initiating Insolvency Resolution Process under section 94 or 95 of the IBC – section 100(4)

REJECTION of the Repayment Plan submitted by the Debtor under Ch III, Part III of the IBC – Section 115(2)

FAILURE in the implementation of the Repayment Plan, based on the Report by the RP – section 118(3)

APPLICATION BY THE DEBTOR – CONTENTS

SECTION 122

- The Application made by debtor shall be accompanied by –
 - i. Records of the Insolvency Resolution Process undertaken under Chapter III of Part III
 - ii. Statement of Affairs of the Debtor (prescribed in the Regulations)
 - iii. Order of the Adjudicating Authority permitting the Debtor to apply for Bankruptcy
- Application may propose a 'Bankruptcy Trustee' in the Application
- Form & Manner of the Application – prescribed in Regulations
- Application shall not be withdrawn without the leave of the Adjudicating Authority
REASON: Adjudicating Authority is a Court of Record



APPLICATION BY THE CREDITOR – CONTENTS

SECTION 123

- Application to be accompanied by:
 - i. Records of the Insolvency Resolution Process under Chapter III, Part III
 - ii. Order permitting creditor to apply for bankruptcy
 - iii. Details of the debt(s) owed to the creditor(s)
- A creditor's application, in cases of SECURED DEBT, shall be accompanied with following:
 - i. Statement by a creditor having the right to enforce the security, that he shall, in the event of a bankruptcy order is made, give up his security, for the benefit of the other creditors; or
 - ii. A statement by the creditor stating –
 - a. Application for bankruptcy is only in respect of the unsecured part of the debt; and
 - b. An estimated value of the unsecured part of the debt

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- In case, Application for bankruptcy by creditor is only with respect of the unsecured part of the debt, then secured and unsecured parts of the debt shall be treated as separate debts.
- Propose a name of an Insolvency Professional as the 'Bankruptcy Trustee'
- In case Debtor is deceased, the Application can be made against the legal representatives of the Debtors.
- Leave of the Adjudicating Authority is a prerequisite for Withdrawal of the Application

EFFECT OF INSTITUTION OF AN APPLICATION FOR BANKRUPTCY ORDER

SECTION 124

- Commencement of 'Interim moratorium' from the date of making of the Application & operative till the date on which bankruptcy order is passed by the Adjudicating Authority.
- Pending legal action / proceedings against any property of the Debtor, in respect of his debts – DEEMED TO HAVE BEEN STAYED
- Creditors not entitled to initiate any further or other proceedings against any property of the Debtor in respect of any of his debts
- In case where Debtor is a Partnership Firm, the protection of interim moratorium extends to all the Partners of the Firm.

APPOINTMENT OF BANKRUPTCY TRUSTEE

SECTION 124

- Where the Application of Bankruptcy Order Proposes an Insolvency Professional in their Application:
 - Adjudicating Authority forwards the proposed name of the IP to IBBI
 - IBBI to confirm about pendency of any proceeding against the IP within 10 days
 - Once confirmed by IBBI, the proposed IP to be appointed as Bankruptcy Trustee
- Where no name is proposed in the Application:
 - Adjudicating Authority shall direct the IBBI to nominate an IP as Bankruptcy Trustee
 - IBBI shall nominate an IP within 10 days
 - IP nominated by IBBI shall be appointed as Bankruptcy Trustee

II. BANKRUPTCY ORDER ADMINISTRATION & DISTRIBUTION OF THE ESTATE OF THE BANKRUPT

- Within 14 days receiving confirmation from IBBI, the Adjudicating Authority shall pass a bankruptcy order against the Debtor and also appointing a Bankruptcy Trustee. Such a Debtor is adjudged and known as 'BANKRUPT'.
- Effect (Section 128):
 - Estate of the Bankrupt shall vest with the Bankruptcy Trustee
 - Estate of the Bankrupt shall be divided among his creditors
 - 'Moratorium' operates vis-à-vis the Bankrupt, except Secured creditors who have opted out.
 - If a Secured Creditor does not make a Statement giving up his security for the benefits of the other creditors of the Bankrupt, then he can deal with his security interest in the same manner as if no bankruptcy order has been passed. However, if such a Creditor takes no action within 30 days of the Bankruptcy Order, then such a creditor loses his right to deal with the security interest.

DISQUALIFICATION OF BANKRUPT (SECTION 140(1))

- In addition to any disqualification under any other law for the time being in force, a bankrupt shall, from the Bankruptcy Commencement Date, shall be disqualified from –
 - ✓ being appointed or acting as a trustee or representative in respect of any trust, estate or settlement;
 - ✓ being appointed or acting as a public servant;
 - ✓ being elected to any public office where the appointment to such office is by election; and
 - ✓ being elected or sitting or voting as a member of any local authority.

RESTRICTIONS ON BANKRUPT (SECTION 141(1))

A bankrupt, from the bankruptcy commencement date, shall –

- ✓ not act as a director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company;
- ✓ without the previous sanction of the bankruptcy trustee, be prohibited from creating any charge on his estate or taking any further debt;
- ✓ be required to inform his business partners that he is undergoing a bankruptcy process;
- ✓ prior to entering into any financial or commercial transaction of such value as may be prescribed, either individually or jointly, inform all the parties involved in such transaction that he is undergoing a bankruptcy process;
- ✓ without the previous sanction of the Adjudicating Authority, be incompetent to maintain any legal action or proceedings in relation to the bankruptcy debts; and
- ✓ not be permitted to travel overseas without the permission of the Adjudicating Authority.

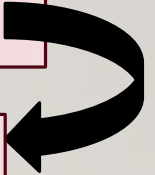
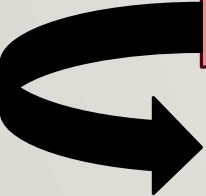
POST-BANKRUPTCY ORDER (FROM THE BANKRUPTCY COMMENCEMENT DATE)

Submission of Statement of financial Position to the Bankruptcy Trustee Within 7 days (Section 129)

Public Notice, Invitation of Claims

Adjudicating Authority shall send Notice to Creditors mentioned in the Statement of Affairs / Application of the Bankrupt

Adjudicating Authority shall also issue public notice inviting claims from creditors



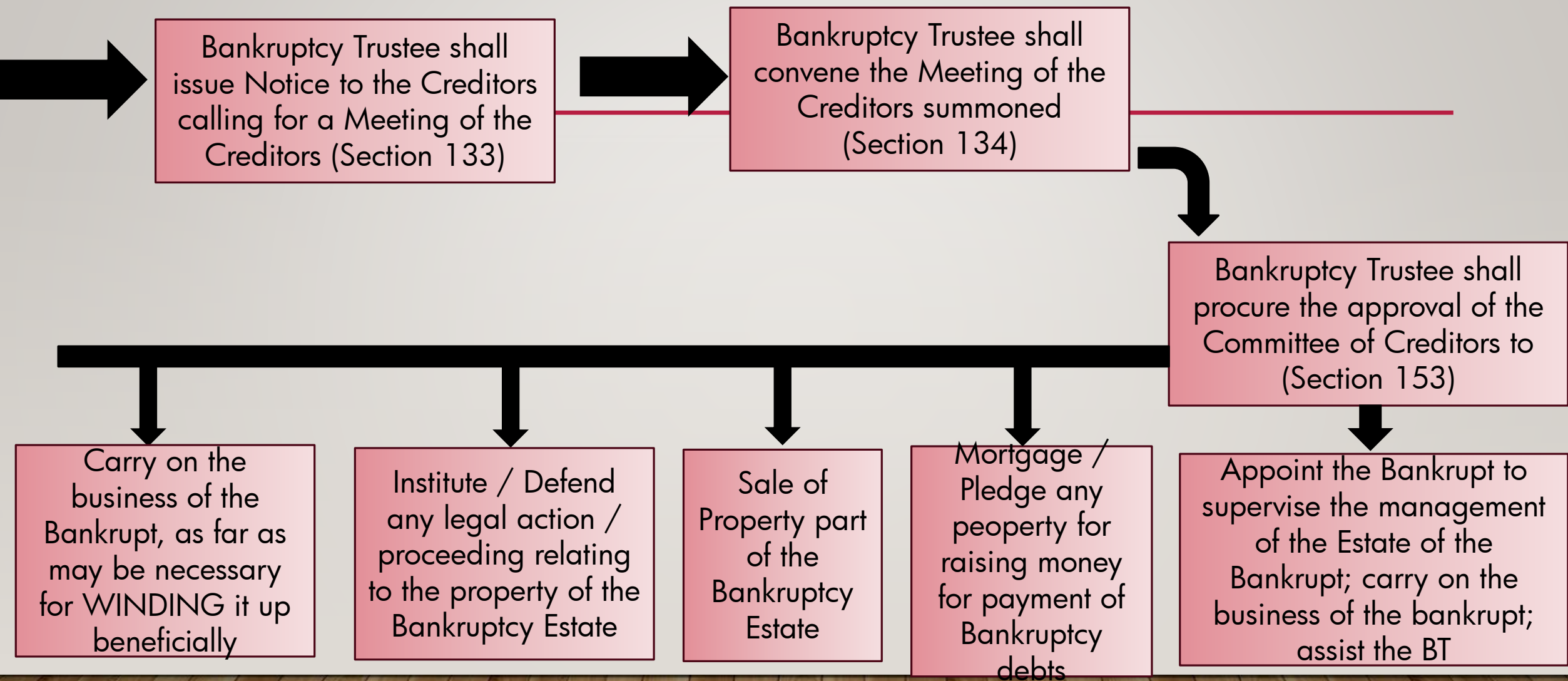
Creditors shall register their claims with the Bankruptcy Trustee



Bankruptcy Trustee shall prepare a list of Creditors of the Bankrupt



Bankruptcy Trustee shall give Notice to each of the Creditors to submit proof of debt within 14 days of preparing the List (Section 171)



ESTATE OF THE BANKRUPT (SECTION 155)

INCLUDES



1. Property belong to / vested in the Bankrupt on the Bankruptcy Commencement Date
2. The capacity to exercise and initiate proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the Bankrupt for his own benefit at the bankruptcy commencement date or before the date of the discharge order passed u/s 138

EXCLUDES



1. Ecluded Assets (Section 79(14), IBC)
2. Property held by the Bankrupt on TRUST for any other person
3. All such due to any workman or employee from the Provident / Pension / Gratuity Funds
4. Such assets as may be notified by the Central Government

DUTIES OF THE BANKRUPT TO THE BANKRUPTCY TRUSTEE

- Give information of his affairs to the Bankruptcy Trustee
 - Attending on the Bankruptcy Trustee as and when required
- } Operates even after Discharge Order
- Give Notice to the Bankruptcy Trustee, if after the Bankruptcy Commencement Date, the Bankrupt acquires or devolves upon himself any property or his income increases.
 - Take possession of any property, books, papers or other records available with the Bankrupt's agent / banker and deliver the said property and documents to the Bankruptcy Trustee (Section 156).

DUTIES OF THE BANKRUPTCY TRUSTEE

- Take possession & control of all properties, books, papers & other records relating to the estate of the bankrupt or the affairs of the Bankrupt which belong to him / are in the Bankrupt's possession or control;
- Investigate into the affairs of the Bankrupt (Section 149(1)(a))
- Estimate the value of any Bankruptcy Debt which does not have a specific value assigned by the concerned Creditor;
- Where the Bankruptcy Trustee serves a Notice to the creditors asking for 'Proof of Debt', and when such a creditor does not file proof of security within 30 days of service of the Notice, the Bankruptcy Trustee – only after the leave of the Adjudicating Authority, sell or dispose any property that was subject to the security, free of that security

RESTRICTIONS ON THE BANKRUPT ON DISPOSITION OF PROPERTY (SECTION 158)

- Any disposition of property made by the debtor, during the period between the date of filing of the application for bankruptcy and the bankruptcy commencement date shall be **VOID**.
- Any disposition of property made under sub-section (1) shall not give rise to any right against any person, in respect of such property, even if he has received such property before the bankruptcy commencement date in – (a) good faith; (b) for value; and (c) without notice of the filing of the application for bankruptcy.
- For the purposes of this section, the term “property” means all the property of the debtor, whether or not it is comprised in the estate of the bankrupt, but shall not include property held by the debtor in trust for any other person.

“AFTER-ACQUIRED PROPERTY” OF THE BANKRUPT (SECTION 159)

- “After-Acquired Property” – any property which has been acquired by or has devolved upon the Bankrupt after the Bankruptcy Commencement date.
- Bankruptcy Trustee entitled to claim any after-acquired property for the estate of the Bankrupt by giving Notice to the Bankrupt. Such a Notice cannot be for:
 - Excluded assets
 - Property acquired/devolved on Bankrupt after DISCHARGE ORDER u/s 138
- **Subsequent Bona Fide Purchaser not affected:** A Bankruptcy Trustee shall not be entitled, by virtue of section 159, to claim from any person who has acquired any right over after-acquired property in good faith, for value and without Notice of the Bankruptcy.

ONEROUS PROPERTY OF THE BANKRUPT

- Means: any unprofitable contract, property in the estate of the bankrupt which is unrealisable, not readily saleable, or such that it may give rise to a claim;
- After giving Notice to Bankrupt / any person interested in the Onerous Property – DISCLAIM such onerous property which forms part of the Estate of the Bankrupt;
- Bankruptcy Trustee may give Notice despite taking possession of the Onerous property, endeavouring to sell it or exercising ownership rights in relation to it.
- If the Onerous Property forms part of the Estate of the Bankrupt, then prior approval of the Creditors is mandatory before making a Notice of disclaimer.
- Notice of Disclaimer shall not affect the rights of any other person. Any person who sustains loss/damage because of the Notice of Disclaimer – Deemed Creditor to that extent

DISCLAIMER OF LEASEHOLDS INTEREST (SECTION 162)

- Bankruptcy Trustee is not entitled to disclaim any leasehold interest, unless:
 - Notice of Disclaimer is served on every interested person; and
 - No Application objecting to the Disclaimer has been made with respect to the Leasehold Interest, within 14 days of the date on which the Notice was served
 - Where Application objecting the disclaimer has been filed by the interested person and the Adjudicating Authority has directed the Disclaimer shall take effect.

CHALLENGE AGAINST DISCLAIMED PROPERTY OF THE BANKRUPT (SECTION 163)

- Who can Apply?
 - Any person who claims interest in the Disclaimed Property
 - Any person who is under liability of the Disclaimed Property
 - Any person who is dwelling in a house which is the subject of the Disclaimed Property
- The Authority, on such an Application, may make an order for the vesting of the Disclaimed Property, in or for its delivery to any of the persons mentioned above. However, such an order shall not be made, unless it appears to the Authority that it would be just to do so for the purpose of compensating the person.

THIRD-PARTY OBLIGATIONS UNDER CONTRACTS ENTERED WITH THE BANKRUPT (SECTION 168)

- APPLICABILITY: Contract entered by the Bankrupt with a person before the Bankruptcy Commencement Date.
- Any party to the Contract other than the Bankrupt may apply to the Adjudicating Authority for:
 - An order discharging the obligations of such an Applicant or the Bankrupt under the Contract;
 - Payment of damages by the party or the Bankrupt for non-performance of the contract. Such damages payable by the Bankrupt = Bankruptcy Debt.

UNDERVALUED TRANSACTIONS (SECTION 164)

- Who may Apply to the Adjudicating Authority? Bankruptcy Trustee
- **Applicability:** Those Transactions which took place 2 years prior to Filing of the Application for Bankruptcy (Lookback period) + triggered Bankruptcy Process
- **“DEEMED UNDERVALUED TRANSACTION”** – Transaction between Bankrupt and his Associate entered into during the 2 years’ lookback period.
- Adjudicating Authority may pass an order:

Declaring an Undervalued Transaction: **VOID**

Requiring any property transferred, as part of an Undervalued Transaction to be vested with the Bankruptcy Trustee as part of the Estate of the Bankrupt

RESTORING the position –
Status Quo Ante

PREFERENCE TRANSACTIONS (SECTION 165)

- Who may Apply to the Adjudicating Authority? Bankruptcy Trustee
- **APPLICABILITY:** Any transaction giving preference to an (a) associate of the Bankrupt taken place in 2 years' lookback period; (b) any other person with a lookback period of 6 months + such transactions should have caused the bankruptcy process to have triggered.
- Order passed by the Adjudicating Authority = Order passed in 'Undervalued Transactions'

EFFECT OF AN ORDER PASSED BY ADJUDICATING AUTHORITY IN UNDERVALUED & PREFERENCE TRANSACTIONS (SECTION 160)

- If the order passed by the Adjudicating Authority – in case of section 164, 165, is a case where the said transaction / interest has been acquired in:
 - In good faith;
 - For value
 - Without notice that the bankrupt entered into the said transaction at an undervalue or for giving preference
 - Without notice of the fact that the Bankrupt has filed an application for Bankruptcy or that the Bankruptcy Order has already been passed;
 - by a person, who at the time of receiving the benefit, was not the Associate of the Bankrupt
- Then in such aforesaid cases and circumstances - the order passed u/s 164 / 165 shall not give rise to a right against a third-party who has already acquired interest in the property.

EXTORTIONATE CREDIT TRANSACTIONS (SECTION 167)

- **Who may Apply to the Adjudicating Authority?** Bankruptcy Trustee
- **APPLICABILITY:** Those Transactions where the Bankrupt is / has been a party + Lookback Period: 2 years preceding the Bankruptcy Commencement Date.
- **Order of the Adjudicating Authority:**
 - Set aside – whole / part of the debt created by the transaction;
 - Vary the terms of the transaction
 - Require any person – who has already been paid, to pay a sum to the Bankruptcy Trustee
 - Require any person to surrender a property of the Bankrupt held as security to the Trustee
- Sums paid / Properties surrendered become part of the Estate of the Bankrupt
- **DEEMED ECT:** Exorbitant payments / Unconscionable under the principles of Contract Law

MUTUAL CREDIT & SET-OFF (SECTION 173)

- Before the Bankruptcy Commencement Date, if there has been mutual dealings between the Bankrupt and any creditor, the Bankruptcy Trustee shall –
 - take an account of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other; and
 - only the balance shall be provable as a bankruptcy debt or as the amount payable to the bankruptcy trustee as part of the estate of the bankrupt.
- Sums due from the Bankrupt to another party shall not be included in the account taken by the bankruptcy trustee under sub-section (1), if that other party had notice at the time they became due that an application for bankruptcy relating to the bankrupt was pending

DISTRIBUTION OF INTERIM DIVIDEND (SECTION 174)

- Whenever the bankruptcy trustee has sufficient funds in his hand, he may declare and distribute interim dividend among the creditors in respect of the bankruptcy debts which they have respectively proved.
- **Whether Approval of Creditors needed?** – Section is Silent.
- In the calculation and distribution of the interim dividend, the bankruptcy trustee shall make provision for –
 - any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their debts; and
 - any bankruptcy debts which are subject of claims which have not yet been determined;
 - disputed proofs and claims; and
 - expenses necessary for the administration of the estate of the bankrupt.

DISTRIBUTION OF PROPERTY (SECTION 175)

Any Property in its existing form –
peculiar – cannot be advantageously
and readily sold



After Approval of the CoC, property may be
divided in its existing form amongst the creditors –
according to its estimated value

- Such Approval shall be sought by the Bankruptcy Trustee for each transaction.
- Where the bankruptcy trustee has done anything without the approval of the committee of creditors, the committee may, for the purpose of enabling him to meet his expenses out of the estate of the bankrupt, ratify the act of the bankruptcy trustee.
- The committee of the creditors shall not ratify the act of the bankruptcy trustee under subsection (3) unless it is satisfied that the bankruptcy trustee acted in a case of urgency and has sought its ratification without undue delay.

FINAL DIVIDEND (SECTION 176)

- Where the entire estate of the Bankrupt has been realised or so much of it could be realised in the opinion of the Bankruptcy Trustee, he shall give Notice –
 - Of his intention to declare a final dividend; or
 - that no dividend or further dividend shall be declared.
- Notice shall require all claims against the estate of the bankrupt to be established by a final date specified in the notice. However, the Adjudicating Authority may, on the application of any person interested in the administration of the estate of the bankrupt, postpone the final date.
- After the 'Final Date' the bankruptcy trustee shall – defray any outstanding expenses of the bankruptcy out of the estate of the bankrupt; and if he intends to declare a final dividend, declare and distribute that dividend among the creditors who have proved their debts, without regard to the claims of any other persons.
- Surplus, if any, thereafter, goes to the Bankrupt.

CLAIMS OF CREDITORS (SECTION 177)

A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but –

- (a) when he has proved the debt, he shall be entitled to be paid any dividend or dividends which he has failed to receive, out of any money for the time being available for the payment of any further dividend; and
- (b) any dividend or dividends payable to him shall be paid before that money is applied to the payment of any such further dividend.

No action shall lie against the bankruptcy trustee for a dividend, but if the bankruptcy trustee refuses to pay a dividend payable in the aforesaid circumstances, the Adjudicating Authority may order him to – (a) pay the dividend; & (b) pay, out of his own money –

- (i) interest on the dividend; & (ii) the costs of proceedings in which the order to pay was made.

PRIORITY OF PAYMENT OF DEBTS (SECTION 178)

1. *Firstly:* costs and expenses incurred by the Bankruptcy Trustee for the Process – IN FULL
2. *Secondly:* (i) Workmen's dues for the period of 24 months preceding Bankruptcy Commencement date & (ii) Debts owed to Secured Creditors
3. *Thirdly:* wages and any unpaid dues owed to employees, other than workmen, of the bankrupt for the period of 12 months preceding the bankruptcy commencement date;
4. *Fourthly:* amounts due to Central & State Governments including the amount to be received on account of Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date;
5. *Fifthly:* all other debts and dues owed by the bankrupt including unsecured debts.

COMPLETION OF ADMINISTRATION (SECTION 137)

- After distribution of the proceeds from sale of the estate of Bankruptcy, the Trustee shall convene a meeting of the CoC & provide with a report of the administration of the estate of the bankrupt.
- The committee of creditors shall approve the report submitted by the bankruptcy trustee within 7 days of the receipt of the report and determine whether the bankruptcy trustee should be released under section 148.
- The bankruptcy trustee shall retain sufficient sums from the estate of the bankrupt to meet the expenses of convening and conducting the meeting required during the administration of the estate.

III. DISCHARGE

- **Who shall Apply?** Bankruptcy Trustee
- **TIMELINES:** Amongst the following – whichever is earlier:

On the expiry of **ONE YEAR**
w.e.f. Bankruptcy
Commencement Date

Within 7 days from approval of
the CoC of the Completion of
Administration & Distribution

- Adjudicating Authority shall pass a “DISCHARGE ORDER” and send a copy of the same to the IBBI for the purpose of record entry in their Register (Section 138).

MODIFICATION OR RECALL OF BANKRUPTCY ORDER (SECTION 142)

- The Adjudicating Authority may, on an application or suo motu, modify or recall a bankruptcy order, whether or not the bankrupt is discharged, if it appears to the Adjudicating Authority that —
 - (a) there exists an error apparent on the face of such order; or
 - (b) both the bankruptcy debts and the expenses of the bankruptcy have, after the making of the bankruptcy order, either been paid for or secured to the satisfaction of the Adjudicating Authority.
- Where the Adjudicating Authority modifies or recalls the bankruptcy order under this section, any sale or other disposition of property, payment made or other things duly done by the bankruptcy trustee shall be valid except that the property of the bankrupt shall vest in such person as the Adjudicating Authority may appoint or, in default of any such appointment, revert to the bankrupt on such terms as the Adjudicating Authority may direct.

EFFECT OF DISCHARGE (SECTION 139)

- The discharge order of the Adjudicating Authority shall release the bankrupt from all the bankruptcy debt. Provided that discharge shall not –
 - affect the functions of the bankruptcy trustee; or
 - affect the operation of the provisions of Chapters IV and V of Part III:
 - release the bankrupt from any debt incurred by means of fraud or breach of trust to which he was a party; or
 - discharge the bankrupt from any excluded debt.
- All disqualifications of (section 140(1) and restrictions on (Section141(1)) cease to operate.

RELEASE OF THE BANKRUPTCY TRUSTEE (SECTION 148)

- A bankruptcy trustee shall be released from his office with effect from the date on which the Adjudicating Authority passes an order appointing a new bankruptcy trustee in the event of replacement, resignation or occurrence of vacancy under sections 145, 146 or section 147, as the case may be.
- Notwithstanding the release, the bankruptcy trustee who has been so released, shall share all information with the new bankruptcy trustee in respect of the bankruptcy process and co-operate with the new bankruptcy trustee in such matters as may be required.
- A bankruptcy trustee who has completed the administration of the bankruptcy process shall be released of his duties with effect from the date on which the committee of creditors approves the report of the bankruptcy trustee under section 137.

QUESTION TIME!

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THANK YOU !

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