

Workshop on "IBC Code 2016 and IBBI Insolvency Exam"

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Purpose of this workshop

To make the participants aware of the provisions under the Insolvency & Bankruptcy Code, 2016.

To provide them with the conceptual understanding about various aspects relating to IB Code so as to facilitate their individual preparation for the Exam.

Finally, to provide them with a roadmap to prepare and to pass the IBBI's Limited Insolvency Exam.

Such big is the Insolvency & Bankruptcy Code-2016

Part		Chapter
I	Preliminary	
II	Insolvency Resolution and Liquidation for Corporate persons	I – Preliminary II – Corporate Insolvency Resolution Process III – Liquidation Process IV – Fast Track Corporate Insolvency Resolution Process V – Voluntary Liquidation of Corporate Persons VI – Adjudicating Authority for Corporate Persons VII – Offences & Penalties
III	Insolvency Resolution & Bankruptcy for Individuals and Partnership Firms	I – Preliminary II – Fresh Start Process III - Insolvency Resolution Process IV - Bankruptcy Order for Individuals and Partnership Firms V – Administration and Distribution of the Estate of the Bankrupt VI - Adjudicating Authority for Individuals and Partnership Firms VII – Offences & Penalties
IV	Regulation of Insolvency Professionals, Agencies and Information Utilities	I – The Insolvency & Bankruptcy Board of India II – Powers & Functions of the Board III – Insolvency Professional Agencies IV - Insolvency Professionals V – Information Utilities VI – Inspection & Investigation VII – Finance, Accounts and Audit
V	Miscellaneous	CA Pramod Jain, pramod7jain@gmail.com / 9766034562 Sections 224 to 255 and the First to the eleventh Schedule

This is what I plan to cover in this session

Part		Chapter
III	Insolvency Resolution & Bankruptcy for Individuals and Partnership Firms	I – Preliminary II – Fresh Start Process III - Insolvency Resolution Process IV - Bankruptcy Order for Individuals and Partnership Firms V – Administration and Distribution of the Estate of the Bankrupt VI - Adjudicating Authority for Individuals and Partnership Firms VII – Offences & Penalties

There are 255 Sections under the IB Code out which 110 form part of Part III

Just to recap yesterday's discussions, following Insolvency & Bankruptcy processes covered under IBC

For Corporates:

1. Corporate Insolvency Resolution Process
2. Liquidation Process
3. Fast Track Corporate Insolvency Resolution Process
4. Voluntary Liquidation

For Individuals and partnerships (Non-Corporates)

1. Fresh Start Process
2. Insolvency Resolution Process
3. Bankruptcy Order

Sequence which I intend to follow for my presentation

1. Strategy which I used for cracking the LIE of IBBI
2. Provisions of IBC relating to Individuals and partnerships (Non-Corporates)
 - Fresh Start Process
 - Insolvency Resolution Process
 - Bankruptcy Order

Part-I: How to enroll for the Examination

1. Limited Insolvency Exam and National Insolvency Exam
2. Firstly, visit the **site of NISM** at <https://certifications.nism.ac.in/nismaol/> and register yourself. It will require uploading of a **photo, PAN and Aadhaar card**, so keep the same handy.
3. After registration, log in to NISM, "**your page**" will open, search for the "Limited Insolvency Exam (IBBI)" and enroll for it.
4. While doing so, **select the date and exam centre** of your convenience.
5. You will need to pay a fee of **Rs. 1500/-** which can be done online using Netbanking or Credit/Debit card.
6. This fee is to be **paid for every attempt** that you take every time.
7. Now you are all set for the Examination.
8. Also download the Syllabus from website of IBBI, applicable from 1st Jan 2018
9. How to prepare for the Exam and **how to write it**, covered in the following slides.

It will not take you more than one hour to cross this hurdle.

Part-II: How to prepare for the Exam

1. As mentioned before, this Exam is **not only very interesting** but at the same time challenging. Interesting, because **this is not a typical pen & paper exam**, which would involve subjectivity in some extent.
2. Rather, **it is an online examination** where your answer has to be absolutely accurate. And plus, there is a **negative marking of 0.25 marks** for each 1 mark question which is answered wrongly. Hence one has to be **absolutely meticulous** in preparation for the exam as well as in writing the exam.
3. **What worked for me** in passing this exam:
4. *Firstly, start with the **BLRC Report**. You can download it from the link: http://ibbi.gov.in/BLRCReportVol1_04112015.pdf. You must go through it thoroughly from the first page to the last page. This report has a **weightage of just 5 marks** out of hundred, but this will provide you with a solid foundation in getting a very strong understanding of the IBC Code, 2016 and the **Rules and Regulation** thereunder.*

Part-II: How to prepare for the Exam

6. Now **pick up a copy of the bare act on IBC** of any publisher which also contains Rules and Regulation under the Code. *Use a highlighter pen to highlight whatever you think is of importance.*
7. Go through this book thoroughly, **2-3 times, making notes side by side.** This is very very important.
8. Reading of the bare act 2-3 times **will make all the provisions clear in your mind** and you will be able to answer any question on IBC that would appear in the Exam.
9. **Since 1st July 2017**, many **new Rules & Regulations** have been added, you also need to prepare them well.
10. Interestingly, the **above action points, cover base for 66% of the syllabus** of the Examination. Because, case studies and transaction analysis which appear as questions in the paper are also based on the above mentioned points only.
11. **Remember, we need 60 marks to pass this exam out of 100.**
12. Having done the above, now focus on 1) **RDDDBFI Act**, 2) **SARFAESI Act**, 3) CDR, 4) SDR, 5) and 6) S4A of RBI, 7) The Arbitration and Conciliation Act, 1996; 8) The Limitation Act, 1963. All these topics put together have a **weightage of 6 marks** out of 100.
13. For RDDDBFI, SARFAESI, the Arbitration and Conciliation Act, 1996 and the Limitation Act, 19 use the bare Acts whereas for CDR, SDR etc material can be downloaded from the portal <http://www.iiipicai.in/>.
14. Though this site is by the ICAI but it is **open to all aspirants of IBC Exam** irrespective of whichever Institute they may belong to.

Part-II: How to prepare for the Exam

14. <http://www.iiipicai.in/> this site is excellently done and good number of videos and material is available including copies of all the bare acts.
15. It has **so many mock tests** which are extremely useful in getting the feel of real exam. Make extensive use of this portal. I am sure, you will find this portal extremely useful.
16. **IPA of ICSI** has also been mailing to all its members very useful materials, MCQs and Case Studies from time to time. You must make full use of the same as this too would help you in passing this examination.
17. **After SARFAESI etc** mentioned under action point 13 above, shift your focus on:
 - a) Companies Act,
 - b) The Partnership Act, and
 - c) the LLP Act.

These Act have a weightage of 10 marks
18. About the **Companies Act**, pick up any latest book on Companies Act and refer all the Chapters prescribed as part of the Syllabus for the Exam.
19. And for the **Partnership Act and LLP Act**, pick up the bare acts and prepare from the same.

Part-II: How to prepare for the Exam

20. Now the next part covers:
 - a) The Indian Contract Act,
 - b) Transfer of Property Act and
 - c) the Sale of Goods Act.
 - d) Specific Relief Act,1963.
 - e) Negotiable Instruments Act,1881.
21. These five Acts put together have a **weightage of 6 marks** out of 100.
22. Now remember, our aim is to pass this exam by ensuring that we get at least 60 marks in our attempt. Therefore, considering the input-output ratio, I decided to **prepare only for the Indian Contract Act** and took the **Transfer of Property Tax Act and the Sale of Goods Act** in option. And this really worked for me very well. I am sure, it should for you too.
23. But **depending upon availability of time** with you, you can decide otherwise.
24. In any case, the MCQs given on <http://www.iiipicai.in/> will prepare you relatively well for the Transfer of Property Tax Act and the Sale of Goods Act as well, without investing too much time in them.
25. Here again, use the **bare act of The Indian Contract Act.**

Part-II: How to prepare for the Exam

26. Then there are 2 more areas forming for part of the IBC Exam Syllabus and i.e. **1) General Awareness and 2) Finance & Accounts, weightage of 6 marks.**
 27. I did not do any special preparation for these 2 topics as it is just not possible also, as these are so vast topics.
 28. But I am sure, **your professional experience** should be able to help you to do well in respect of these topics.
 29. However, you can prepare yourself on the topics such as **Financial Ratios, CAPM Model, Operating Leverage, Financial Leverage** and broad understanding of **IndAS**.
 - 30. Subsequent to June 2017**, the course contents have been expanded, do take care of the same as well.
 31. Do not do not **do not, try to memorise** anything rather read the contents minimum 3-4 times and more.
 32. Kept **offences and penalties** in option, as there are too many and that too with differing quantum in every case with very little consistency.
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- In any case, I thought the aim is to pass the Exam and there is always a limitation of time. Therefore, I applied the above strategy for preparation and with god's grace I could pass the exam, with it.
 - Hopefully, this will work for you too. **And I would be too happy to know that it did.**

Part-III: How to write the Exam - “Strategy in tackling the IBC Exam”

1. In my experience, passing the IBC Exam, **75% depends on “how well you have prepared for it”** and the remaining **25% depends on how well you tackle the actual Exam**. And in my view, **it is this 25% part** which makes the real difference.
2. First of all, please remember, it is **not important as to how many questions you attempt**, what is important is, **how many questions you attempt correctly**, as there is negative marking of 0.25 marks for every wrong answer which you give for a question of 1 mark. **And this can be really killing and frustrating.**
3. For example, let us say, you attempted all the questions in your attempt to somehow make it. And you **answered questions worth 67 marks correctly** and questions worth **33 marks wrongly**.
4. So even though you got 7 more marks than required for passing the exam, you would still fail because, the **33 questions answered wrongly will eat 8.25 marks** of your marks because of negative marking. As a consequence, your actual score will come down to 58.75 i.e. (67-8.25). What a pity, isn't it?
5. So how should you go about tackling the exam **so as to avoid this mishap**? Just follow the following strategy with whatever modifications which you may feel appropriate.

Part-III: How to write the Exam - “Strategy in tackling the IBC Exam”

6. To begin with, keep answering only those questions about which **you are 100%** sure that you know the correct answer. Follow the principle of **“First time right”**.
7. If you are not sure about a question, **“mark it for review”**. But before doing so, click on the option which you think, should be the correct answer for this question. So that next time when you come back to it, you do not have to spend too much time on it again.
8. And when you are sure about a question that, **you definitely do not know the answer of it, just skip it**. No need to spend time on it at all, either now or later.
9. Now after completing the entire paper, following the above three steps, by clicking the **review icon** you will see in front of you:
 1. How many questions you have attempted about which you are absolutely sure in your own judgement.
 2. How many questions you have kept open for review and
 3. How many questions you have not attempted at all **(these are the ones you are sure that you do not know the answer)**.

Part-III: How to write the Exam - “Strategy in tackling the IBC Exam”

10. Now let us assume that **the total of questions which are absolutely confident of, is 65**, which defacto means you are through. Therefore, you need not do anything. It is possible that you may have some surplus time, have a quick look on the questions **“marked for review”**, if something is found simple to answer, otherwise you can close the Exam, get the good news of passing it and go home with a smile on your face and result in your hand.
11. Second scenario, **let’s say for example, you have answered 55 questions (or questions worth 55 marks)** about which you are absolutely sure. So now your task is to just ensure that out of the questions **which you have marked for review**, you are able at least **answer about 8-10 questions** correctly, if it is more, so much better.
12. So, now read the question and the multiple choices very very carefully with total concentration and focus so as to be able to, use the **logic of elimination** of wrong options and thereby try and reach to the correct answer.
13. Please **don’t try guess work (mutka)**, it can be dangerous. Keep your head absolutely cool. And keep on working on it and I am sure, you will certainly reach the desired number and sail through the exam.

Part-III: How to write the Exam - “Strategy in tackling the IBC Exam”

14. The total **no. of questions is about 86 and not 100**, as few questions carry 2 marks each.
15. There are **few Case Studies** which are again based on the provisions of IBC 2016, will have **3-4 questions** of 2 marks each.
16. **Time is of absolute essence** in this Exam, hence ensure that you **do not get stuck up** on any question, give a calculated time and move on.
17. One more suggestion which I would like to make is, even if you are **not fully prepared at this moment, just schedule** and appear for this exam at your earliest possible. This will help you in many ways.
 - Firstly, it will make you **aware of the entire process** of the exam and how you should play the above strategy.
 - Secondly, it will make you realise, **what kind of questions appear** in the exam and
 - Finally, it will make you realise, **how well you are prepared and how much more preparation** you still have to do. This will cost you Rs. 1500/- extra, but I think this investment is definitely worth it.
18. Please also remember some of the questions carry 2 marks whereas most of them carry 1 mark each. This you can see on your screen and answer the **questions which carry 2 marks each with even greater care** and awareness as wrong answer to such a question will eat 0.5 marks of your score.

Part III

Insolvency Resolution And Bankruptcy For Individuals And Partnership Firms

Chapter I

Preliminary

(From Section 78 - 79)

Section 78 - Application

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**.

Section 79 - Definitions

(1) "**Adjudicating Authority**" means the **Debt Recovery Tribunal** constituted under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

(2) "**associate**" of the debtor means—

(a) a person who belongs to the **immediate family** of the debtor;

(b) a person who is a **relative of the debtor** or a relative of the **spouse of the debtor**;

(c) a person who **is in partnership** with the debtor;

(d) a person who is a **spouse or a relative of any person** with whom the debtor is in partnership;

(e) a person who is **employer of the debtor** or **employee of the debtor**;

(f) a person who is a **trustee of a trust** in which the **beneficiaries of the trust include a debtor**, or the terms of the trust confer a power on the trustee which may be exercised for the benefit of the debtor; and

(g) **a company**, where the debtor or the debtor along with his associates, **own more than fifty per cent. of** the share capital of the company or control the appointment of the board of directors of the company.

Explanation.—For the purposes of this sub-section, "**relative**", with reference to any person, means anyone who is related to another, if—

(i) they are members of a Hindu Undivided Family;

(ii) one person is related to the other in such manner as may be prescribed;

Section 79 - Definitions

(14) "excluded assets" for the purposes of this part includes—

(a) unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation,

(b) unencumbered furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family;

(c) any unencumbered personal ornaments of such value, as may be prescribed, of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;

(d) any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family; and

(e) an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed;

“Excluded assets” are the assets which will not be touched for discharging the debts of the Bankrupt

Section 79 - Definitions

(15) "excluded debt" means—

- (a) liability to **pay fine imposed** by a court or tribunal;
- (b) liability to **pay damages for negligence**, nuisance or breach of a statutory, contractual or other legal obligation;
- (c) liability to **pay maintenance to any person** under any law for the time being in force;
- (d) liability **in relation to a student loan**; and
- (e) any other debt as may be prescribed;

“Excluded Debts” are the debts which will not form part of the Bankruptcy

Section 79 - Definitions

(16) "**firm**" means a body of individuals carrying on business in partnership whether or not registered under section 59 of the Indian Partnership Act, 1932;

(17) "**immediate family**" of the debtor means his spouse, dependent children and dependent parents;

(18) "**partnership debt**" means a debt for which all the partners in a firm are jointly liable;

Section 79 - Definitions

(19) "**qualifying debt**" means amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a **liquidated sum** either immediately or at certain future time and does not include—

- (a) an excluded debt;
- (b) a debt to the extent it is secured; and
- (c) **any debt which has been incurred three months prior** to the date of the application for fresh start process;

"qualifying debt" are the debts which will form part of the Bankruptcy

Part III

Insolvency Resolution And Bankruptcy For Individuals And Partnership Firms

Chapter II

Fresh Start Process
(From Section 80 to 93)

Part III Chapter II - Fresh Start Process

- Section 80 - Eligibility for making an application for a fresh start
- Section 81 - Application for fresh start order
- Section 82 - Appointment of resolution professional
- Section 83 - Examination of application by resolution professional
- Section 84 - Admission or rejection of application by Adjudicating Authority
- Section 85 - Effect of admission of application
- Section 86 - Objections by creditor and their examination by resolution professional
- Section 87 - Application against decision of resolution professional
- Section 88 - General duties of debtor
- Section 89 - Replacement of resolution professional
- Section 90 - Directions for compliances of restrictions, etc
- Section 91 - Revocation of order admitting application
- Section 92 – Discharge Order
- Section 93 - Standard of conduct

Who is eligible to avail “Fresh Start”?

Who can file an application for “Fresh Start”?

How will you differentiate, “fresh start process, insolvency resolution process and bankruptcy process”?

(Section 80 - Eligibility for making an application for a fresh start)

Section 80 - Eligibility for making an application for a fresh start

80. (1) A debtor, who is **unable to pay his debt** and fulfils the conditions specified in sub-section (2) , shall be entitled to **make an application for a fresh start** for discharge of his qualifying debt under this Chapter.

(2) A debtor may **apply, either personally or through a resolution professional**, for a fresh start under this Chapter in respect of his qualifying debts to the Adjudicating Authority if —

- (a) the **gross annual income** of the debtor does not exceed **sixty thousand rupees**;
- (b) the **aggregate value of the assets** of the debtor does not exceed **twenty thousand rupees**;
- (c) the **aggregate value of the qualifying debts** does not exceed **thirty-five thousand rupees**;
- (d) he is not an undischarged bankrupt;
- (e) he **does not own a dwelling unit**, irrespective of whether it is encumbered or not;
- (f) a **fresh start process, insolvency resolution process or bankruptcy process** is not subsisting against him; and
- (g) **no previous fresh start order** under this Chapter has been made in relation to him in the **preceding twelve months** of the date of the application for fresh start.

How many people you think will be eligible as per Sec 80 (2) in this country?

This is truly applicable in rarest of rare cases.

Section 81 -Application for fresh start order

81. (1) When an application is filed under section 80 by a debtor, **an interim-moratorium shall commence on the date of filing of said application** in relation to all the debts and shall cease to have effect on the date of **admission or rejection** of such application, as the case may be.

(2) During the interim-moratorium period,—

(i) any **legal action or legal proceeding pending** in respect of any of his debts shall be deemed to have been stayed; and

(ii) **no creditor shall initiate** any legal action or proceedings in respect of such debt.

(3) The application under section 80 shall be in such form and manner and accompanied by such fee, as may be prescribed.

Section 81 -Application for fresh start order

(4) The application under sub-section (3) shall contain the following information supported by an affidavit, namely:—

- (a) a list of all debts owed by the debtor as on the date of the said application along with details relating to the amount of each debt, interest payable thereon and the names of the creditors to whom each debt is owed;
- (b) the interest payable on the debts and the rate thereof stipulated in the contract;
- (c) a list of security held in respect of any of the debts;
- (d) the financial information of the debtor and his immediate family up to two years prior to the date of the application;
- (e) the particulars of the debtor's personal details, as may be prescribed;
- (f) the reasons for making the application;
- (g) the particulars of any legal proceedings which, to the debtor's knowledge has been commenced against him;
- (h) the confirmation that no previous fresh start order under this Chapter has been made in respect of the qualifying debts of the debtor in the preceding twelve months of the date of the application.

Adjudicating authority in case of Corporates is NCLT and in case of Non-Corporates it is DRT.

NCLT/DRT will always direct the Board (IBBI) to check about pending Disciplinary Proceedings against IRP within 7 days of application?

Or within 7days, ask the Board (IBBI) to nominate IRP.

Board will nominate IRP within 10 days.

IRP stands for Insolvency Resolution Professional and Interim Resolution Professional depending on the context.

(Section 82 - Appointment of resolution professional)

Section 82 - Appointment of resolution professional

- 82. (1)** Where an application under section 80 is filed by the debtor through a resolution professional, the **Adjudicating Authority shall direct the Board within seven days** of the date of receipt of the application and shall seek confirmation from the Board that there are no disciplinary proceedings against the resolution professional who has submitted such application.
- (2) The **Board shall communicate** to the Adjudicating Authority in writing either—
- (a) confirmation of the appointment of the resolution professional who filed an application under sub-section (1); or
 - (b) rejection of the appointment of the resolution professional who filed an application under sub-section (1) and **nominate a resolution professional suitable** for the fresh start process.
- (3) Where an **application under section 80 is filed by the debtor himself** and not through the resolution professional, the **Adjudicating Authority shall direct the Board within seven days** of the date of the receipt of an application to nominate a resolution professional for the fresh start process.

Section 82 - Appointment of resolution professional

- (4) The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority under sub-section (3).
- (5) The Adjudicating Authority shall by order appoint the resolution professional recommended or nominated by the Board under sub-section (2) or sub-section (4), as the case may be.
- (6) A resolution professional appointed by the Adjudicating Authority under sub-section (5) shall be provided a copy of the application for fresh start.

Who would like to be appointed as IRP in case of Fresh Start process?

RP to examine the application within 10 days of his appointment, and submit report either recommending acceptance or rejection.

Report to contain details of:

(a) qualifying debts; and

(b) liabilities eligible for discharge under sub-section (3) of section 92.

Basis to presume Debtor's inability to pay

Basis for recommending rejection of the application

(Section 82 - Examination of application by resolution professional)

Section 83 - Examination of application by resolution professional

83. (1) The resolution professional shall examine the application made under section 80 **within ten days of his appointment, and submit a report** to the Adjudicating Authority, either recommending acceptance or rejection of the application.

(2) The report referred to in sub-section (1) shall contain the details of the amounts mentioned in the application which in the opinion of the resolution professional are—

(a) qualifying debts; and

(b) liabilities eligible for discharge under sub-section (3) of section 92.

(3) The **resolution professional may call for such further information or explanation** in connection with the application as may be required from the debtor or any other person who, in the opinion of the resolution professional, may provide such information.

(4) The debtor or any other person, as the case may be, shall furnish such information or explanation **within seven days of receipt of the request** under sub-section (3).

Section 83 - Examination of application by resolution professional

- (5) The resolution professional shall presume that the debtor is unable to pay his debts at the date of the application if—
- (a) in his opinion the information supplied in the application indicates that the debtor is unable to pay his debts and he has no reason to believe that the information supplied is incorrect or incomplete; and
 - (b) he has reason to believe that there is no change in the financial circumstances of the debtor since the date of the application enabling the debtor to pay his debts.
- (6) The resolution professional shall reject the application, if in his opinion—
- (a) the debtor does not satisfy the conditions specified under section 80; or
 - (b) the debts disclosed in the application by the debtor are not qualifying debts; or
 - (c) the debtor has deliberately made a false representation or omission in the application or with respect to the documents or information submitted.
- (7) The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report to the Adjudicating Authority under sub-section (1) and shall give a copy of the report to the debtor.

Section 84 - Admission or rejection of application by Adjudicating Authority

84. (1) The Adjudicating Authority may **within fourteen days from the date of submission of the report** by the resolution professional, pass an order either **admitting or rejecting** the application made under sub-section (1) of section 81.

(2) The order passed under sub-section (1) accepting the application shall state the **amount which has been accepted as qualifying debts** by the resolution professional and **other amounts eligible for discharge** under section 92 for the purposes of the fresh start order.

(3) A **copy of the order passed** by the Adjudicating Authority under sub-section (1) along with a copy of the application **shall be provided to the creditors** mentioned in the application **within seven days** of the passing of the order.

Section 85 - Effect of admission of application

85. (1) On the date of admission of the application, the **moratorium period shall commence** in respect of all the debts.
- (2) **During the moratorium period**—
- (a) any **pending legal action or legal proceeding** in respect of any debt shall be deemed to have been stayed; and
 - (b) subject to the provisions of section 86, the **creditors shall not initiate any legal action** or proceedings in respect of any debt.
- (3) During the moratorium period, **the debtor shall**—
- (a) 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**;
 - (b) not **dispose of or alienate** any of his assets;
 - (c) **inform his business partners** that he is undergoing a fresh start process;
 - (d) be **required to inform prior to entering into any financial or commercial transaction** of such value as may be notified by the Central Government, either individually or jointly, that he is **undergoing a fresh start process**;
 - (e) **disclose the name under which he enters into business transactions**, if it is different from the name in the application admitted under section 84;
 - (f) **not travel outside India** except with the permission of the Adjudicating Authority.
- (4) The **moratorium ceases** to have effect at the end of the period of **one hundred and eighty days** beginning with the date of admission unless the order admitting the application is revoked under sub-section (2) of section 91.

Interim Moratorium Vs. Moratorium

Section 86 - Objections by creditor and their examination by resolution professional

86. (1) Any creditor mentioned in the order of the Adjudicating Authority under section 84 to whom a qualifying debt is owed may, **within a period of ten days from the date of receipt of the order under section 84**, object only on the following grounds, namely:—

(a) inclusion of a debt as a qualifying debt; or

(b) incorrectness of the details of the qualifying debt specified in the order under section 84.

(2) A **creditor may file an objection** under sub-section (1) by way of an application to the resolution professional.

(3) The application under sub-section (2) shall be supported by such information and documents as may be prescribed.

(4) The resolution professional shall **consider every objection made** under this section.

Section 86 - Objections by creditor and their examination by resolution professional

(5) The resolution professional shall **examine the objections** under sub-section (2) and either accept or **reject the objections, within ten days** of the date of the application.

(6) The resolution professional **may examine any matter that appears to him to be relevant** for making of a final list of qualifying debts for the purposes of section 92.

(7) On the basis of the examination under sub-section (5) or sub-section (6), the resolution professional shall—

(a) **prepare an amended list of qualifying debts** for the purpose of the discharge order;

(b) make an application to the **Adjudicating Authority for directions** under section 90; or

(c) take **such other steps** as he considers necessary in relation to the debtor.

Section 87 - Application against decision of resolution professional

87. (1) The debtor or the creditor who is aggrieved by the action taken by the resolution professional under section 86 may, within ten days of such decision, make an application to the Adjudicating Authority challenging such action on any of the following grounds, namely:—

- (a) that the resolution professional has not given an opportunity to the debtor or the creditor to make a representation; or
- (b) that the resolution professional colluded with the other party in arriving at the decision; or
- (c) that the resolution professional has not complied with the requirements of section 86.

(2) The Adjudicating Authority shall decide the application referred to in sub-section (1) within fourteen days of such application, and make an order as it deems fit.

(3) Where the application under sub-section (1) has been allowed by the Adjudicating Authority, it shall forward its order to the Board and the Board may take such action as may be required under Chapter VI of Part IV against the resolution professional.

Section 88 - General duties of debtor

88. The debtor shall—

(a) **make available to the resolution professional all information** relating to his affairs, attend meetings and comply with the requests of the resolution professional in relation to the fresh start process.

(b) **inform the resolution professional** as soon as reasonably possible of—

(i) **any material error or omission** in relation to the information or document supplied to the resolution professional; or

(ii) **any change in financial circumstances** after the date of application, where such change has an impact on the fresh start process.

Can a RP be replaced?
If yes, then how, why and by whom?

(Section 89 - - Replacement of resolution professional)

Section 90 - Directions for compliances of restrictions, etc

90. (1) The resolution professional may apply to the Adjudicating Authority for any of the **following directions**, namely:—

- (a) **compliance of any restrictions** referred to in sub-section (3) of section 85, in case of non-compliance by the debtor; or
- (b) **compliance of the duties of the debtor** referred to in section 88, in case of non-compliance by the debtor.

(2) The resolution professional may apply to the Adjudicating Authority for **directions in relation to any other matter** under this Chapter for which no specific provisions have been made.

Can the order admitting application be revoked? If yes then
and how?

(Section 91 - Revocation of order admitting application)

Section 91 - Revocation of order admitting application

91. (1) The resolution professional may submit an application to the Adjudicating Authority seeking revocation of its order made under section 84 on the following grounds, namely :—

- (a) if due to any **change in the financial circumstances of the debtor**, the debtor is ineligible for a fresh start process; or
- (b) **non-compliance by the debtor** of the restrictions imposed under sub-section (3) of section 85; or
- (c) if the **debtor has acted in a mala fide manner** and has willfully failed to comply with the provisions of this Chapter.

(2) The Adjudicating Authority shall, **within fourteen days** of the receipt of the application under sub-section (1), may by order admit or reject the application.

(3) On passing of the order admitting the application referred to in sub-section (1) , the **moratorium and the fresh start process shall cease to have effect.**

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

Section 92 – Discharge Order

92. (1) The resolution professional shall prepare a final list of qualifying debts and submit such list to the Adjudicating Authority **at least seven days before the moratorium period comes to an end.**

(2) The Adjudicating Authority shall pass a discharge order at the end of the moratorium period **for discharge of the debtor from the qualifying debts** mentioned in the list under sub-section (1).

(3) Without prejudice to the provisions of sub-section (2), the Adjudicating Authority shall **discharge the debtor from the following liabilities**, namely:—

(a) **penalties in respect of the qualifying debts** from the date of application till the date of the discharge order;

(b) **interest including penal interest** in respect of the qualifying debts from the date of application till the date of the discharge order; and

(c) **any other sums owed under any contract** in respect of the qualifying debts from the date of application till the date of the discharge order.

Section 92 – Discharge Order

(4) The discharge order shall not discharge the debtor from any debt not included in sub-section (2) and from any liability not included under sub-section (3).

(5) The discharge order shall be **forwarded to the Board for the purpose of recording** an entry in the register referred to in section 196.

(6) A discharge order under sub-section (2) **shall not discharge any other person** from any liability in respect of the qualifying debts.

Section 93 - Standard of conduct

93. The resolution professional shall perform his functions and duties in compliance with the code of conduct provided under **section 208**.

Part III

Insolvency Resolution And Bankruptcy For Individuals And Partnership Firms

Chapter III

Insolvency Resolution Process (From Section 94 to 120)

What is “Insolvency Resolution Process” and what purpose is expected to be achieved through it?

Part III Chapter III - Insolvency Resolution Process

- Section 94 - Application by debtor to initiate insolvency resolution process
- Section 95 - Application by creditor to initiate insolvency resolution process
- Section 96 - Interim-moratorium
- Section 97 - Appointment of resolution professional
- Section 98 - Replacement of resolution professional
- Section 99 - Submission of report by resolution professional
- Section 100 - Admission or rejection of application
- Section 101-Moratorium
- Section 102 -Public notice and claims from creditors
- Section 103 - Registering of claims by creditors
- Section 104 - Preparation of list of creditors
- Section 105 - Repayment plan
- Section 106 - Report of resolution professional on repayment plan

Part III Chapter III - Insolvency Resolution Process

- Section 107 - Summoning of meeting of creditors
- Section 108 - Conduct of meeting of creditors
- Section 109 - Voting rights in meeting of creditors
- Section 110 - Rights of secured creditors in relation to repayment plan
- Section 111- Approval of repayment plan by creditors
- Section 112 - Report of meeting of creditors on repayment plan
- Section 113- Notice of decisions taken at meeting of creditors
- Section 114 - Order of Adjudicating Authority on repayment plan
- Section 115 - Effect of order of Adjudicating Authority on repayment plan
- Section 116 - Implementation and supervision of repayment plan
- Section 117 - Completion of repayment plan
- Section 118 - Repayment plan coming to end prematurely
- Section 119 - Discharge order
- Section 120 - Standard of conduct

Section 94 - Application by debtor to initiate insolvency resolution process

94. (1) A debtor who **commits a default may apply, either personally or through a resolution professional**, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.

(2) Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm **unless all or a majority of the partners of the firm file the application jointly**.

(3) An application under sub-section (1) shall be submitted only in respect of debts which are **not excluded debts**.

(4) A **debtor shall not be entitled to make an application** under sub-section (1) if he is—

- (a) an undischarged bankrupt;
- (b) undergoing a fresh start process;
- (c) undergoing an insolvency resolution process; or
- (d) undergoing a bankruptcy process.

(5) A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been **admitted in respect of the debtor during the period of twelve months** preceding the date of submission of the application under this section.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.

Section 95 - Application by creditor to initiate insolvency resolution process

95. (1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—

(a) any one or more partners of the firm; or

(b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

Section 95 - Application by creditor to initiate insolvency resolution process

- (4) An application under sub-section (1) shall be **accompanied with details and documents** relating to—
- (a) **the debts owed by the debtor** to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;
 - (b) **the failure by the debtor to pay the debt** within a **period of fourteen days of the service** of the notice of demand; and
 - (c) **relevant evidence of** such default or non-repayment of debt.
- (5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.
- (6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.
- (7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.

Section 96 - Interim-moratorium

96. (1) When an application is filed under section 94 or section 95—

(a) an **interim-moratorium shall commence** on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) **during the interim-moratorium** period—

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

(ii) **the creditors of the debtor shall not initiate** any legal action or proceedings in respect of any debt.

(2) Where the **application has been made in relation to a firm**, the interim-moratorium under sub-section (1) **shall operate against all the partners of the firm** as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator

Section 97 - Appointment of resolution professional

97. (1) If the application under section 94 or 95 is **filed through a resolution professional**, the Adjudicating Authority shall direct the Board within **seven days** of the date of the application to confirm that there are no disciplinary proceedings pending against resolution professional.

(2) **The Board shall within seven days** of receipt of directions under sub-section (1) communicate to the Adjudicating Authority in writing either—

(a) confirming the appointment of the resolution professional; or

(b) rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.

(3) Where an **application** under section 94 or 95 is **filed by the debtor or the creditor** himself, as the case may be, and not through the resolution professional, the Adjudicating Authority shall **direct the Board, within seven days** of the filing of such application, to nominate a resolution professional for the insolvency resolution process.

Section 97 - Appointment of resolution professional

- (4) **The Board** shall nominate a resolution professional **within ten days of** receiving the direction issued by the Adjudicating Authority under sub-section (3).
- (5) The Adjudicating Authority **shall by order appoint** the resolution professional recommended under sub-section (2) or as nominated by the Board under sub-section (4).
- (6) A resolution professional appointed by the Adjudicating Authority under sub-section (5) shall be provided a copy of the application for insolvency resolution process.

Section 98 - Replacement of resolution professional

98. (1) Where **the debtor or the creditor is of the opinion** that the resolution professional appointed under section 97 is required to be replaced, he **may apply to the Adjudicating Authority** for the replacement of the such resolution professional.

(2) The Adjudicating Authority shall **within seven days** of the receipt of the application under sub-section (1) **make a reference to the Board** for replacement of the resolution professional.

(3) The Board shall, **within ten days of the receipt** of a reference from the Adjudicating Authority under sub-section (2), recommend the name of the resolution professional to the Adjudicating Authority against whom **no disciplinary proceedings** are pending.

(4) Without prejudice to the provisions contained in sub-section (1), **the creditors may apply to the Adjudicating Authority for replacement of the resolution professional** where it has been decided in the meeting of the creditors, to replace the resolution professional with a **new resolution professional for implementation of the repayment plan.**

Section 98 - Replacement of resolution professional

(5) Where the Adjudicating Authority admits an application made under sub-section (1) or sub-section (4) , it shall direct the Board to confirm that there are **no disciplinary proceedings pending** against the proposed resolution professional.

(6) The **Board shall send a communication within ten days** of receipt of the direction under sub-section (5) either—

(a) **confirming appointment** of the nominated resolution professional; or

(b) **rejecting appointment of the nominated** resolution professional and recommend a new resolution professional.

(7) On the basis of the communication of the Board under sub-section (3) or sub-section (6) , the Adjudicating Authority shall pass an order appointing a new resolution professional.

(8) The Adjudicating Authority may **give directions** to the resolution professional replaced under sub-section (7)—

(a) **to share all information** with the new resolution professional in respect of the insolvency resolution process; and

(b) **to co-operate** with the new resolution professional in such matters as may be required.

Section 99 - Submission of report by resolution professional

- 99.** (1) The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.
- (2) Where the application has been filed under section 95, the resolution professional may 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 acknowledgment by the creditor accepting receipt of dues.
- (3) Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.
- (4) For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.

Section 99 - Submission of report by resolution professional

- (5) The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation **within seven days of receipt** of the request.
- (6) The resolution **professional shall examine the application** and ascertain that—
- (a) the application **satisfies the requirements** set out in section 94 or 95;
 - (b) the applicant **has provided information and given explanation** sought by the resolution professional under sub-section (4).
- (7) After examination of the application under sub-section (6), he may **recommend acceptance or rejection** of the application in his report.
- (8) Where the resolution professional finds that the debtor is **eligible for a fresh start under Chapter II**, the resolution professional shall submit a report recommending that the **application by the debtor under section 94 be treated as an application under section 81** by the Adjudicating Authority.
- (9) The resolution professional **shall record the reasons** for recommending the acceptance or rejection of the application in the report under sub-section (7).
- (10) The resolution professional **shall give a copy of the report** under sub-section (7) to the debtor or the creditor, as the case may be.

Section 100 - Admission or rejection of application

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.

Section 101-Moratorium

101. (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 and claims from creditors

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

Section 103 - Registering of claims by creditors

103. (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.

Receiving the claims from the creditors is an obligation or a right of the RP. Or it is neither?

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

- 105.** (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 authorize 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.

Is Repayment Plan is same as Resolution Plan under CIRP?

Section 106 - Report of resolution professional on repayment plan

106. (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.

(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.

Section 107 - Summoning of meeting of creditors

- 107.** (1) The resolution professional shall **issue a notice calling the meeting** of the creditors **at least fourteen days before** the date fixed for such meeting.
- (2) The resolution professional shall send the notice of the meeting to the list of creditors prepared under section 104.
- (3) **The notice sent** under sub-section (1) shall state the **address of the Adjudicating Authority** to which the repayment plan and report of the resolution professional on the repayment plan has been submitted and **shall be accompanied** by—
- (a) a copy of the **repayment plan**;
 - (b) a copy of the **statement of affairs of** the debtor;
 - (c) a copy of the said **report of the resolution professional**; and
 - (d) forms for proxy voting.
- (4) The **proxy voting**, including **electronic proxy voting** shall take place in such manner and form as may be specified.

Section 108 - Conduct of meeting of creditors

108. (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

110. (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

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

- (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 of 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 113- Notice of decisions taken at meeting of creditors

113. The resolution professional shall provide a copy of the report of the meeting of creditors prepared under section 99 to—

- (a) the debtor;
- (b) the creditors, including those who were not present at the meeting; and
- (c) the Adjudicating Authority

Section 114 - Order of Adjudicating Authority on repayment plan

114. (1) The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional under section 112:

Provided that where a **meeting of creditors is not summoned**, the Adjudicating Authority shall pass an order on the **basis of the report prepared by the resolution professional** under section 106.

(2) The order of the Adjudicating Authority approving the repayment plan may also provide for **directions for implementing the repayment plan**.

(3) Where the Adjudicating Authority is of the opinion that the **repayment plan requires modification**, it may direct the resolution professional to **re-convene a meeting** of the creditors for reconsidering the repayment plan.

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.

Unlike CIRP where if CIRP is not accomplished within the prescribed time limits, CD goes in for liquidation by default, here Debtor or Creditors will have to file an application for bankruptcy.

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 117 - Completion of repayment plan

117. (1) The resolution professional shall **within fourteen days of the completion of the repayment plan**, forward to the persons who are bound by the repayment plan under section 115 and the Adjudicating Authority, the following documents, namely:—

- (a) a **notice that the repayment plan** has been fully implemented; and
- (b) a **copy of a report by the resolution professional summarising** all receipts and payments made in pursuance of the repayment plan and **extent of the implementation of such plan** as compared with the repayment plan approved by the meeting of the creditors.

(2) The resolution professional **may apply to the Adjudicating Authority to extend the time** mentioned in sub-section (1) for such further period not exceeding seven days.

Section 118 - Repayment plan coming to end prematurely

118. (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.

Section 118 - Repayment plan coming to end prematurely

- (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

119. (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.

Section 120 - Standard of conduct

120. The resolution professional shall perform his functions and duties in compliance with the code of conduct provided under section 208.

Part III

Insolvency Resolution And Bankruptcy For Individuals And Partnership Firms

Chapter IV

Bankruptcy Order For Individuals And Partnership Firms

(From Section 121 to 148)

What is “Bankruptcy Order” and what purpose is expected to be achieved through it?

Part III Chapter IV - Bankruptcy Order For Individuals And Partnership Firms

- Section 121 - Application for bankruptcy
- Section 122 - Application by debtor
- Section 123- Application by creditor
- Section 124 - Effect of application
- Section 125 - Appointment of insolvency professional as bankruptcy trustee
- Section 126 - Bankruptcy order
- Section 127 - Validity of bankruptcy order
- Section 128 - Effect of bankruptcy order
- Section 129 - Statement of financial position
- Section 130 - Public notice inviting claims from creditors
- Section 131 - Registration of claims
- Section 132 - Preparation of list of creditors
- Section 133 - Summoning of meeting of creditors
- Section 134 - Conduct of meeting of creditors

Part III Chapter IV - Bankruptcy Order For Individuals And Partnership Firms

- Section 135 - Voting rights of creditors
- Section 136 - Administration and distribution of estate of bankrupt
- Section 137 - Completion of administration
- Section 138 - Discharge order
- Section 139 - Effect of discharge
- Section 140 - Disqualification of bankrupt
- Section 141 - Restrictions on bankrupt
- Section 142 - Modification or recall of bankruptcy order
- Section 143 - Standard of conduct
- Section 144 - Fees of bankruptcy trustee
- Section 145 - Replacement of bankruptcy trustee
- Section 146 - Resignation by bankruptcy trustee
- Section 147 - Vacancy in office of bankruptcy trustee
- Section 148 - Release of bankruptcy trustee

Section 121 - Application for bankruptcy

121. (1) An application for bankruptcy of a debtor may be made, **by a creditor individually or jointly with other creditors or by a debtor**, to the Adjudicating Authority in the following circumstances, namely;—

(a) where an order has been passed by an Adjudicating Authority under sub-section 4 of section 100; or

(b) where an order has been passed by an Adjudicating Authority under sub-section 2 of section 115; or

(c) where an order has been passed by an Adjudicating Authority under sub-section 3 of section 118.

(2) An **application for bankruptcy shall be filed within a period of three months** of the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1).

(3) Where the **debtor is a firm**, the application under sub-section (1) **may be filed by any of its partners**.

Section 122 - Application by debtor

- 122.** (1) The application for bankruptcy by the debtor shall be accompanied by—
- (a) the records of insolvency resolution process undertaken under Chapter III of Part III;
 - (b) the statement of affairs of the debtor in such form and manner as may be prescribed, on the date of the application for bankruptcy; and
 - (c) a copy of the order passed by the Adjudicating Authority under Chapter III of Part III permitting the debtor to apply for bankruptcy.
- (2) The debtor may propose an insolvency professional as the bankruptcy trustee in the application for bankruptcy.
- (3) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.
- (4) An application for bankruptcy by the debtor shall not be withdrawn without the leave of the Adjudicating Authority.

Section 123- Application by creditor

123. (1) The application for bankruptcy by the creditor shall be accompanied by—

(a) the **records of insolvency resolution process** undertaken under Chapter III;

(b) a **copy of the order passed by the Adjudicating** Authority under Chapter III permitting the creditor to apply for bankruptcy;

(c) **details of the debts owed by the debtor to the creditor** as on the date of the application for bankruptcy; and

(d) **such other information** as may be prescribed.

(2) **An application** under sub-section (1) made in respect of a **debt which is secured**, shall be accompanied with—

(a) a statement by the creditor having the right to enforce the security that he shall, in the event of a bankruptcy order being made, **give up his security for the benefit of all the creditors of the bankrupt**; or

(b) a statement by the creditor stating—

(i) that the application for bankruptcy is **only in respect of the unsecured part of the debt**; and

(ii) an **estimated value of the unsecured part of the debt**.

Section 123- Application by creditor

(3) If a **secured creditor makes an application** for bankruptcy and submits a statement under clause (b) of sub-section (2), **the secured and unsecured parts of the debt shall be treated as separate debts.**

(4) The creditor **may propose an insolvency professional** as the bankruptcy trustee in the application for bankruptcy.

(5) An application for bankruptcy under sub-section (1), in case of a **deceased debtor, may be filed against his legal representatives.**

(6) The application for bankruptcy shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) An application for bankruptcy by the creditor **shall not be withdrawn without the permission** of the Adjudicating Authority.

Section 124 - Effect of Bankruptcy application

124. (1) When an **application is filed** under sections 122 or 123,—

(a) **an interim-moratorium shall commence** on the date of the making of the application **on all actions against the properties of the debtor** in respect of his debts and such moratorium shall cease to have effect on the bankruptcy commencement date; and

(b) during the interim-moratorium period—

(i) **any pending legal action or legal proceeding** against any property of the debtor in respect of any of his debts shall be deemed to have been stayed;

(ii) **the creditors of the debtor shall not be entitled to initiate** any legal action or legal proceedings against any property of the debtor in respect of any of his debts.

(2) Where the **application has been made in relation to a firm**, the interim-moratorium under subsection (1) shall operate **against all the partners** of the firm as on the date of the making of the application.

(3) **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 125 - Appointment of insolvency professional as bankruptcy trustee

125. (1) If an insolvency professional is proposed as the bankruptcy trustee in the application for bankruptcy under section 122 or section 123, the **Adjudicating Authority shall direct the Board within seven days** of receiving the application for bankruptcy to confirm that there are **no disciplinary proceedings pending** against such professional.

(2) The **Board shall within ten days** of the receipt of the direction under sub-section (1) in writing either—

- (a) **confirm the appointment of the proposed insolvency** professional as the bankruptcy trustee for the bankruptcy process; or
- (b) **reject the appointment** of the proposed insolvency professional as the bankruptcy trustee and **nominate another bankruptcy trustee** for the bankruptcy process.

(3) Where a **bankruptcy trustee is not proposed by the debtor or creditor** under section 122 or 123, the Adjudicating Authority shall **direct the Board within seven days** of receiving the application to nominate a bankruptcy trustee for the bankruptcy process.

(4) The Board shall nominate a bankruptcy trustee **within ten days** of receiving the direction of the Adjudicating Authority under sub-section (3).

(5) The bankruptcy trustee confirmed or nominated under this section shall be appointed as the bankruptcy trustee by the Adjudicating Authority in the bankruptcy order under section 126.

Section 126 - Bankruptcy order

126. (1) The Adjudicating Authority shall pass a **bankruptcy order within fourteen days** of receiving the confirmation or nomination of the bankruptcy trustee under section 125.

(2) The Adjudicating Authority shall provide the following documents to **bankrupt, creditors and the bankruptcy trustee within seven days** of the passing of the bankruptcy order, namely:—

- (a) a **copy of the application** for bankruptcy; and
- (b) a copy of the **bankruptcy order**.

Section 127 - Validity of bankruptcy order

127. The bankruptcy order passed by the Adjudicating Authority under section 126 shall continue to have effect **till the debtor is discharged under section 138.**

Section 128 - Effect of bankruptcy order

(1) On the passing of the bankruptcy order under section 126,—

(a) the **estate of the bankrupt shall vest in the bankruptcy trustee** as provided in section 154;

(b) the estate of the bankrupt shall be **divided among his creditors**;

(c) subject to provisions of sub-section (2), a creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt **shall not—**

(i) **initiate any action against the property** of the bankrupt in respect of such debt; or

(ii) **commence any suit or other legal proceedings** except with the leave of the Adjudicating Authority and on such terms as the Adjudicating Authority may impose.

(2) Subject to the provisions of section 123, the **bankruptcy order shall not affect the right of any secured creditor to realise or otherwise deal with his security interest** in the same manner as he would have been entitled if the bankruptcy order had not been passed:

Provided that no secured creditor shall be entitled to any interest in respect of his debt after the bankruptcy commencement date **if he does not take any action to realise his security within thirty days** from the said date.

(3) Where a **bankruptcy order under section 126 has been passed against a firm**, the order shall operate as if it were a bankruptcy order made against each of the individuals who, on the date of the order, is a partner in the firm.

(4) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

Section 129 - Statement of financial position

129. (1) Where a bankruptcy order is passed on the application for bankruptcy by a creditor under section 123, **the bankrupt shall submit his statement of financial position to the bankruptcy trustee within seven days** from the bankruptcy commencement date.

(2) The statement of financial position shall be submitted in the **such form and manner** as may be prescribed.

(3) **Where the bankrupt is a firm**, its partners on the date of the order shall submit a joint statement of financial position of the firm, and each partner of the firm shall submit a statement of his financial position.

(4) The bankruptcy trustee may require the bankrupt or any other person to submit in writing **further information explaining or modifying any matter** contained in the statement of financial position.

Section 130 - Public notice inviting claims from creditors

130. (1) The Adjudicating Authority shall—

(a) **send notices within ten days** of the bankruptcy commencement date, to the creditors mentioned in—

(i) the **statement of affairs** submitted by the bankrupt under section 129; or

(ii) the **application for bankruptcy** submitted by the bankrupt under section 122.

(b) issue a public notice inviting claims from creditors.

(2) The public notice under clause (b) of sub-section (1) shall **include the last date up to which the claims shall be submitted** and such other matters and details as may be prescribed and shall be—

(a) published in leading newspapers, one in English and another in vernacular having sufficient circulation where the bankrupt resides;

(b) affixed on the premises of the Adjudicating Authority; and

(c) placed on the website of the Adjudicating Authority.

(3) The notice to the creditors referred to under clause (a) of sub-section (1) shall include such matters and details as may be prescribed

Section 131 - Registration of claims

131. (1) The creditors shall register claims with the bankruptcy trustee within seven days of the publication of the public notice, by sending details of the claims to the bankruptcy trustee in such manner as may be prescribed.

(2) The creditor, in addition to the details of his claims, shall provide such other information and in such manner as may be prescribed.

Section 132 - Preparation of list of creditors

132. The bankruptcy trustee shall, **within fourteen days from the bankruptcy commencement date, prepare a list of creditors** of the bankrupt on the basis of—

(a) the **information disclosed by the bankrupt** in the application for bankruptcy filed by the bankrupt under section 118 and the statement of affairs filed under section 125; and

(b) **claims received by the bankruptcy trustee** under sub-section (2) of section 130.

Section 133 - Summoning of meeting of creditors

133. (1) The bankruptcy trustee shall, **within twenty-one days from the bankruptcy commencement date**, issue a notice for calling a meeting of the creditors, to every creditor of the bankrupt as mentioned in the list prepared under section 132.

(2) The **notices issued** under sub-section (1) shall—

(a) state the **date of the meeting** of the creditors, **which shall not be later than twenty-one days** from the bankruptcy commencement date;

(b) be accompanied with **forms of proxy voting**;

(c) specify the **form and manner in which the proxy voting may take place**.

(3) The proxy voting, including electronic proxy voting shall take place in such manner and form as may be specified.

Section 134 - Conduct of meeting of creditors

134. (1) The **bankruptcy trustee shall be the convener of the meeting** of the creditors summoned under section 133.

(2) The bankruptcy trustee shall **decide the quorum for the meeting** of the creditors, and conduct the meeting only if the quorum is present.

(3) The **following business shall be conducted in the meeting** of the creditors in which regard a resolution may be passed, namely:—

(a) the establishment of a **committee of creditors**;

(b) **any other business** that the bankruptcy trustee thinks fit to be transacted.

(4) The bankruptcy trustee shall **cause the minutes of the meeting** of the creditors to be recorded, signed and retained as a part of the records of the bankruptcy process.

(5) The bankruptcy trustee **shall not adjourn the meeting** of the creditors for any purpose **for more than seven days** at a time.

Section 135 - Voting rights of creditors

135. (1) Every creditor mentioned in the list under section 132 or his proxy shall be entitled to vote in respect of the resolutions in the meeting of the creditors 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) The **following creditors shall not be entitled to vote** under this section, namely:—

(a) creditors who are **not mentioned in the list of creditors** under section 132 and those who have not been given a notice by the bankruptcy trustee;

(b) creditors who are **associates of the bankrupt.**

Section 136 - Administration and distribution of estate of bankrupt

136. The bankruptcy trustee shall conduct the administration and distribution of the estate of the bankrupt in accordance with the **provisions of Chapter V**.

Section 137 - Completion of administration

- 137. (1)** The bankruptcy trustee shall **convene a meeting of the committee of creditors** on completion of the administration and distribution of the estate of the bankrupt in accordance with the provisions of Chapter V.
- (2) The **bankruptcy trustee shall provide the committee of creditors** with a report of the administration of the estate of the bankrupt in the meeting of the said committee.
- (3) The **committee of creditors shall approve the report submitted** by the bankruptcy trustee under sub-section (2) within **seven days of the receipt of the report** and **determine whether the bankruptcy trustee should be released under section 148.**
- (4) The bankruptcy trustee shall **retain sufficient sums from the estate of the bankrupt** to meet the expenses of convening and conducting the meeting required under this section during the administration of the estate.

Section 138 - Discharge order

- 138.** (1) The bankruptcy trustee shall apply to the Adjudicating Authority for a discharge order—
- (a) on the expiry of one year from the bankruptcy commencement date; or
 - (b) within seven days of the approval of the committee of creditors of the completion of administration of the estates of the bankrupt under section 137, where such approval is obtained prior to the period mentioned in clause (a).
- (2) The Adjudicating Authority shall pass a discharge order on an application by the bankruptcy trustee under sub-section (1).
- (3) A copy of the discharge order shall be provided to the Board for the purpose of recording an entry in the register referred to in section 196.

Section 139 - Effect of discharge

139. The discharge order under sub-section (2) of section 138 shall release the bankrupt from all the bankruptcy debt:

Provided that discharge shall not—

- (a) affect the functions of the bankruptcy trustee; or
- (b) affect the operation of the provisions of Chapters IV and V of Part III; or
- (c) release the bankrupt from any debt incurred by means of fraud or breach of trust to which he was a party; or
- (d) discharge the bankrupt from any excluded debt.

Section 140 - Disqualification of bankrupt

140. (1) The bankrupt shall, **from the bankruptcy commencement date**, be subject to the disqualifications mentioned in this section.

(2) In addition to any **disqualification under any other law** for the time being in force, a bankrupt shall be disqualified from—

(a) being appointed or acting as a **trustee or representative in respect of any trust, estate or settlement**;

(b) being appointed or acting as a **public servant**;

(c) being **elected to any public office** where the appointment to such office is by election; and

(d) being **elected or sitting or voting as a member of any local authority**.

(3) Any disqualification to which a bankrupt may be subject under this section shall cease to have effect, if—

(a) the **bankruptcy order against him is modified or recalled** under section 142; or

(b) he is **discharged under section 138**.

Explanation.—For the purposes of this section, the term "**public servant**" shall have the same meaning as assigned to it in **section 21 of the Indian Penal Code**

Section 141 - Restrictions on bankrupt

- 141. (1)** A bankrupt, **from the bankruptcy commencement date**, shall—
- (a) **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;
 - (b) without the previous sanction of the bankruptcy trustee, be **prohibited from creating any charge** on his estate or taking any further debt;
 - (c) be required to **inform his business partners** that he is undergoing a bankruptcy process;
 - (d) **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;
 - (e) **without the previous sanction of the Adjudicating Authority**, be incompetent to maintain any legal action or proceedings in relation to the bankruptcy debts; and
 - (f) not be permitted to **travel overseas without the permission** of the Adjudicating Authority.
- (2) **Any restriction** to which a bankrupt may be **subject under this section** shall cease to have effect, if—
- (a) the bankruptcy order against him is modified or recalled under section 142; or
 - (b) he is discharged under section 138.

Section 142 - Modification or recall of bankruptcy order

142. (1) The Adjudicating Authority may, **on an application or suo moto, 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.

(2) 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.

(3) A copy of the order passed by the Adjudicating Authority under sub-section (1) shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 191.

(4) The modification or recall of the order by the Adjudicating Authority under sub-section (1) **shall be binding on all creditors so far as it relates to any debts due to them** which form a part of the bankruptcy.

Section 143 - Standard of conduct

143. The bankruptcy trustee shall perform his functions and duties in compliance with the code of conduct provided under section 208.

Section 144 - Fees of bankruptcy trustee

144 (1) A bankruptcy trustee appointed for conducting the bankruptcy process shall charge such fees as may be specified **in proportion to the value of the estate of the bankrupt.**

(2) The fees for the conduct of the bankruptcy process shall be paid to the bankruptcy trustee **from the distribution of the estate of the bankrupt** in the manner provided in section 178.

Section 145 - Replacement of bankruptcy trustee

145. (1) Where **Committee of creditors is of the opinion** that at any time during the bankruptcy process, a bankruptcy trustee appointed under section 125 is required to be replaced, it may replace him with another bankruptcy trustee in the manner provided under this section.

(2) The Committee of creditors may, at a meeting, **by a vote of seventy-five per cent.** of voting share, **propose to replace the bankruptcy trustee** appointed under section 125 with another bankruptcy trustee.

(3) The Committee of creditors may **apply to the Adjudicating Authority** for the replacement of the bankruptcy trustee.

(4) The Adjudicating Authority shall **within seven days of the receipt** of the application under sub-section (3) direct the Board to recommend for replacement of bankruptcy trustee.

(5) The **Board shall, within ten days** of the direction of the Adjudicating Authority under sub-section (4) , **recommend a bankruptcy trustee** for replacement against whom **no disciplinary proceedings are pending.**

Section 145 - Replacement of bankruptcy trustee

(6) The Adjudicating Authority shall, by an order, appoint the bankruptcy trustee as recommended by the Board under sub-section (5) **within fourteen days** of receiving such recommendation.

(7) The earlier bankruptcy trustee shall **deliver possession of the estate of the bankrupt** to the bankruptcy trustee appointed under sub-section (6) , on the date of his appointment.

(8) The Adjudicating Authority **may give directions** to the earlier bankruptcy trustee—

(a) **to share all information** with the new bankruptcy trustee in respect of the bankruptcy process; and

(b) **to co-operate** with the new bankruptcy trustee in such matters as may be required.

(9) The **earlier bankruptcy trustee** replaced under this section shall be **released** in accordance with the provisions of section 148.

(10) The bankruptcy trustee appointed under this section shall give a **notice of his appointment to the bankrupt within seven days** of his appointment.

Section 146 - Resignation by bankruptcy trustee

146. (1) A bankruptcy trustee may resign if—

(a) he **intends to cease practicing as an insolvency** professional; or

(b) **there is conflict of interest or change of personal circumstances** which preclude the further discharge of his duties as a bankruptcy trustee.

(2) The Adjudicating Authority shall, **within seven days of the acceptance** of the resignation of the bankruptcy trustee, **direct the Board for his replacement**.

(3) The Board shall, **within ten days** of the direction of the Adjudicating Authority under sub-section (2) recommend another bankruptcy trustee as a replacement.

(4) The Adjudicating Authority shall appoint the bankruptcy trustee recommended by the Board under sub-section (3) within **fourteen days** of receiving the recommendation.

Section 146 - Resignation by bankruptcy trustee

(5) The replaced bankruptcy trustee shall **deliver possession of the estate of the bankrupt to the bankruptcy trustee** appointed under sub-section (4), on the date of his appointment.

(6) The Adjudicating Authority may give directions to the bankruptcy trustee who has resigned—

(a) **to share all information** with the new bankruptcy trustee in respect of the bankruptcy process; and

(b) **to co-operate** with the new bankruptcy trustee in such matters as may be required.

(7) The bankruptcy trustee appointed under this section shall give a **notice of his appointment to the committee of creditors and the bankrupt** within **seven days** of his appointment.

(8) The bankruptcy trustee replaced under this section shall be released in accordance with the provisions of section 148.

Section 147 - Vacancy in office of bankruptcy trustee

147. (1) If a vacancy occurs in the office of the bankruptcy trustee **for any reason other than his replacement or resignation**, the vacancy shall be filled in accordance with the provisions of this section.

(2) In the event of the occurrence of vacancy referred to in sub-section (1), the Adjudicating Authority shall **direct the Board for replacement** of a bankruptcy trustee.

(3) The **Board shall, within ten days of the direction** of the Adjudicating Authority under sub-section (2), recommend bankruptcy trustee as a replacement.

(4) The Adjudicating Authority shall appoint the bankruptcy trustee recommended by the Board under sub-section (3) **within fourteen days** of receiving the recommendation.

Section 147 - Vacancy in office of bankruptcy trustee

(5) The earlier bankruptcy trustee shall **deliver possession of the estate of the bankrupt to the bankruptcy** trustee appointed under sub-section (4), on the date of his appointment.

(6) The Adjudicating Authority may give directions to the bankruptcy trustee who has vacated the office—

- (a) **to share all information** with the new bankruptcy trustee in respect of the bankruptcy;
- (b) **to co-operate with the new bankruptcy** trustee in such matters as may be required.

(7) The bankruptcy trustee appointed under sub-section (4) shall give a **notice of his appointment to the committee of creditors and the bankrupt** within **seven days** of his appointment.

(8) The earlier bankruptcy trustee replaced under this section shall be **released** in accordance with the provisions of section 148:

Provided that this section shall not apply if the **vacancy has occurred due to temporary illness or temporary leave** of the bankruptcy trustee.

Section 148 - Release of bankruptcy trustee

148. (1) 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.

(2) Notwithstanding the release under sub-section (1) , 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.

(3) 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.

Part III

Insolvency Resolution And Bankruptcy For Individuals And Partnership Firms

Chapter V

Administration And Distribution Of The Estate Of The Bankrupt (From Section 149 to 178)

Part III Chapter V - Administration And Distribution Of The Estate Of The Bankrupt

- **Section 149** - Functions of bankruptcy trustee
- **Section 150** - Duties of bankrupt towards bankruptcy trustee
- **Section 151** - Rights of bankruptcy trustee
- **Section 152** - General powers of bankruptcy trustee
- **Section 153** - Approval of creditors for certain acts
- **Section 154** - Vesting of estate of bankrupt in bankruptcy trustee
- **Section 155** - Estate of bankrupt
- **Section 156** - Delivery of property and documents to bankruptcy trustee
- **Section 157** - Acquisition of control by bankruptcy trustee
- **Section 158** - Restrictions on disposition of property
- **Section 159** - After-acquired property of bankrupt

Part III Chapter V - Administration And Distribution Of The Estate Of The Bankrupt

- **Section 160** - Onerous property of bankrupt
- **Section 161** - Notice to disclaim onerous property
- **Section 162** - Disclaimer of leaseholds
- **Section 163** - Challenge against disclaimed property
- **Section 164** - Undervalued transactions
- **Section 165** - Preference transactions
- **Section 166** - Effect of order
- **Section 167** - Extortionate credit transactions
- **Section 168** - Obligations under contracts
- **Section 169** - Continuance of proceedings on death of bankrupt
- **Section 170** - Administration of estate of deceased bankrupt

Part III Chapter V - Administration And Distribution Of The Estate Of The Bankrupt

- Section 171 - Proof of debt
- Section 172 - Proof of debt by secured creditors
- Section 173 - Mutual credit and set-off
- Section 174 - Distribution of interim dividend
- Section 175 - Distribution of property
- Section 176 - Final dividend
- Section 177 - Claims of creditors
- Section 178 - Priority of payment of debts

Section 149 - Functions of bankruptcy trustee

149. The bankruptcy trustee shall perform the following functions in accordance with the provisions of this Chapter—

- (a) **investigate** the affairs of the bankrupt;
- (b) **realise the estate** of the bankrupt; and
- (c) **distribute the estate** of the bankrupt.

Section 150 - Duties of bankrupt towards bankruptcy trustee

150. (1) The bankrupt shall assist the bankruptcy trustee in carrying out his functions under this Chapter by—

- (a) giving to the bankruptcy trustee the information of his affairs;
- (b) attending on the bankruptcy trustee at such times as may be required;
- (c) giving notice to the bankruptcy trustee of any of the following events which have occurred after the bankruptcy commencement date,—
 - (i) acquisition of any property by the bankrupt;
 - (ii) devolution of any property upon the bankrupt;
 - (iii) increase in the income of the bankrupt;
- (d) doing all other things as may be prescribed.

(2) The bankrupt shall give notice of the increase in income or acquisition or devolution of property under clause (c) of sub-section (1) within seven days of such increase, acquisition or devolution.

(3) The bankrupt shall continue to discharge the duties under sub-section (1) other than the duties under clause (c) even after the discharge under section 138.

Section 151 - Rights of bankruptcy trustee

151. For the purpose of performing his functions under this Chapter, the bankruptcy trustee **may, by his official name**—

- (a) **hold property** of every description;
- (b) make **contracts**;
- (c) **sue** and be sued;
- (d) **enter into engagements** in respect of the estate of the bankrupt;
- (e) **employ persons** to assist him;
- (f) **execute any power of attorney**, deed or other instrument; and
- (g) **do any other act** which is necessary or expedient for the purposes of or in connection with the exercise of his rights.

Section 152 - General powers of bankruptcy trustee

152. The bankruptcy trustee may while discharging his functions under this Chapter,—

- (a) **sell any part of the estate** of the bankrupt;
- (b) **give receipts** for any money received by him;
- (c) **prove, rank, claim and draw a dividend** in respect of such debts due to the bankrupt as are comprised in his estate;
- (d) where any property comprised in the estate of the bankrupt is **held by any person by way of pledge or hypothecation**, exercise the **right of redemption** in respect of any such property subject to the relevant contract by giving notice to the said person;
- (e) where any part of the estate of the bankrupt **consists of securities in a company or any other property which is transferable in the books of a person**, exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt; and
- (f) **deal with any property comprised in the estate** of the bankrupt to which the bankrupt is beneficially entitled in the same manner as he might have dealt with it.

Section 153 - Approval of creditors for certain acts

153. The bankruptcy trustee for the purposes of this Chapter may after procuring the **approval of the committee of creditors**,—

- (a) **carry on any business** of the bankrupt as far as may be necessary for winding it up beneficially;
- (b) **bring, institute or defend any legal action** or proceedings relating to the property comprised in the estate of the bankrupt;
- (c) **accept as consideration for the sale of any property** a sum of money due at a future time subject to certain stipulations such as security;
- (d) **mortgage or pledge any property for the** purpose of raising money for the payment of the debts of the bankrupt;

Section 153 - Approval of creditors for certain acts

- (e) where any right, **option or other power forms part of the estate of the bankrupt**, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of such right, option or power;
- (f) **refer to arbitration or compromise on such terms** as may be agreed, any debts subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt;
- (g) **make compromise or other arrangement** as may be considered expedient, with the creditors;
- (h) make compromise or other arrangement as he may deem expedient with respect to any claim arising out of or incidental to the bankrupt's estate;
- (i) **appoint the bankrupt** to—
- (A) **supervise the management** of the estate of the bankrupt or any part of it;
 - (B) **carry on his business** for the benefit of his creditors;
 - (C) **assist the bankruptcy trustee** in administering the estate of the bankrupt.

Section 154 - Vesting of estate of bankrupt in bankruptcy trustee

154. (1) The estate of the bankrupt shall vest in the bankruptcy trustee **immediately from the date of his appointment.**

(2) The vesting under sub-section (1) shall take effect **without any conveyance, assignment or transfer.**

Section 155 - Estate of bankrupt

155. (1) The estate of the bankrupt shall include,—

- (a) **all property belonging to or vested in the bankrupt** at the bankruptcy commencement date;
- (b) the **capacity to exercise and to 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 under section 138; and
- (c) all property which by virtue of any of the provisions of this Chapter is comprised in the estate.

(2) The estate of the bankrupt **shall not include**—

- (a) **excluded** assets;
- (b) property held by the bankrupt **on trust for any other person**;
- (c) all sums due to any workman or employee from the **provident fund, the pension fund and the gratuity fund**; and
- (d) **such assets as may be notified** by the Central Government in consultation with any financial sector regulator.

Section 156 - Delivery of property and documents to bankruptcy trustee

156. The **bankrupt, his banker or agent or any other person** having possession of any property, books, papers or other records which bankruptcy trustee is required to take possession for the purposes of the bankruptcy process shall **deliver the said property and documents to the bankruptcy trustee.**

Section 157 - Acquisition of control by bankruptcy trustee

157(1) The bankruptcy trustee shall take possession and control of all property, books, papers and other records relating to the estate of the bankrupt or affairs of the bankrupt which belong to him or are in his possession or under his control.

(2) Where any part of the estate of the bankrupt consists of things in actionable claims, they shall be deemed to have been assigned to the bankruptcy trustee without any notice of the assignment.

Section 158 - Restrictions on disposition of property

158. (1) 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**.

(2) 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.

(3) 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.

Section 159 - After-acquired property of bankrupt

159. (1) The bankruptcy trustee shall be **entitled to claim for the estate of the bankrupt, any after-acquired** property by giving a notice to the bankrupt.

(2) A notice under sub-section (1) shall not be served in respect of—

(a) excluded assets; or

(b) any property which is acquired by or devolves upon the bankrupt **after a discharge order is passed under section 138.**

(3) The **notice** under sub-section (2) shall be given **within fifteen days** from the day on which the acquisition or devolution of the after-acquired property **comes to the knowledge of the bankruptcy trustee.**

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

(a) anything which comes to the knowledge of the bankruptcy trustee shall be **deemed to have come to the knowledge of the successor** of the bankruptcy trustee at the same time; and

(b) anything which comes to the knowledge of a person before he is appointed as a bankruptcy trustee shall be deemed to have come to his knowledge on the date of his appointment as bankruptcy trustee.

Section 159 - After-acquired property of bankrupt

(5) The bankruptcy trustee shall not be entitled, by virtue of this section, 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.**

(6) A notice may be served after the expiry of the period under sub-section (3) only with the approval of the Adjudicating Authority.

Explanation.—For the purposes of this section, the term "**after-acquired property**" means any property which has been acquired by or has devolved upon the bankrupt after the bankruptcy commencement date.

Section 160 - Onerous property of bankrupt

160. (1) The bankruptcy trustee may, by giving notice to the bankrupt or any person interested in the onerous property, **disclaim any onerous property which forms a part of the estate of the bankrupt.**

(2) The bankruptcy trustee **may give the notice** under sub-section (1) **notwithstanding that he has taken possession** of the onerous property, endeavored to sell it or has exercised rights of ownership in relation to it.

(3) **A notice of disclaimer** under sub-section (1) shall—

(a) determine, as from the date of such notice, the rights, interests and liabilities of the bankrupt in respect of the onerous property disclaimed;

(b) **discharge the bankruptcy trustee** from all personal liability in respect of the onerous property as from the date of appointment of the bankruptcy trustee.

Section 160 - Onerous property of bankrupt

(4) A notice of disclaimer under sub-section (1) shall not be given in respect of the property which has been claimed for the estate of the bankrupt under section 155 without the permission of the committee of creditors.

(5) A notice of disclaimer under sub-section (1) shall not affect the rights or liabilities of any other person, and any person who sustains a loss or damage in consequence of the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the loss or damage.

Explanation.—For the purposes of this section, the term "onerous property" means—

(i) any unprofitable contract; and

(ii) any other property comprised in the estate of the bankrupt which is unsaleable or not readily saleable, or is such that it may give rise to a claim.

Section 161 - Notice to disclaim onerous property

161. (1) No notice of disclaimer under section 160 shall be necessary if—

(a) a person interested in the onerous property has applied in writing to the bankruptcy trustee or his predecessor requiring him to decide whether the onerous property should be disclaimed or not; and

(b) a decision under clause (a) has not been taken by the bankruptcy trustee within seven days of receipt of the notice.

(2) Any onerous property **which cannot be disclaimed** under sub-section (1) shall be deemed to be part of the estate of the bankrupt.

Explanation.—For the purposes of this section, an onerous property **is said to be disclaimed** where notice in relation to that property has been given by the bankruptcy trustee under section 160.

Section 162 - Disclaimer of leaseholds

162. (1) The bankruptcy trustee shall not be entitled to disclaim any leasehold interest, unless a notice of disclaimer has been served on every interested person and—

(a) no application objecting to the disclaimer by the interested person, has been filed with respect to the leasehold interest, within fourteen days of the date on which notice was served; and

(b) where the application objecting to the disclaimer has been filed by the interested person, the Adjudicating Authority has directed under section 163 that the disclaimer shall take effect.

(2) Where the Adjudicating Authority gives a direction under clause (b) of subsection (1), it may also make order with respect to fixtures, improvements by tenant and other matters arising out of the lease as it may think fit.

Section 163 - Challenge against disclaimed property

163. (1) An application challenging the disclaimer may be made by the following persons under this section to the Adjudicating Authority—

(a) any person who claims an interest in the disclaimed property; or

(b) any person who is under any liability in respect of the disclaimed property; or

(c) where the disclaimed property is a dwelling house, any person who on the date of application for bankruptcy was in occupation of or entitled to occupy that dwelling house.

(2) The Adjudicating Authority may on an application under sub-section (1) make an order for the vesting of the disclaimed property in, or for its delivery to any of the persons mentioned in sub-section (1).

(3) The Adjudicating Authority shall not make an order in favour of a person who has made an application under clause (b) of sub-section (1) except where it appears to the Adjudicating Authority that it would be just to do so for the purpose of compensating the person.

(4) The effect of an order under this section shall be taken into account while assessing loss or damage sustained by any person in consequence of the disclaimer under sub-section (5) of section 160.

(5) An order under sub-section (2) vesting property in any person need not be completed by any consequence, assignment or transfer

Section 164 - Undervalued transactions

164. (1) The bankruptcy trustee may apply to the Adjudicating Authority for an order under this section in respect of an **undervalued transaction between a bankrupt and any person.**

(2) The undervalued transaction referred to in sub-section (1) should have—

(a) been entered into during the **period of two years** ending on the filing of the application for bankruptcy; and

(b) **caused bankruptcy process to be triggered.**

(3) A transaction between a bankrupt and his associate entered into during the period of two years preceding the date of **making of the application for bankruptcy** shall be deemed to be an undervalued transaction under this section.

(4) On the application of the bankruptcy trustee under sub-section (1), **the Adjudicating Authority may—**

(a) pass an order **declaring an undervalued** transaction **void**;

(b) pass an order requiring any property transferred as a part of an undervalued transaction **to be vested with the bankruptcy trustee** as a part of the estate of the bankrupt; and

(c) pass any other order it thinks fit **for restoring the position to what it would have been** if the bankrupt had not entered into the undervalued transaction.

Section 164 - Undervalued transactions

(5) The order under clause (a) of sub-section (4) shall not be passed if it is proved by the bankrupt that the **transaction was undertaken in the ordinary course of business** of the bankrupt:

Provided that the provisions of this sub-section shall not be applicable to undervalued transaction entered into between a bankrupt and his associate under sub-section (3) of this section.

(6) For the purposes of this section, a bankrupt enters into an **undervalued transaction** with any person if—

(a) he **makes a gift** to that person;

(b) **no consideration has been received** by that person from the bankrupt;

(c) it is in consideration of marriage; or

(d) it is for a consideration, the **value of which in money or money's worth is significantly less than** the value in money or money's worth of the consideration provided by the bankrupt.

Section 165 - Preference transactions

165. (1) The bankruptcy trustee may apply to the Adjudicating Authority for an order under this section if a **bankrupt has given a preference to any person**.

(2) The transaction giving preference to an associate of the bankrupt under sub-section (1) should have been entered into by the **bankrupt with the associate during the period of two years** ending on the date of the application for bankruptcy.

(3) Any transaction giving preference not covered under sub-section (2) should have been entered into by the bankrupt during the **period of six months ending on the date of the application** for bankruptcy.

(4) The transaction giving preference under sub-section (2) or under sub-section (3) **should have caused the bankruptcy process to be triggered**.

(5) **On the application of the bankruptcy trustee** under sub-section (1), the Adjudicating Authority may—

- (a) pass an order **declaring a transaction giving preference void**;
- (b) pass an order requiring any property transferred in respect of a transaction giving preference to be **vested with the bankruptcy trustee as a part of the estate** of the bankrupt; and
- (c) **pass any other order it thinks fit** for restoring the position to what it would have been if the bankrupt had not entered into the transaction giving preference.

Section 165 - Preference transactions

(6) The Adjudicating Authority shall not pass an order under sub-section (5) **unless the bankrupt was influenced in his decision of giving preference to a person** by a desire to produce in relation to that person an effect under clause (b) of sub-section (8).

(7) For the purpose of sub-section (6), if the **person is an associate of the bankrupt**, (otherwise than by reason only of being his employee), at the time when the preference was given, it shall be presumed that the bankrupt was influenced in his decision under that sub-section.

(8) For the purposes of this section, a **bankrupt shall be deemed to have entered into a transaction giving preference to any person** if—

(a) the person is the creditor or surety or guarantor for any debt of the bankrupt; and

(b) the bankrupt does anything or suffers anything to be done which has the effect of putting that person into a position which, in the event of the debtor becoming a bankrupt, will be better than the position he would have been in, if that thing had not been done.

Section 166 - Effect of order

166. (1) Subject to the provision of sub-section (2), an order passed by the Adjudicating Authority under section 164 or section 165 **shall not**,—

- (a) give rise to a right against a person interested in the property which was acquired in an undervalued transaction or a transaction giving preference, whether or not he is the person with whom the bankrupt entered into such transaction; and
- (b) require any person to pay a sum to the bankruptcy trustee in respect of the benefit received from the undervalued transaction or a transaction giving preference, whether or not he is the person with whom the bankrupt entered into such transaction.

Section 166 - Effect of order

(2) The provision of sub-section (1) shall apply only if the interest was acquired or the benefit was received—

(a) in good faith;

(b) for value;

(c) without notice that the bankrupt entered into the transaction at an undervalue or for giving preference;

(d) without notice that the bankrupt has filed an application for bankruptcy or a bankruptcy order has been passed; and

(e) by any person who at the time of acquiring the interest or receiving the benefit was not an associate of the bankrupt.

(3) Any sum required to be paid to the bankruptcy trustee under sub-section (1) shall be included in the estate of the bankrupt.

Section 167 - Extortionate credit transactions

167. (1) Subject to sub-section (6), on an application by the bankruptcy trustee, the Adjudicating Authority may make an order under this section in respect of extortionate credit transactions **to which the bankrupt is or has been a party.**

(2) The transactions under sub-section (1) should have been entered into by the bankrupt **during the period of two years ending** on the bankruptcy commencement date.

(3) **An order of the** Adjudicating Authority may—

(a) set aside the whole or part of any debt created by the transaction;

(b) **vary the terms of the transaction** or vary the terms on which any security for the purposes of the transaction is held;

(c) **require any person who has been paid by the bankrupt** under any transaction, to pay a sum to the bankruptcy trustee;

(d) **require any person to surrender to the bankruptcy** trustee any property of the bankrupt held as security for the purposes of the transaction.

Section 167 - Extortionate credit transactions

(4) Any sum paid or any property surrendered to the bankruptcy trustee shall be included in the estate of the bankrupt.

(5) For the purposes of this section, **an extortionate credit transaction is a transaction for or involving the provision of credit to the bankrupt by any person—**

(a) on terms **requiring the bankrupt to make exorbitant payments** in respect of the credit provided; or

(b) which is **unconscionable under the principles** of law relating to contracts.

(6) Any debt extended by a person **regulated for the provision of financial services** in compliance with the law in force in relation to such debt, shall not be considered as an extortionate credit transaction under this section.

Section 168 - Obligations under contracts

168. (1) This section shall apply where a contract has been entered into by the bankrupt with a person before the bankruptcy commencement date.

(2) Any party to a contract, other than the bankrupt under sub-section (1), may apply to the Adjudicating Authority for—

(a) an order discharging the obligations of the applicant or the bankrupt under the contract; and

(b) payment of damages by the party or the bankrupt, for non-performance of the contract or otherwise.

(3) Any damages payable by the bankrupt by virtue of an order under clause (b) of sub-section (2) shall be provable as bankruptcy debt.

(4) When a bankrupt is a party to the contract under this section jointly with another person, that person may sue or be sued in respect of the contract without joinder of the bankrupt.

Section 169 - Continuance of proceedings on death of bankrupt

169. If a bankrupt dies, the bankruptcy proceedings shall, continue as if he were alive.

Section 170 - Administration of estate of deceased bankrupt

170.(1) All the provisions of Chapter V relating to the administration and distribution of the estate of the bankrupt shall, so far as the same are applicable, apply to the administration of the estate of a deceased bankrupt.

(2) While administering the estate of a deceased bankrupt, the bankruptcy trustee shall have regard to the claims by the legal representatives of the deceased bankrupt to payment of the proper funeral and testamentary expenses incurred by them.

(3) The claims under sub-section (2) shall rank equally to the secured creditors in the priority provided under section 178.

(4) If, on the administration of the estate of a deceased bankrupt, any surplus remains in the hands of the bankruptcy trustee after payment in full of all the debts due from the deceased bankrupt, together with the costs of the administration and interest as provided under section 178, such surplus shall be paid to the legal representatives of the estate of the deceased bankrupt or dealt with in such manner as may be prescribed.

Section 171 - Proof of debt

171. (1) The bankruptcy trustee shall give **notice to each of the creditors to submit proof of debt** within fourteen days of preparing the list of creditors under section 132.

(2) The proof of debt shall—

(a) **require the creditor to give full particulars of debt**, including the date on which the debt was contracted and the value at which that person assesses it;

(b) require the creditor **to give full particulars of the security**, including the date on which the security was given and the value at which that person assesses it;

(c) be in **such form and manner** as may be prescribed.

(3) In case **the creditor is a decree holder against the bankrupt**, a copy of the decree shall be a valid proof of debt.

(4) Where a debt bears interest, that interest shall be provable as part of the debt except in so far as it is owed in respect of any period after the bankruptcy commencement date.

Section 171 - Proof of debt

(5) The bankruptcy trustee shall estimate the value of any bankruptcy debt which does not have a specific value.

(6) The value assigned by the bankruptcy trustee under sub-section (5) shall be the amount provable by the concerned creditor.

(7) A creditor may prove for a debt where payment would have become due at a date later than the bankruptcy commencement date as if it were owed presently and may receive dividends in a manner as may be prescribed.

(8) Where the bankruptcy trustee serves a notice under sub-section (1) and the person on whom the notice is served does not file a proof of security within thirty days after the date of service of the notice, the bankruptcy trustee may, with leave of the Adjudicating Authority, sell or dispose of any property that was subject to the security, free of that security.

Section 172 - Proof of debt by secured creditors

172. (1) Where a **secured creditor realises** his security, he may **produce proof of the balance due to him**.

(2) Where a **secured creditor surrenders his security** to the bankruptcy trustee for the general benefit of the creditors, he may produce proof of his whole claim.

Section 173 - Mutual credit and set-off

173. (1) Where before the bankruptcy commencement date, there have been **mutual dealings between the bankrupt and any creditor**, the bankruptcy trustee shall—

(a) 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

(b) **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.

(2) 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.**

Section 174 - Distribution of interim dividend

174. (1) 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**.

(2) Where the bankruptcy trustee has declared any interim dividend, he shall give notice of such dividend and the manner in which it is proposed to be distributed.

(3) In the calculation and distribution of the interim dividend, the **bankruptcy trustee shall make provision** for—

(a) 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

(b) any bankruptcy **debts which are subject of claims** which have not yet been determined;

(c) **disputed proofs and claims**; and

(d) **expenses necessary** for the administration of the estate of the bankrupt.

Section 175 - Distribution of property

175. (1) The bankruptcy trustee may, **with the approval of the committee of creditors**, divide in its existing form amongst the creditors, according to its estimated value, any property in its existing form which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) An approval under sub-section (1) shall be sought by the bankruptcy trustee for each transaction, and a person dealing with the bankruptcy trustee in good faith and for value shall not be required to enquire whether any approval required under sub-section (1) has been given.

(3) 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.

(4) The committee of the creditors shall not ratify the act of the bankruptcy trustee under sub-section (3) unless it is satisfied that the bankruptcy trustee acted in a case of urgency and has sought its ratification without undue delay.

Section 176 - Final dividend

176. (1) Where the bankruptcy trustee **has realised the entire estate of the bankrupt** or so much of it as could be realised in the opinion of the bankruptcy trustee, **he shall give notice—**

- (a) of his intention to **declare a final dividend**; or
- (b) that **no dividend or further dividend** shall be declared.

(2) The notice under sub-section (1) shall **contain such particulars as may be prescribed** and shall require all claims against the estate of the bankrupt to be established by a final date specified in the notice.

(3) The Adjudicating Authority may, **on the application of any person** interested in the administration of the estate of the bankrupt, **postpone the final date referred** to in sub-section (2).

- (4) **After the final date** referred to in sub-section (2) , the bankruptcy trustee shall—
- (a) **defray any outstanding expenses** of the bankruptcy out of the estate of the bankrupt; and
 - (b) 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.

Section 176 - Final dividend

(5) **If a surplus remains** after payment in full with interest to all the creditors of the bankrupt and the payment of the expenses of the bankruptcy, the **bankrupt shall be entitled to the surplus.**

(6) Where a bankruptcy order has been passed in respect of one partner in a firm, a creditor to whom the bankrupt is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

Section 177 - Claims of creditors

177. (1) 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.

(2) **No action shall lie against the bankruptcy trustee for a dividend**, but if the bankruptcy trustee refuses to pay a dividend payable under sub-section (1), **the Adjudicating Authority may order** him to—

(a) pay the dividend; and

(b) pay, out of his own money—

(i) interest on the dividend; and

(ii) the costs of the proceedings in which the order to pay has been made.

Section 178 - Priority of payment of debts

178. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or the State Legislature for the time being in force, in the distribution of the final dividend, **the following debts shall be paid in priority to all other debts—**

(a) firstly, the **costs and expenses incurred by the bankruptcy trustee** for the bankruptcy process in full;

(b) secondly,—

(i) **the workmen's dues** for the period of twenty-four months preceding the bankruptcy commencement date; and

(ii) debts owed to **secured creditors**;

(c) thirdly, wages and any unpaid **dues owed to employees**, other than workmen, of the bankrupt for the period of **twelve months preceding the bankruptcy** commencement date;

(d) fourthly, **any amount due to the Central Government** and the State Government 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;

(e) **lastly, all other debts and dues owed** by the bankrupt including unsecured debts.

Section 178 - Priority of payment of debts

(2) The debts in each class specified in sub-section (1) shall rank in the order mentioned in that sub-section but debts of the same class shall rank equally amongst themselves, and shall be paid in full, unless the estate of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Where any creditor has given any indemnity or has made any payment of moneys by virtue of which any asset of the bankrupt has been recovered, protected or preserved, the Adjudicating Authority may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks taken by him in so doing.

(4) Unsecured creditors shall rank equally amongst themselves unless contractually agreed to the contrary by such creditors.

Section 178 - Priority of payment of debts

(5) Any surplus remaining after the payment of the debts under sub-section (1) shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the bankruptcy commencement date.

(6) Interest payments under sub-section (5) shall rank equally irrespective of the nature of the debt.

(7) In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

(8) Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

Part III

Insolvency Resolution And Bankruptcy For Individuals And Partnership
Firms

Chapter VI

**Adjudicating Authority For Individuals And Partnership
Firms**

(From Section 179 to 183)

Part III Chapter VI - Adjudicating Authority For Individuals And Partnership Firms

- **Section 179** - Adjudicating Authority For Individuals And Partnership Firms
- **Section 180** - Civil court not to have jurisdiction
- **Section 181** - Appeal to Debt Recovery Appellate Tribunal
- **Section 182** - Appeal to Supreme Court
- **Section 183** - Expeditious disposal of applications

Section 179 - Adjudicating Authority For Individuals And Partnership Firms

179. (1) Subject to the provisions of section 60, the Adjudicating Authority, in relation to insolvency matters of **individuals and firms shall be the Debt Recovery Tribunal having territorial jurisdiction** over the place where the individual debtor **actually and voluntarily resides** or carries on business or personally works for gain and can entertain an application under this Code regarding such person.

(2) The Debt Recovery Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of—

(a) any suit or proceeding by or against the individual debtor;

(b) any claim made by or against the individual debtor;

(c) any question of priorities or any other question whether of law or facts, arising out of or in relation to insolvency and bankruptcy of the individual debtor or firm under this Code.

(3) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law 14 of 1963. for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

Section 180 - Civil court not to have jurisdiction

180. (1) No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal has jurisdiction under this Code.

(2) No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal by or under this Code.

Section 181 - Appeal to Debt Recovery Appellate Tribunal

181. (1) An appeal from an order of the Debt Recovery Tribunal under this Code shall be filed **within thirty days before** the Debt Recovery Appellate Tribunal.

(2) The Debt Recovery Appellate Tribunal may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within thirty days, allow the appeal to be filed within a further period **not exceeding fifteen days.**

Section 182 - Appeal to Supreme Court

182. (1) An appeal from an order of the Debt Recovery Appellate Tribunal **on a question of law** under this Code shall be filed within **forty-five days** before the Supreme Court.

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal **within forty-five days**, allow the appeal to be filed within a further period not **exceeding fifteen days**.

Section 183 - Expeditious disposal of applications

- **183.** Where an application is not disposed of or order is not passed within the period specified in this Code, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the Chairperson of the Debt Recovery Appellate Tribunal, after taking into account the reasons so recorded, extend the period specified in this Code, **but not exceeding ten days.**

Part III

Insolvency Resolution And Bankruptcy For Individuals And Partnership Firms

Chapter VII

Offences & Penalties (From Section 184 to 187)

Part III Chapter VI - Offences & Penalties

- **Section 184** - Punishment for false information, etc., by creditor in insolvency resolution process
- **Section 185** - Punishment for contravention of provisions
- **Section 186** - Punishment for false information, concealment, etc., by bankrupt
- **Section 187** - Punishment for certain actions

Section 184 - Punishment for false information, etc., by creditor in insolvency resolution process

184. (1) If a debtor or creditor provides information which is false in any material particulars to the resolution professional, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five lakh rupees, or with both.

(2) If a creditor promises to vote in favour of the repayment plan dishonestly by accepting any money, property or security from the debtor, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three times the amount or its equivalent of such money, property or security accepted by such creditor, as the case may be, or with both:

Provided that where such amount is not quantifiable, the total amount of fine shall not exceed five lakh rupees.

Section 185 - Punishment for contravention of provisions

185. If an insolvency professional deliberately contravenes the provisions of this Part, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which shall not be less than one lakh rupees, but may extend to five lakhs rupees, or with both.

Section 186 - Punishment for false information, concealment, etc., by bankrupt

186. If the bankrupt—

(a) knowingly makes a false representation or willfully omits or conceals any material information while making an application for bankruptcy under section 122 or while providing any information during the bankruptcy process, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five lakh rupees, or with both;

Explanation.—For the purposes of clause (a), a false representation or omission includes non-disclosure of the details of disposal of any property, which but for the disposal, would be comprised in the estate of the bankrupt, other than dispositions made in the ordinary course of business carried on by the bankrupt;

(b) fraudulently has failed to provide or deliberately withheld the production of, destroyed, falsified or altered, his books of account, financial information and other records under his custody or control, he shall be punishable with imprisonment which may extend to one year, or with fine, which may extend to five lakh rupees, or with both;

(c) has contravened the restrictions under section 140 or the provisions of section 141, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five lakh rupees, or with both;

(d) has failed to deliver the possession of any property comprised in the estate of the bankrupt under his possession or control, which he is required to deliver under section 156, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five lakh rupees, or with both;

(e) has failed to account, without any reasonable cause or satisfactory explanation, for any loss incurred of any substantial part of his property comprised in the estate of the bankrupt from the date which is twelve months before the filing of the bankruptcy application, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, which may extend to three times of the value of the loss, or with both:

Provided that that where such loss is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees;

(f) has absconded or attempts to absconds after the bankruptcy commencement date, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to five lakh rupees, or with both

Explanation.—For the purposes of this clause, a bankrupt shall be deemed to have absconded if he leaves, or attempts to leave the country without delivering the possession of any property which he is required to deliver to the bankruptcy trustee under section 156

Section 187 - Punishment for certain actions

187. If a bankruptcy trustee,—

(a) has fraudulently misapplied, retained or accounted for any money or property comprised in the estate of the bankrupt; or

(b) has willfully acted in a manner that the estate of the bankrupt has suffered any loss in consequence of breach of any duty of the bankruptcy trustee in carrying out his functions under section 149, he shall be punishable with imprisonment for a term which may extend to three years, or with

fine, which shall not be less than three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention, or with both:

Provided that where such loss or unlawful gain is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees:

Provided further that the bankruptcy trustee shall not be liable under this section if he seizes or disposes of any property which is not comprised in the estate of the bankrupt and at that time had reasonable grounds to believe that he is entitled to seize or dispose that property.