

PART II
INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE
PERSONS

CHAPTER I

PRELIMINARY

4. Application of this Part. –

(1) This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh 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 crore rupees.

5. Definitions. –

In this Part, unless the context otherwise requires, –

(1) “Adjudicating Authority”, for the purposes of this Part, means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013 (18 of 2013);

(2) “auditor” means a chartered accountant certified to practice as such by the Institute of Chartered Accountants of India under section 6 of the Chartered Accountants Act, 1949 (XXXVIII of 1939);

(3) “Chapter” means a Chapter under this Part;

(4) “constitutional document”, in relation to a corporate person, includes articles of association, memorandum of association of a company and incorporation documents of a Limited Liability Partnership;

(5) “corporate applicant” means –

(a) corporate debtor; or

(b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or

(c) an individual who is in charge of managing the operations and resources of the corporate debtor; or

(d) a person who has the control, and supervision over the financial affairs of the corporate debtor;

¹[(5A) “corporate guarantor” means a corporate person who is the surety in a contract of guarantee to a corporate debtor;]

(6) “dispute” includes a suit or arbitration proceedings relating to–

¹ Ins. by Act No. 26 of 2018, sec. 3 (w.e.f. 6-6-2018).

- (a) the existence of the amount of debt;
- (b) the quality of goods or service; or
- (c) the breach of a representation or warranty;

(7) “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes–

- (a) money borrowed against the payment of interest;
 - (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
 - (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
 - (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
 - (e) receivables sold or discounted other than any receivables sold on non-recourse basis;
 - (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
- ²**[Explanation.** -For the purposes of this sub-clause, -
- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
 - (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
 - (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
 - (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;

² Ins. by Act No. 26 of 2018, sec. 3 (w.e.f. 6-6-2018).

(9) “financial position”, in relation to any person, means the financial information of a person as on a certain date;

(10) “information memorandum” means a memorandum prepared by resolution professional under sub-section (1) of section 29;

(11) “initiation date” means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process;

(12) “insolvency commencement date” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be:

³[Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority];

(13) “insolvency resolution process costs” means –

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs as may be specified by the Board;

(14) “insolvency resolution process period” means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day;

(15) “interim finance” means any financial debt raised by the resolution professional during the insolvency resolution process period;

(16) “liquidation cost” means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board;

(17) “liquidation commencement date” means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be;

(18) “liquidator” means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be;

(19) “officer” for the purposes of Chapter VII of this Part, means an officer who is in

³ Ins. by Act No. 26 of 2018, sec. 3 (w.e.f. 6-6-2018).

default, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), as the case may be;

(20) “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the ⁴[payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

(22) “personal guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor;

(23) “personnel” includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor;

(24) “related party”, in relation to a corporate debtor, means-

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is

⁴ Subs. by Act No. 26 of 2018, sec. 3 for the word ‘repayment’ (w.e.f. 6-6-2018).

a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of-

(i) participation in policy making processes of the corporate debtor; or

(ii) having more than two directors in common between the corporate debtor and such person; or

(iii) interchange of managerial personnel between the corporate debtor and such person; or

(iv) provision of essential technical information to, or from, the corporate debtor;

⁵[(24A) “related party”, in relation to an individual, means-

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

⁵ Ins. by Act No. 26 of 2018, sec. 3 (w.e.f. 6-6-2018).

(i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation. - For the purposes of this clause, -

(a) “relative”, with reference to any person, means anyone who is related to another, in the following manner, namely:-

- (i) members of a Hindu Undivided Family,
- (ii) husband,
- (iii) wife,
- (iv) father,
- (v) mother,
- (vi) son,
- (vii) daughter,
- (viii) son’s daughter and son,
- (ix) daughter’s daughter and son,
- (x) grandson’s daughter and son,
- (xi) granddaughter’s daughter and son,
- (xii) brother,
- (xiii) sister,
- (xiv) brother’s son and daughter,
- (xv) sister’s son and daughter,
- (xvi) father’s father and mother,
- (xvii) mother’s father and mother,
- (xviii) father’s brother and sister,
- (xix) mother’s brother and sister; and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;]

⁶[(25) "resolution applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25;]

⁶ Subs. by Act No. 8 of 2018, sec. 3(a), for clause (25) (w.r.e.f. 23-11-2017). Clause (25), before substitution, stood as under:
'(25) “resolution applicant” means any person who submits a resolution plan to the resolution professional;’.

(26) “resolution plan” means a plan proposed by ⁷[resolution applicant] for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;

(27) “resolution professional”, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim-resolution professional; and

(28) “voting share” means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.

CHAPTER II

CORPORATE INSOLVENCY RESOLUTION PROCESS

6. Persons who may initiate corporate insolvency resolution process. –

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.

7. Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with ⁸[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation. - For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish -

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under

⁷ Subs. by Act 8 of 2018, sec. 3(b), for “any person” (w.r.e.f. 23-11-2017).

⁸ Subs. by Act No. 26 of 2018, sec. 4 for the words “other financial creditors” (w.e.f. 6-6-2018).

sub-section (3).

(5) Where the Adjudicating Authority is satisfied that –

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate-

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

8. Insolvency resolution by operational creditor. -

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor -

(a) existence of a dispute, ⁹[if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the ¹⁰[payment] of unpaid operational debt-

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has

⁹ Subs. by Act No. 26 of 2018, sec. 5 (a) (i) for the words “if any, and” (w.e.f. 6-6-2018).

¹⁰ Subs by Act No. 26 of 2018, sec.5 (a) (ii) for the word “repayment” (w.e.f. 6-6-2018).

encashed a cheque issued by the corporate debtor.

Explanation. – For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding ¹¹[payment] of the operational debt in respect of which the default has occurred.

9. Application for initiation of corporate insolvency resolution process by operational creditor. –

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish-

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt ¹²[by the corporate debtor, if available;]

¹³[(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

¹¹ Subs. by Act No. 26 of 2018, sec.5 (b) for the word “repayment” (w.e.f. 6-6-2018).

¹² Subs. by Act No. 26 of 2018, sec. 6 (a) (i), for the words” by the corporate debtor; and” (w.e.f. 6-6-2018).

¹³ Subs. by Act No. 26 of 2018, sec. 6 (a) (ii), for the words “such other information or as may be specified” (w.e.f. 6-6-2018).

- (a) the application made under sub-section (2) is complete;
 - (b) there is no ¹⁴[payment] of the unpaid operational debt;
 - (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
 - (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
 - (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.
- (ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if -
- (a) the application made under sub-section (2) is incomplete;
 - (b) there has been ¹⁵[payment] of the unpaid operational debt;
 - (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;
 - (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
 - (e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.

10. Initiation of corporate insolvency resolution process by corporate applicant. -

(1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

¹⁶[(3) The corporate applicant shall, along with the application, furnish-

¹⁴ Subs. by Act No. 26 of 2018, sec. 6 (b) (A) for the word “repayment” (w.e.f. 6-6-2018).

¹⁵ Subs. by Act No. 26 of 2018, sec. 6 (b) (B) for the word “repayment” (w.e.f. 6-6-2018).

¹⁶ Ins. by Act No. 26 of 2018, sec. 7(a) (w.e.f. 6-6-2018), before substitution the sub clause 3, stood as under –
“(3). The corporate applicant shall, along with the application furnished the information relating to –
(a) its books of account and such other documents relating to such period as may be specified; and
(b) the resolution professional proposed to be appointed as an interim resolution professional.”

(a) the information relating to its books of account and such other documents for such period as may be specified;

(b) the information relating to the resolution proposed to be appointed as an interim resolution professional; and

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.]

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order-

(a) admit the application, if it is complete ¹⁷[and no disciplinary proceeding is pending against the proposed resolution professional]; or

(b) reject the application, if it is incomplete ¹⁸[or any disciplinary proceeding is pending against the proposed resolution professional]:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.

11. Persons not entitled to make application. -

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely: -

(a) a corporate debtor undergoing a corporate insolvency resolution process; or

(b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or

(d) a corporate debtor in respect of whom a liquidation order has been made.

Explanation. - For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

12. Time-limit for completion of insolvency resolution process. -

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of

¹⁷ Ins. by Act No. 26 of 2018, sec. 7(b) (i) (w.e.f. 6-6-2018).

¹⁸ Ins. by Act No. 26 of 2018, sec. 7(b) (ii) (w.e.f. 6-6-2018).

the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of ¹⁹[sixty-six] per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

²⁰[12A. Withdrawal of application admitted under section 7, 9 or 10. –

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.]

13. Declaration of moratorium and public announcement. -

(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order –

- (a) declare a moratorium for the purposes referred to in section 14;
- (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and
- (c) appoint an interim resolution professional in the manner as laid down in section 16.

(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.

14. Moratorium. -

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

¹⁹ Subs. by Act No. 26 of 2018, sec. 8 for the words, “seventy-five” (w.e.f. 6-6-2018).

²⁰ Ins. by Act No. 26 of 2018, sec. 9 (w.e.f. 6-6-2018).

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

²¹[(3) The provisions of sub-section (1) shall not apply to —

(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;

(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

15. Public announcement of corporate insolvency resolution process. -

(1) The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely: –

(a) name and address of the corporate debtor under the corporate insolvency resolution process;

(b) name of the authority with which the corporate debtor is incorporated or registered;

(c) the last date for submission of ²²[claims, as may be specified];

(d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;

²¹ Subs. by Act No. 26 of 2018, sec. 10 (w.e.f. 6-6-2018). Before its substitution, it stood as under: -
“(3) The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.”

²² Subs. by Act No. 26 of 2018, sec. 11 for the word “claims” (w.e.f. 6-6-2018).

(e) penalties for false or misleading claims; and

(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

(2) The public announcement under this section shall be made in such manner as may be specified.

16. Appointment and tenure of interim resolution professional. -

(1) The Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date.

(2) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

(3) Where the application for corporate insolvency resolution process is made by an operational creditor and-

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

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

(5) The term of the interim resolution professional ²³[shall continue till the date of appointment of the resolution professional under section 22].

17. Management of affairs of corporate debtor by interim resolution professional. -

(1) From the date of appointment of the interim resolution professional, -

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

²³ Subs. by Act No.26 of 2018, sec. 12, for the words “shall not exceed thirty days from date of his appointment” (w.e.f. 6-6-2018).

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

(2) The interim resolution professional vested with the management of the corporate debtor, shall-

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of accounts, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as ²⁴[may be specified; and]

(e) ²⁵[be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.]

18. Duties of interim resolution professional. -

The interim resolution professional shall perform the following duties, namely: -

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to -

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a

²⁴ Subs. by Act No. 26 of 2018, sec. 13 (i), for the words “may be specified” (w.e.f. 6-6-2018).

²⁵ Ins. by Act No. 26 of 2018, sec. 13 (ii) (w.e.f. 6-6-2018).

resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including -

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

Explanation. – For the purposes of this ²⁶[section], the term “assets” shall not include the following, namely: -

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

19. Personnel to extend co-operation to interim resolution professional. -

(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and

²⁶ Subs. by Act No. 26 of 2018, sec. 14, for the words “sub-section” (w.e.f. 6-6-2018).

management of the corporate debtor.

20. Management of operations of corporate debtor as going concern. -

(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-

(a) to appoint accountants, legal or other professionals as may be necessary;

(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and

(e) to take all such actions as are necessary to keep the corporate debtor as a going concern.

21. Committee of creditors. -

(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a²⁷[financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor,] shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

²⁸[Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into

²⁷Subs. by Act No. 26 of 2018, sec. 15 (i) (a), for the words “related party to whom a corporate debtor owes a financial debt” (w.e.f. 6-6-2018).

²⁸ Ins. by Act No. 26 of 2018, sec. 15 (i) (b) (w.e.f. 6-6-2018).

equity shares, prior to the insolvency commencement date.]

(3) ²⁹[Subject to sub-sections (6) and (6A), where] the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

(4) Where any person is a financial creditor as well as an operational creditor, -

(a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;

(b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

(5) Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

(6) Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility ³⁰[***] provide for a single trustee or agent to act for all financial creditors, each financial creditor may-

(a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;

(b) represent himself in the committee of creditors to the extent of his voting share;

(c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or

(d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

³¹[(6A) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised

²⁹ Subs. by Act No. 26 of 2018, sec. 15 (ii), for the word “Where” (w.e.f. 6-6-2018).

³⁰ The words “or issued as securities” omitted by Act. No 26 of 2018, sec. 15 (iii) (w.e.f. 6.6.2018).

³¹ Ins. by Act No. 26 of 2018, sec. 15(iv) (w.e.f. 6-6-2018).

representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6B) The remuneration payable to the authorised representative-

(i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (b) of sub-section (6A) shall be as specified which shall be form part of the insolvency resolution process costs.]

³²[(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.]

(9) The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.

(10) The resolution professional shall make available any financial information so required by the committee of creditors under sub-section (9) within a period of seven days of such requisition.

22. Appointment of resolution professional. -

(1) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than ³³[**sixty-six**] per cent. of the voting share of the financial creditors, either resolve to

³² Subs. by Act No. 26 of 2018, sec. 15 (v) (w.e.f. 6.6.2018), before substitution, the clauses (7) & (8) as under: -

“(7) The Board may specify the manner of determining the voting share in respect of financial debts issued as securities under sub-section (6).

(8) All decisions of the committee of creditors shall be taken by a vote of not less than seventy - five per cent. of voting share of the financial creditors:”

³³ Subs. by Act No. 26 of 2018, sec. 16 (a) for the words “seventy-five” (w.e.f. 6-6-2018).

appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) Where the committee of creditors resolves under sub-section (2)-

(a) to continue the interim resolution professional as resolution professional³⁴[subject to a written consent from the interim resolution professional in the specified form], it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional³⁵[along with a written consent from the proposed resolution professional in the specified form].

(4) The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.

(5) Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

23. Resolution professional to conduct corporate insolvency resolution process. -

(1) Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period:

³⁶[Provided that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31.]

(2) The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

(3) In case of any appointment of a resolution professional under sub-sections (4) of section 22, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

24. Meeting of committee of creditors. -

³⁴ Ins. by Act No. 26 of 2018, sec. 16 (b) (i) (w.e.f. 6-6-2018).

³⁵ Ins. by Act No. 26 of 2018, sec. 16 (b) (ii) (w.e.f. 6-6-2018).

³⁶ Ins. by Act No. 26 of 2018, sec. 17 (w.e.f. 6-6-2018).

(1) The members of the committee of creditors may meet in person or by such other electronic means as may be specified.

(2) All meetings of the committee of creditors shall be conducted by the resolution professional.

(3) The resolution professional shall give notice of each meeting of the committee of creditors to-

(a) members of ³⁷[committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)];

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:

Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

(5) ³⁸[Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor] who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

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

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.

25. Duties of resolution professional. -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the

³⁷ Subs. by Act No. 26 of 2018, sec. 18(i) for the words "Committee of creditors" (w.e.f. 6-6-2018).

³⁸ Subs. by Act No. 26 of 2018, sec. 18 (ii) for the words "Any creditor" (w.e.f. 6-6-2018).

following actions, namely: -

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

³⁹[(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.]

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board.

⁴⁰[25A. Rights and duties of authorised representative of financial creditors. –

(1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

³⁹ Subs. by Act 8 of 2018, sec. 4, for clause (h) (w.r.e.f. 23-11-2017). Clause (h), before substitution, stood as under:

“(h) invite prospective lenders, investors, and any other persons to put forward resolution plans;”.

⁴⁰ Ins. by Act No. 26 of 2018, sec. 19 (w.e.f. 6-6-2018).

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Explanation. - For the purposes of this section, the “electronic means” shall be such as may be specified.]

26. Application for avoidance of transactions not to affect proceedings. -

The filing of an avoidance application under clause (j) of sub-section (2) of section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.

27. Replacement of resolution professional by committee of creditors. -

(1) Where, at any time during the corporate insolvency resolution process, the committee or creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

⁴¹[(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.]

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22

⁴¹ Subs. by Act No. 26 of 2018, sec. 20 (w.e.f. 6-6-2018). Clause (2), before substitution stood as under:

“(2) The committee of creditors may, at a meeting, by a vote of seventy-five per cent. of voting shares, propose to replace the resolution professional appointed under section 22 with another resolution professional.”

shall continue till the appointment of another resolution professional under this section.

28. Approval of committee of creditors for certain actions. -

(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: -

(a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;

(b) create any security interest over the assets of the corporate debtor;

(c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;

(d) record any change in the ownership interest of the corporate debtor;

(e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;

(f) undertake any related party transaction;

(g) amend any constitutional documents of the corporate debtor;

(h) delegate its authority to any other person;

(i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;

(j) make any change in the management of the corporate debtor or its subsidiary;

(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;

(l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or

(m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

(2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).

(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of ⁴²[sixty-six] per cent. of the voting shares.

(4) Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in

⁴² Subs. by Act No. 26 of 2018, sec. 21, for the words “seventy-five” (w.e.f. 6-6-2018).

this section, such action shall be void.

(5) The committee of creditors may report the actions of the resolution professional under sub-section (4) to the Board for taking necessary actions against him under this code.

29. Preparation of information memorandum. -

(1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes-

(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and

(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Explanation. – For the purposes of this section, “relevant information” means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.

⁴³[29A. Persons not eligible to be resolution applicant. -

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

(c) ⁴⁴[at the time of submission of the resolution plan has an account,] or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) ⁴⁵[or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution

⁴³ Ins. by Act 8 of 2018, sec. 5 (w.r.e.f. 23-11-2017).

⁴⁴ Subs. by Act No. 26 of 2018, sec 22(i) (A), for the words “has an account” (w.e.f.6-6-2018.).

⁴⁵ Ins. by Act No. 26 of 2018, sec 22(i) (B) (w.e.f. 6-6-2018).

process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:

⁴⁶[Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;]

⁴⁷[(d) has been convicted for any offence punishable with imprisonment –

- (i) for two years or more under any Act specified under the Twelfth Schedule; or
- (ii) for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause(iii) of *Explanation I*];

(e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

⁴⁸[Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of *Explanation I*;]

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction

⁴⁶ Ins. by Act No. 26 of 2018, sec. 22(i) (C) (w.e.f. 6-6-2018).

⁴⁷ Subs by Act No. 26 of 2018, sec. 22 (ii) (w.e.f. 6-6-2018). Clause (d) before substitution stood as under:

“(d) has been convicted for any offence punishable with imprisonment for two years or more;”

⁴⁸ Ins. by Act No. 26 of 2018, sec. 22 (iii) (w.e.f. 6-6-2018).

or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

⁴⁹[Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;]

(h) has executed ⁵⁰[a guarantee] in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code ⁵¹[and such guarantee has been invoked by the creditor and remains unpaid in full or part];

(i) ⁵²[is] subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

*Explanation*⁵³**[I]**. — For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

⁵⁴[Provided that nothing in clause (iii) of *Explanation I* shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity,

⁴⁹ Ins. by Act No. 26 of 2018, sec. 22 (iv) (w.e.f. 6-6-2018).

⁵⁰ Subs. by Act No. 26 of 2018, sec. 22 (v) (A) for the words "an enforceable guarantee" (w.e.f. 6-6-2018).

⁵¹ Ins. by Act No. 26 of 2018, sec. 22 (v) (B) (w.e.f. 6-6-2018).

⁵² Subs. by Act No. 26 of 2018, sec. 22 (vi) for the words "has been" (w.e.f. 6-6-2018).

⁵³ Numbered as **I** by Act No. 26 of 2018, sec 22(vii) (w.e.f. 6-6-2018).

⁵⁴ Subs. by Act No. 26 of 2018, sec. 22 (vii) (w.e.f. 6-6-2018). The proviso before substitution stood as under:

"Provided that nothing in clause (iii) of this *Explanation* shall apply to—

(A) a scheduled bank; or

(B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); or

(C) an Alternate Investment Fund registered with the Securities and Exchange Board of India."

regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;]

⁵⁵[*Explanation II*—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);

(d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(e) an Alternate Investment Fund registered with Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.]

30. Submission of resolution plan. -

(1) A resolution applicant may submit a resolution plan ⁵⁶[along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan -

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ⁵⁷[payment] of other debts of the corporate debtor;

⁵⁵ Ins. by Act No. 26 of 2018, sec. 22 (viii) (w.e.f. 6-6-2018).

⁵⁶ Ins. by Act No. 26 of 2018, sec 23(i) (w.e.f. 6-6-2018).

⁵⁷ Subs by Act No.26 of 2018, sec.23 (ii) (A) for the words "repayment" (w.e.f. 6-6-2018).

(b) provides for the ⁵⁸[payment] of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) confirms to such other requirements as may be specified by the Board.

⁵⁹[*Explanation.* — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

⁶⁰[(4) The committee of creditors may approve a resolution plan by a vote of not less than ⁶¹[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section]:

⁵⁸ Subs by Act No.26 of 2018, sec.23 (ii) (A) for the words “repayment” (w.e.f. 6-6-2018).

⁵⁹ Ins. By Act No.26 of 2018, sec.23 (ii) (B) (w.e.f. 6-6-2018).

⁶⁰ Subs. by Act 8 of 2018, sec. 6, for sub-section (4) (w.r.e.f. 23-11-2017). Sub-section (4), before substitution stood as under:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent. of voting share of the financial creditors.”.

⁶¹ Subs. by Act. No 26 of 2018, sec. 23 (iii) (a) for the words “seventy-five” (w.e.f. 6-6-2018).

⁶²[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

31. Approval of resolution plan. -

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

⁶³[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), -

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

⁶⁴[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the

⁶² Ins. by Act. No 26 of 2018, sec. 23 (iii) (b) (w.e.f. 6-6-2018).

⁶³ Ins. by Act. No 26 of 2018, sec. 24 (w.e.f. 6-6-2018).

⁶⁴ Ins. by Act. No 26 of 2018, sec. 24 (w.e.f. 6-6-2018).

committee of creditors.]

32. Appeal. -

Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.

CHAPTER III

LIQUIDATION PROCESS

33. Initiation of liquidation. -

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

it shall -

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors ⁶⁵[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan,

⁶⁵ Ins. by Act No. 26 of 2018, sec. 25 (w.e.f. 6-6-2018).

it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority,

(6) the provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

34. Appointment of liquidator and fee to be paid. -

(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under ⁶⁶[Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicating Authority in specified form,] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

(2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

(3) The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.

(4) The Adjudicating Authority shall by order replace the resolution professional, if—

(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded ⁶⁷[in writing; or]

⁶⁸[(c) the resolution professional fails to submit written consent under sub-section (1).]

⁶⁶ Subs. by Act No. 26 of 2018, sec 26(a), for the words and figures “Chapter II shall” (w.e.f. 6-6-2018).

⁶⁷ Sub by Act No. 26 of 2018, sec 26(b), for the words “in writing” (w.e.f. 6-6-2018).

⁶⁸ Ins. by Act No 26 of 2018, sec 26(b) (w.e.f. 6-6-2018).

(5) For the purposes of ⁶⁹[clause (a) and clause (c)] of sub-section (4), the Adjudicating Authority may direct the Board to propose name of another insolvency professional to be appointed as a liquidator.

(6) The Board shall propose the name of another insolvency professional ⁷⁰[along with written consent from the insolvency professional in the specified form] within ten days of the direction issued by the Adjudicating Authority under sub-section (5).

(7) The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

(8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

35. Powers and duties of liquidator. -

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -

(a) to verify claims of all the creditors;

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified:

⁷¹[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.]

(g) to draw, accept, make and endorse any negotiable instruments including bill of

⁶⁹ Subs. by Act No 26 of 2018, sec 26 (c), for the words and brackets “clause (a)” (w.e.f. 6-6-2018).

⁷⁰ Ins. by Act No.26 of 2018, sec 26 (d), (w.e.f. 6-6-2018)

⁷¹ Ins. by Act 8 of 2018, sec. 7 (w.r.e.f. 23-11-2017).

exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board.

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

36. Liquidation estate. -

(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: -

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -

(a) assets owned by a third party which are in possession of the corporate debtor, including -

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

(d) assets of any Indian or foreign subsidiary of the corporate debtor; or

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

37. Powers of liquidator to access information. -

(1) Notwithstanding anything contained in any other law for the time being in force, the liquidator shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely: -

(a) an information utility;

(b) credit information systems regulated under any law for the time being in force;

(c) any agency of the Central, State or Local Government including any registration authorities;

(d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;

(e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;

(f) any database maintained by the Board; and

(g) any other source as may be specified by the Board.

(2) The creditors may require the liquidator to provide them any financial information relating to the corporate debtor in such manner as may be specified.

(3) The liquidator shall provide information referred to in sub-section (2) to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.

38. Consolidation of claims. -

(1) The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.

(2) A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility:

Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner provided for the submission of claims for the operational creditor under sub-section (3).

(3) An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.

(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub-section (3).

(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

39.Verification of claims.-

(1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.

(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

40. Admission or rejection of claims. -

(1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be:

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

41. Determination of valuation of claims. -

The liquidator shall determine the value of claims admitted under section 40 in such manner as may be specified by the Board.

42. Appeal against the decision of liquidator. -

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator ⁷²[accepting or] rejecting the claims within fourteen days of the receipt of such decision.

43. Preferential transactions and relevant time. -

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of

⁷² Ins. by Act No.26 of 2018, sec. 27 (w.e.f. 6-6-2018).

preferential transactions and for, one or more of the orders referred to in section 44.

(2) A corporate debtor shall be deemed to have given a preference, if—

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers—

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that —

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation. – For the purpose of sub-section (3) of this section, “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(4) A preference shall be deemed to be given at a relevant time, if —

(a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

44. Orders in case of preferential transactions. -

(1) The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:

(a) require any property transferred in connection with the giving of the preference

to be vested in the corporate debtor;

(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;

(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;

(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;

(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

(g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not -

(a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;

(b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

Explanation-I: For the purpose of this section, it is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference, -

(a) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;

(b) is a related party,

it shall be presumed that the interest was acquired, or the benefit was received otherwise than in good faith unless the contrary is shown.

Explanation-II. – A person shall be deemed to have sufficient information or

opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13.

45. Avoidance of undervalued transactions. -

(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) ⁷³***] determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the corporate debtor—

(a) makes a gift to a person; or

(b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor.

46. Relevant period for avoidable transactions. -

(1) In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that –

(i) such transaction was made with any person within the period of one year preceding the insolvency commencement date; or

(ii) such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

(2) The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.

47. Application by creditor in cases of undervalued transactions. -

(1) Where an undervalued transaction has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter.

(2) Where, the Adjudicating Authority, after examination of the application made under sub-section (1), is satisfied that -

⁷³ Omitted by Act No. 26 of 2018, sec. 28 (w.e.f. 6-6-2018). Before omission, it stood as “of section 43”.

(a) undervalued transactions had occurred; and

(b) liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority,

it shall pass an order-

(a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48;

(b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

48. Order in cases of undervalued transactions. -

(1) The order of the Adjudicating Authority under sub-section (1) of section 45 may provide for the following: -

(a) require any property transferred as part of the transaction, to be vested in the corporate debtor;

(b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;

(c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or

(d) require the payment of such consideration for the transaction as may be determined by an independent expert.

49. Transactions defrauding creditors. -

(1) Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor -

(a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or

(b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order-

(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and

(ii) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section -

(a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice

of the relevant circumstances, or affect any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

50. Extortionate credit transactions. -

(1) Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

(2) The Board may specify the circumstances in which a transactions which shall be covered under sub-section (1).

Explanation. - For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

51. Orders of Adjudicating Authority in respect of extortionate credit transactions. -

Where the Adjudicating Authority after examining the application made under sub-section (1) of section 50 is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order –

- (a) restore the position as it existed prior to such transaction;
- (b) set aside the whole or part of the debt created on account of the extortionate credit transaction;
- (c) modify the terms of the transaction;
- (d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or
- (e) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

52. Secured creditor in liquidation proceedings. -

- (1) A secured creditor in the liquidation proceedings may-
 - (a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or
 - (b) realise its security interest in the manner specified in this section.
- (2) Where the secured creditor realises security interest under clause (b) of sub-

section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either –

- (a) by the records of such security interest maintained by an information utility; or
- (b) by such other means as may be specified by the Board.

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall-

- (a) account to the liquidator for such surplus; and
- (b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53.

53. Distribution of assets. -

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period as may be specified, namely: -

- (a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following:

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

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

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

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following: -

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the 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 liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation. – For the purpose of this section-

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(ii) the term “workmen's dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

54. Dissolution of corporate debtor. -

(1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

CHAPTER IV

FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS

55. Fast track corporation insolvency resolution process. -

(1) A corporate insolvency resolution process carried out in accordance with this Chapter shall be called as fast track corporate insolvency resolution process.

(2) An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely: -

(a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or

(b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or

(c) such other category of corporate persons as may be notified by the Central Government.

56. Time period for completion of fast track corporate insolvency resolution process. -

(1) Subject to the provisions of sub-section (3), the fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast track corporate insolvency resolution process beyond ninety days if instructed to do so by way of a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy-five per cent. of the voting share.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that fast track corporate insolvency resolution process cannot be completed within ninety days, it may, by order, extend the duration of such process beyond the said period ninety days by such further period, as it thinks fit, but not exceeding forty-five days:

Provided that any extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once.

57. Manner of initiating fast track corporate insolvency resolution process. -

An application for fast track corporate insolvency resolution process may be filed by a

creditor or corporate debtor as the case may be, alongwith-

(a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and

(b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process. Manner of initiating fast track corporate insolvency resolution process.

58. Applicability of Chapter II to this Chapter. -

The process for conducting a corporate insolvency resolution process under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require.

CHAPTER V

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

59. Voluntary liquidation of corporate persons. -

(1) A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.

(2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.

(3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely: -

(a) a declaration from majority of the directors of the company verified by an affidavit stating that –

(i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

(ii) the company is not being liquidated to defraud any person;

(b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely: -

(i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

(c) within four weeks of a declaration under sub-clause (a), there shall be -

(i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or

(ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

Provided that the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

(4) The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

(5) Subject to approval of the creditors under sub-section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-section (3).

(6) The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

(7) Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

(8) The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(9) A copy of an order under sub-section (8) shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.

CHAPTER VI

ADJUDICATING AUTHORITY FOR CORPORATE PERSONS

60. Adjudicating Authority for corporate persons. -

(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the

registered office of a corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or ⁷⁴[liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before the National Company Law Tribunal.

(3) An insolvency resolution process or ⁷⁵[liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of -

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate 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.

61. Appeals and Appellate Authority. -

(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

⁷⁴ Subs. by Act. No 26 of 2018, sec. 29 (a), for the words “bankruptcy of a personal guarantor of such corporate debtor” (w.e.f. 6-6-2018)

⁷⁵ Subs. by Act. No 26 of 2018, sec 29 (b), for the words “bankruptcy proceeding of a personal guarantor of the corporate debtor” (w.e.f. 6-6-2018).

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely: –

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

(4) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

62. Appeal to Supreme Court. -

(1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

(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.

63. Civil court not to have jurisdiction. -

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.

64. Expeditious disposal of applications. -

(1) Where an application is not disposed of or order is not passed within the period specified in this Code, the National Company Law Tribunal or the National Company Law Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the President of the National Company Law Tribunal or the Chairperson of the National Company Law Appellate Tribunal, as the case may be, may,

after taking into account the reasons so recorded, extend the period specified in the Act but not exceeding ten days.

(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 National Company Law Tribunal or the National Company Law Appellate Tribunal under this Code.

65. Fraudulent or malicious initiation of proceedings. -

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon a such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

66. Fraudulent trading or wrongful trading. -

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

67. Proceedings under section 66. -

(1) Where the Adjudicating Authority passes an order under sub-section (1) or sub-

section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may—

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.

Explanation. – For the purposes of this section, “assignee” includes a person to whom or in whose favour, by the directions of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the declaration has been made.

(2) Where the Adjudicating Authority has passed an order under sub-section (1) or (2) of section 66, as the case may be, in relation to a person who is a creditor of the corporate debtor, it may, by an order, direct that the whole or any part of any debt owed by the corporate debtor to that person and any interest thereon shall rank in the order of priority of payment under section 53 after all other debts owed by the corporate debtor.

CHAPTER VII

OFFENCES AND PENALTIES

68. Punishment for concealment of property. -

(1) Where any officer of the corporate debtor has, –

(i) within the twelve months immediately preceding the insolvency commencement date, –

(a) wilfully concealed any property or part of such property of the corporate debtor or concealed any debt due to, or from, the corporate debtor, of the value of ten thousand rupees or more; or

(b) fraudulently removed any part of the property of the corporate debtor of the value of ten thousand rupees or more; or

(c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the corporate debtor or its affairs, or

(d) wilfully made any false entry in any book or paper affecting or relating to the property of the corporate debtor or its affairs, or

(e) fraudulently parted with, altered or made any omission in any document

affecting or relating to the property of the corporate debtor or its affairs, or

(f) wilfully created any security interest over, transferred or disposed of any property of the corporate debtor which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the corporate debtor, or

(g) wilfully concealed the knowledge of the doing by others of any of the acts mentioned in clauses (c), (d) or clause (e); or

(ii) at any time after the insolvency commencement date, committed any of the acts mentioned in sub-clause (a) to (f) of clause (i) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of clause (i); or

(iii) at any time after the insolvency commencement date, taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed,

such officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.

69. Punishment for transactions defrauding creditors. -

⁷⁶**[If]** an officer of the corporate debtor or the corporate debtor-

(a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the corporate debtor;

(b) has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor,

such officer of the corporate debtor or the corporate debtor, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Provided that a person shall not be punishable under this section if the acts mentioned in clause (a) were committed more than five years before the insolvency commencement date; or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the corporate debtor.

⁷⁶ Subs. by Act. No 26 of 2018, sec. 30, for the words "On or after the insolvency commencement date, if" (w.e.f. 6-6-2018).

70. Punishment for misconduct in course of corporate insolvency resolution process. -

(1) On or after the insolvency commencement date, where an officer of the corporate debtor —

(a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or

(b) does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or

(c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver; or

(d) fails to inform their solution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or

(e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or

(f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date,

he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to do so in relation to the state of affairs of the corporate debtor.

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

71. Punishment for falsification of books of corporate debtor. -

On and after the insolvency commencement date, where any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the corporate debtor with intent to defraud or deceive any person, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, and with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

72. Punishment for wilful and material omissions from statements relating to affairs of corporate debtor. -

Where an officer of the corporate debtor makes any material and wilful omission in any statement relating to the affairs of the corporate debtor, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

73. Punishment for false representations to creditors. -

(1) Where any officer of the corporate debtor —

(a) on or after the insolvency commencement date, makes a false representation or commits any fraud for the purpose of obtaining the consent of the creditors of the corporate debtor or any of them to an agreement with reference to the affairs of the corporate debtor, during the corporate insolvency resolution process, or the liquidation process;

(b) prior to the insolvency commencement date, has made any false representation, or committed any fraud, for that purpose,

he shall be punishable with imprisonment for a term which shall not be less than three years, but may extend to five years or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

74. Punishment for contravention of moratorium or the resolution plan. -

(1) Where the corporate debtor or any of its officer violates the provisions of section 14, any such officer who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable with imprisonment for a term which shall not be less than three years, but may extend to five years or with fine which shall not be less than one lakh rupees, but may extend to three lakh rupees, or with both.

(2) Where any creditor violates the provisions of section 14, any person who knowingly and wilfully authorised or permitted such contravention by a creditor shall be punishable with imprisonment for a term which shall not be less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

75. Punishment for false information furnished in application. -

Where any person furnishes information in the application made under section 7, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material, such person shall be punishable with fine which shall not be less than one lakh rupees, but may extend to one crore rupees.

76. Punishment for non-disclosure of dispute or ⁷⁷[payment] of debt by operational creditor. -

Where-

(a) an operational creditor has wilfully or knowingly concealed in an application under section 9 the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final ⁷⁸[payment] of the unpaid operational debt; or

(b) any person who knowingly and wilfully authorised or permitted such concealment under clause (a)

such operational creditor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year but may extend to five years or with fine which shall not be less than one lakh rupees but may extend to one crore rupees, or with both.

77. Punishment for providing false information in application made by corporate debtor. -

Where-

(a) a corporate debtor provides information in the application under section 10 which is false in material particulars, knowing it to be false and omits any material fact, knowing it to be material; or

(b) any person who knowingly and wilfully authorised or permitted the furnishing of such information under sub-clause (a)

such corporate debtor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years and with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

Explanation. – For the purpose of this section and sections 75 and 76, an application shall be deemed to be false in material particulars in case the facts mentioned or omitted in the application, if true, or not omitted from the application as the case may be, would have been sufficient to determine the existence of a default under this Code.

⁷⁷ Subs. by Act. No. 26 of 2018, sec. 31(a), for the word “repayment” (w.e.f. 6-6-2018).

⁷⁸ Subs. by Act. No. 26 of 2018, sec. 31(b), for the word “repayment” (w.e.f. 6-6-2018).