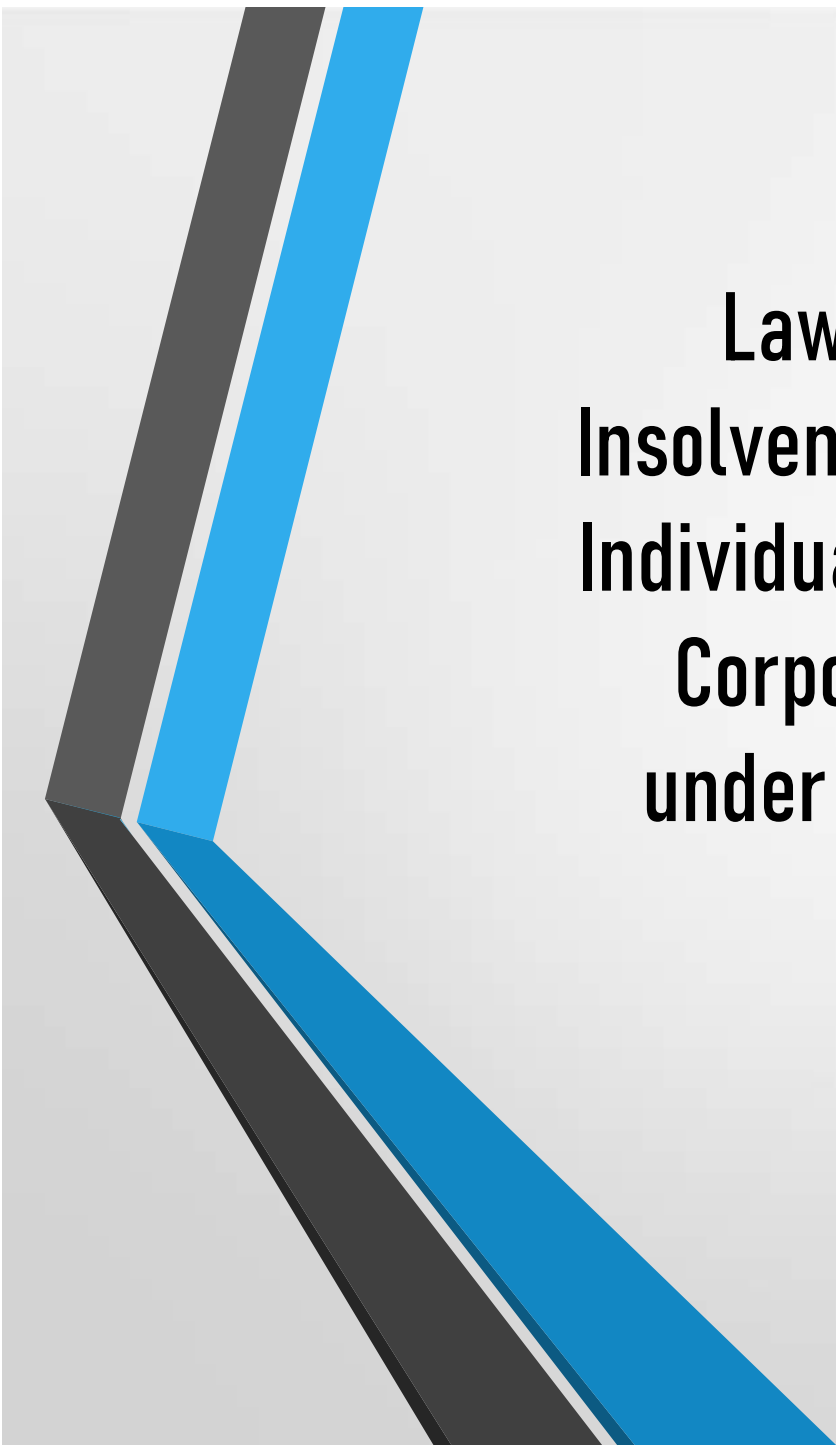




**Warm Welcome & Greetings
Dear Participants**



**Law relating to
Insolvency Resolution of
Individual Guarantors to
Corporate Debtors
under I&B Code, 2016**

**Presenter:
NILESH SHARMA
FCA, LL B., Insolvency Professional
First Partner, RRR
Insolvency Service Experts
LLP (RRRISE)**



CONTENTS & STRUCTURE OF INDIVIDUAL INSOVENCY RESOLUTION PROCESS

Goals of the Process for Individual Insolvency

- ❖ Providing a fair and orderly process for dealing with the financial affairs of insolvency individual;
- ❖ Providing effective relief or release from the financial liabilities and obligations of the insolvent;
- ❖ Providing mechanisms that enable both debtor and creditor to participate with the least possible delay;
- ❖ Providing the correct ex-ante incentives so that individuals are not able to unfairly strategise during the process of bankruptcy.

Ingredients of an efficient insolvency/Bankruptcy regime :

- ❖ Promote early initiation of proceeding to separate viable businesses from unviable ones and to preserve maximum value;
- ❖ Have clear hierarchy of payments upon insolvency;
- ❖ Have an efficient system for transferring failed re-organizations to liquidation;
- ❖ Allow sufficient control to the creditors without giving them the leeway to manipulate;
- ❖ Effective law on the statute books as well as an effective institutional structure to deal with bankruptcy cases;
- ❖ Must be applied in tandem with other laws such as Debt Recovery Laws and Labour Laws

Consequences of inefficient rescue regime in India:

- ❖ Most creditors prefer to initiate separate recovery proceeding often involving the same assets irrespective of the viability of the business of the debtor;
- ❖ Conflicts amongst the various stakeholders;
- ❖ Disorderly distribution;
- ❖ Delays and depletion in value of assets of the debtors;
- ❖ More emphasis on secured loans to the firms who have fixed assets;
- ❖ Non-availability / inadequate availability of funding to businesses which do not have much tangible assets;
- ❖ Poor environment for credit leading to concentration of credit to a small set of very safe borrowers;

Non-development of bond markets

Notification & Applicability

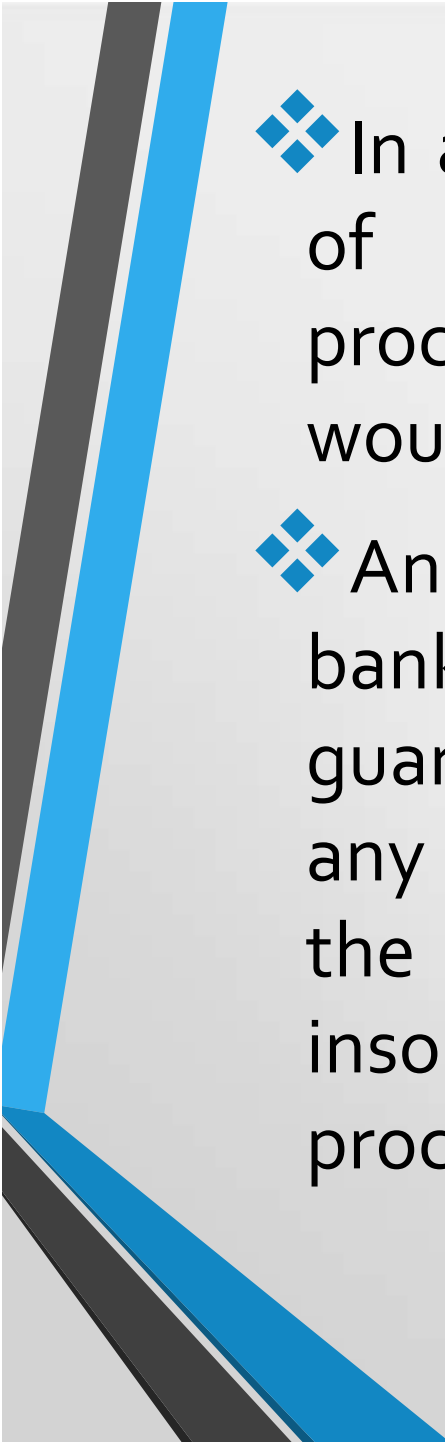
- ❖ The Insolvency & Bankruptcy Code, 2016, (IBC) classifies **individuals** into **three classes**, namely:
 - i. *personal guarantors to Corporate Debtors;*
 - ii. *partnership firms and proprietorship firms; and*
 - iii. *other individuals*
- ❖ The provisions of **Part III** of the Code have only been brought into effect in so far as they are applicable to a **Personal Guarantor to CD**.
- ❖ Ministry of Corporate Affairs vide notification dated 15.11.2019 notified the provisions of I&B Code, 2016 relating to 'Personal Guarantors' to Corporate Debtors, effective from 01.12.2019.
- ❖ Including clause (e) of section 2 of the I&B Code, 2016 dealing with personal guarantors to corporate debtors and Part III of the I&B Code except Fresh Start Process (Chapter II).

Applicability of Part III of IBC | Chapter I, Section 78

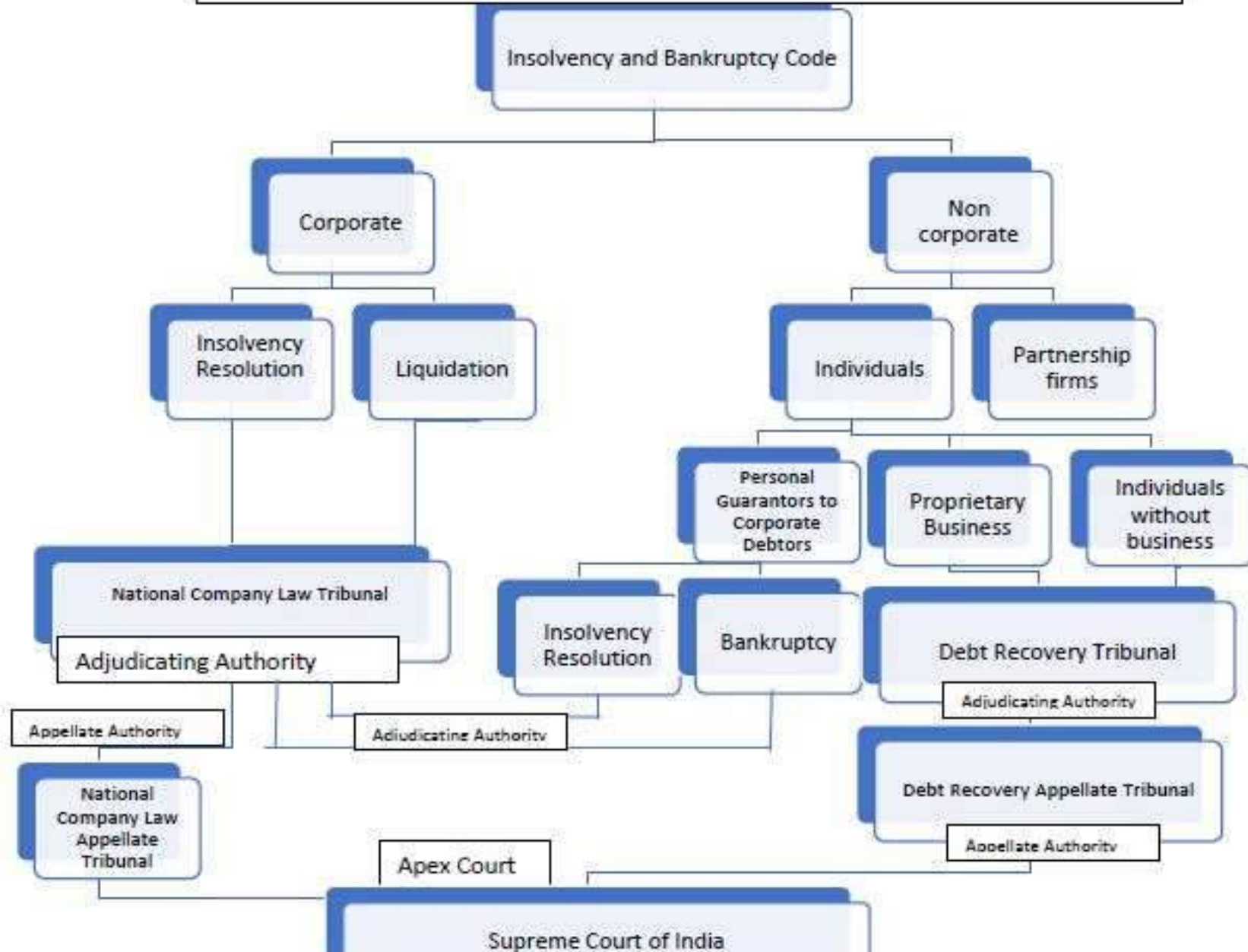
- ❖ Insolvency & Bankruptcy of Individuals can be initiated where the amount of default is more than **one thousand rupees**.
- ❖ Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than **one lakh rupees**
- ❖ **Exception: Fresh state process (not notified) (Section 80 to Section 93)**

JURISDICTION:-

- ❖ As per section 60(1) & (2), the jurisdiction for initiating Insolvency and Bankruptcy proceedings against a personal guarantor to a corporate debtor, would lie with **National Company Law Tribunal (NCLT)** in cases where a corporate insolvency process has already been initiated or is pending against the corporate debtor of personal guarantor. In this regard, NCLT shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code.

- 
- ❖ In all other cases, the jurisdiction in respect of initiating Insolvency and Bankruptcy proceedings against a personal guarantor would lie with **Debt Recovery Tribunal**.
 - ❖ An insolvency resolution process or bankruptcy proceeding of a personal guarantor 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.

Framework of IBC-Adjudicating Authority



DIFFERENCES BETWEEN CIRP AND INDIVIDUAL INSOLVENCY PROCESS

Point of difference	CIRP	INDIVIDUAL INSOLVENCY
Creditor classification	Classified as "Financial" and "Operational"	No such classification.
Interim Moratorium	Not available.	Available from the date of filing application for initiation.
Role of RP	Starts from admission of application.	Starts before admission with scrutiny of Application for initiation.
Possession of assets	Goes into the hands of RP on admission.	Shifts to Bankruptcy Trustee only on admission of Bankruptcy process.
Consequence of rejection of plan.	Compulsory Liquidation.	The creditor whose dues remain unpaid is entitled to file an application for bankruptcy.

Definition of Guarantor (as per Section 126 of Indian Contract Act, 1872)

- **126. "Contract of guarantee", "surety", "principal debtor" and "creditor".** – A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default.
- The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

Definition of Guarantor:

- Section 126 of Indian Contract Act, 1872 (the "ICA") reflects upon the guiding principles behind a contract of guarantee, which is a tripartite contract between a surety, the principal debtor and the creditor, **wherein liability of the guarantor is co extensive with that of the principal debtor.** Thus, the guarantor's liability to make good the payments on behalf of the principal debtor arises as soon as the principal debtor fails to fulfil its obligations under the contract.
- The guarantee furnished by a person to the corporate debtor can be invoked even prior to resorting to the corporate debtor.
- Basis the aforementioned principles of the ICA, a **personal guarantor** under the Code is defined under **Section 5(22)** as *“an individual who is the surety in a contract of guarantee to the corporate debtor.”*

SECTION 79- DEFINITIONS

❖ **Excluded assets (S. 79(14)) include -**

- unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his **personal use** or for **the purpose of his employment business or vocation**
- unencumbered furniture, household equipment and provisions as are necessary for satisfying the **basic domestic needs** of the bankrupt and his immediate family
- any **unencumbered personal ornaments** of such value, as may be prescribed of the debtor or his immediate family which cannot be parted with, in accordance with religious usage

❖ **Excluded assets include -**

- any unencumbered **life insurance policy or pension plan** taken in the name of debtor or his immediate family
- an unencumbered **single dwelling unit** owned by the debtor of such value as may be prescribed

- **Excluded Debts (S. 79(15)) means :**

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

IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations, 2019

- ❖ The said regulations came into force from the 1st day of December 2019;
- ❖ Regulations shall apply to insolvency resolution process for personal guarantors to corporate debtor.
- ❖ Essential definitions:
 - “Associate” in relation to a creditor, a resolution professional or professional engaged by resolution professional, as the case may be, shall have the same meaning as assigned to it in relation to a debtor in sub-section (2) of section 79;
 - “Corporate debtor” means a corporate person for whom the guarantor has given a personal guarantee

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IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations, 2019

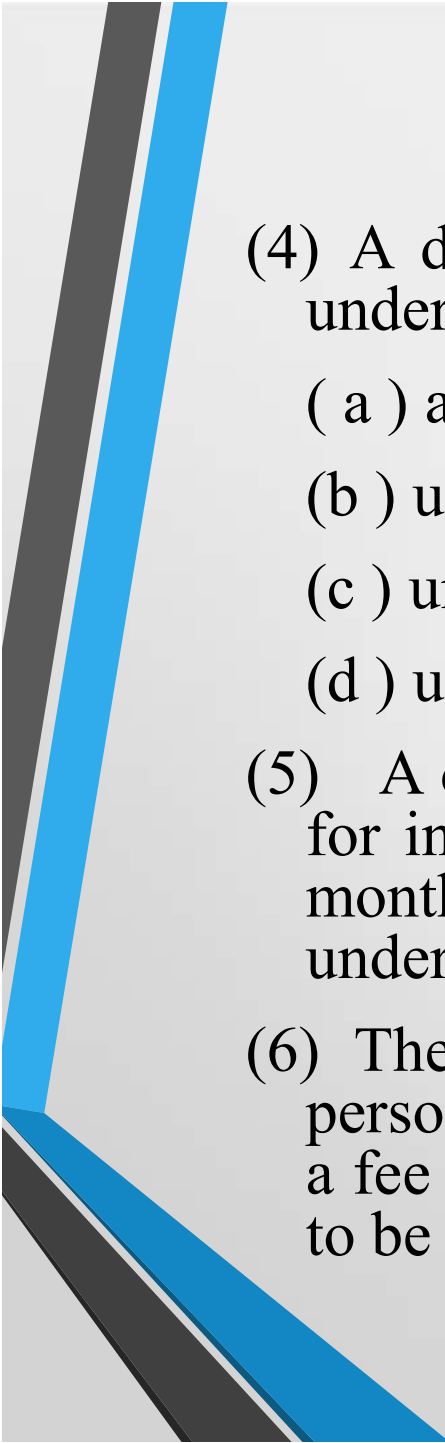
- “Resolution process commencement date” means the date of admission of an application under section 100;
- “Resolution process cost” shall mean-
 - (i) Fees payable to the resolution professional
 - (ii) Expenses incurred on and by the resolution professional for carrying out the resolution process, including the fee of professionals engaged;
 - (iii) Finances raised for the resolution process and costs incurred in raising such finances;
 - (iv) Such other costs directly relatable to the resolution process, to the extent ratified or approved by the creditors

Insolvency & Bankruptcy (Application to Adjudicatory Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019

- ❖ Shall come into force from the 1st day of December 2019
- ❖ **Essential definitions:**
 - “Adjudicating Authority” means-
 - (i) for the purpose of section 60 the National Company Law Tribunal;
 - (ii) in cases other than sub-clause (i), the Debt Recovery Tribunal
 - “**Guarantor**” means a debtor who is a personal guarantor to a corporate debtor and in respect of whom **guarantee has been invoked by the creditor** and **remains unpaid in full or part.** (**Rule 3(1)(f)**)
 - Relatives [for the purpose of clause (ii) of explanation to section 79(2)] shall mean the manner as provided in explanation to section 5(24A) of IBC

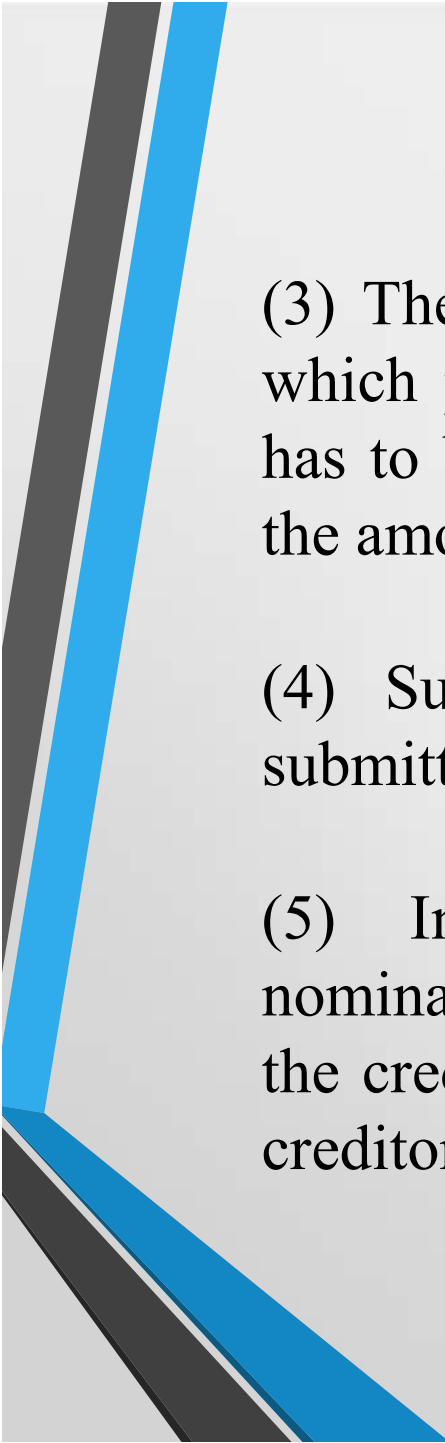
Application by 'Debtor' to initiate insolvency resolution process- Section 94

- (1) A **debtor** who commits a **default** may apply, either **personally** or **through a RP**, to the AA for initiating the insolvency resolution process, by submitting an application.
- (2) Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the AA in respect of the firm unless all or a majority of the partners of the firm file the application jointly.
- (3) An application under can only be submitted with respect to debts **which are not excluded debts**.

- 
- (4) A debtor shall **not be entitled** to make an application under sub-section (1) if he is –
- (a) an undischarged bankrupt;
 - (b) undergoing a fresh start process;
 - (c) undergoing an insolvency resolution process; or
 - (d) undergoing a bankruptcy process.
- (5) A debtor is not eligible to apply u/s 94 if an application for insolvency has been admitted during the period of 12 months preceding the date of submission of the application under this section.
- (6) The application u/s 94 is filed as per Rule 6 of the personal insolvency Rules, 2019 under Form A along with a fee of Rs. 2,000/- and copy of the application is required to be served upon every financial creditor and the CD.

Application by 'Creditor' to initiate insolvency resolution process – Section 95

- (1) A creditor may apply either by himself, or jointly with other creditors, or through a RP to the AA for initiating an insolvency resolution process
- (2) The application shall be accompanied with details/documents wrt:-
 - (a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;
 - (b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and
 - (c) relevant evidence of such default or non-repayment of debt.



(3) The application is required to be filed as per Rule 7 which provides a mandatory demand notice u/s 95(4)(b) has to be served on the guarantor demanding payment of the amount of default in Form B

(4) Subsequently the application u/s 95(1) shall be submitted in Form C along with fee of Rs. 2,000/-

(5) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors and serve a copy of the application to every creditor and CD

Interim- moratorium – Section 96

- (1) When an application is filed under section 94 or section 95 –
 - (a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and
 - (b) during the interim-moratorium period –
 - (i)any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
 - (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
- (2) Where the application has been made in relation to a firm, the interim moratorium shall operate against all the partners of the firm as on the date of the application.

Submission of report by Resolution Professional – Section 99

(1) The RP shall examine the application u/s 94 or 95, **within 10 days of his appointment**, and submit a report to the AA recommending for approval or rejection of the same

(2) In case of application u/s 95, the RP may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing such information/document.

(3) The RP shall examine the application and ascertain that -

(a) the application satisfies the requirements set out in section 94 or 95;

(b) the applicant has provided information and given explanation sought by the RP

And upon such examination may recommend acceptance or rejection of the application in his report.

(4) Where the RP finds that the debtor is eligible for a fresh start under Chapter II, he shall submit a report recommending that the application by the debtor u/s 94 be treated as an application under section 81 by the AA

Admission or rejection of application-Section 100

- (1) The AA shall, **within 14 Days from the date of submission of the report** under section 99 pass an order either admitting or rejecting the application referred to in section 94 or 95.
- (2) Where the AA admits an application it may, on the request of the RP issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan.
- (3) The AA shall provide a copy of the order along with the report of the RP and the application u/s 94 or 95, to the creditors within 7 days from the date of the said order.
- (4) If the application is rejected by the AA on the basis of report submitted by the RP or that the application was made with the intention to defraud his creditors, the order shall record that the creditor is entitled to file for a bankruptcy order under Chapter IV.

Withdrawal of Application

- ❖ Given under **Rule 11 of Insolvency and Bankruptcy (Application to AA for IRP for PG to CD) Rules, 2019**
- ❖ The AA may permit withdrawal of the application submitted under Rule 6 & 7 (referred above)-
 - (a) before its admission on a request made by the applicant;
 - (b) after its admission on the request made by the applicant, if ninety per cent, of the creditors agree to such withdrawal
- ❖ An application for withdrawal shall be in Form D

Moratorium – Section 101

- (1) When the application is admitted under section 100, a moratorium shall commence in relation to **all the debts** and shall cease to have effect at the end of the period of **180 days** beginning from the date of admission of the application or on the date the AA passes an order on the repayment plan under section 114, whichever is earlier.
- (2) During the moratorium period-
 - (a) any **pending legal action or proceeding** in respect of any debt shall be deemed to have been stayed;
 - (b) the creditors **shall not initiate any legal action or legal proceedings** in respect of any debt; and
 - (c) the debtor **shall not transfer, alienate, encumber or dispose** of any of the **assets or his legal right or beneficial interest** therein;

Public notice and claims from creditors – Section 102

- (1) The AA shall issue a public notice **within 7 days of passing the order** under section 100 inviting claims from all creditors **within twenty- one days of such issue.**
- (2) The notice under sub-section (1) shall include—
 - (a) details of the order admitting the application;
 - (b) particulars of the resolution professional with whom the claims are to be registered; and
 - (c) the last date for submission of claims.
- (3) The notice shall be —
 - (a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;
 - (b) affixed in the premises of the Adjudicating Authority; and
 - (c) placed on the website of the Adjudicating Authority

Registering of claims by creditors Section 103

- (1) The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.
- (2) In addition, the creditor shall provide to the RP, personal information and such particulars as may be prescribed.

Preparation of list of creditors

Section 104

- (1) The RP shall prepare a list of creditors on the basis of -
 - (a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;
 - (b) claims received by the RP u/s 102.
- (2) The RP shall prepare the **list within 30 days from the date of the notice.**

Repayment plan – Section 105

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

Report of resolution professional on repayment plan - Section 106

- (1) The RP shall submit the repayment plan under section 105 along with his report on such plan to the AA **within a period of 21 days from the last date of submission of claims** under section 102.
- (2) The report shall include that-
 - (a) the repayment plan is in compliance with the provisions of any law for the time being in force;
 - (b) the repayment plan has a reasonable prospect of being approved and implemented; and
 - (c) there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan: Provided that where the RP recommends that a meeting of the creditors is not required to be summoned, reasons for the same shall be provided.

Meeting of Creditors

- ❖ Given under **Regulation 11 of IBBI (IRP for PG to CD) Regulations, 2019;**
- ❖ A creditor, who is included in the list of creditors, shall be entitled to participate in the meetings of creditors;
- ❖ The voting share of each creditor shall be in proportion to the debt owed to such creditor;
- ❖ The RP shall convene the first meeting of creditors in accordance with **section 107(1)** by giving notice to the other participants as decided by the creditors, which shall not less than **forty-eight hours**;
- ❖ The resolution professional shall convene a meeting of creditors on a request by creditors having thirty-three percent of voting share of creditors;
- ❖ The notice under this regulation shall be served on every participant at the address provided to the resolution professional in accordance with regulation 12;
- ❖ Unless otherwise provided in the Code, any **decision** of the creditors shall require approval of more **than fifty percent of voting share of the creditors who voted.**

Meeting of Creditors (Some Essential Aspects)

- ❖ Given under **Chapter IV of IBBI (IRP for PG to CD) Regulations, 2019;**
- ❖ Participants may attend the meeting either in person, through a proxy, by electronic means or through proxy;
- ❖ A **meeting shall quorate** if creditors representing **at-least 33% of voting-share are present** in person, by proxy or through video-conferencing;
- ❖ RP shall preside over the meeting;
- ❖ RP shall take a vote of the creditors present in the meeting;
- ❖ **Minutes** to be circulated to all participants within **48 hours** of the conclusion of meeting;
- ❖ Voting shall be kept open for at-least 24 hours if done electronically;
- ❖ A proxy may vote by electronic means in behalf of the creditor provided the creditor has submitted Form C to the RP at-least **24 hours** prior to meeting

Voting rights in meeting of creditors – Section 109

- (1) A creditor shall be entitled to vote at every meeting of the creditors in respect of the repayment plan in accordance with voting share assigned to him.
- (2) The resolution professional shall determine voting share to be assigned to each creditor in the manners specified by the Board.
- (3) A creditor shall not be entitled to vote in respect of a debt for an unliquidated amount.
- (4) A creditor shall not be entitled to vote in a meeting of the creditors if he —
 - (a) is not a creditor mentioned in the list of creditors under section 104; or
 - (b) **is an associate of the debtor**

Rights of secured creditors in relation to a resolution plan(s.110)

- A Secured creditor shall be entitled to participate and vote in the meeting of creditors.
- - If he participates and votes in the meeting in relation to the repayment plan, he shall forfeit his right to enforce his security during the period of repayment plan.
- --Where he does not forfeit his right to enforce security, he shall submit an affidavit to the RP at the meeting :
- (a) that the right to vote exercised by him is only in respect of the unsecured part his debt.

(b) The estimated value of the unsecured part of his debt

In such a case, secured and unsecured part of his debt shall be treated as separate debts.

If he doesn't participate in the voting on repayment plan but the provisions of the repayment plan affect his security, his concurrence shall be obtained.

Approval of repayment plan by creditors

Section 111

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

Contents of Repayment Plan

- ❖ Given under **Regulation 17 of IBBI (IRP for PG to CD) Regulations, 2019;**
- ❖ Repayment plan shall contain-
 - (a) the term of the repayment plan and its implementation schedule, including the amounts to be repaid and dates of repayment to creditors;
 - (b) the source of funds that will be used to pay resolution process costs and that such payment shall be made in priority over any creditor;
 - (c) a minimum budget for the duration of the repayment plan, to cover the reasonable expenses of the guarantor and members of his immediate family to the extent they are dependent on him, provided that at least ten percent of the realisable income of the guarantor shall be utilised for repayment of debts;
 - (d) financing required for implementation of the repayment plan;

Continued.....

Contents of Repayment Plan

❖ Repayment plan shall contain-

- (e) if the guarantor has any business, the manner in which it is proposed to be conducted during the course of the repayment plan, and the role of the resolution professional;
- (f) the manner in which funds held for the purposes of the repayment plan, invested or otherwise dealt with, pending repayment to creditors;
- (g) the functions which are to be undertaken by the resolution professional, including supervision and implementation of the repayment plan;
- (h) variation of onerous terms of a contract or transaction involving the guarantor;
- (i) the details of excluded assets and excluded debts of the guarantor; and
- (j) terms and conditions for the discharge of the guarantor.

Continued.....

Contents of Repayment Plan

❖ Repayment plan **may** provide for-

- (a) transfer or sale of all or part of the assets of the guarantor along with the mode and manner of such sale;
- (b) administration or disposal of any funds of the guarantor;
- (c) satisfaction or modification of any security interest;
- (d) reduction in the amount payable to creditors;
- (e) curing or waiving of any breach of a debt due from the guarantor;
- (f) modification in the terms of repayment of any debt due from the guarantor;
- (g) part of the income of the guarantor to be used for the repayment of the debt, and the manner of calculating the income of the guarantor;
- (h) the manner in which funds held for the purpose of repayment to creditors, and not so repaid at the end of the repayment plan, are to be dealt with; and
- (i) such other matters as may be required by the creditors.

Purchase of Assets by Certain Persons

Given under **Regulation 18 of IBBI (IRP for PG to CD) Regulations, 2019;**

The following persons shall not purchase or acquire any interest in the property of guarantor, directly or indirectly, without permission of the AA-

- (a) the resolution professional or any partner or director of the insolvency professional entity of which the resolution professional is a partner or director;
- (b) any professional appointed by the resolution professional for the resolution process;
- (c) any creditor;
- (d) any company where the guarantor or a creditor is a promoter or director;
- (e) any associate of the guarantor, creditor or resolution professional.

The AA may set aside purchase or acquisition made contrary to the provisions of this regulation and may make such order as it may deem fit

Report of meeting of creditors on repayment plan - Section 112

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

Order of Adjudicating Authority on repayment plan – Section 114

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

In case of no COC meeting the order be passed basing on report submitted by RP u/s 106.

- (2) The order of the AA approving the repayment plan may also provide for directions for implementing the repayment plan.
- (3) Where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution professional to re-convene a meeting of the creditors for reconsidering the repayment plan.

Effect of order of Adjudicating Authority on repayment plan – Section 115

- (1) Where the Adjudicating Authority has approved the repayment plan under section 114, the repayment plan shall –
 - (a) take effect as if proposed by the debtor in the meeting;
and
 - (b) be binding on creditors mentioned in the repayment plan and the debtor.
- (2) In case of rejection, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.

Filing with the Adjudicating Authority

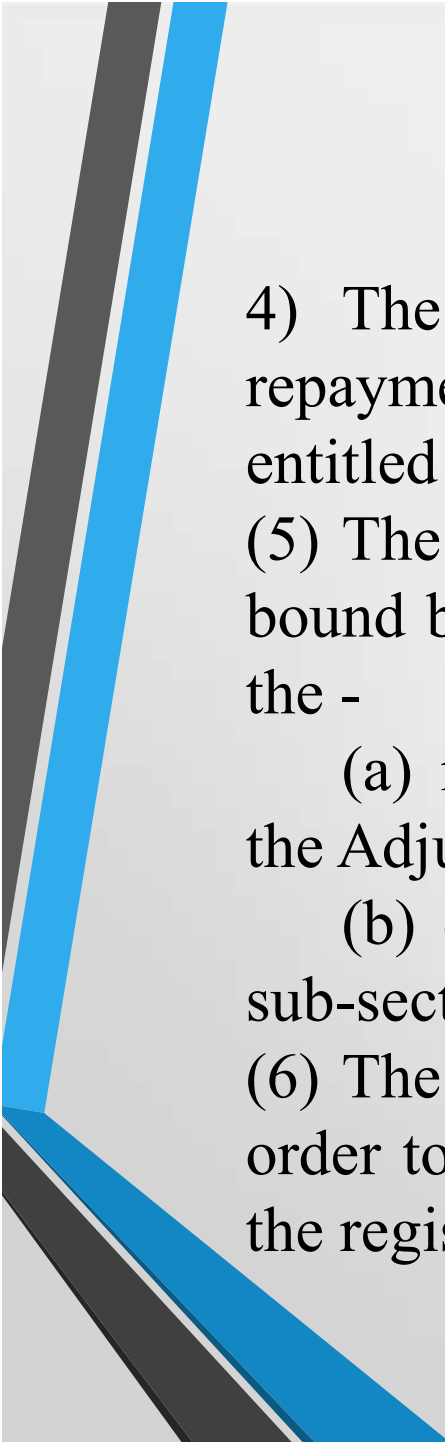
- ❖ Given under **Regulation 19 of IBBI (IRP for PG to CD) Regulations, 2019;**
- ❖ The RP shall file the repayment plan, as approved by the creditors, along with the report mentioned in section 106 or 112, with the AA on or before completion of 120 days from the resolution process commencement date;
- ❖ The RP shall provide the copies of the documents filed with the AA, mentioned above, to the guarantor and the creditors within three days from the date of such filing.

Completion of repayment plan Section - 117

- (1) The RP shall **within 14 days of the completion of the repayment plan**, forward to the persons who are bound by the repayment plan under section 115 and the Adjudicating Authority, the following documents, namely -
 - (a) a notice that the repayment plan has been fully implemented; and
 - (b) a copy of a report by the RP

Repayment plan coming to end prematurely - Section 118

- (1) A repayment plan shall be deemed to have come to an end prematurely if it has **not been fully implemented** in respect of all persons bound by it within the period as mentioned in the repayment plan.
- (2) Where a repayment plan comes to an end prematurely under this section, the resolution professional shall submit a report to the Adjudicating Authority which shall state -
 - (a) the receipts and payments made in pursuance of the repayment plan;
 - (b) the reasons for premature end of the repayment plan; and
 - (c) the details of the creditors whose claims have not been fully satisfied.
- (3) The Adjudicating Authority shall pass an order on the basis of the report submitted by the RP.



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

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

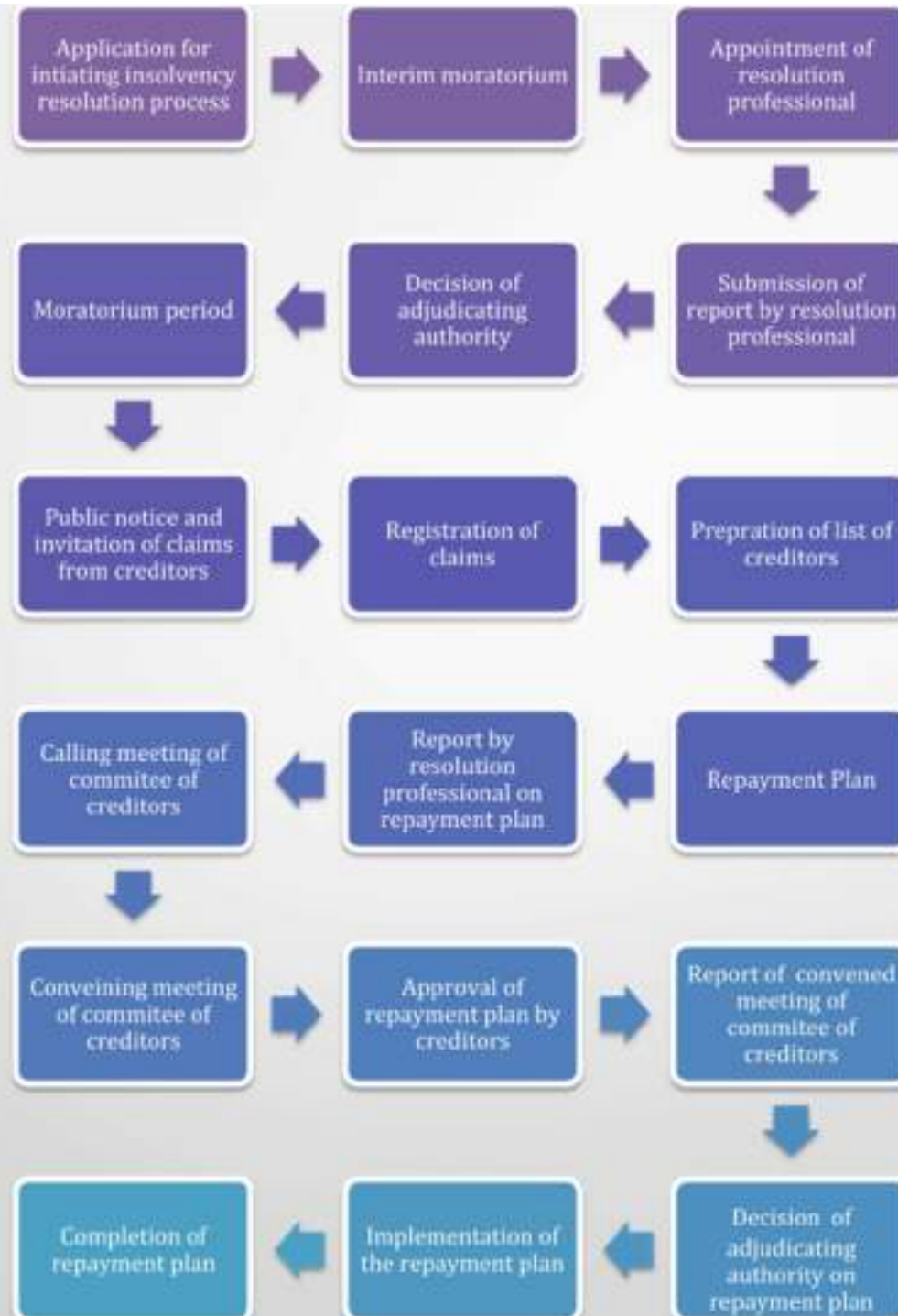
(a) report submitted by the resolution professional to the Adjudicating Authority under sub-section (2); and

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

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

Discharge order – Section 119

- (1) On the basis of the repayment plan, the RP shall apply to the AA for a discharge order in relation to the debts mentioned in the repayment plan and the AA may pass such discharge order.
- (2) The repayment plan may provide for -
 - (a) early discharge; or
 - (b) discharge on complete implementation of the repayment plan.
- (3) The discharge order shall be forwarded to the Board, for the purpose of recording entries in the register referred to in section 196.
- (4) The discharge shall not discharge any other person from any liability in respect of his debt.





Landmark Decisions under IBC

A Primer upon major rulings

Ram Kishun and Ors. Vs. Respondent: State of U.P. and Ors

The Hon'ble Supreme Court held :

- The liability of the Guarantor/Surety is co-extensive with that of the Borrower. Therefore, the creditor has a right to obtain a decree against the surety and the Principal Borrower, Guarantor cannot dictate terms towards the same.

Ferro Alloys Corporation Ltd vs Rural Electrification Corporation Ltd (Company Appeal (AT) (Insolvency) No. 92/2017)

The Hon'ble NCLAT held:

- It's not necessary to initiate Corporate Insolvency Resolution Process against the "Principal Borrower" before initiating the insolvency process against the "Corporate Guarantors". **It is always open to the Financial Creditor to initiate Insolvency Process under Section 7 against the "Corporate Guarantor" without exercising the same against the Principal Borrower.**

Dr. Vishnu Kumar Agarwal vs. M/s. Piramal Enterprises Ltd., Company Appeal (AT) (Insolvency) No. 346 of 2018

- The Hon'ble NCLAT held:
- “32. There is no bar in the ‘I&B Code’ for filing simultaneously two applications under Section 7 against the ‘Principal Borrower’ as well as the ‘Corporate Guarantor(s)’ or against both the ‘Guarantors’. However, once for same set of claim application under Section 7 filed by the ‘Financial Creditor’ is admitted against one of the ‘Corporate Debtor’ (‘Principal Borrower’ or ‘Corporate Guarantor(s)'), second application by the same ‘Financial Creditor’ for same set of claim and default cannot be admitted against the other ‘Corporate Debtor’ (the ‘Corporate Guarantor(s)’ or the ‘Principal Borrower’).
- Though the aforesaid judgment is strictly not passed in the context of ‘personal guarantors’ and can be distinguished, however, benefit of doubt may still be pleaded. Also, Appeal is pending before Hon'ble Supreme Court against the said judgement.

State Bank of India vs Athena Energy Ventures Private Limited Company Appeal (AT) (Ins) No.633 of 2020

- The Hon'ble NCLAT held that simultaneous initiation of CIRP against a CD and its guarantor is permissible. The Hon'ble further held that simultaneously remedy is central to a contract of guarantee and where principal borrower and surety are undergoing CIRP, the creditor should be able to file claims in CIRP of both of them.

Deepak Bhandari versus Himachal Pradesh State Industrial Development Corporation Limited [Civil appeal no.1019/2014]

In the instant case Hon'ble Supreme Court seized that, the **right to sue under a contract of indemnity or guarantee would principally arise when the indemnifier or the guarantor fails to pay the money claimed from it and not from the time when the 'Recall Notice' is served.**

If while making the demand for payment, no period is stipulated within which the payment should be made, the breach occurs or right to sue accrues, when the demand is served on the guarantor.

Syndicate Bank V. Channaveerappa Beleri And Others

- The Hon'ble Supreme Court has held that the limitation as to guarantor's liability depends on the terms and conditions of contract and **such limitation starts running only when actually a demand for payment is made and was refused by guarantors**, however, such a demand should not be time-barred against the principal debtor i.e. it should be a live claim and cessation of operation of accounts cannot be treated as refusal to pay by the principal debtor.
- A guarantor's liability depends upon the terms of his contract. If the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/non-compliance. Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years, even if the claim against the principal debtor gets subsequently time barred.

Lalit Kumar Jain Vs. Union of India & Ors. (2021) ibclaw.in 61 SC

- In landmark judgment, the Hon'ble Supreme Court **upheld validity of notification dated 15.11.2019 and held that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability.** The Court referred *Maharashtra State Electricity Board [2017] ibclaw.in 19 SC* judgment alongwith other judgments and clarified that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract. It was also held approval of a resolution plan relating to a corporate debtor does not operate so as to discharge the liabilities of personal guarantors (to corporate debtors).

- Hon'ble Supreme Court in the case of ***Laxmi Pat Surana vs Union Bank of India & Anr.*** [Civil Appeal No. 2734 of 2020] settled the issue of the applicability of Section 18 of the Limitation Act, 1963 to applications for initiation of insolvency proceedings under the Code.
- It was held that **when a principal borrower and/or the corporate guarantor acknowledges the liability, a fresh period of limitation is required to be computed from the time when the acknowledgment was so signed by the principal borrower or the corporate guarantor, provided the acknowledgment is before expiration of the prescribed period of limitation.**
- In relation to the liability of a guarantor, the Hon'ble Apex Court reiterated that such liability is coextensive with the principal borrower under Section 128 of the Contract Act, 1872. Therefore, when the principal borrower acknowledges its liability, the period of limitation for enforcing rights under such a guarantee would also stand extended, subject to the contract of guarantee.



- Thank you

FRESH STRAT PROCESS UNDER IBC

- One of the methods for resolving the insolvency of individuals is “The fresh start process”.
- This is applicable for **individuals and partnership firms**.
- These provisions though not notified yet have been framed to give debtors with comparatively smaller debts the chance to discharge their debts, and start afresh without any liabilities.

Salient features of Fresh Start Process

1. The process will not apply to secured debts, to ensure that the secured creditors continue to remain protected.
2. Eligibility for making the application:-
 - a. The debtor can only have a maximum gross annual income of INR 60,000,
 - b. The maximum value of assets should not exceed Rs.20, 000.
 - c. The aggregate value of the qualifying debts does not exceed Rs 35,000
 - d. Debtor is not an undischarged bankrupt
 - e. Debtor does not own a dwelling unit, irrespective of whether it is encumbered or not;
 - f. a fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; and
 - g. no previous fresh start order under this Chapter has been made in relation to him in the preceding 12 months of the date of the application for fresh start

Section 81- interim moratorium

- 1) Upon filing of application, an interim-moratorium shall commence on the date of filing of said application in relation to all the debts and shall cease to have effect on the date of admission or rejection of such application.
- 2) During the interim-moratorium period
 - (i) any legal action or legal proceeding pending in respect of any of his debts shall be deemed to have been stayed; and
 - (ii) no creditor shall initiate any legal action or proceedings in respect of such debt

Documents and records to be submitted along with Fresh Start Application

- List of Each Debt owned by Debtors
- Interest payable on such debt
- List of Security Held
- Financial Information of Debtor and his immediate family (2 years)
- Personal Detail as may be prescribed
- Reason for making application
- Particular of Legal Proceeding against him
- Confirmation about no earlier fresh start order

AA's power to accept or reject application

- Within 14 days from the date of report by resolution professional, AA will decide on the matter of admission or rejection of application.
- Order of Acceptance must contain amount of qualifying debt by resolution professional and amount eligible for discharge.
- Copy of order passed by AA shall be provided to the creditors mentioned in the application along with copy of application within 2 days from the date of passing order.

Objection by Creditors

- Within 10 days from the date of order of AA objection may be raised by creditors whose name is included in order with respect to inclusion of debt as qualifying debt or incorrectness of detail of qualifying debt.
- Application for objection should be given to the Resolution Professional.
- Within 10 days RP will accept or reject the application.

Application Against the order of RP

- Within 10 days from the date of acceptance or rejection of creditor's objection by RP, either debtor or creditor may challenge the order before AA.
- AA will decide the matter within 14 days of such application.

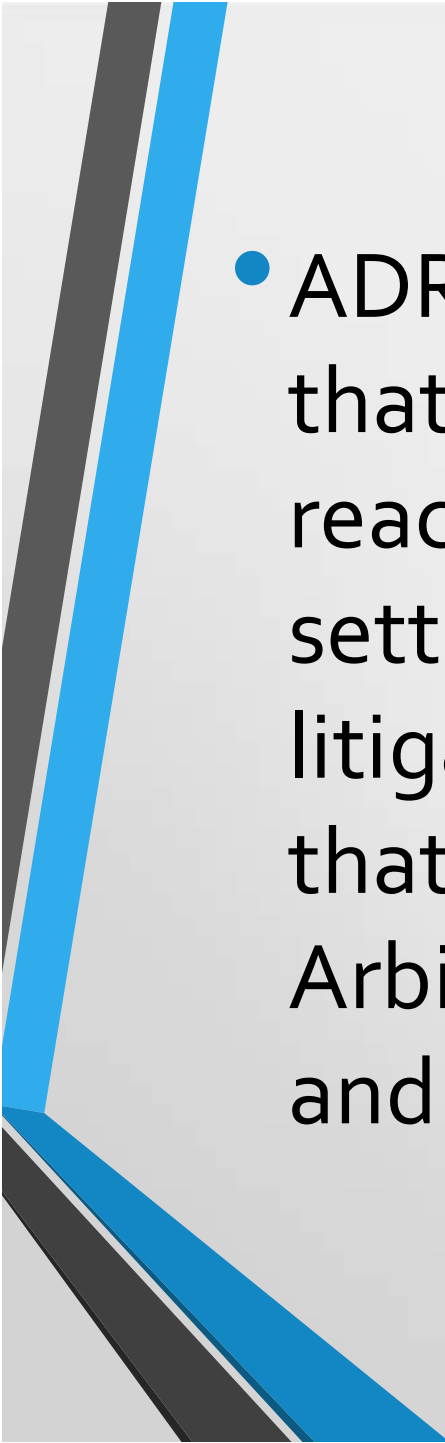
Discharge Order

- RP will prepare a final list of qualifying debts and submit such list to AA at least 7 days before moratorium period comes to an end.
- AA will pass discharge order at the end of the moratorium period for discharge of debtors from



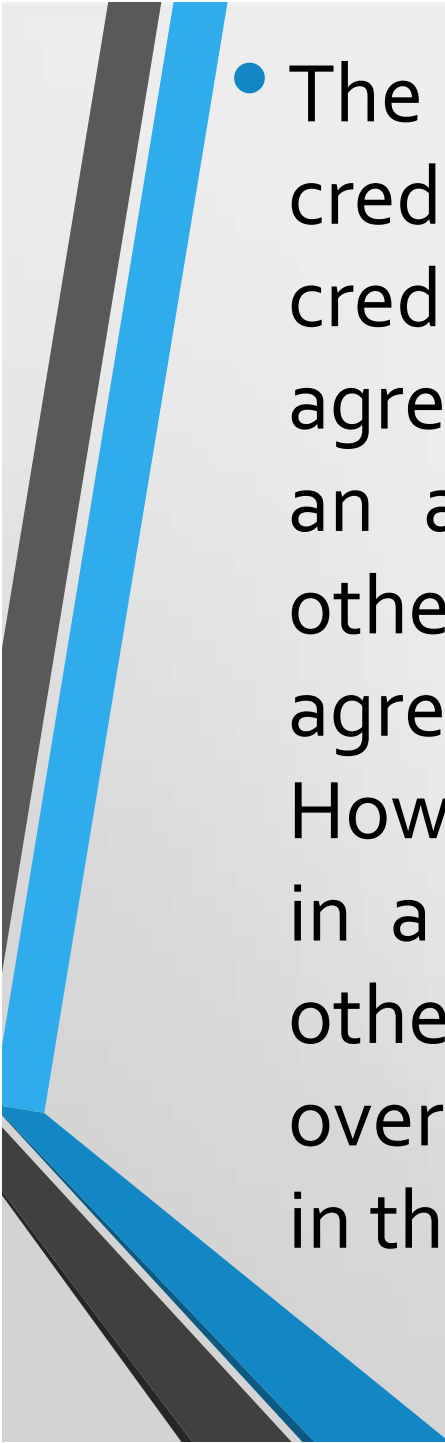
ALTERNATE DISPUTE RESOLUTION

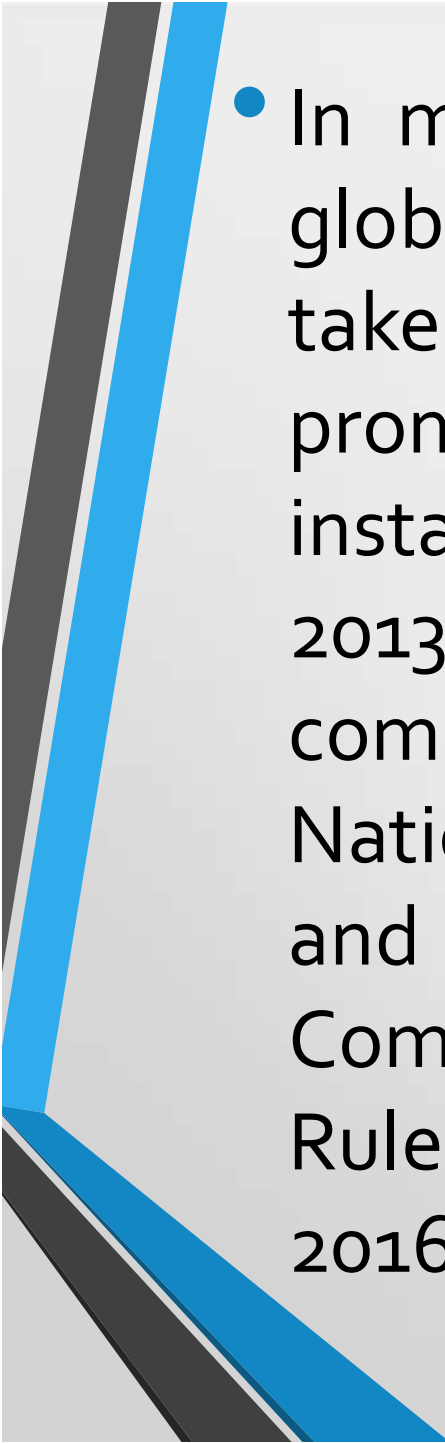
MEDIATION & CONCILIATION

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- ADR is a set of methods or techniques that allows parties to a dispute to reach an amicable “out-of-court settlement” by avoiding lengthy litigation. The methods of settlement that are widely accepted are Arbitration, Mediation, Conciliation and Negotiation.

MEDIATION & CONCILIATION IN INSOLVENCY CASES

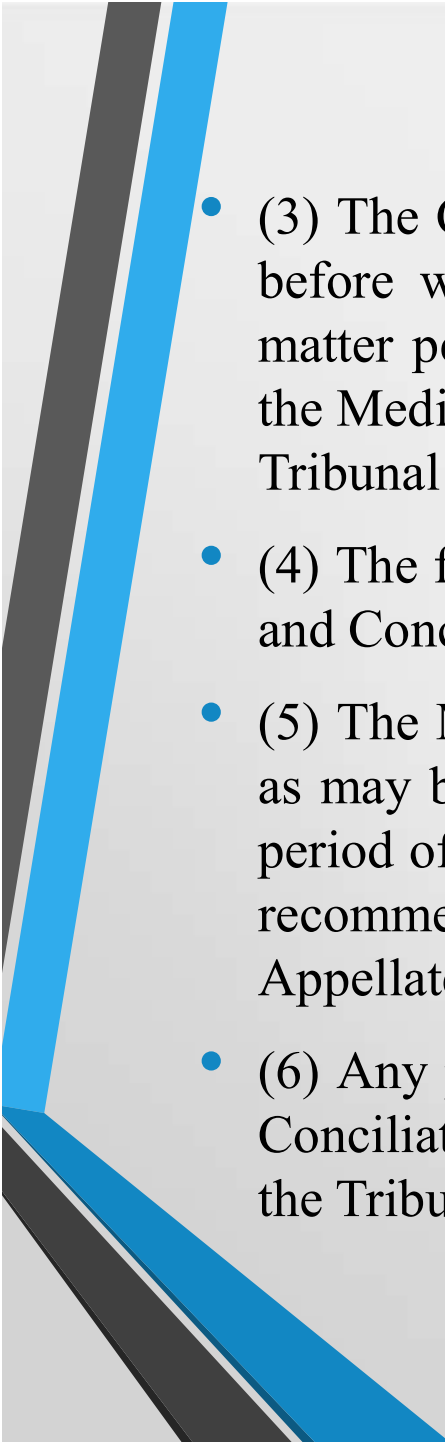
- Insolvency cases are collective proceedings in which numerous persons participate. There is, therefore, a dilemma of how ADR can reconcile the interests of all the creditors.
- The unique feature of ADR in insolvency cases is that not all the creditors usually participate in the dispute resolution.

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- The debtor can negotiate with each creditor individually or with a group of creditors to come to a collective agreement. Thus, when a debtor comes to an agreement with some creditors, the other creditors cannot challenge the agreement and must comply with it. However such settlement is only possible in a court supervised/directed settlement otherwise the same will not be binding over the creditors who did not participate in the ADR procedure

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- In modern times to keep pace with the globalisation of commerce, the GOI has taken several legislative measures to promote Mediation in the country. For instance Section 442 of the Companies Act, 2013, which provides for referral of company disputes to Mediation by the National Company Law Tribunal (NCLT) and Appellate Tribunal read with the Companies (Mediation and Conciliation) Rules, 2016 (notified on September 9, 2016)

Section 442 of companies act

- 442. Mediation and Conciliation Panel.—
- (1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.
- (2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

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- (3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo motu, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.
 - (4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.
 - (5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
 - (6) Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

- As of now Mediation has not been utilised for resolving of insolvency disputes in India. Currently insolvency disputes are resolved under the IBC. Before the enactment of the IBC, there was no single legal framework in India that dealt with insolvency and bankruptcy. The provisions relating to insolvency and bankruptcy were scattered over many legislations like Sick Industrial companies (Special Provisions) Act, 1985 (SICA Act) ; The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002 and the Companies Act, 2013 etc.



THANK YOU !

Have a wonderful day ahead!