

LAW ON INSOLVENCY & BANKRUPTCY IN INDIA

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CHAPTER 1: INTRODUCTION

The IBC Law was enacted with the objective to ensure that ease of doing business improves in India. This law, which was earlier fragmented due to multiplicity of statutes as well as forums, has simplified the winding up process in respect of companies. The main purpose of the code is to empower the creditor to get back the dues from the debtor through the Corporate Insolvency Resolution Process (CIRP) or through liquidation of the defaulting debtor entity.

The objective of Insolvency and Bankruptcy Code, 2016 is to consolidate multiple laws and adjudicating authorities dealing with insolvency, bankruptcy, revival and/or liquidation of various entities including individual, partnership firms, corporate entities etc.

While the National Company law Tribunal deals with Insolvency Resolution and Liquidation of Corporate Persons under the Code, the Debt Recovery Tribunal deals with insolvency and bankruptcy of individuals and partnership firms. Chapter III which deals with matters relating to fresh start, insolvency and bankruptcy of individuals and partnership firms made effective from 01.12.2019 by Insolvency and Bankruptcy Board of India (“IBBI”) vide Gazette Notification No. S.O. 4126 (E) dated 15 November 2019. In the present Report we are only dealing with Insolvency Resolution and Liquidation of Corporate Persons under the Code.

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**CHAPTER 2: AMENDMENTS AND KEY FEATURES OF THE
AMENDMENTS**

**1. THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT)
ACT, 2017(18th January,2018):**

- A.** The scope of the Act was extended to bring personal guarantors of the corporate debtor and proprietorship firms who were earlier immune from any liability under the purview of the Code by modifying Section 2.
- B.** The definition of Resolution Applicant was amended as “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”.
- C.** The Amendment Act amends the liberty to the resolution professional laid down in Section 25 of the Code. Previously, the resolution professional had the liberty to invite any prospective lender, investor, and any other person to put forward a resolution plan. However, the Amendment Act provides that the resolution professional must now determine eligibility criteria, with the approval of the committee of creditors, for persons who can be invited by the resolution professional for presenting the resolution plan. While determining the eligibility criteria, the resolution professional is now obligated to give due regard to the complexity and scale of operations of the business of the corporate debtor. This amendment would ensure that only persons with sufficient

and relevant financial, legal and technical competency submit the resolution plan.

D. In order to curb unscrupulous persons from submitting Resolution Plans, Section 29 A was introduced, which made certain persons ineligible to submit a resolution plan.

E. The Amendment Act amended Section 30(4) of the Code and provided that committee of creditors must approve the resolution plan by a vote of not less than seventy-five per cent of voting shares of financial creditors. The approval of the resolution plan must be given only after considering the viability and feasibility of such a resolution plan. The committee of creditors cannot approve any resolution plan submitted before November 23, 2017 by persons disqualified under factors provided under Section 29A of the Act and if no other resolution plan is available with the creditors committee then it should invite fresh resolution plans.

F. The amendment to Section 35 of the Code ensures that properties or actionable claims of a corporate debtor undergoing CIRP are sold to a person who is eligible to be a resolution applicant and bars the sale of any immovable or movable property or actionable claim of the corporate debtor undergoing CIRP by the liquidator to a person not eligible to be resolution applicant.

G. The Amendment Act introduced a new provision in form of Section 235A. This section prescribes a fine of not less than one lakh rupees

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which can be extended up to two crore rupees if any person contravenes any provision of the Code or rules and regulations made under it if no penalty is prescribed for such contravention specifically.

2. THE INSOLVENCY AND BANKRUPTCY CODE (SECOND AMENDMENT) ACT, 2018 - NO. 26 OF 2018[17th August, 2018]

A. Financial debt having commercial effect of a borrowing shall now include any amount raised from an allottee under a real estate project as per the explanation to Section 5 (8) (f).

B. 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 sixty-six per cent. of the voting shares Section 12(2).

C. As per the new provision Section 12A, 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.

D. The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22 not being restricted to mere thirty days Section 16(5).

E. The amendment substitutes Section 21(8) in the following manner- 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.

F. As per new Section 238A, the provisions of **the Limitation Act, 1963** shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.

G. The amendment substitutes Section 21(8) in the following manner- 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.

3. THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2019:

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A. Time Limit for Completion of Resolution: The major amendment is that now instead of 270 days the resolution now needs to be completed within 330 days. The reason for prolonging the period is because in litigation lots of time is exhausted and resolution process cannot be completed within time period and courts through their discretion used to extend the time limit which makes the provision redundant. But now the time period of 330 days also includes litigation time within which the resolution process has to compulsorily completed. After the said period the company's assets will have to go for liquidation. Amongst all this is the most important amendment.

4. THE INSOLVENCY AND BANKRUPTCY CODE AMENDMENT ACT, 2020:

A. The Code gives the power to creditors to initiate an insolvency resolution if the company fails to make any payments to them. In the case of real-estate companies, at least 10% of homebuyers or 100 such individuals, whichever is less, can start the process. In case of pending Applications which have not yet been admitted, the Financial Creditor has to comply with the said requirement within 30 days of commencement of the Act (Amended Section 7).

B. The IRP should be appointed on the insolvency commencement date
Section 16.

CHAPTER 3: DEBT, DEBTORS AND CREDITORS

DEBT:

Under Section 3(11), Debt means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

FINANCIAL DEBT:

Under Section 5(8) of the IBC, 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 nonrecourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
- (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;

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(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-clauses (a) to (h) of this clause.

OPERATIONAL DEBT:

Under Section 5(21), Operational Debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment 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.

DEBTORS:

Under Section 3(8) of the IBC, Corporate Debtor means a corporate person who owes a debt to any person. Corporate Person means a Company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

The following have been included within the purview of Corporate Debtors:-

a. Corporate Guarantors of a Corporate Debtor(*Ferro Alloys Corporation Limited v Rural Electrification Corporation Limited (Comp. App (AT) (Ins) No. 92 of 2017)*)

b. Personal Guarantors of a Corporate Debtor can be proceeded against before the NCLT under the Insolvency and Bankruptcy (Application to

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Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. Claims against Personal Guarantors of a Corporate Debtor shall be adjudicated upon by the NCLT as against the DRT.

CREDITORS:

Under Part I, Section 3, sub-section (10) of the IBC, Creditor means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decreeholder.

PERSONS ENTITLED TO MAKE APPLICATIONS UNDER IBC

The IBC, concerns itself with only two types of Creditors viz. Financial Creditors and Operational Creditors. In order to succeed in initiating corporate insolvency resolution process against a debtor, it is sine qua non to prove that the creditor falls within the ambit and scope of the definition of either 'Financial Creditor' under Section 5(7) or 'Operational Creditor' under Section 5(20) of the IBC.

FINANCIAL CREDITOR:

Under Section 5(7) of the IBC, 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. Section 7 of the IBC sets out the manner in which an Application has to be filed by the Financial Creditor before the Adjudicating Authority.

The following have been included within the purview of Financial Creditors under the IBC-

- a. Put-Option and buy-back arrangement will constitute Financial Debt under the Code and Put-Option Holders are Financial Creditors under the

IBC (Pushpa Shah &Anr. Versus IL&FS Financial Services Limited &Anr. in NCLAT Company Appeal (AT) (Insolvency) No. 521 of 2018);

b. Home buyers shall be treated as Financial Creditors (*Pioneer Urban Land and Infrastructure Limited vs. Union of India*) under Section 5(8)(f) of the IBC;

c. Promoters, Directors and Shareholders who have advanced monies to the Company without interest shall also constitute Financial Creditors under the IBC (*Shailesh Sangani v. Joel Cardoso &Anr in Company Appeal, (AT)(Insolvency)No.616 of 2018*);

The following have been excluded from the purview of Financial Creditors under the IBC:-

a. Persons who are mortgagees securing debts of third parties (*Anuj Jain, vs. Axis Bank Limited (Civil Appeal Nos. 8512-8527 of 2019)*);

b. Decree Holders are not covered under Section 7 or Section 9 of the IBC (*Digamber Bhondwe Versus JM Financial Asset Reconstruction Company (165(IBC)130/2020)*);

c. Personal Guarantors who have cleared the liability of a Corporate Debtor/Sureties will not constitute Financial Creditors of such Corporate Debtor (*Sh. Neeraj Bhatia vs Davinder Ahluwalia in Company Appeal (AT) (Insolvency) No. 142 of 2017*);

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Under Section 5(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. Sections 8 and 9 of the IBC set out the manner in which an Application has to be filed by the Operational Creditor before the Adjudicating Authority.

The following have been included within the purview of Operational Creditors under the IBC:-

- a. A Lessor who rents out space for monthly rent is an Operational Creditor (Mobilox Innovations Private Ltd Versus Kirusa Software Private Ltd., Indiabulls Real Estate Company Private Limited vs. Crest Steel & Power Private Limited)

However, contrary rulings have also been given wherein Lessors have been excluded from the scope of Operational Creditors (Jindal Steel & Power Ltd. vs. DCM International Ltd. in Company Appeal (AT) (Insolvency) No. 288 of 2017, Citicare Super Speciality Hospital vs. Vighnaharta Health Visionaries Pvt. Ltd. in C.P. No. 567/IB/2018)

CORPORATE DEBTOR:

The Corporate Applicant of the Corporate Debtor can file an Application for voluntary insolvency under the IBC. Section 10 of the IBC set out the manner in which an Application has to be filed by the Corporate Applicant before the Adjudicating Authority.

PERSONS NOT ENTITLED TO MAKE APPLICATIONS UNDER IBC

Under Section 11, a Corporate Debtor undergoing a corporate insolvency resolution process or having completed corporate insolvency resolution process twelve months preceding the date of making of the application or has violated any

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of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter II of Part II or in respect of whom a liquidation order has been made cannot make an application to initiate CIRP.



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CHAPTER 4: LIMITATION

The IBC was amended by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (w.e.f. 06.06.2018) to incorporate Section 238A, which makes the Limitation Act applicable to proceedings and appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal and the said provision was given retrospective application.

This stand on limitation was made clear by the Hon'ble Supreme Court in the matter of BK Educational Services Private Limited v Parag Gupta and Associates wherein it held as under:-

“27...It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. “The right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.”

BASIC PRINCIPLES OF LIMITATION

Before seeing how the limitation law affects rights of parties under the Code, it is important to take note of certain basic principles of limitation law, as provided in the Limitation Act and/or has been well-established by years of judicial analysis and interpretation.

(i) PERIOD OF STAY IS EXCLUDED

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Section 15 of the Act provides that “*in computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.*”

(ii) LIMITATION PERIOD TO BEGIN AFRESH FROM THE TIME WHEN ACKNOWLEDGEMENT IS MADE

“Acknowledgment” generally refers to acceptance or admission of something that exists. Section 18 (1) of the Act states that

“Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.”

Hence, it can be said that the Act uses the term “acknowledgement” to mean an admission of an existing liability *in lieu* of which the period of limitation is extended.

Considering that the Act requires such acknowledgement to be in writing, in general parlance, the following may be considered as valid acknowledgement-

(a) Balance sheets are deemed to be the most substantive admission of indebtedness and sufficient acknowledgment under the Indian Limitation Act (held by the Hon’ble Calcutta High Court in *Bengal Silk Mills Co. vs Ismail GolamHossainArif* AIR 1962 Cal 115, 65 CWN 856). However, care must be taken that such balance sheet must be a duly signed one, failing which it shall not be considered as an authenticated document, and as such shall not stand as a valid

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acknowledgment under section 18 of the Act (*BabulalRukmanand vs. Official Liquidator, Bharatpur Oil Mills Pvt. Ltd. AIR 1968 Raj 214*).

(b) E-mails acknowledging the debt constitute a valid and legal acknowledgement of debt, despite the fact that it is not a strictly “signed” document for the purpose of section 18 of the Act (*Sudarshan Cargo Pvt. Ltd vs. M/S Techvac Engineering Pvt Ltd. [C.O.P. No.11/2013]*). Considering that “e-mails” are legally recognized forms of communication under the Information Technology Act, e-mails are valid acknowledgment under the Act.

(c) Cheque given by a debtor to pay his dues is an acknowledgement, even though the Cheque is dishonoured. (*Hindusthan Apparel Industries vs. Fair Deal Corporation AIR 2000 Guj 261 (FB)*). It was held that even though the cheque so given was later dishonoured, the very fact that the debtor gave a cheque to the creditor is indicative of acknowledgement of debt by the debtor.

(d) Acknowledgment has to be prior to the expiration of limitation period- The Hon’ble Supreme Court in “*Sampuran Singh and Ors. v. NiranjanKaur and Ors.— (1999) 2 SCC 679*”, observed that the acknowledgment, if any, has to be prior to the expiration of the prescribed period for filing the suit, failing which it shall not lead to a fresh trigger of limitation period.

Therefore, a fresh acknowledgement shall imply a fresh start of limitation period, wherein as per section 12 (1) of the Act, the date on which the acknowledgment is given shall not be included.

(iii) ANY PAYMENT/ INTEREST PAYMENT MADE TOWARDS A LEGACY, FRESH LIMITATION PERIOD STARTS

Section 19 of the Act provides that where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period of the debt or legacy, a fresh period of limitation shall be computed from the time when

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payment was made, as every payment made towards such legacy shall be treated as a fresh/ renewed acknowledgement, as discussed above.

(iv) CONTINUING BREACH- EVERY MOMENT TILL CONTINUED BREACH

The provisions of the Act state that in case of a continuing breach of contract, or a case of continuing tort, fresh limitation period begins every moment of such continued breach.

The said principle was also appreciated by the Hon'ble Allahabad High Court in the matter of *PashupatiPratap Singh vs Chairman, District Board, Gonda*, wherein it was held that:

“A third kind might be where there is a total deprivation of a set of rights so that the wrongful act is complete but the effect thereof continues. In such a case, the cause of action is one which came into existence in the beginning but the effect of the wrong is continuous. For example where a man has been dispossessed from his property. Here the limitation begins to run from the date of the dispossession even though the person dispossessed is deprived of his rights during the whole period of his dispossession:

(v) THE LIMITATION ACT DOES NOT EXTINGUISH A RIGHT BUT IT ONLY BARS THE REMEDY

In a case of *Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay*, AIR 1958 SC 328, the Hon'ble Supreme Court held that,

“21.It has been already mentioned that when a debt becomes time-barred, it does not become extinguished but only unenforceable in a court of law. Indeed, it is on that footing that there can be a statutory transfer of the debts due to the employees, and that is how the Board gets title to them. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge there

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from. The modes in which an obligation under a contract becomes discharged are well-defined, and the bar of limitation is not one of them.”

(vi) TRIGGER OF LIMITATION PERIOD IN CASE OF PAYMENT IN INSTALMENTS

Where any party is under the obligation to make payment in form of instalments, or for a continued period, every instance of payment made shall imply a fresh limitation period. For instance, “A” agrees to extend to “B” a sum of Rs. 5,00,000/- on the basis of an agreement that “A” shall repay the sum in 20 instalments. In this case, the limitation period shall trigger from the date of entering into loan agreement, rather it shall commence from the date when “A” makes the first default in payment of instalment.

The above principle has also been appreciated by the Hon’ble Delhi High Court in *Kotak Mahindra Bank Ltd. vs Anuj Kumar Tyagi*, wherein it was observed that:

“...The period of limitation would, though, commence from the date of the last defaulted EMI, which is made the subject matter of the notice and not from the date of the notice itself....”

RECENT JUDICIAL DEVELOPMENTS

(i) Determination of limitation period in case of security-

Where a sum payable is secured by an instrument, the period of limitation shall be equivalent to the period prescribed for such instrument. The Hon’ble NCLAT in the matter of *Mr. Bisab Biraja Paul & ors v. Edelweiss Asset Reconstruction Company Limited & anr (Company Appeal (AT) (Ins) No.772 of 2019)* held that where a valid mortgage has been entered into, the period of limitation shall be determined in light of Article 62 of Part V of the Act, which provides that an

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application for enforcing payment of money secured by a mortgage or otherwise charge upon immovable property, shall be subject to a limitation period of 12 years.

(ii) Status of an application under IBC filed beyond limitation, on grounds of a pending money suit

When the application under the Code is filed beyond limitation, the mere existence of a pending money suit shall not be an excuse for extension of limitation whatsoever, and the application so filed shall be liable to be dismissed. The Hon'ble Supreme Court in *Jignesh Shah vs Union of India* held that the purpose for which a winding up petition vis-à-vis a money suit is filed significantly differ. Hence, the mere continuance of the money suit does not imply revival/ extension of the limitation period.

(iii) Exclusion of period for which a corporate debtor was classified as sick unit under the Sick Industrial Companies (Special Provisions) Act, 1985

If pursuant to an order of BIFR under SICA, a creditor was unable to take any action against its debtor until introduction of the Code, the period during which such creditor was barred by the order of BIFR shall be excluded for the purpose of determining limitation (*Mr. Gouri Prasad Goenka v. Punjab National Bank &ors. (Company Appeal (AT) (Insolvency) No. 28 of 2019)*).

**CHAPTER 5: STEPS PRIOR TO FILING AN APPLICATION BEFORE
THE ADJUDICATING AUTHORITY UNDER THE IBC**

DEMAND NOTICE:

OPERATIONAL CREDITOR:

In the event that an Operational Creditor intends to initiate proceedings against the Corporate Debtor, the Operational Creditor has to serve a Demand Notice demanding repayment of the operational debt in respect of which the default has occurred, upon the Corporate Debtor under Section 8 of the IBC.

Within 10 days of receipt of the Demand Notice, the Corporate Debtor shall bring to the notice of the Operational Creditor—

- (a) existence of a dispute, if any, and 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 repayment 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 encashed a cheque issued by the corporate debtor.

In the event that the Corporate Debtor fails to pay the amount in default or dispute the debt within the stipulated period, the Operational Creditor can proceed to make an application before the Adjudicating Authority under the IBC.

DEMAND NOTICE AND SERVICE OF DEMAND NOTICE:

Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides the manner in which the aforesaid Demand Notice has to be made and served upon the Corporate Debtor-

An operational creditor shall deliver to the corporate debtor, the following documents, namely-

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- (a) a demand notice in Form 3; or
- (b) a copy of an invoice attached with a notice in Form 4.

The demand notice or the copy of the invoice demanding payment, may be delivered to the corporate debtor,

- (a) at the registered office by hand, registered post or speed post with acknowledgement due; or
- (b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.

A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any.

FORMAT OF FORM 3

FORM 3

(See clause (a) of sub-rule (1) of rule 5)

**FORM OF DEMAND NOTICE / INVOICE DEMANDING PAYMENT UNDER
THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

(Under rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

[Date

]

To,

[Name and address of the registered office of the corporate debtor]

From,

[Name and address of the registered office of the operational creditor]

Subject: Demand notice/invoice demanding payment in respect of unpaid operational debt due from [corporate debtor] under the Code.

Madam/Sir,

1. This letter is a demand notice/invoice demanding payment of an unpaid operational debt due from [name of corporate debtor].

2. Please find particulars of the unpaid operational debt below:

PARTICULARS OF OPERATIONAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS	

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	ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF DEFAULT IN TABULAR FORM)	
3.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)	
4.	DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS	
5.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY (IF ANY)	
6.	PROVISION OF LAW, CONTRACT OR OTHER DOCUMENT UNDER WHICH DEBT HAS BECOME DUE	

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7.	LIST OF DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF OPERATIONAL DEBT AND THE AMOUNT IN DEFAULT	
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3. If you dispute the existence or amount of unpaid operational debt (in default) please provide the undersigned, within ten days of the receipt of this letter, of the pendency of the suit or arbitration proceedings in relation to such dispute filed before the receipt of this letter/notice.

4. If you believe that the debt has been repaid before the receipt of this letter, please demonstrate such repayment by sending to us, within ten days of receipt of this letter, the following:

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

(b) an attested copy of any record that [name of the operational creditor] has received the payment.

5. The undersigned, hereby, attaches a certificate from an information utility confirming that no record of a dispute raised in relation to the relevant operational debt has been filed by any person at any information utility. (if applicable)

6. The undersigned request you to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate a corporate insolvency resolution process in respect of [name of corporate debtor].

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor
Name in block letters
Position with or in relation to the Operational Creditor

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Address of person signing

FORMAT OF FORM 4

Form 4

(See clause (b) of sub-rule(1) of rule 5)

**FORM OF NOTICE WITH WHICH INVOICE DEMANDING PAYMENT IS TO
BE ATTACHED**

(Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)

[Date
]

To,

[Name and address of registered office of the corporate debtor]

From,

[Name and address of the operational creditor] Subject: Notice attached to invoice
demanding payment

Madam/Sir,

[Name of operational creditor], hereby provides notice for repayment of the unpaid
amount of INR [insert amount] that is in default as reflected in the invoice attached
to this notice.

In the event you do not repay the debt due to us within ten days of receipt of this
notice, we may file an application before the Adjudicating Authority for initiating a
corporate insolvency resolution process under section 9 of the Code.

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor

Name in block letters

Position with or in relation to the Operational Creditor

Address of person signing

FINANCIAL CREDITOR:

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

No demand Notice has to be given in the case of a Financial Creditor.

RECORD OF DEFAULT WITH INFORMATION UTILITY

Information Utilities collect, collate, authenticate and disseminate financial information to facilitate insolvency resolution, liquidation and bankruptcy proceedings envisaged under the Code. The purpose of the Information utility is to remove information dependency on the debtor's management for critical information that is required to resolve insolvency. This information would be available to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings. The Code requires creditors to provide financial information of debtors to multiple utilities on an ongoing basis to the IUs. The information maintained in these IUs will be available to all relevant parties on the payment of a fee.

REGISTRATION OF RECORD OF DEFAULT WITH INFORMATION UTILITY

Creditors are required to register the Record of Default on the National E-Governance Services Limited website. The following is a step by step method for registration:-

- a. Create an account on behalf of the Operational/Financial Creditor. The following link provides a step by step procedure to be followed for creating an account on the NESL website:

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

<https://www.nesl.co.in/tips-users-user-registration-availing-nesls-iu-services/>

- b. Once the account is created the login details will be sent to the account holder within 3 days from creating the account. The password will be valid for a period of 7 days only, thus, the same has to be changed.
- c. After logging in, go to Submission → New Submission. Select the Type of Debt.
- d. Fill in the mandatory fields of the Submitters details, Debtors details, Debt Information, Security Details and Default Details.
- e. Thereafter, report the default by going to the Submission → Existing loan. A list of all facilities will drop down, click the Debt Reference No. of the facility you need to report default for. A window will open, Click the Report Default Tab and clarify the details. For a Financial Creditor, no documents have to be submitted, however, documents for an Operational Creditor have to be given on payment of a fee. After confirming the details click submit and use Aadhaar details to authenticate the submission. Form C will be generated.
- f. After a period of 15 days from the date reporting of default, a Default Report will be sent to the Operational/Financial Creditor.

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

- g.** The different ‘status’ of authentication which maintained by NeSL for each record and each party shall cover:
- i.** ‘Not presented’: Normally IU will immediately present any received information to the concerned parties for authentication. Hence this status will be transient in nature till a mail/ message is sent out to the concerned parties.
 - ii.** ‘Pending’: when the concerned party is yet to undertake authentication.
 - iii.** ‘Failed Authentication’: if the specified time limit of 15 days is exceeded or an updated submission of the same UDI is received, whichever later and treated as ‘expired’.
 - iv.** ‘Authenticated’: when the concerned party verifies and accepts the information presented and then affixes digital signature or e-Sign to the artefact as presented, without any change.
 - v.** ‘Disputed’: when the concerned party disagrees/disputes a part of or the entire information presented and then affixes signature or e-Sign to the artefact as presented, without any change.
 - vi.** ‘Deemed to be Authenticated’: Applicable only in case an information of default is not responded by a debtor even after three reminders as per Regulation 21.

A colour coding scheme for different 'status' of authentication of information of default as provided under Regulation 21 needs to be maintained by an IU for each default loan record.



CHAPTER 6: FILING

FINANCIAL CREDITOR:

Section 7: Initiation of Corporate insolvency resolution process by Financial Creditor:

1. A Financial Creditor either by itself or jointly with 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.

- **Provided** that for the Financial Creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:
- **Provided** further that for Financial Creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:
- **Provided also** that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

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 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.

Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides the manner in which the Application has to be filed before the Adjudicating Authority

(1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) Where the applicant under sub-rule (1) is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer.

(3) The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

Form 1

(See sub-rule (1) of rule 4)

**APPLICATION BY FINANCIAL CREDITORS TO INITIATE CORPORATE
INSOLVENCY RESOLUTION PROCESS UNDER CHAPTER II OF PART II
OF THE CODE.**

(Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

DATE: _____

To,
The National Company Law Tribunal
[Address]

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

From,
[Names and addresses of the registered offices of the financial creditors]

In the matter of [name of the corporate debtor]

Subject: Application to initiate corporate insolvency resolution process in the matter of [name of the corporate debtor] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Names of the financial creditor(s)], hereby submit this application to initiate a corporate insolvency resolution process in the matter of [name of corporate debtor]. The details for the purpose of this application are set out below:

Part - I

PARTICULARS OF APPLICANT		
1.	NAME OF FINANCIAL CREDITORS	
2.	DATE OF INCORPORATION OF FINANCIAL CREDITORS	
3.	IDENTIFICATION NUMBER OF FINANCIAL CREDITORS	
4.	ADDRESS OF THE REGISTERED OFFICE OF THE FINANCIAL CREDITORS	
5.	NAME AND ADDRESS OF THE PERSON AUTHORISED TO SUBMIT APPLICATION ON IT'S BEHALF	
6.	NAME AND ADDRESS OF PERSON RESIDENT IN INDIA AUTHORISED TO ACCEPT PROCESS ON ITS BEHALF	

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

Part – II

PARTICULARS OF CORPORATE DEBTOR	
1.	NAME OF THE CORPORATE DEBTOR
2.	IDENTIFICATION NUMBER OF CORPORATE DEBTOR
3.	DATE OF INCORPORATION OF CORPORATE DEBTOR
4.	<p>NOMINAL SHARE CAPITAL</p> <p>AND</p> <p>THE PAID-UP SHARE CAPITAL OF THE CORPORATE DEBTOR</p> <p>AND/OR</p> <p>DETAILS OF GUARANTEE CLAUSE AS PER MEMORANDUM OF ASSOCIATION (AS APPLICABLE)</p>
5.	ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATE DEBTOR
6.	<p>DETAILS OF THE CORPORATE DEBTOR AS PER THE NOTIFICATION UNDER SECTION 55(2) OF THE CODE-</p> <p style="padding-left: 40px;">(I) ASSETS AND INCOME</p> <p style="padding-left: 40px;">(II) CLASS OF CREDITORS OF AMOUNT OF DEBT</p> <p>CATEGORY OF CORPORATE PERSON</p>

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

Part-III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION	
1.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL

Part-IV

PARTICULARS OF FINANCIAL DEBT	
1.	TOTAL AMOUNT OF DEBT GRANTED DATE OF DISBURSEMENT:
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)

Part-V

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

PARTICULARS OF OPERATIONAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]	
1.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. (ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY))
2.	PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE DEFAULT, IF ANY. (ATTACH A COPY OF THE ORDER)
3.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)
4.	DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925) (ATTACH A COPY)

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

5.	THE LATEST AND COMPLETE COPY OF THE FINANCIAL CONTRACT REFLECTING ALL AMENDMENTS AND WAIVERS TO DATE (ATTACH A COPY)	
6.	A RECORD OF DEFAULT AS AVAILABLE WITH ANY CREDIT INFORMATION COMPANY (ATTACH A COPY)	
7.	COPIES OF ENTERIES IN A BANKERS BOOK IN ACCORDANCE WITH THE BANKERS BOOKS EVIDENCE ACT, 1891 (18 OF 1891) (ATTACH A COPY)	
8.	LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT AND DATE OF DEFAULT	

I hereby certify that to the best of my knowledge name of proposed insolvency professional, is fully qualified and permitted to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Code, 2016 and the associate rules and regulations.

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

[Name of the financial creditor] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of person authorised to act on behalf of the financial creditor
Name in block letters
Position with or in relation to the financial creditor
Address of person signing

Instructions:

Please attach the following to this application:

Annex I	Copies of all documents referred to in this application
Annex 2	Written communication by the proposed interim resolution professional as set out in Form 2
Annex 3	Proof that the specified application fee has been paid
Annex 4	Where the application is made jointly, the particulars specified in this form shall be furnished in respect of all the joint applicants along with a copy of authorisation to the financial creditor to file and act on this application on behalf of all the applicants

OPERATIONAL CREDITOR:

Section 9

(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;

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

- (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 by the corporate debtor; and
 - (d) such other information as may be specified.
- (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,—
 - (a) the application made under sub-section (2) is complete;
 - (b) there is no repayment 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 repayment 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 subclause (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.

FILING OF APPLICATION BEFORE NCLT

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides the manner in which the Application has to be filed before the Adjudicating Authority-

- (1) An operational creditor, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 9 of the Code in Form 5, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (2) The applicant under sub-rule (1) shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.
The Application can also be served via e-mail.

Form 5

(See sub-rule (1) of rule 6)

**APPLICATION BY OPERATIONAL CREDITOR TO INITIATE
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE
CODE.**

(Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

Date: _____

To,
The National Company Law
Tribunal [*Address*]

From,
[*Name and address for correspondence of the operational creditor*]

In the matter of [*name of the corporate debtor*]

Subject: Application to initiate corporate insolvency resolution process in respect of [*name of the corporate debtor*] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

[Name of the operational creditor], hereby submits this application to initiate a corporate insolvency resolution process in the case of [name of corporate debtor]. The details for the purpose of this application are set out below:

Part – I

PARTICULARS OF APPLICANT		
1.	NAME OF OPERATIONAL CREDITOR	
2.	IDENTIFICATION NUMBER OF OPERATIONAL CREDITOR	
3.	ADDRESS FOR CORRESPONDENCE OF THE OPERATIONAL CREDITOR	

Part – II

PARTICULARS OF CORPORATE DEBTOR		
1.	NAME OF THE CORPORATE DEBTOR	
2.	IDENTIFICATION NUMBER OF CORPORATE DEBTOR	
3.	DATE OF INCORPORATION OF CORPORATE DEBTOR	
4.	NOMINAL SHARE CAPITAL AND THE PAID-UP SHARE CAPITAL OF THE CORPORATE DEBTOR AND/OR DETAILS OF GUARANTEE CLAUSE AS PER	

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

	MEMORANDUM OF ASSOCIATION (AS APPLICABLE)	
5.	ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATE DEBTOR	
6.	NAME, ADDRESS AND AUTHORITY OF PERSON SUBMITTING APPLICATION ON BEHALF OF OPERATIONAL CREDITOR (ENCLOSE AUTHORISATION)	
7.	NAME AND ADDRESS OF PERSON RESIDENT IN INDIA AUTHORISED TO ACCEPT THE SERVICE OF PROCESS ON ITS BEHALF (ENCLOSE AUTHORISATION)	

Part-III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL [IF PROPOSED]
--

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

1.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INSOLVENCY PROFESSIONAL	The proposed Insolvency Professional may be appointed as per the directions of the Hon'ble National Company Law Tribunal Bench, at Mumbai
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Part-IV

PARTICULARS OF OPERATIONAL DEBT	
1	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE: AND THE DATE FROM WHICH SUCH DEBT FELL DUE
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

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Part-V

**PARTICULARS OF OPERATIONAL DEBT
[DOCUMENTS, RECORDS AND EVIDENCE OF
DEFAULT]**

1.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)	
2.	DETAILS OF RESERVATION / RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS	
3.	PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE	

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

	DEFAULT, IF ANY (ATTACH A COPY OF THE ORDER)	
4.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)	
5.	DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925) (ATTACH A COPY)	
6.	PROVISION OF LAW, CONTRACT OR OTHER DOCUMENT UNDER WHICH OPERATIONAL DEBT HAS BECOME DUE	
7.	A STATEMENT OF BANK ACCOUNT WHERE DEPOSITS ARE MADE OR CREDITS RECEIVED NORMALLY BY THE OPERATIONAL CREDITOR IN RESPECT OF THE DEBT OF THE CORPORATE DEBTOR (ATTACH A COPY)	
8.	LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF OPERATIONAL DEBT AND THE	

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

	AMOUNT IN DEFAULT	
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I, [Name of the operational creditor / person authorised to act on behalf of the operational creditor] hereby certify that, to the best of my knowledge, [name of proposed insolvency professional], is fully qualified and permitted to act as an insolvency professional in accordance with the Code and the rules and regulations made thereunder. [WHERE APPLICABLE]

[Name of the operational creditor] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of person authorized to act on behalf of the operational creditor
Name in Block Letters
Position with or in relation to the operational creditor
Address of person signing

Instructions

Please attach the following to this application:

Annex I	Copy of the invoice / demand notice as in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 served on the corporate debtor
Annex II	Copies of all documents referred to in this application
Annex III	Copy of the relevant accounts from the banks/financial institutions maintaining accounts of the operational creditor confirming that there is no payment of the relevant unpaid operational debt by the operational debtor, if available
Annex	Affidavit in support of the application in accordance with the

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

IV	Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
Annex V	Written communication by the proposed interim resolution professional as set out in Form 2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. [<i>WHEREAPPLICABLE</i>]
Annex VI	Proof that the specified application fee has been paid

Note:

Where workmen/employees are operational creditors, the application may be made either in an individual capacity or in a joint capacity by one of them who is duly authorised for the purpose.

1. An operational creditor shall make an application in Form 5, and along with the application furnish:

- A copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
- An affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
- 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 by the corporate debtor, if available;
- 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

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

- 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.

CORPORATE APPLICANT

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.
3. The corporate applicant shall, along with the application, furnish –
 - 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 professional 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 [and no disciplinary proceeding is pending against the proposed resolution professional]; or
 - B. reject the application, if it is incomplete [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.

FILING OF APPLICATION BEFORE NCLT:

Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides the manner in which the Application has to be filed before the Adjudicating Authority

1. A corporate applicant, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 10 of the Code in Form 6, accompanied with documents and records required

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2. The applicant under sub-rule(1) shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

FORMAT OF FORM 6

Form 6

(See sub-rule(1) of rule 7)

[APPLICATION BY CORPORATE APPLICANT TO INITIATE CORPORATE
INSOLVENCY RESOLUTION PROCESS *UNDER CHAPTER II OF PART II/
UNDER CHAPTER IV OF PART II OF THE CODE)

(Under rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)

DATE: _____

To,
The National Company Law Tribunal
[Address]

From,
[Name and address for correspondence of the corporate applicant]]

In the matter of [name of the corporate debtor]

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

Subject: Application to initiate corporate insolvency resolution process in respect of [name of the corporate debtor] under the Code.

Madam/Sir,

We, hereby submit this application to initiate a corporate insolvency resolution process in respect of [name of corporate debtor]. The details for the purpose of this application are set out below:

Part - I

PARTICULARS OF CORPORATE APPLICANT	
1.	NAME ADDRESS, EMAIL ADDRESS, IDENTIFICATION NUMBER AND ADDRESS FOR COMMUNICATION OF THE CORPORATE APPLICANT
2.	NAME ADDRESS, EMAIL ADDRESS, IDENTIFICATION NUMBER AND ADDRESS OF THE REGISTERED OFFICE OF CORPORATE DEBTOR
3.	NAMES AND ADDRESSES OF ALL DIRECTORS, PROMOTERS, DESIGNATED PARTNERS OF THE CORPORATE DEBTOR (AS APPLICABLE)
4.	DATE OF INCORPORATION OF

Research by: Adv. Priyanshi Bathia, Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

	CORPORATE DEBTOR	
5.	NOMINAL SHARE CAPITAL AND THE PAID-UP SHARE CAPITAL OF THE CORPORATE DEBTOR AND/OR DETAILS OF GUARANTEE CLAUSE AS PER MEMORANDUM OF ASSOCIATION (AS APPLICABLE)	
6.	NAME, ADDRESS AND AUTHORITY OF PERSON SUBMITTING APPLICATION ON BEHALF OF CORPORATE APPLICANT (ENCLOSE AUTHORISATION)	
7.	NAME AND ADDRESS OF PERSON RESIDENT IN INDIA AUTHORISED TO ACCEPT THE SERVICE OF PROCESS ON ITS BEHALF (ENCLOSE AUTHORISATION)	
8.	DOCUMENTATION TO SHOW THAT THE CORPORATE APPLICANT IS AUTHORISED TO INITIATE THE CORPORATE INSOLVENCY RESOLUTION PROCESS	
9.	DETAILS OF THE CORPORATE DEBTOR AS PER THE NOTIFICATION UNDER SECTION	

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55 (2) OF THE CODE – (i) ASSETS AND INCOME (ii) CLASS OF CREDITORS OR AMOUNT OF DEBT (iii) CATEGORY OF CORPORATE PERSON (WHERE APPLICATION IS UNDER CHAPTER IV OF PART II OF THE CODE)]	
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Part-II

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION	
1.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL

Part-IV

PARTICULARS OF FINANCIAL / OPERATIONAL DEBT [CREDITOR WISE, AS APPLICABLE]	
1.	NAME(S) OF FINANCIAL / OPERATIONAL CREDITOR(S):
2.	ADDRESS OF CORRESPONDENCE OF THE FINANCIAL / OPERATIONAL CREDITOR(S)

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3.	TOTAL DEBT RAISED AND AMOUNT IN DEFAULT	
4.	DATE WHEN THE FINANCIAL/ OPERATIONAL DEBT WAS INCURRED	
5.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)	
6.	DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS	
7.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY	
8.	LIST OF DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL/ OPERATIONAL DEBT	

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	AND THE AMOUNT IN DEFAULT	
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I, certify that, to the best of my knowledge, [name of proposed insolvency professional], is fully qualified and permitted to act as an insolvency professional in accordance with the Code and the associated rules and regulations. [Name of the corporate applicant] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of person authorised to act on behalf of the financial creditor
Name in block letters
Position with or in relation to the financial creditor
Address of person signing

Please attach the following to this application:

Annex I	In case of financial debt, record of default obtained through the information utility or all documents listed in serial number 8 of part –III of this application.
Annex 2	In case of operational debt, (i) copy of invoice / demand notice served by an operational creditor on the corporate debtor and (ii) record of default obtained through the information utility or all documents listed in serial number 8 of part-III of this application.
Annex 3	Written communication by the proposed interim resolution professional as set out in Form 2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
Annex 4	Copy of the relevant books of accounts of the corporate debtor evidencing the default to creditors.
Annex 5	Copies of audited financial statements of the corporate debtor for the last two financial years and the provisional financial statements for the current financial year made upto a date not earlier than fourteen days from the date of the application.

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Annex 6	<p>A statement of affairs made up to a date not earlier than fourteen days from the date of application including the following document, namely:-</p> <p>(a) a list of the corporate debtor's assets and liabilities, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;</p> <p>(b) in the case of any property on which a claim against the corporate debtor is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created;</p> <p>(c) the names and addresses of the financial creditors and operational creditors of the corporate debtor, with the amounts due to each of them;</p> <p>(d) particulars of any debts owed by or to the corporate debtor to or by persons connected with it;</p> <p>(e) whether any, and if so what, guarantees have been given in relation to the debts of the corporate debtor by other persons, specifying which, if any, of the guarantors is a related party to the corporate debtor and the corporate applicant; and</p> <p>(f) the names and addresses of the members and partners of the corporate debtor, as the case may be, with details of their respective shareholdings.</p>
Annex 7	<p>A copy of:</p> <p>(a) relevant extract of any constitutional document or shareholders' agreement that records the authority of the corporate applicant to make this application, where the corporate applicant is a member or partner of the corporate debtor; or</p> <p>(b) relevant extract of an employment agreement, constitutional document or fillings made to the Registrar of Companies confirming the authority of the corporate applicant to make this application, where the corporate applicant is an individual in charge of managing the operations and resources of the corporate debtor or has control and supervision over the financial affairs of the corporate debtor</p>
Annex 8	<p>Affidavit in support of the application in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority)</p>

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	Rules, 2016
Annex 9	Proof that the specified application fee has been paid

KEY POINTS FOR PHYSICAL FILING UNDER SECTIONS 7, 9 AND 10 OF THE IBC:

1. Printing shall be one sided and on ledger paper.
2. Documents included in the compilation for filing shall be as follows:
 - a) Covering Letter on Letter Head
 - b) Index
 - c) Online Filing Challan.
 - d) Court Fees Receipt (Case Details & Advocate Details have to be mentioned on back side)
 - e) Synopsis
 - f) Application Form
 - g) Annexures (To contain Master Data from MCA)
 - h) Affidavit-In-Support.(Title has to be on Stamp Paper of Rs 100)
 - i) Record of Default with Information Utility,
 - j) Vakalatnama (Court Fees of Rs 10 to be affixed)
 - k) Court Fees (2000 for Operational Creditor and 25000 Financial Creditors)
 - l) Board Resolution authorizing representative to file the petition.
 - m) Proof of Service on the Respondents/Corporate Debtors (Email Service).
3. After the printout full set has to be scanned. The CD has to be burnt and the scanned copy has to be put in the CD. **1 CD** has to be submitted along with the physical set. Case details have to be written on the CD viz. Case title, Section under which application is made, Name of the Advocate, E-mail id, Mobile Number.

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4. There has to be 3 printouts of the Compilation (2 Ledger + 1 White Set). 2 ledger sets have to be stitched in 2 brown files respectively and tied with white ropes. Also 1 CD has to put with one of the ledger compilation. The same have to be submitted to the department taking the stamp on the acknowledgement copy.
5. Brown Files should have white A4 size cover pages in which case details along with the Advocates details are mentioned.

FEES PAYABLE

SCHEDULE
[See sub-rule (3) of rule 10]

SR No	Applicant	Fee Payable (In Rupees)
1	Application by Financial Creditor(whether solely or jointly	25000 /-
2	Application by Operational Creditor	2000 /-
3	Application by corporate debtor	25000 /-

Steps for paying Court Fees:

1. Go to Website **bharatkosh.gov.in**.
2. Click on Non- Registered Users.
3. Select the Category as Corporates / Commercial Undertakings.
4. Ministry – Corporate Affairs.
5. Purpose – Search – Filing Fees(Mumbai) –Company Petition/ Insolvency and Bankruptcy Code Petition.
6. Drawing and Disbursing Office – National Company Law Tribunal, Mumbai.
7. Enter the Amount, In Remarks put the Case Title and proceed to next tab.
8. In next tab details of the petitioner have to be mentioned
9. After confirming proceed for payment, save the receipt.

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A. Steps for Online filing in NCLT: (Petitioner Side)

1. Go to <https://efiling.nclt.gov.in/mainPage.drt>.
2. Put the login details
3. Go to NCLT Tab.
4. Go to Petition Corner (Choose the appropriate option : Company Act, 2013/ IBC Code,2016)
5. Fill in the required fields (Following link shows detailed procedure for filing *(<https://efiling.nclt.gov.in/downloads/manual/manual.pdf>)
6. Also the Scanned copy of the Petition has to be uploaded along with the payment receipt in the upcoming fields.
7. Submit the Online Application and save the PDF of the submission of Online Application which shall be printed out and annexed with the Physical Brown File.

Steps for Online filing in NCLT: (Respondent Side)

***Only possible if the Petition has been filed by the Petitioner Online**

1. Go to <https://efiling.nclt.gov.in/mainPage.drt>.
2. Put the login details.
3. Go to NCLT Tab.
4. Go to Respondent Corner.
5. Enter the Security Code and Filing Number as per the details of the petition..
6. Fill the required details and upload the documents.

Interim Resolution Professional:

1. The applicant, wherever he is required to propose or proposes to appoint an insolvency resolution professional, shall obtain a written

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communication in Form 2 from the insolvency professional for appointment as an interim resolution professional and enclose it with the application made under rules 4, 6 or 7, as the case may be.

2. The application under sub-rule (1) shall be accompanied by a certificate confirming the eligibility of the proposed insolvency professional for appointment as a resolution professional in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
3. For Application under Section 7 it is mandatory to file Form 2 accompanied by a certificate confirming the eligibility of the proposed IRP.
4. For Application under Section 9 it is insisted by the Hon'ble Court that Form 2 shall be filed by the IRP accompanied by a certificate confirming the eligibility of the proposed IRP.

CHAPTER 7: PROCEEDINGS BEFORE THE TRIBUNAL

1. The Petition needs to be filed at the department along with proof of service and at a specific date the matter is listed before the appropriate Court Room at National Company Law Tribunal.
2. On first date of hearing the Petitioner has to explain in brief about the details of the case and the amount claimed to the Hon'ble Tribunal on which the Hon'ble Tribunal may direct the Petitioner either of the following:
 - a) To re-serve the opposite side by mentioning the next date of hearing and file the Affidavit of Service in the Department before a specific date; or
 - b) Issue Notices to the opposite side. The said notices have to be collected from the Department and sent to the Opposite Side and file Affidavit of Service for the same within the time framed mentioned by the Hon'ble Tribunal.
3. **On the next date of hearing there are 2 possibilities :**
 - a) The Opposite Side Advocate may file Vakalatnama and Board Resolution and appear before the Hon'ble Tribunal and seek time to file a reply to the Petition and serve the same to the Petitioner ;or

- b) If the Opposite Side Advocate does not appear, the Petitioner is directed by the Hon'ble Tribunal to re-serve the Opposite Side and file Affidavit of Service.

4. On subsequent date of hearing either:

- a) Once the reply is received by the Petitioner and if new points of dispute arise, the Petitioner may seek time to file a re-joinder which is allowed only at the liberty of the Hon'ble Tribunal; or
- b) If the Opposite Side Advocate does not appear the Hon'ble Tribunal will direct the Petitioner to initiate substituted service by publication and file Affidavit of Service for the same.

5. Last stage before Admission :

- a) Arguments of both the parties are heard at length by the Hon'ble Tribunal pursuant to which the Hon'ble Tribunal may either admit the Petition or reject the Petition ;or
- b) Even after a substitute service by publication if the Opposite Side Advocate does not appear the Hon'ble Tribunal have the power to proceed with the Petition by hearing the Petitioner and admitting or rejecting the Petition on its merit.

**CHAPTER 8: POST ADMISSION- CORPORATE INSOLVENCY
RESOLUTION PROCESS (CIRP) AND CORPORATE LIQUIDATION
PROCESS (CLP) IN BRIEF**

1. **Under Section 13** of the Code, as soon as an application u/s. 7, 9 or 10 is admitted, the Adjudicating Authority shall, by an order—
 - (a) declare a moratorium under section 14;
 - (b) cause a public announcement of the initiation of CIRP and call for the submission of claims under section 15 (to take effect after appointment of IRP as set out below). Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 sets out in detail the manner in which public announcement has to be made.;
 - (c) appoint an interim resolution professional in the manner as laid down in section 16.
2. The IRP takes over the management and bank accounts of the Company, the BOD is suspended.
3. The IRP 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 which shall consist of the Financial Creditors of the Corporate Debtor, subject to certain stipulations set out in Section 21 of the Code. In the event any financial creditor is a related party of the defaulting debtor, such a creditor will not have the right to represent, participate or vote in the committee of creditors so constituted by the IRP. In order to be a part of the Creditor's Committee, the average dues of the

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operational creditors must be at least ten percent of the debt. Though Operational Creditors can be part of the COC in certain circumstances, they do not have the right to vote in a COC. 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.

In the matter of RubinaChadha&Anr. Vs. AMR Infrastructure Ltd., the Hon'ble NCLAT observed: "The appellants herein, whether they are 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor', as claim to be creditors are now entitled to file their respective claims before the 'Interim Resolution Professional', as may be appointed and the advertisement as may be published in the newspaper calling of such application(s) with regard to resolution of 'Corporate Debtor'- AMR Infrastructure Ltd. In such case, their claim should be considered by the Interim Resolution Professional (IRP) and the Committee of Creditors, in accordance with the provisions of the 'I&B Code'

4. After appointment of the COC, the Resolution Professional is appointed in the manner set out in Section 22 of the Code. Either the IRP may be allowed to continue as the RP or a new RP may be appointed. The RP conducts the CIRP and manages the affairs of the Company till completion of CIRP.
5. The RP shall prepare an information memorandum in such form and manner containing such relevant information as set out in **Regulation 36** of the **INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016** for formulating a resolution plan.

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6. Under Regulation 36A (1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP shall publish brief particulars of the invitation for Expression Of Interest (EOI) in **Form G** of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.

In the matter of **Armada Singapore Ptv. Ltd. Vs. Ashapura Minechem Ltd.** held that resolution plan submitted by a Resolution Applicant without EOI is against the provision of Sec. 65 of the Code

7. The RP shall examine each resolution plan received by him to confirm that each resolution plan conforms with Section 30 of the Code and Regulation 38 of INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016
8. The COC may approve a resolution plan by a vote of not less than 50% of voting share of the financial creditors pursuant to which the COC approved Resolution plan is sent to the Adjudicating Authority for approval.
9. If the Adjudicating Authority is satisfied that the resolution plan as approved by the COC under Section 30 meets the requirements, it shall by order approve the resolution plan which shall be binding on the corporate debtor

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and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

LIQUIDATION

10.The liquidation process commences only if:

- a.** The Creditors Committee fails to submit the resolution plan with the provided time frame to the NCLT.
- b.** The Resolution Plan is rejected because of non-adherence to the Code.
- c.** The Creditor's Committee takes a decision for liquidating the assets by a majority vote.
- d.** The resolution plan is flouted by the debtor.

11.The Liquidator shall be the same person as the Resolution Professional lest replaced. The liquidator so appointed shall constitute the liquidation estate which shall comprise of all the properties, whether financial or immovable, of the corporate debtor. The claims of the creditors shall be received, verified, admitted or rejected based on the final decision of the liquidator within a within a period of thirty days from the date of the commencement of the liquidation process.

12.Section 53 provides, 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 and in such manner as may be specified, namely: -

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

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- (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.

13. Once all the assets of the corporate debtor are liquidated, the NCLT passes an order to finally liquefy the corporate debtor.

CHAPTER 9:SETTLEMENT

Prior to Introduction of Section 12A:

- The essence of Insolvency and Bankruptcy Code, 2016 (“**Code**”) is to manage the asset deficit in a case of insolvency in a manner that is fair to all the stakeholders. The National Company Law NCLAT(“NCLAT”) **in Binani Industries Ltd. v. Bank of Baroda**, has extensively dealt with the objective and purpose of the Code. The Code gives ‘Resolution’ primacy over ‘Liquidation’.
- Under Rule 8 of the **Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016**, the NCLT may permit withdrawal of the application on a request by the applicant before its admission.
- The Code was silent on whether an application once admitted could be withdrawn or settled by the corporate debtor. This issue aroused first time in the case of **Mother Pride Dairy India Pvt. Ltd. v. Portrait Advertising & Marketing Pvt. Ltd** the NCLAT while interpreting Rule 8 held that-
“...once an application is admitted, it cannot be withdrawn even by the Operational Creditor, as other creditors are entitled to raise claim pursuant to public announcement under Section 15 read with Section 18 of the I&B Code, 2016.”

An appeal against the decision of the NCLAT was preferred to the Honourable Supreme Court by the applicant creditor. The Honourable Supreme Court while overturning the decision of the NCLAT accepted the

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settlement between the applicant creditor and the corporate debtor by exercising its inherent power under Article 142 of the Constitution of India.

- Since these issues kept raising and Honourable Apex Court directed the Competent Authority to amend the law and made the following observations in **Uttara Foods and Feeds Private Limited v. Mona Pharmachem** :

“We are of the view that instead of all such orders coming to the Supreme Court as only the Supreme Court may utilise its powers under Article 142 of the Constitution of India, the relevant Rules be amended by the competent authority so as to include such inherent powers. This will obviate unnecessary appeals being filed before this Court in matters where such agreement has been reached.”

- Thereafter, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 was promulgated on June 06, 2018 The Ordinance inserted Section 12A in the Code which provided for withdrawal of insolvency applications after they have been admitted by the Adjudicating Authority.

Insolvency and Bankruptcy (Second Amendment) Act, 2018:

1. Section 12A was inserted with retrospective effect from 06.06.2018 on recommendation by Insolvency Law Committee Report to provide facility to withdraw application made under section 7, 9 or 10 on settlements even if CIRP has been initiated.

2. A matter can be settled between the parties and an application(s) under Sections 7 or 9 or 10 can be withdrawn only at four stages:

- I. Before admission of application under Sections 7 or 9 or 10.
- II. After admission but before constitution of Committee of Creditors(CoC).
- III. After admission but after constitution of Committee of creditors(Coc).

I. Withdrawal Application before Admission of application u/s 7, 9 or 10.

IV. **Under Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016**, the NCLT may permit withdrawal of the application on a request by the applicant before its admission by filing a Withdrawal Memo.

V. **FORMAT:**

**BEFORE THE HON'BLE NATIONAL COMPANY LAW
TRIBUNAL**

**_____ BENCH
COMPANY PETITION NO ___ OF _____**

**In the matter of:
Petition under Section ___ of Insolvency
and Bankruptcy Code, 2016.**

Names and addresses of _____)
the registered offices of the _____)
Financial/Operational creditors)Operational/Financial
Creditor

Versus

Names and addresses of _____)

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the registered offices of the)
Corporate Debtor) Corporate Debtor

WITHDRAWAL MEMO

1. The Operational/Financial Creditor had filed the present Petition under Section ____ of Insolvency and Bankruptcy Code, 2016.
2. The Corporate Debtor has cleared all the dues of the Operational/Financial Creditor.
3. In view of the same, the Operational creditor seeks leave of this Hon'ble Tribunal to withdraw the petition.

Dated this ____ day of ____, 2020.

Advocate for Operational/Financial Creditor

Operational/Financial Creditor

II. Withdrawal of Application after Admission of application u/s 7, 9 or 10.

Section 12A of the Code provides that 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 90% voting share of the committee of creditors.

Regulation 30A (amended on 25.07.2019) of CIRP Regulation, 2016 guide the process of making an application under section 12A. Following steps to be considered for withdrawal of an application:

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PARTICULAR	BEFORE CONSTITUTION OF COC	AFTER CONSTITUTION OF COC BUT BEFORE ISSUE OF INVITATION FOR EXPRESSION OF INTEREST	AFTER ISSUE OF INVITATION FOR EXPRESSION OF INTEREST
Application through	By the applicant through the IRP	By the applicant through the IRP or the RP, as the case may be	By the applicant through the IRP or the RPI, as the case may be and the applicant shall state the reasons justifying withdrawal after issue of such invitation
Application Form	Form FA	Form FA	Form FA
Bank Guarantee accompanied with the Form FA	Towards estimated expenses incurred on or by the IRP for purposes of regulation 33, till the date of filing of the application	Towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application	Towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application
Time limit for CoC	Not Applicable	CoC shall consider the application within 7 days of its receipt	CoC shall consider the application within 7 days of its receipt
Requirement of CoC Approval	Not Applicable	CoC approval with 90% voting share is required to consider the withdrawal	CoC approval with 90% voting share is required to consider the withdrawal

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Time limit to submit the application to the Adjudicating Authority	IRP shall submit the application to the AA on behalf of the applicant, with in 3 days of its receipt.	Where the application approved by the CoC with 90% voting share, the RP shall submit such application along with the approval of the CoC, to the AA on behalf of the applicant, within 3 days of such approval.	Where the application approved by the CoC with 90% voting share, the RP shall submit such application along with the approval of the CoC, to the AA on behalf of the applicant, within 3 days of such approval.
Approval of Application by AA	AA may, by order, approve the application. Where the application is approved, the applicant shall deposit an amount, towards the actual expenses incurred till the date of approval by the AA, as determined by the IRP or RP, as the case may be, within 3 days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received shall be invoked, without prejudice to any other action permissible against the applicant under the Code.		

JUDICIAL PRNOUNCEMENTS AFTER INSERTION OF SECTION 12A:

- **Brilliant Alloys Pvt. Ltd. v. Mr. S. Rajagopal**, settlement post admission was rejected by the Adjudicating Authority on the ground that it was made after the stage of Expression of Interest which is violative of Regulation 30A of the CIRP Regulation, against the said order a Special Leave Petition was filed before the Apex Court. The Apex Court annulled the insolvency proceeding and allowed the

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settlement with a finding that Regulation 30A has to be read with Section 12A which has no such stipulation. The stipulation under Regulation 30A is directory in nature depending on each case.

- The Constitutional Validity of Section 12A was challenged before the Hon'ble Supreme Court in *Swiss Ribbons v. Union of India*. The Apex Court while upholding the constitutional validity of Section 12A, explained two scenarios with respect to the withdrawal/settlement post admission of Insolvency Petition:
 - a) preCoC formation; and
 - b) postCoC formation.

Before a CoC is formed, parties can approach the Adjudicating Authority for settlement, which in exercise of its inherent power under Rule 11 of the NCLT Rules, 2016 may allow or disallow the withdrawal/settlement. Post formation of CoC, it is the Committee which has to be consulted before the parties are allowed to settle and settlement can be allowed only if it has received ninety per cent voting approval from the CoC. The Apex Court also relied on the Insolvency Law Committee Report of March 2018 while explaining the high threshold of ninety per cent of Committee for approving the settlement. Furthermore, if the parties feel the decision of Committee is arbitrary they can approach the NCLT or NCLAT under Section 60 of the Code.

- NCLAT in the matter of *Sunshine Caterers Pvt. Ltd. Vs. Redreef Finance & Investment Pvt. Ltd.* held that if the Committee of

Creditors approved the application under Section 12A with majority voting share of 90%, the Adjudicating Authority cannot further look into the matter and is required to allow the applicant to withdraw the application, if it is filed.



CHAPTER 10: APPEAL

NATIONAL COMPANY LAW APPELLATE TRIBUNAL(NCLAT):

1. NCLAT is the Appellate Tribunal for hearing appeals against the orders passed by NCLT(s) under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC), with effect from 1st December, 2016. NCLAT is also the Appellate Tribunal for hearing appeals against the orders passed by Insolvency and Bankruptcy Board of India under Section 202 and Section 211 of IBC.
2. NCLAT is also the Appellate Tribunal to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India (CCI) – as per the amendment brought to Section 410 of the Companies Act, 2013 by Section 172 of the Finance Act, 2017, with effect from 26th May, 2017.

- **Section 61: Appeals and Appellate Authority**

1. Notwithstanding anything to the contrary contained under the Companies Act 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:

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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:-

- a) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
- b) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period
- c) 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
- d) the insolvency resolution process costs have not been provided for repayment in priority to all other debts;
- e) 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.

Judicial Pronouncements:

1. In the matter of **Sunil Sharma v. Hex Technologies and Industrial Services v. Electrosteel Steels** the NCLAT held that Appellate Tribunal has

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no jurisdiction to condone delay beyond 15 days apart from the 30 days for preferring an appeal, as prescribed under Section 61 (2) of the Insolvency and Bankruptcy Code.

2. In the matter of **Prowess International Private Limited v. Action Ispat & Power Private Limited**, the NCLAT drew a distinction between the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 as regards the period of limitation for an appeal before the NCLAT. In an appeal preferred under Section 421 of the Companies Act, 2013, the period of limitation is counted from the date on which a copy of the order is made available by the tribunal pursuant to sub-section (3) of Section 421 of the Companies Act, 2013. Under Section 61 of the Code, the appeal is required to be filed within thirty-days, means within thirty-days from the date of knowledge of the order against which appeal is preferred.

FORMAT: Appeal under section 61 of Insolvency and Bankruptcy Code, 2016
BEFORE THE NATIONAL COMPANY LAW APPELLATE
TRIBUNAL, NEW DELHI
APPELLATE JURISDICTION
COMPANY APPEAL(AT)(INSOLVENCY)NO. __2020
Memorandum of Appeal Preferred under Section 61 of Insolvency and
Bankruptcy Code, 2016

IN THE MATTER OF:

A.B.Appellant (s)

And

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Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

C.D.Respondent(s)

(With short address)

COMPANY APPEAL UNDER SECTION 61 OF THEE INSOLVENCY AND BANKRUPTCY CODE,2016 AGAINST THE IMPUGNED ORDER DATED PASSED BY HON'BLE NATIONAL COMPANY LAW TRIBUNAL, _____, IN COMPANY PETITION NO. _____ OF _____ SEEKING SETTING ASIDE THE AFORESAID ORDER.

MOST RESPECTFULLY SHOWTH:

- 1. DETAILS OF THE APPEAL.**
- 2. DATE OF THE IMPUGNED ORDER.**
- 3. ADDRESS OF THE APPELLANT**

Address of the appellant for service is as set out hereunder:

- Postal address including PIN code
- Phone number including mobile number.
- E-mail
- Fax No.
- Address of Legal Representative with Phone No., Fax No., e-mail

- 4. ADDRESS OF THE RESPONDENT**

Address of the Respondent for service is as set out hereunder:

- Postal address including PIN code
- Phone number
- E-mail
- Fax Number
- Mobile Number

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- Address of Counsel with Phone number, Fax number, e-mail and mobile number.

5. JURISDICTION OF THE APPELLATE TRIBUNAL.

The appellant declares that the subject matter of the appeal is within the jurisdiction of this Tribunal.

6. LIMITATION

The Impugned Order was passed on _____. The Certified copy of the same was made available to _____ on _____. Thus, the Appellant declares that the Appeal is within the period specified in sub-section (2) of Section 61 of the code.

7. FACTS OF THE CASE

The facts of the case are given below:

(Give here a concise statement of facts in a chronological order followed by elaboration of issues including the question of law arising in the appeal. Each paragraph should deal with, as far as possible a separate issue.)

8. Formulate (i) the facts in issue or specify the dispute between the parties and (ii) summarize the questions of law that arise for consideration in the appeal:

9. Grounds raised with legal provisions

10. Matters not previously filed or pending with any other court

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The appellant further declares that the appellant had not previously filed any writ petition or suit regarding the matter in respect of which this appeal is preferred before any court or any other authority nor any such writ petition or suit is pending before any of them.

[In case the appellant previously had filed any such writ petition or suit, the stage at which it is pending and, if decided, the outcome of the same should be specified and a copy of the order should also be annexed].

11. Specify below explaining the grounds for such relief (s) and the legal provisions, if any, relied upon.

12. Details of Interim Application, if any, preferred along with appeal.

13. Details of appeal/s, if any preferred before this Appellate Tribunal against the same impugned order/direction, by Respondents with numbers, dates... and interim order, if any passed in that appeal (if known)

14. Details of Index [An index containing the details of the documents in chronological order relied upon is enclosed]

15. Particulars of fee payable and details of bank draft in favour of Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi. In respect of the fee for appeal. Name of the Bank _____ Branch, _____ payable at Delhi. DD No. _____ Date.

16. List of enclosures:

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- a)
- b)

17. Whether the order appealed as communicated in original is filed? If not, explain the reason for not filing the same.

18. Whether the appellant/s is ready to file written submissions/arguments before the first hearing after serving the copy of the same on Respondents.

19. Whether the copy of memorandum of appeal with all enclosures has been forwarded to all respondents and all interested parties, if so, enclose postal receipt/courier receipt in addition to payment of prescribed process fee.

20. Any other relevant or material particulars / details which the appellant(s) deems necessary to set out:

21. Reliefs Sought :

- a)
- b)
- c)

Dated at _____ this ____ day of ____ 20__.

Counsel for Appellant(s)
Appellant(S)

DECLARATION BY APPELLANT

The appellant(s) above named hereby solemnly declare (s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original(s)/fair reproduction of the originals / true translation thereof. Verified at _____ on this at _____ day of _____ 20---.

Counsel for Appellant (s)

APPELLANT(S)

VERIFICATION

I _____ (Name of the Appellant) S/o. W/o. D/o. [indicate any one, as the case may be] _____ age _____ working as _____ in the office of _____ resident of _____ do hereby verify that the contents of the paras _____ to _____ are true to my personal knowledge/derived from official record) and para _____ to _____ are believed to be true on legal advice and that I have not suppressed any material facts.

Date:

Place:

**Signature of the Appellant or
Authorized officer**

• **SECTION 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.

Judicial Pronouncements:

1. In case petition is admitted, Supreme Court held that the board of directors (suspended) have no right to move an appeal on behalf of the 'corporate debtor', although it is open to the director(s) or shareholder(s) to challenge the same, *Innoventive Industries Limited v. ICICI Bank ((2018) 1 SCC 407)*.

CHAPTER 11: CONCLUSION

The purpose of the code is to put the insolvency resolution process into fast track.

That being said, the purposes of the code, is as follows:

1. Establishing and amend in the laws associated with reorganizing and resolving the insolvency of entities like partnership firms, individuals and corporate persons.
2. Providing resolution in a time bound manner.
3. Promoting entrepreneurship in India.
4. Maximizing the availability of credit in the Indian market.
5. Establishing Insolvency and Bankruptcy Board in India.
6. Balancing the interests of the entire stakeholders including alteration in the prescribed order of priority of government fees payment.

Apart from the above-mentioned challenges, the Insolvency and Bankruptcy Code, 2016 has helped in improving the global rank of India in the ease of doing business. For the first time, India has a rank within the top 100 in the world. This jump is because of economic reforms like Insolvency and Bankruptcy Code. Due to this development, we can also expect a growth in FDI and GDP in the country. It has also given an immense thrust to Mergers and Acquisitions in India. The smooth functioning of a credit market in an economy will ensure that all the stakeholders are collectively contributing to the success of the entrepreneurial growth of a country. Insolvency and Bankruptcy Code has been undoubtedly landmark legislation and still evolving so that it can meet with several unforeseen challenges.

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Disclaimer:

This information has been compiled from the following sources:

- Ibci.gov.in
- Ibclaw.in
- Nclt.gov.in
- Efiling.nclt.gov.in
- Legalservicesindia.com
- Taxguru.in
- <http://vinodkothari.com/2020/02/limits-of-the-limitation-law-and-ibc/>

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