## Personal Guarantors under IBC

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About Us

Vinod Kothari & Co., based in Kolkata, Mumbai and Delhi

We are a team of consultants, advisors & qualified professionals having over 25 years of practice.
INTRODUCTION
Companies, LLPs, limited liability entities, except financial services providers

Corporate
- Insolvency Resolution (Adjudicating Authority)
- Liquidation
  - National Company Law Tribunal
    - Appellant Authority
      - National Company Law Appellate Tribunal
        - Apex Authority
          - Supreme Court

Non-Corporate
- Minimum default Rs. 1,00,000/-

Individuals
- Personal Guarantors to Corporate Persons
  - Insolvency Resolution (Adjudicating Authority)
  - Bankruptcy

Partnership Firms
- Individuals having business/propriety (Sole proprietorships)
  - Insolvency Resolution (Adjudicating Authority)
  - Bankruptcy

- Individuals without any business
  - Insolvency Resolution (Adjudicating Authority)
  - Bankruptcy
  - Debt Recovery Tribunal
    - Appellant Authority
      - Debt Recovery Appellate Tribunal
        - Apex Authority
          - Supreme Court

Not yet notified
It has been proposed to have separate set of rules and regulations for three classes of non-corporate persons & a phased implementation.

Provisions relating to personal guarantors have been notified.
Framework for Personal Insolvency

Sections 94 to 187 of the Code, read with sec. 60 (1) and (2), w.r.t. insolvency and bankruptcy of personal insolvency of corporate guarantors have been notified vide notification dated 15.11.2019, along with rules and regulations for insolvency and bankruptcy process of Personal Guarantors.

The IB Code, 2016 was enacted

Draft Regulations for Bankruptcy Process of Personal Guarantors of Corporate Debtor

Draft Rules for Insolvency Process of Personal Guarantors of Corporate Debtor

Sections of the Code & Rules for Personal Guarantor notified

Reg. for Personal insolvency and Bankruptcy Process

Provisions for Personal Insolvency (along with Rules and Reg.) shall be effective
## Personal Insolvency v/s Corporate Insolvency

<table>
<thead>
<tr>
<th>Point of difference</th>
<th>Personal Insolvency</th>
<th>Corporate Insolvency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distinction between creditors</td>
<td>No classification w.r.t. type of creditor i.e. operational or financial</td>
<td>Three classes of creditors – financial, operational, other</td>
</tr>
<tr>
<td>Withdrawal of Application</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Requires 90% consent of creditors</td>
<td>Requires 90% consent of CoC</td>
</tr>
<tr>
<td>CoC</td>
<td>No concept of CoC- a general list of creditors is formed</td>
<td>Constitution of CoC mandatory- shall comprise of financial creditors only.</td>
</tr>
<tr>
<td>Meeting of Creditors</td>
<td>Not Mandatory- shall be conducted if deemed necessary by the RP – <strong>subject to conditions</strong></td>
<td>Mandatory to conduct the CoC</td>
</tr>
<tr>
<td>Moratorium</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Interim Moratorium</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Approval of Plan</td>
<td>Requires 75% assent of creditors present and voting</td>
<td>Requires 66% assent of CoC</td>
</tr>
<tr>
<td>Rejection of plan</td>
<td>Application for bankruptcy <strong>may be</strong> filed</td>
<td>Leads to compulsory liquidation</td>
</tr>
<tr>
<td>Role of the IP</td>
<td>Pre-scrutiny of the insolvency application and repayment plan by the RP</td>
<td>RP does not come into picture until admission</td>
</tr>
</tbody>
</table>
## Personal Insolvency Resolution v/s Bankruptcy

<table>
<thead>
<tr>
<th>Point of difference</th>
<th>Insolvency Resolution</th>
<th>Bankruptcy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Necessary condition</strong></td>
<td>Default by the debtor.</td>
<td>Rejection of application for insolvency resolution; or rejection of repayment plan; or premature termination of the repayment plan.</td>
</tr>
<tr>
<td><strong>Eligible applicants</strong></td>
<td>Debtor/creditor.</td>
<td>Debtor/creditor; in some circumstances, only creditor – section 100(4).</td>
</tr>
<tr>
<td><strong>Dominant Aspect</strong></td>
<td>Preparation of Repayment plan</td>
<td>Administration, liquidation and distribution of estate</td>
</tr>
<tr>
<td><strong>Interim-moratorium</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Role of insolvency professional</strong></td>
<td>Resolution Professional</td>
<td>Bankruptcy Trustee</td>
</tr>
<tr>
<td><strong>Moratorium on creditors</strong></td>
<td>Yes, includes restrictions on creditors too.</td>
<td>Assets of the bankrupt vest in the hands of trustee. Secured creditors may sell</td>
</tr>
<tr>
<td><strong>Vesting of estate</strong></td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Committee of Creditors</strong></td>
<td>Not mandatory</td>
<td>Established u/s 134</td>
</tr>
<tr>
<td><strong>Period of Discharge</strong></td>
<td>No default period specified; on implementation of the repayment plan.</td>
<td>Earlier of 1 year or completion of administration is approved by the committee of creditors.</td>
</tr>
<tr>
<td><strong>Phases</strong></td>
<td>Insolvency → Resolution → Failure → Bankruptcy/Liquidation → Dissolution</td>
<td>Insolvency → Repayment Plan → Failure → Bankruptcy → Discharge</td>
</tr>
</tbody>
</table>
Insolvency versus bankruptcy

- Repayment plan under insolvency is in the nature of a compromise – adherence to repayment plan means the debtor comes out as a non-defaulter
  - No question of impairment of credit
  - Debtor maintains assets, credit, social reputation, right to borrow

- However, why will creditors prefer insolvency over bankruptcy?
  - Assets available for immediate liquidation in insolvency are such assets as debtor is willing to liquidate immediately
  - However, there may be a repayment plan to pay over time
  - Possibility of family assets too

- The bargain between insolvency and bankruptcy is the same as between CDR vs OTS
## CORPORATE BANKRUPTCY VS. PERSONAL BANKRUPTCY (1/2)

<table>
<thead>
<tr>
<th>Point of difference</th>
<th>Liquidation</th>
<th>Bankruptcy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manner of initiation</td>
<td>Automatically triggered u/s 33</td>
<td>Creditor/debtor become entitled to file for bankruptcy</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Section 100 – Rejection of insolvency resolution application by AA.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Section 115 – Rejection of repayment plan by AA.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Section 118 – Premature closing of repayment plan</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Note undischarged insolvent u/s 92 (2) may also be adjudged as bankrupt</td>
</tr>
<tr>
<td>Reversibility/modification or recall</td>
<td>No specific provision – right to appeal against AA’s order – section 61.</td>
<td>Possible – by AA, on application or suo-motu – section 142 (either erroneous initiation or full repayment).</td>
</tr>
<tr>
<td>Interim-moratorium</td>
<td>No</td>
<td>Yes – sec. 124 (1) - on application – lasts till bankruptcy order is passed</td>
</tr>
<tr>
<td>Moratorium</td>
<td>Sec. 33 - On liquidation order being passed</td>
<td>Sec. 128 - On bankruptcy order being passed</td>
</tr>
<tr>
<td>Role of Insolvency Professional</td>
<td>As liquidator</td>
<td>As bankruptcy trustee</td>
</tr>
<tr>
<td>Estate of debtor</td>
<td>Liquidation estate held by liquidator as fiduciary for benefit of all creditors – section 36</td>
<td>Estate of the bankrupt vests in the bankruptcy trustee – section 154</td>
</tr>
<tr>
<td>Manner of vesting of estate</td>
<td>No conveyance, assignment – the estate is constructive</td>
<td>Section 154(2) provides that there is no need for conveyance, assignment or transfer for vesting of property in the trustee.</td>
</tr>
</tbody>
</table>
## PERSONAL BANKRUPTCY V/S CORPORATE BANKRUPTCY (2/2)

<table>
<thead>
<tr>
<th>Point of difference</th>
<th>Liquidation</th>
<th>Bankruptcy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Involvement of creditors</td>
<td>Liquidator has the constitute Stakeholder’s Consultation Committee (including creditors). No provision for a committee of creditors.</td>
<td>Considerable - meeting of creditors is summoned, a committee of creditors is appointed for approval of the report on administration of the estate; the bankruptcy requires approval of the committee for several acts (section 153), and the committee of creditors decides on the release of the bankruptcy trustee.</td>
</tr>
<tr>
<td>Priority of payout from estate</td>
<td>Sec. 53 – financial debts take priority over operational debts</td>
<td>Sec. 178 – distinction b/w financial creditor and operational creditor does not exist [even if the individual is carrying on business]</td>
</tr>
<tr>
<td>Final Stage</td>
<td>Dissolution – the entity loses its existence.</td>
<td>Discharge – releases the bankrupt from all bankruptcy debts.</td>
</tr>
</tbody>
</table>
# ROLE OF THE AA

<table>
<thead>
<tr>
<th>Section</th>
<th>Particulars (in brief)</th>
</tr>
</thead>
<tbody>
<tr>
<td>94</td>
<td>Application by debtor for initiation of insolvency process</td>
</tr>
<tr>
<td>95</td>
<td>Application by creditor for initiation of insolvency process</td>
</tr>
<tr>
<td>97</td>
<td>Direction to the Board w.r.t. appointment of Resolution Professional, and appointment thereof</td>
</tr>
<tr>
<td>98</td>
<td>Admission of application for initiation of insolvency process</td>
</tr>
<tr>
<td>100</td>
<td>Public notice to creditors</td>
</tr>
<tr>
<td>102</td>
<td>RP to submit report on repayment plan to AA</td>
</tr>
<tr>
<td>112</td>
<td>RP to submit report on meeting of creditors on repayment plan</td>
</tr>
<tr>
<td>114</td>
<td>Order of AA on repayment plan</td>
</tr>
<tr>
<td>116</td>
<td>AA may pass directions w.r.t. implementation of Repayment Plan, if such application is filed by RP</td>
</tr>
<tr>
<td>117</td>
<td>Report of completion of repayment plan to AA</td>
</tr>
<tr>
<td>118</td>
<td>Order of AA in case of premature termination of repayment plan</td>
</tr>
<tr>
<td>119</td>
<td>Discharge order by AA w.r.t. insolvency process</td>
</tr>
<tr>
<td>Section</td>
<td>Particulars (in brief)</td>
</tr>
<tr>
<td>---------</td>
<td>------------------------</td>
</tr>
<tr>
<td>122</td>
<td>Application for bankruptcy by debtor</td>
</tr>
<tr>
<td>123</td>
<td>Application for bankruptcy by creditor</td>
</tr>
<tr>
<td>126</td>
<td>AA to pass bankruptcy order and appoint bankruptcy trustee in accordance with section 125</td>
</tr>
<tr>
<td>130</td>
<td>To send notice to creditors</td>
</tr>
<tr>
<td>138</td>
<td>Bankruptcy trustee applies to AA for discharge order, and AA passes discharge order</td>
</tr>
<tr>
<td>141</td>
<td>Bankrupt not to maintain any legal action or proceedings in relation to the bankruptcy debts without previous sanction of AA</td>
</tr>
<tr>
<td>142</td>
<td>Modification/recall of bankruptcy order</td>
</tr>
<tr>
<td>145</td>
<td>Appointment of bankruptcy trustee on replacement</td>
</tr>
<tr>
<td>146</td>
<td>Appointment of bankruptcy trustee on resignation</td>
</tr>
</tbody>
</table>
### Role of the AA

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<th>Section</th>
<th>Particulars (in brief)</th>
</tr>
</thead>
<tbody>
<tr>
<td>147</td>
<td>Appointment of bankruptcy trustee on vacancy in office</td>
</tr>
<tr>
<td>159</td>
<td>AA’s approval required to give delayed notice by bankruptcy trustee in respect of after-acquired property</td>
</tr>
<tr>
<td>163</td>
<td>Challenges against disclaimed property</td>
</tr>
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<td>164</td>
<td>Application to AA against undervalued transactions</td>
</tr>
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<td>165</td>
<td>Application to AA against preference transactions</td>
</tr>
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<td>167</td>
<td>Application to AA against extortionate credit transactions</td>
</tr>
<tr>
<td>176</td>
<td>Application by interested persons to postpone the date of final dividend</td>
</tr>
<tr>
<td>177</td>
<td>Order against refusal of bankruptcy trustee to pay dividend</td>
</tr>
<tr>
<td>178(3)</td>
<td>Order giving a creditor an advantage in distribution of assets where the creditor has given any indemnity to may payments in respect of assets of the bankrupt</td>
</tr>
</tbody>
</table>
UNDERSTANDING TERMINOLOGY
WHO IS A PERSONAL GUARANTOR?

• Elements of the definition:
  • Must be a debtor – sec 79 (12) provides an inclusive definition, to include judgement debtor. Meaning should come from “debt” in sec 3 (11)
  • Who is a personal guarantor
    • Sec 5 (22) – covers only individuals who are sureties to a contract of guarantee to a corporate debtor.
    • Principal debtor must be a corporate debtor; guarantor must be individual
  • Guarantee has been invoked
    • Invocation of guarantee must be in terms of the guarantee deed; provisions of sec 126-147 of the Contracts Act
    • Usually guarantee is invoked by notice
  • Remains unpaid in full or part
  • Does it make a difference if the personal guarantor gave securities as well?
    • no
  • What if there are joint sureties:
    • Depending on construction of the guarantee, but proceedings may be filed against one or all – based on joint and several liability

Rule 3 (e) of Personal Guarantor Rules: “debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part”

A "contract of guarantee " is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor ", and the person to whom the guarantee is given is called the "creditor ". A guarantee may be either oral or written. – Sec 126 of Contracts Act
WHO IS A PERSONAL GUARANTOR?

Know More (some landmark judgements)

Can guarantee be invoked before claiming the same from the Corporate Person?

The Hon’ble NCLAT in the matter of Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd. Company Appeal (AT) (Insolvency) No. 346 of 2018, held that guarantee can be invoked before claiming the same from the principal debtor.

Other landmark judgements in this regard-
- Mukesh Hans & Anr. v. Smt. Uma Bhasin & Ors, Delhi High Court
- Ferro Alloys Corporation Limited v Rural Electrification Corporation Limited (Comp. App (AT) (Ins) No. 92 of 2017)- Hon’ble NCLAT
DEBT

- **Qualifying Debt**: The term is relevant for fresh start process
- **Non-dischargeable debt**: Debt obtained by fraud or breach of trust
- **Excluded Debt**: Debt which is not part of either repayment plan or discharged
EXCLUDED DEBT

- Damages for negligence, breach of stat. obligation
- Maintenance to pay any person under any law
- Liability w.r.t. a student loan
- Any other debt, as may be prescribed — no such prescription yet
- Fine imposed by Court/ Tribunal

Excluded Debt
Sec. 79 (15)
EXCLUDED ASSETS

Sec 79 (14) read with Rule 5

- Unencumbered tools, vehicles and other equipments, necessary for employment, business or vocation.
- Unencumbered furniture, equipment, necessary for basic domestic needs
- Unencumbered personal ornaments, that cannot be parted with in accordance with religious usage
- Unencumbered life insurance policy/ pension plan
- Unencumbered single dwelling unit

Upto Rs. 1,00,000/-

Upto Rs. 20,00,000/- in Urban area;
Rs. 10,00,000/- in rural area
INSOLVENCY RESOLUTION PROCESS

-As per Part III of the Code- an “earned start” for the debtor
APPLICATION FOR INITIATION

**Debtor (Sec. 94)**
- filed by a **debtor** (in Form A);
- who has committed **default** of debt, other than **excluded** debt;
- Either personally or through a Resolution Professional (RP)
- In case of partnership, consented by majority of partners;

**Creditors (Sec. 95)**
- filed by a **creditor** (in Form C)- Invocation of guarantee- a precondition.
- either individually or jointly with other creditors;
- directly or through a Resolution Professional (RP)
- Only if debtors fails to pay within 14 days of service of demand notice (in Form B).

Who can be a creditor?
Any person to whom debt is owed - no specified nature of debt.
Debtor’s ineligibility to file application

Debtor shall not be entitled to make an application if he is-

(a) an undischarged bankrupt;

(b) undergoing a fresh start process;

(c) undergoing an insolvency resolution process; or

(d) undergoing a bankruptcy process.
**Rule 7 (1)** - Prior to filing of application, the creditor must serve a demand notice in Form B.

Application can be filed only if the debt stated in the demand notice is not repaid by the debtor within 10 days of service of the demand notice.

Unlike demand notice in Form 3 of the IBBI (Application to Adjudicating Authority) Rules, 2016, the demand notice in case of personal insolvency **does not give a chance of disputing the notice.**
THE PROCESS

Application for In. RP

RP appointed

RP’s report

Order by AA

Repayment Plan

Creditor list by RP

Creditors’ Claims

Public Notice

Submission of repayment plan by RP to AA with his own report on the plan

Meeting of Creditors?

Yes

Report on the meeting by RP

Order by AA

Approved?

Yes

Binding on creditor and debtor

No

Both debtor and creditor entitled to file for bankruptcy order

No

Admission?

Yes

Creditor entitled to file for bankruptcy

No
MORATORIUM

Stages of Moratorium

Interim (Sec. 96)
- From date of filing of application till its admission
  - No time limit specified
- Against pending legal action w.r.t. ANY debt;
- Initiation of proceedings against ANY debt
- Applicable to debtor as well

Final (Sec. 100)
- From admission of Application till 180 days or approval of Repayment Plan, whichever is earlier.
- Against pending legal action w.r.t. debt;
- Initiation of proceedings against debt
- The debtor shall not transfer, alienate, encumber, any of his assets or legal rights
Preparation of List of Creditors (Sec. 104)

The resolution professional shall —

(a) make the list of creditors available for inspection by the persons who submitted claims with proof;

(b) serve a copy of the list of creditors to the guarantor;

(c) make available the list of creditors on the website, if any, of the guarantor;

(d) present the list of creditors at the meeting of creditors; and

(e) file a certified copy of the list of creditors with the Adjudicating Authority along with the repayment plan.
General meeting of Creditors

- No COC – no classification into financial/operational
- Classification of creditors of the corporate debtor?

- RP to call general meeting of creditors, if in his opinion, the same is necessary for consideration of repayment plan OR on requisition by 33% of list of creditors in value

**Voting Rights**

- Present and voting rule
  - For approval of repayment plan – more than 75% majority
  - For other matters – more than 50% of voting share of those who voted

- Based on value of the claim as a percentage of the total claim;
- No voting right shall be granted pursuant to an unliquidated debt;
- Associates of the debtor are not entitled to vote, even if they form part of the list of creditors.

**Quorum**

- Creditors representing 33% of voting share
- Can be modified

(Sec 107-109 read with Reg. 11-16)
Rights of a Secured Creditor

Security Right relinquished

- YES: Entitled to vote at meeting of creditors
- NO: Shall be entitled to vote only in respect of Unsecured debt, if any

NOTE:
“If the Secured creditor does not relinquish his right & the Repayment Plan affects his right to enforce security, his concurrence shall be obtained”
RESOLUTION PROCESS COST

- Expenses incurred for Insolvency Process
- Finance raised for resolution process
- Cost of raising finance
- Other costs, directly related to resolution process
- Fee payable RP

Resolution Process Cost* (Reg. 3 (i))

*to the extent approved/ ratified by the creditors
WHAT IS A REPAYMENT PLAN?

Sec 105 read with Chapter V of Personal Guarantor Regulations

Similar to a “Resolution Plan” in case of corporate insolvency, “Repayment Plan” can be said to be the key to resolution in case of non-corporate insolvency.

It is plan/proposal, containing terms as per which the debtor will pay his debts to the creditors, and also provides for the manner in which the affairs of the debtors will be carried on.
FEATURES OF A REPAYMENT PLAN

Shall be prepared by the debtor, in consultation with the RP.

Contains proposal for restructuring of debtor’s debts towards the creditors.

May authorise the RP to carry the business/trade of the debtor, on behalf of his name.

Must contain justification for preparation of the plan; and Reasons why the creditors may agree to it.
## CONTENTS OF A REPAYMENT PLAN

Ref. Regulation 17

1. Term of repayment plan and its implementation schedule
2. Source of funds that will be used to pay resolution cost
3. Minimum budget for duration of resolution plan
4. Finance required for implementation of plan
5. Variation of onerous terms of a contract or transaction involving guarantor
6. Details of exclude assets and excluded debts of the guarantor
7. Terms and conditions for discharge of guarantor
Section 111 states that:
“The repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.”

Illustration:
Mr. A is undergoing insolvency process, wherein Mr. B is appointed as the RP. On the basis of public announcement, claims have been received from 10 creditors of total value Rs. 5,00,000/-. Repayment Plan is placed before the creditors for approval. Only 6 creditors having dues of Rs. 3,50,000/- are present and entitled to vote in the meeting.
**Scenario 1:**
3 Creditors having dues of Rs. 2,75,000/- approve the Plan

**Votes in Favour-**
% of total claims- 55%
% of present & voting- 78.57%

**Outcome-**
Plan approved

**Scenario 2:**
Of the 3 creditors who approved the plan, 2 were present in proxy, not in person.

**Outcome-**
Plan is still considered approved
ORDER OF THE AA

Approval of Plan by Creditors
Sec 111

RP to submit Report to AA
Sec. 112

AA shall by order approve the Plan on the basis of the Report of the Meeting
Sec. 114

Repayment plan is to be filed by the RP with AA on or before 120 days from the commencement date.

Where no meeting of CoC is summoned by RP

AA shall by order approve the Plan on the basis of RP’s report on Repayment Plan
EFFECT OF APPROVAL OF PLAN

Once approved, the Plan shall:

RP shall supervise the implementation of the Plan

AA may issue specific direction w.r.t. implementation

Become effective as if proposed by debtor

Be binding on the creditors mentioned in the Plan

Ref. section 116
COMPLETION OF REPAYMENT PLAN

Full Completion of Plan (sec. 117)

RP shall notify all persons bound by the Plan, that the Plan has been fully implemented

Report w.r.t. All receipts & payments pursuant to implementation of Plan shall be sent to all persons bound by the Plan

Premature Termination of Plan (sec. 118)

RP shall submit report stating reasons for premature end of repayment plan;
Details of creditors whose dues have not been paid as per Plan

Creditors whose claims have not been fully satisfied may apply for bankruptcy order.
Opinion of the RP that guarantor has breached

Within 3 days of such knowledge

Issue notice to guarantor identifying failure

Within 15 days of notice

Addresses failure; or Satisfactory explanation

NO

RP to report failure to creditors within 7 days

YES

RP to apply before AA
Application for discharge order (Section 119 read with reg. 21)-
On the basis of the repayment plan, the resolution professional shall apply to the AA for a discharge order in relation to the debts mentioned in the repayment plan and the Adjudicating Authority may pass such discharge order.

The repayment plan may provide for -
(a) early discharge; or
(b) discharge on complete implementation of the repayment plan.

Discharge order only for the Debtor-
Discharge order under sub-section (3) shall not discharge any other person from any liability in respect of his debt.
PURCHASE OF ASSETS

Purchase of assets by certain persons—*Restrictive, not prohibitory* (Reg. 18)

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

- RP, partner/director of related IPE
- Professional appointed by RP
- Any creditor
- Company where guarantor is a promoter/director
- Company where a creditor is a promoter/director
- Associate of guarantor/RP/creditor

The Adjudication Authority may set aside purchase or acquisition made contrary to the provisions of this regulation and may make such order as it may deem fit.
Rule 11(2)

The Adjudicating Authority may permit withdrawal of the application submitted under rule as the case may be-

(a) before its admission, on a request made by the applicant;

(b) after its admission, on the request made by the applicant, if 90% of the creditors agree to such withdrawal.

An application for withdrawal shall be in Form D appended to the Rules.
There may be various situations during insolvency period, such as-

If provided by Repayment Plan- same shall follow;

If not- most reasonably, shall continue to apply on the estate

Impact of these may be on the cash-flows of the debtor to the extent the same were dependent on continued availability of the debtor

Repayment Plan continues to work w.r.t. assets of the debtor

No explicit restriction- finances must be controlled by the RP
WHO IS A BANKRUPT?

• “Bank” + “rupt”
  • ‘bank’ means ‘bench or a place of business’
  • ‘rupt’ derived from ‘ruptus’ means ‘broken’
  • ‘Bankrupt’ is ‘bankrupt’ only when he is adjudged as such

“Bankrupt” means an individual who has been adjudged bankrupt and, in relation to a bankruptcy order, it means the individual adjudged bankrupt by that order

UK

“bankrupt” means a person against whose estate a sequestration order has been made or who has become a bankrupt by virtue of the presentation of a debtor’s petition

Canada

“bankrupt” means a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126;

Australia

(b) each of the partners of a firm, where a bankruptcy order under section 126 has been made against a firm; or

(c) any person adjudged as an undischarged insolvent

Significance of the last limb of the definition:

• After commencement of an insolvency proceeding, if the insolvent fails to get a discharge u/s 92 (2) or 119 (1), the AA may adjudge the insolvent as bankrupt
Insolvency Process is a pre-condition- direct application for bankruptcy not allowed.

Possible by debtor/creditor
- Creditor-individually or jointly
  - In case debtor is a firm, application may be filed by any of its partners

Within 3 months of the order passed by AA under Section 100(4), or 115(2), or 118(3), as the case may be (refer succeeding slide)

Applicant may propose an insolvency professional to act as bankruptcy trustee;

Application shall not be withdrawn without the leave of AA.

Interim moratorium commences once application is filed (Sec. 124 (1)(a))
- Terminates on bankruptcy commencement date
- Debars all actions against properties of the debtor in respect of his debts
- Creditors not entitled to initiate legal actions against properties in respect of any of the debts of the debtor.
- Such interim-moratorium provisions not to apply to transactions notified by the Central Government in consultation with any financial sector regulator
WHEN IS APPLICATION FILED

Application for Bankruptcy (Sec. 122 & 123)

Order by AA recording rejection of repayment plan by meeting of creditors (Section 115(2))

Order of AA on premature ending of the repayment plan under Section 118(3)

Both debtor and creditor entitled to apply

Creditor entitled to file application

Application for IRP is rejected by AA under Section 100(4)

The debtor or the creditor, whose claims have not been fully satisfied entitled to apply
Can a person be undischarged from insolvency and still not undergo bankruptcy?

- Sec 121 suggests that bankruptcy order is only on application
- However, sec 79 (3) (c ) provides additional limb to include undischarged insolvent

So, if insolvent does not obtain discharge [failure of repayment plan, or unsuccessful completion of repayment plan], insolvency has not been redeemed

Since undischarged insolvent is a bankrupt, this person is still a bankrupt

Bankruptcy order u/s 126 is a process of redeeming the bankrupt from bankruptcy, which will otherwise continue to stay

**UNDISCHARGED INSOLVENT**

- Defaulter: Default has occurred
  - No application for insolvency

- Potential insolvent: Application for insolvency filed
  - No order as yet

- Insolvent: Insolvency admitted
  - Repayment plan not sanctioned

- Undischarged insolvent: Insolvent undergoing repayment plan
  - Not discharged yet

- Bankrupt: Adjudged as having failed repayment plan
BANKRUPTCY PROCESS

Application for bankruptcy order

Nomination of bankruptcy trustee

Bankruptcy Order by AA

Interim-moratorium

Within 14 days

Within 10 days

Notice/Public notice by AA inviting claims from creditors

Within 10 days

Creditors to register claims with bankruptcy trustee

Within 7 days

Preparation of list of creditors by trustee

Within 14 days of bankruptcy commencement date

Notice to summon meeting of creditors

Within 21 days of bankruptcy commencement date

Completion of administration and distribution of the estate of bankrupt

Within 7 days

Report of the administration by trustee

To be presented in

Meeting of creditors

Approval of trustee’s report by Crs. Committee and determination of whether bankruptcy trustee shall be released

Bankrupt to submit statement of financial position to the bankruptcy trustee if the application was filed by a creditor within 7 days
• By AA – on application or suo moto

• Where it appears to AA that –
  • there exists an error apparent on the face of such order
  • both the bankruptcy debts and the expenses of the bankruptcy have, after
    the making of the bankruptcy order, either been paid for or secured to the
    satisfaction of the Adjudicating Authority

• Effect of modification/recall
  • Sale, payments, etc. by bankruptcy trustee remain valid
  • Property of the bankrupt shall vest in such person as AA may appoint or may
    revert to the bankrupt on terms as directed by AA
  • Order binding on all creditors so far it relates to bankruptcy debts

• Each of these are different
  • Recall of the order – the order itself is recalled; the bankrupt has not undergone
    bankruptcy process
  • Discharge on completion of administration – assets have been liquidated
  • Setting aside or quashing of the order of the AA on appeal- there never was a
    bankruptcy order
EFFECT OF BANKRUPTCY ORDER

(Sec 128): Upon passing of the bankruptcy order, the immediate effect is as follows

Bankruptcy Estate
- Bankruptcy estate shall vest with the bankruptcy trustee

Moratorium
- Bankrupt shall be immune from any action by the creditors w.r.t. (a) Property of the bankrupt; (b) any legal proceedings without permission of AA

Division of Estate
- The estate shall be divided amongst the creditors
### The Bankruptcy Moratorium – Sec. 128 (1) (C)

<table>
<thead>
<tr>
<th>Blocks these:</th>
<th>Does not block these:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- A creditor shall not initiate any action against property of the bankrupt</td>
<td>- Enforcement action by secured creditor – sec 128 (2)</td>
</tr>
<tr>
<td>- A creditor shall not commence any suit or other legal proceeding except with the leave of the AA</td>
<td>- Punitive action for personal misconduct, such as contempt of court</td>
</tr>
<tr>
<td>Note the bar is only on a creditor – if there is a monetary implication against the debtor, the claimant becomes a creditor</td>
<td>- Ruling in Smith vs Braintree DC [1990] 2 AC 215 – criminal proceedings not stayed; quasi-criminal proceedings, with predominant purpose of enforcing a payment, may get stayed.</td>
</tr>
</tbody>
</table>

Can excluded debts be recovered?

Usually AA should not object to recovery of an excluded debt by any action

- Fines, damages, maintenance obligation, etc
10.56.—(1) The statement of affairs must contain—
(a) identification details for the proceedings; (b) identification details for the bankrupt;
(c) the date of the bankruptcy order;
(d) a list of the bankrupt’s secured creditors giving in relation to each—
(i) the name and postal address,
(ii) the amount owed to the creditor, and
(iii) particulars of the property of the bankrupt which is claimed by the creditor to clear or reduce the creditor’s debt and the value of that property;
(e) a list of unsecured creditors giving in relation to each—
(i) the name and postal address of the creditor,
(ii) the amount the creditor claims the bankrupt owes to that creditor, and
(iii) the amount the bankrupt thinks is owed by the bankrupt to that creditor;
(f) a list of the bankrupt’s total assets (which must include anything not previously mentioned in the statement of affairs which may be of value) divided into the following categories and giving the value of each asset listed—
(i) cash at the bank or building society,
(ii) household furniture and belongings,
(iii) life policies,
(iv) money owed to the bankrupt,
(v) stock in trade,
(vi) motor vehicles, and
(vii) other property; and
(g) the total value of the assets listed under paragraph (f).
Besides being a succinct yet comprehensive record of assets and obligations, the SFP is also a way to track the past financial history of the debtor. Particularly to find any vulnerable transactions.

Penal provision of sec 186 (a)
- False representation
- Wilful omission or concealment
- While providing any information during the bankruptcy process

Can creditors seek a copy of the SFP?
- Usually, the SFP is the basis of the bankruptcy proceedings
- UK law specifically empowers creditors to seek a copy of it

Regulation-making may take care of this
Sec 140: Upon Bankruptcy Order shall, the bankrupt shall be disqualified from acting as-

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

b) being appointed or acting as a public servant;

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

d) being elected or sitting or voting as a member of any local authority.
Additionally, the bankrupt also attracts disqualification from/ under various other laws. Illustrative list is below:

<table>
<thead>
<tr>
<th>Law</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies Act, 1956/ 2013</td>
<td>Being a member of a professional body viz. ICAI; ICSI. ICWA</td>
</tr>
<tr>
<td>Insurance Regulatory and development Act</td>
<td>Being a part of composition of the State Commission under Consumer Protection Act, 1986</td>
</tr>
<tr>
<td>Being a member of a professional body viz. ICAI; ICSI. ICWA</td>
<td>Contract Labour (Regulation and Abolition) Central Rules, 1971</td>
</tr>
<tr>
<td>Holding office under the Notaries Act, 1952</td>
<td>Holding office under the Indian Constitution</td>
</tr>
<tr>
<td>Reserve Bank of India Act, 1934</td>
<td>Reserve Bank of India Act, 1934</td>
</tr>
</tbody>
</table>
Sec. 141: Apart from disqualifications as discussed, bankruptcy order also attracts the following restrictions upon the bankrupt:

- Cannot be a member of a professional body
- Cannot act as director/promoter
- Cannot create any charge of his/her debt
- Cannot travel overseas without permission of AA
- Cannot maintain legal proceedings w.r.t. bankruptcy debts
- Must inform the party before entering into any transaction (Rs.1,00,000)
- Must inform business partner of ongoing bankruptcy
- Cannot take further debt without approval of the Bankruptcy Trustee
<table>
<thead>
<tr>
<th><strong>General meeting of creditors</strong></th>
<th><strong>Committee meeting of creditors</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The first meeting of creditors will mandatorily have to be called, within 21 days of BCD – sec. 133 (1)</td>
<td>The Committee is constituted by the Trustee. Composition of the Committee is not laid down in the Code or the Regs</td>
</tr>
<tr>
<td>Primary business of the first meeting is to constitute the Committee of Creditors</td>
<td>Given the fact that Creditors’ Committee has substantial powers to drive the bankruptcy process, including power to replace the trustee, the Committee’s composition must reflect the voting share of the general body</td>
</tr>
</tbody>
</table>
| Voting percentage for the general meeting is not given in the Code or the Regulations. Sec 134 (3) provides for passing of a resolution  
• By common intuition, this should be ordinary majority resolution | Trustee to intimate to the AA the constitution of the Committee within 3 days – reg 20 (2) |
VOTING SHARE FOR GUARANTEE CREDITORS

- Sec. 135 (3) – a creditor shall not be entitled to vote for an un-liquidated amount
  - Un-liquidated amount normally refers to un-liquidated damages for breach of a contract which requires adjudication
  - The right of creditor to demand money from guarantor, if clear under the guarantee deed, is an ascertainable claim
  - Several rulings of the SC on this point, Biswanath Jhunjhunwala, Ganga Kishun, etc
- The Code has several provisions for secured creditor’s voting rights – only in respect of surrendered security interest, or unsecured part of his claim
  - Sec. 110, 123 (3)
- However, is a secured creditor of the CD a secured creditor of the guarantor?
  - Answer will be no, unless there assets of guarantor given as security
- Hence, the voting shares will be based on claims filed by the guarantee creditors
- Claim amount:
  - Where resolution plan for CD has been approved – the amount of haircut
  - Where the resolution plan for CD is not yet approved – the whole of the amount payable by the CD
  - Where the CD is in liquidation, and the creditor has relinquished security interest – the amount claimed, less any distribution
  - Where the CD is neither in resolution, nor liquidation – the amount due from CD, as demanded from guarantor
The bankruptcy order shall not affect the right of any secured creditor to realize or otherwise deal with his security interest in the same manner as he would have been entitled if the bankruptcy order had not been passed:

Who is a secured creditor?
Secured creditor is a lender that provides collateralized debt.

Secured in respect of what?
• His claim against the debtor in question

Under the Code, secured creditor shall have rights of a secured creditor only up to the amount of security not relinquished.

Also, a secured creditor is taken secured only to the extent of value of security interest – sec. 123 (3)

Three options of a secured creditor
1. Relinquish security interest, claim against bankruptcy estate, and get top priority u/s 178
2. Enforce security interest outside of bankruptcy process:
   1. He would have first filed a claim separately for the secured and unsecured portions
   2. Trustee has the right to pit an alternative buyer
• Bankruptcy trustee to give notice to every creditor
  Within 14 days from days of preparing list of creditors

• Interest on debt - provable as part of the debt
  Till bankruptcy commencement date

• Mandatory to call meeting of creditors – section 133 (associates not entitled to vote) –
  Committee of creditors is to be established – section 134(3)

• Creditor approval is mandatory for certain acts by bankruptcy trustee – section 153
  Also, the CoC approves the report of bankruptcy trustee on administration of the estate, and determines whether the bankrupt be released
DISCHARGE ORDER

Ref: Sec 138
• Application by bankruptcy trustee to AA;

• Earlier of —
  • Expiry of 1 year from the bankruptcy commencement date
  • Within 7 days of the approval of the committee of creditors of the completion of administration of estate of the bankrupt, if the said approval is accorded before the expiry of 1 year from the bankruptcy commencement date

• Effects
  • Bankrupt is released from *all bankruptcy debts*
  • In case the application for discharge is filed within 7 days of the creditors’ approval, the discharge does not affect
    • functions of the bankruptcy trustee
    • the operation of the provisions of Chapters IV and V of Part III;

• These remain unaffected
  • Right of the secured creditor to enforce his security for the payment of a debt from which the bankrupt is discharged
  • Bankrupt is not released in respect of debts incurred by means of fraud or breach of trust to which he was a party
  • Bankrupt is *not released from any excluded debt*

• **Undischarged bankrupt** — means a bankrupt who has not received a discharge order u/s 138
BANKRUPTCY ESTATE

Chapter V of the Code
Sec 155- Estate of the Bankrupt shall -

**Includes:**
- all property belonging to or vested in the bankrupt at BCD;
- the capacity to exercise and to initiate proceedings for exercising all such powers in or over or in respect of property;
- all property which by virtue of any of the provision of the Code.

**Not include:**
- excluded assets; (defined)
- property held by the bankrupt on trust for any other person;
- all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
- such assets as may be notified by the CG in consultation with any financial sector regulator.
Personal ornament exception – sec 79 (14) (c)

- Personal ornaments of debtor “or his immediate family”
  - There is no question of vesting of assets of immediate family members
  - The reference may only for use of the ornaments
  - Which cannot be parted with as per religious custom
  - Limited in value to Rs 1,00,000/-

Tools, books, vehicle or other equipment

- Necessary for personal use or the employment or vocation of the bankrupt
- How many vehicles can be retained?
  - The question is one of necessity
  - Hence, seems exception is only for 1 vehicle
  - Luxury vehicles may also have to be vested

- Furniture, household equipment or provisions necessary for basic domestic needs
- Unencumbered LIP or pension plan
EXCLUDED ASSETS – DWELLING UNIT

Unencumbered single dwelling unit of such value as may be prescribed
  Unit owned of by the debtor, of upto Rs 20 lacs in urban areas
  Upto Rs 10 lacs in rural areas
  Rural area defined in line with NAREGA law – any area outside the area under a local body or cantonment board
As for determination of value, values’ valuations may be relevant
Unlikely that the bankrupt will have a dwelling unit of as much value
Most bankrupt-owned properties may be of value higher than the ceilings:
  Does the bankrupt get as much value from the bankruptcy estate, if he cedes his house to the estate?
  Seems logical, equitable

How to deal with interests in dwelling units:
  Practically, the dwelling unit may be owned in various modes
    Owned by an HUF, debtor has a co parcener’s interest
    Owned jointly, debtor has a joint owner’s interest
    Owned by spouse, debtor has right to stay
    Under tenancy – tenancy rights
    Joint tenancy rights
The only carve out is to leave a dwelling unit owned by the debtor
**INCLUSIONS IN THE ESTATE OF THE BANKRUPT**

**Estate of the bankrupt vests in the trustee**

- What is the meaning of estate?
- All the assets owned by the bankrupt as on the bankruptcy commencement date

**Sec 155 provides the scope of inclusions**

- All property of the bankrupt or vested in the bankrupt on the BCD
- Powers to take proceedings, as the bankrupt would have done
- All property that gets comprised by virtue of any of the provisions – such as preferential transfers, undervalued transactions

**Wide definition of “property” in sec 3 (27)**

**Causes of action personal to the bankrupt do not form part of “property”**

- Damages for pain/harm to body, mind or character – Grady v HM Prison Service (2003) EWCA Civ 523
- Damages for unfair dismissal

**Family property**

- Several rulings under erstwhile insolvency laws that interest of the bankrupt in family property may be liquidated as a part of the bankruptcy estate. Eg. Ramchandra Aiyar, (1922) 43 MLJ 569

**Doctrine of reputed ownership has not been incorporated in the Code**

- Provident fund – sec 10 of the PF Act provides that money lying to the credit of the person shall not be subject to claim under erstwhile Insolvency laws
- Gratuity – sec 13 of the Gratuity Act
FUNCTIONS & DUTIES TOWARDS THE ESTATE

Functions of the Trustee
(Sec. 149)

The bankruptcy trustee shall perform the following functions in accordance with the provisions of this Chapter –

a) Investigate the affairs of the bankrupt;

b) Realise the estate of the bankrupt; and

c) Distribute the estate of the bankrupt.

Duties of the Bankrupt
(Sec. 150)

The bankrupt shall perform the following duties-

a) give to the bankruptcy trustee the information of his affairs;

b) attend on the bankruptcy trustee at such times as may be required;

c) giving notice to the bankruptcy trustee of any significant events which have occurred after the BCD
GENERAL POWERS OF THE BANKRUPTCY TRUSTEE

Ref: Sec 152

- Sell any part of the estate
- Give receipts for any money received by him
- Prove, rank, claim and draw any dividend in respect of such debts due to the bankrupt as are comprised in the estate
- Exercise right of redemption w.r.t. any property held in hypothecation
- Deal with any property in the bankruptcy estate
Certain acts that require explicit approval of creditors are: (Sec 153)

- Appoint the bankrupt to supervise the management of estate; carry on business; assist the trustee
- Make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, rights attached to any asset
- Any compromise or arrangement as may be considered expedient
- Arbitration or compromise w.r.t. subsisting debts
- Carrying on business of bankrupt
- Initiate or defend legal proceedings against the debtor
- Accept sale consideration at a future time
- Mortgage or sell any property for raising money for payment of debt of bankrupt
No mandatory valuation
Valuation may be done only if:
(a) Bankruptcy trustee is of the opinion that valuation is necessary; or
(b) Resolution in this regard is passed by the committee

Assets to be valued
Valuation may be done of assets which may or may not form part of estate of the bankrupt;
MODE OF SALE

Auction

All assets shall be ordinarily sold by auction, except in case of conditions for private sale mentioned alongside.

Private Sale

In the following conditions:
- the asset is perishable in nature;
- likely deterioration in value of asset;
- the selling price of the asset is higher than the reserve price of a failed auction

Ref: Regulation 27 read with Schedule II
PARTIES DISQUALIFIED FROM PURCHASE OF ASSETS

Purchase of assets by certain persons- **Restrictive, not prohibitory** (Reg. 27 (3))

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

(a) the Bankruptcy Trustee or any partner or director of the IPE of which the Bankruptcy Trustee is a partner or director;
(b) any professional appointed by the Bankruptcy Trustee for the bankruptcy process;
(c) any creditor or associate of the bankrupt;
(d) any company where the bankrupt or a creditor is a promoter or director;

The Adjudication Authority may set aside purchase or acquisition made contrary to the provisions of this regulation and may make such order as it may deem fit.
Similar to priority set out u/s 53 of the Code for liquidation of a corporate debtor, during bankruptcy, the distribution of the final dividend, the following debts shall be paid in priority to all other debt as per section 178.

<table>
<thead>
<tr>
<th>Costs</th>
<th>Costs and expenses incurred by the bankruptcy trustee for the bankruptcy process- in full.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workmen &amp; Secured creditors</td>
<td>Workmen dues for a period of 24 months prior to BCD; Debts to secured creditors</td>
</tr>
<tr>
<td>Employee dues</td>
<td>Wages and any unpaid dues to employees, other than workmen, for a period of 12 months prior to BCD</td>
</tr>
<tr>
<td>Government Dues</td>
<td>Any amount due to CG or SG, for 2 years preceding the BCD</td>
</tr>
<tr>
<td>Other debts</td>
<td>All other debts and dues including unsecured debts</td>
</tr>
</tbody>
</table>
ENHANCING LIQUIDATION ESTATE

- All assets of the bankruptcy as on BCD vest in the trustee
- All transfers from the date of bankruptcy application to the BCD are void
- For incomes/assets after the BCD till the date of discharge
  - The trustee has the option of claiming the assets from the bankrupt
- Other transfers
  - Preferential transfers
  - Undervalued transfers
  - Fraudulent transfers
- Saving the liquidation estate
  - Giving up onerous assets
Ref: Regulation 36

**Deposit to the Insolvency and Bankruptcy Fund**-
Within 3 days of submission of Final Report, Trustee shall apply to the Adjudicating Authority for an order for such deposit, any unclaimed dividends of bankruptcy process or undistributed asset or any other balance amount payable to the creditors, left with him.

**Statement for deposit**-
Trustee shall submit a statement containing-

(a) the names and last known address of the creditors entitled to the unclaimed dividend or undistributed asset or any other balance;

(b) the amount of the unclaimed dividend or any other balance for each creditor under (a);

(c) the value of the undistributed assets
The term “onerous property” means —

(i) any unprofitable contract; and

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

The bankruptcy trustee may, by giving notice to the bankrupt or any person interested in the onerous property, disclaim any onerous property which forms a part of the estate of the bankrupt.
Person interested in Onerous Property

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

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

(c) where the disclaimed property is a dwelling house, any person who is in occupation of or entitled to occupy the dwelling house, on the date of filing of application.
VULNERABLE TRANSACTIONS

Vulnerable Transactions under the Code

- **Undervalued Transactions**
  (Sec. 164)
  - An undervalued transaction between a bankrupt and any person
    - entered into during the period of two years ending on the filing of the application for bankruptcy; and
    - caused bankruptcy process to be triggered

- **Preference Transactions**
  (Sec. 165)
  - The transaction giving preference to an associate of the bankrupt
    - entered into during the period of two years ending on the filing of the application for bankruptcy; and

- **Extortionate Credit Transactions**
  (Sec. 167)
  - In respect of extortionate credit transactions to which the bankrupt is or has been a party
    - entered into during the period of two years ending on the filing of the application for bankruptcy; and
ROLE OF RP/ BANKRUPTCY TRUSTEE
ELIGIBILITY FOR APPOINTMENT

Eligibility of RP/ Bankruptcy Trustee

IP, IPE of which he is partner or director & all partners & directors of that IPE - Independent* of the guarantor

- Not an associate of the guarantor;
- Not a related party of the corporate debtor;
- Has not acted as the IRP;
- RP or liquidator of the CD

IP not subject to ongoing proceedings

IP, IPE of which he is partner or director & all partners & directors does not represent any party in resolution process

Regulation 4 & 3 of Personal Insolvency and Bankruptcy Regulations, respectively
When Application is filed by

Resolution Professional

AA directs Board to confirm that no disc. Proceedings pending against RP

Board confirms/ rejects appointment of the RP

AA shall pass order appointing the RP

Debtor/ Creditors

AA directs Board nominate a Resolution Professional

Board shall nominate a RP to the AA

AA shall pass order appointing the RP
DUTIES OF THE RP

Duties of the RP in case of personal insolvency process:

- **Report on application u/s 99**
  RP is required to submit a report within 10 days of his appointment, w.r.t. the Application filed by the debtor (sec 94) or a creditor (sec 95).

- **Invitation for and collation of claim**
  Sec 102 requires the RP to issue a public notice within seven days of admission, to invite claims from all creditors within 21 days of the public notice.

- **Consulting debtor on repayment plan**
  While making of this Repayment Plan, the RP must endeavour to ensure the following:
  - The RP must provide consultancy taking into account the personal circumstances of the debtor and the nature of the debtor’s finances;
  - To ensure full and accurate disclosure by the RP;
  - Explain the consequences of the Repayment Plan, for which the debtor may be liable.

- **Report on Repayment Plan**
  Section 106 of the Code calls for the RP to submit repayment plan within 21 days from the last day of submission of claims of the creditors.
Name of trustee proposed in the application? 

Within 7 days

Yes

No

AA directs the Board to nominate a trustee

Within 7 days

Board nominates a trustee

Within 10 days

No

Within 10 days

Yes

Proposed Trustee appointed as bankruptcy trustee

Board confirms?

Nominate another trustee as replacement

Appointment of nominated trustee as bankruptcy trustee
RELEASE OF BANKRUPTCY TRUSTEE

Ref: Sec 148

Release of Bankruptcy Trustee

Appointment of a new trustee

By completion of administration

U/s 145 - Replacement of CoC;

U/s 146 - By resignation

U/s 147 - By vacancy
**FEE OF THE BANKRUPTCY TRUSTEE**

**Fee of Bankruptcy Trustee**

- As decided by the creditors/CoC
- On percentage basis (as per Sch. I)

**SCHEDULE I**

**FEES OF BANKRUPTCY TRUSTEE**

[Under regulation 4(2)]

<table>
<thead>
<tr>
<th>Amount of realisation in rupees (less bankruptcy process cost)</th>
<th>Percentage of fee on the amount realised</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>in the first six months</td>
</tr>
<tr>
<td>On the first 25 lakh</td>
<td>10.00</td>
</tr>
<tr>
<td>On the next 50 lakh</td>
<td>7.50</td>
</tr>
<tr>
<td>On the next 1 crore</td>
<td>5.00</td>
</tr>
<tr>
<td>On the next 9 crore</td>
<td>3.75</td>
</tr>
<tr>
<td>On the next 40 crore</td>
<td>2.50</td>
</tr>
<tr>
<td>On the next 50 crore</td>
<td>1.25</td>
</tr>
<tr>
<td>On further sums realised</td>
<td>0.25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amount of distribution in rupees</th>
<th>Percentage of fee on the amount distributed</th>
</tr>
</thead>
<tbody>
<tr>
<td>On the first 50 lakh</td>
<td>5.00</td>
</tr>
<tr>
<td>On the next 75 lakh</td>
<td>3.75</td>
</tr>
<tr>
<td>On the next 1 crore</td>
<td>2.50</td>
</tr>
<tr>
<td>On the next 9 crore</td>
<td>1.88</td>
</tr>
<tr>
<td>On the next 40 crore</td>
<td>1.25</td>
</tr>
<tr>
<td>On the next 50 crore</td>
<td>0.63</td>
</tr>
<tr>
<td>On further sums distributed</td>
<td>0.13</td>
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REPORTS BY BANKRUPTCY TRUSTEE

Reporting Requirements

- **Preliminary Report** (Reg. 8)
  - To the AA & Committee;
  - Within 90 days of BCD;
  - List of assets and liabilities of the bankrupt as on BCD;
  - Proposed plan of action w.r.t. estate;
  - Details of the assets forming and not forming part of estate

- **Subsequent Progress Reports** (Reg 10)
  - To AA & Committee; within 15 days of every calendar quarter;
  - Appointment details of professionals;
  - A statement indicating the progress in proceedings;
  - An asset sale report
  - Details of fee and remuneration;
  - Status of material litigation

- **Final Report** (Reg 11)
  - Manner of realisation of the assets;
  - Manner of distribution of the dividends;
  - Details regarding the discharge of the bankrupt;
  - Unclaimed dividend, if any;
  - Surplus dividend, if any; and
  - If the bankruptcy process cost exceeds the estimated cost provided in the preliminary report, along with reasons for the same