



Opportunities under Insolvency & Bankruptcy Code 2016

Sr. No	Area of practice under IBC	Details / Process
	Types of cases under IBC	<ol style="list-style-type: none">1. Under section 7 by Financial Creditor against the corporate debtor2. Under section 9 by operational creditor against the corporate debtor3. Under section 10 by the corporate debtor for self-declared insolvency for CIRP4. Under section 33 – liquidation in case CIRP failed5. Under section 59 – Voluntary Liquidation6. Under section 54 – Pre-packaged insolvency resolution process for MSME companies



		<p>7. Under section 94-95 – Insolvency against individuals who are guarantors to corporate debts.</p> <p>8. Interlocutory applications for any kind of add-interim reliefs in the processes.</p>
1	Basic Definitions & abbreviations	<p>Insolvency & Bankruptcy Code – IBC</p> <p>Corporate Debtor – CD</p> <p>Financial Creditor – FC</p> <p>Operational Creditor – OC</p> <p>Resolution Professional – RP</p> <p>Interim Resolution Professional – IRP</p>



		<p>Resolution Plan –</p> <p>Resolution Application – RA</p> <p>Corporate Insolvency Resolution Process – CIRP</p> <p>Committee of Creditor – COC</p> <p>1. “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 decree-holder;</p>
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	<p>2. “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;</p> <p>3. “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1[paid] by the debtor or the corporate debtor, as the case may be;</p> <p>4. “insolvency professional” means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207;</p> <p>5. “insolvency commencement date” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be:</p>
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		<p>6. CIRP Cost</p> <p>7. “insolvency resolution process period” means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day;</p> <p>8. “liquidation commencement date” means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be;</p> <p>9. “liquidator” means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be;</p>
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		<p>10. “operational creditor” OC - means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;</p> <p>11. “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the 2[payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;</p> <p>12. “personal guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor;</p> <p>13. “resolution applicant” means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25;]</p>
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		<p>14. “resolution plan” means a plan proposed by 2[resolution applicant] for insolvency resolution of the corporate debtor as a going concern in accordance with Part II.</p> <p>15. “resolution professional” means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim-resolution professional; and</p> <p>16. “voting share” means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.</p>



<p>2</p>	<p>Insolvency case under section 7 of IBC by the Financial Creditor</p>	<p>Sec. 5(7) “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;</p>
		<p>Sec. 5(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–</p> <ul style="list-style-type: none">(a) money borrowed against the payment of interest;(b) any amount raised by acceptance under any acceptance credit facility or its dematerialized equivalent;(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;



		<p>(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;</p> <p>(e) receivables sold or discounted other than any receivables sold on non-recourse basis;</p> <p>(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;</p> <p>1[Explanation. -For the purposes of this sub-clause, -</p> <p>(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and</p>
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		<p>(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]</p> <p>(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;</p> <p>(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;</p>
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		<p>(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;</p> <p><u>Sec. 7. Initiation of corporate insolvency resolution process by financial creditor.</u></p> <p>Process:</p> <ol style="list-style-type: none">1. On default of making payment of Rs. 1 crore the petition can be filed by FC against CD.2. Petition to be filed in FORM 1 as given in IBC (CIRP) Regulations 20163. Petition to be served upon the respondent
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		<p>h. Liquidation – in case the resolution plan not received or received but not approved by COC then company will go into liquidation</p> <p>i. Liquidation Process – Under section 33 of IBC</p>
3	Insolvency case under section 9 of IBC by the Operational Creditor against the Corporate Debtor	<p>“operational creditor” OC - means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;</p> <p>“operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the 2[payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;</p>



		<p>Corporate debtor – CD from which the due amount to be received by the OC</p> <p>Process:</p> <ul style="list-style-type: none">a. Demand Notice u/s 8 – if the debt is more than 1 crore then the demand notice in FORM 3 and 4 can be sent to the CDb. 10 days waiting period – after sending demand notice OC has to wait for 10 days for the reply from CD or receipt of paymentc. receipt of payment – purpose of demand notice completedd. non receipt of money / denied to pay in reply to demand notice by CD –
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		<p>e. petition can be filed u/s 9 of IBC in FORM 5 as per IBBI Application to Adjudicating Authority Rules 2016.</p> <p>Rest of the proceedings as per section 7 as above-</p>
4	<p>Insolvency case under section 10 of IBC by the Corporate Debtor itself</p>	<p>Sec. 10. Initiation of corporate insolvency resolution process by corporate applicant.</p> <p>(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.</p> <p>The corporate applicant shall, along with the application, furnish-</p> <p>(a) the information relating to its books of account and such other documents for such period as may be specified;</p>



		<p>(b) the information relating to the resolution proposed to be appointed as an interim resolution professional; and</p> <p>(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.</p> <p>Rest of the proceedings as per section 7 as above-</p>
5	Liquidation post CIRP	<p>1. In case CIRP fails ie. Resolution plan not received or not approved by COC then liquidation to be started.</p> <p>2. Insolvency Professional can be appointed as a Liquidator</p> <p>3. Liquidator shall do the needful for liquidation of the company by selling off all the assets and distribution of the</p>



		liquidation proceeds among the creditors and then the residual if any can be distributed among the shareholders.
6	Voluntary Liquidation of company – under section 59 of IBC	<p>1. if case the company has assets and liabilities but intend to close down the business activities can go for Voluntary Liquidation.</p> <p>2. company should be a solvency company to go for voluntary liquidation</p> <p>3. Steps/Process as follows:</p> <p>a. Board Meeting – declaration of solvency by all the directors</p> <p>b. Extra Ordinary General meeting for approval of voluntary liquidation</p>



		<ul style="list-style-type: none">c. Appointment of Liquidator (resolution professional – RP shall be appointed as liquidator).d. Intimation to the IBBI about appointment and initiation of the liquidation processe. Newspaper publication inviting claims, if any.f. Filing of FORM GNL 2 & FORMS MGT 14 with ROCg. NOC from Income Tax Departmenth. Affidavits & Undertakings from the directorsi. Distribution of proceeds to the stakeholders and then Closure of bank account.j. Filing of petition at NCLT for dissolution of the company
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		<p>k. ROC report shall be filed – accordingly the hearing shall take place</p> <p>l. NCLT shall allow the dissolution based on all the process for liquidation followed for making payments to all the concerned parties including shareholders, creditors, government authorities if any and at the end closure of bank account which was particularly opened for voluntary liquidation process.</p> <p>m. Filing of dissolution order with ROC IN FORM INC 28</p>
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7	Insolvency Petition against the personal guarantors – under section 94 and 95 of IBC	<p>Individuals who have given personal guarantees for the corporate debtor shall be covered under this part.</p> <p>Sec. 94. Application by debtor to initiate insolvency resolution process. –</p> <p>(1) A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.</p> <p>(2) Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm unless all or a majority of the partners of the firm file the application jointly.</p> <p>(3) An application under sub-section (1) shall be submitted only in respect of debts which are not excluded debts.</p>
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		<p>(4) A debtor shall not be entitled to make an application under sub-section (1) if he is</p> <p>-</p> <p>(a) an undischarged bankrupt;</p> <p>(b) undergoing a fresh start process;</p> <p>(c) undergoing an insolvency resolution process; or</p> <p>(d)undergoing a bankruptcy process.</p> <p>(5) A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.</p>
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(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.

Sec. 95. Application by creditor to initiate insolvency resolution process. –

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

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



		<p>(a) any one or more partners of the firm; or</p> <p>(b) the firm.</p> <p>(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.</p> <p>(4) An application under sub-section (1) shall be accompanied with details and documents relating to-</p>
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	<p>(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;</p> <p>(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and</p> <p>(c) relevant evidence of such default or non-repayment of debt.</p> <p>(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.</p> <p>(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.</p> <p>(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.</p>
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<p>8</p>	<p>Other matters before NCLT</p>	<ul style="list-style-type: none">• Merger and Amalgamation under section 230 – 232 of the Companies Act.• Capital reduction under section 66 of companies act• Compounding of offences having penalty of Rs. more than 25 lacs.• Restoration of Companies under section 252 of companies act• Oppression and mismanagement in companies – under section 241 of companies
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Thank You..!!