

INSOLVENCY RESOLUTION PROCESS FOR INDIVIDUALS & PARTNERSHIP FIRMS- PART 2



ADMINISTRATION AND DISTRIBUTION OF THE ESTATE OF THE BANKRUPT

❖ Functions of bankruptcy trustee (Section 149):

The bankruptcy trustee shall perform the following functions –

- a) investigate the affairs of the bankrupt;
- b) realise the estate of the bankrupt; and
- c) Distribute the estate of the bankrupt.

❖ Duties of bankrupt towards bankruptcy trustee (Section 150):

The bankrupt shall assist the bankruptcy trustee in carrying out his functions by -

- (a) giving to the bankruptcy trustee the information of his affairs;
- (b) attending on the bankruptcy trustee at such times as may be required;
- (c) giving notice to the bankruptcy trustee of any of the following events which have occurred after the bankruptcy commencement date, -
 - (i) acquisition of any property by the bankrupt;
 - (ii) devolution of any property upon the bankrupt;
 - (iii) increase in the income of the bankrupt;
- (d) Doing all other things as may be prescribed.

The bankrupt shall give notice of the increase in income or acquisition or devolution of property within seven days of such increase, acquisition or devolution. The bankrupt shall continue to discharge the duties even after the discharge under section 138.

❖ Rights of bankruptcy trustee (Section 151):

For the purpose of performing his functions, the bankruptcy trustee may, by his official name -

- (a) hold property of every description;
- (b) make contracts;
- (c) sue and be sued;

- (d) enter into engagements in respect of the estate of the bankrupt;
- (e) employ persons to assist him;
- (f) execute any power of attorney, deed or other instrument; and
- (g) Do any other act which is necessary or expedient for the purposes of or in connection with the exercise of his rights.

❖ **General Powers of bankruptcy trustee (Section 152):**

The bankruptcy trustee may while discharging his functions -

- (a) sell any part of the estate of the bankrupt;
- (b) give receipts for any money received by him;
- (c) prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate;
- (d) where any property comprised in the estate of the bankrupt is held by any person by way of pledge or hypothecation, exercise the right of redemption in respect of any such property subject to the relevant contract by giving notice to the said person;
- (e) where any part of the estate of the bankrupt consists of securities in a company or any other property which is transferable in the books of a person, exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt; and
- (f) deal with any property comprised in the estate of the bankrupt to which the bankrupt is beneficially entitled in the same manner as he might have dealt with it.

❖ **Approval of creditors for certain acts (Section 153):**

The bankruptcy trustee may after procuring the approval of the committee of creditors, -

- (a) carry on any business of the bankrupt as far as may be necessary for winding it up beneficially;
- (b) bring, institute or defend any legal action or proceedings relating to the property comprised in the estate of the bankrupt;
- (c) accept as consideration for the sale of any property a sum of money due at a future time subject to certain stipulations such as security;
- (d) mortgage or pledge any property for the purpose of raising money for the payment of the debts of the bankrupt;
- (e) where any right, option or other power forms part of the estate of the bankrupt, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of such right, option or power;
- (f) refer to arbitration or compromise on such terms as may be agreed, any debts subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt;
- (g) make compromise or other arrangement as may be considered expedient, with the creditors;
- (h) make compromise or other arrangement as he may deem expedient with respect to any claim arising out of or incidental to the bankrupt's estate;
- (i) appoint the bankrupt to -
 - (a) supervise the management of the estate of the bankrupt or any part of it;
 - (b) carry on his business for the benefit of his creditors;
 - (c) assist the bankruptcy trustee in administering the estate of the bankrupt.

❖ **Vesting of estate of bankrupt in bankruptcy trustee (Section 154)**

The estate of the bankrupt shall vest in the bankruptcy trustee immediately from the date of his appointment. The vesting shall take effect without any conveyance, assignment or transfer.

❖ **Estate of bankrupt (Section 155):**

The estate of the bankrupt shall include

- (a) all property belonging to or vested in the bankrupt at the bankruptcy commencement date;
- (b) the capacity to exercise and to initiate proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the bankruptcy commencement date or before the date of the discharge order passed under section 138; and

(c) all property which by virtue of any of the provisions of this Chapter is comprised in the estate.

The estate of the bankrupt shall not include –

- (a) excluded assets;
- (b) property held by the bankrupt on trust for any other person;
- (c) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund; and
- (d) such assets as may be notified by the Central Government in consultation with any financial sector regulator.

❖ **Delivery of property and documents to bankruptcy trustee (Section 156):**

The bankrupt, his banker or agent or any other person having possession of any property, books, papers or other records which bankruptcy trustee is required to take possession for the purposes of the bankruptcy process shall deliver the said property and documents to the bankruptcy trustee.

❖ **Acquisition of control by bankruptcy trustee (Section 157):**

The bankruptcy trustee shall take possession and control of all property, books, papers and other records relating to the estate of the bankrupt or affairs of the bankrupt which belong to him or are in his possession or under his control. Where any part of the estate of the bankrupt consists of things in actionable claims, they shall be deemed to have been assigned to the bankruptcy trustee without any notice of the assignment.

❖ **Restrictions on disposition of property (Section 158):**

Any disposition of property made by the debtor, during the period between the date of filing of the application for bankruptcy and the bankruptcy commencement date shall be void. Any disposition of property shall not give rise to any right against any person, in respect of such property, even if he has received such property before the bankruptcy commencement date in

- a) good faith;
- b) for value; and
- c) without notice of the filing of the application for bankruptcy.

For the purposes of this section, the term “property” means all the property of the debtor, whether or not it is comprised in the estate of the bankrupt, but shall not include property held by the debtor in trust for any other person.

❖ **After-acquired property of bankrupt (Section 159):**

The bankruptcy trustee shall be entitled to claim for the estate of the bankrupt, any after-acquired property by giving a notice to the bankrupt. A notice shall not be served in respect of -

- a) excluded assets, or
- b) any property which is acquired by or devolves upon the bankrupt after a discharge order is passed under section 138.

The notice shall be given within fifteen days from the day on which the acquisition or devolution of the after-acquired property comes to the knowledge of the bankruptcy trustee.

Anything which comes to the knowledge of the bankruptcy trustee shall be deemed to have come to the knowledge of the successor of the bankruptcy trustee at the same time; and Anything which comes to the knowledge of a person before he is appointed as a bankruptcy trustee shall be deemed to have come to his knowledge on the date of his appointment as bankruptcy trustee.

The bankruptcy trustee shall not be entitled, to claim from any person who has acquired any right over after-acquired property, in good faith, for value and without notice of the bankruptcy.

For the purposes of this section, the term "after-acquired property" means any property which has been acquired by or has devolved upon the bankrupt after the bankruptcy commencement date.

❖ **Onerous property of bankrupt (Section 160):**

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. The bankruptcy trustee may give the notice notwithstanding that he has taken possession of the onerous property, endeavoured to sell it or has exercised rights of ownership in relation to it.

A notice of disclaimer shall -

- a) determine, as from the date of such notice, the rights, interests and liabilities of the bankrupt in respect of the onerous property disclaimed;
- b) discharge the bankruptcy trustee from all personal liability in respect of the onerous property as from the date of

appointment of the bankruptcy trustee.

A notice of disclaimer shall not be given in respect of the property which has been claimed for the estate of the bankrupt under section 155 without the permission of the committee of creditors. A notice shall not affect the rights or liabilities of any other person, and any person who sustains a loss or damage in consequence of the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the loss or damage.

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.

❖ **Notice to disclaim onerous property (Section 161):**

No notice of disclaimer under section 160 shall be necessary if -

- a) a person interested in the onerous property has applied in writing to the bankruptcy trustee or his predecessor requiring him to decide whether the onerous property should be disclaimed or not; and
- b) a decision under clause (a) has not been taken by the bankruptcy trustee within seven days of receipt of the notice.

Any onerous property which cannot be disclaimed shall be deemed to be part of the estate of the bankrupt.

An onerous property is said to be disclaimed where notice in relation to that property has been given by the bankruptcy trustee.

❖ **Disclaimer of leaseholds (Section 162):**

- 1) The bankruptcy trustee shall not be entitled to disclaim any leasehold interest, unless a notice of disclaimer has been served on every interested person and –
 - a) no application objecting to the disclaimer by the interested person, has been filed with respect to the leasehold interest, within fourteen days of the date on which notice was served; and
 - b) where the application objecting to the disclaimer has been filed by the interested person, the Adjudicating Authority has directed under section 163 that the disclaimer shall take effect.
- 2) Where the Adjudicating Authority gives a direction under clause (b) of sub-section (1), it may also make order with respect to fixtures, improvements by tenant and other matters arising out of the lease as it may think fit.

❖ **Challenge against disclaimed property (Section 163):**

An application challenging the disclaimer may be made by the following persons to the Adjudicating Authority-

- a) any person who claims an interest in the disclaimed property; or
- b) any person who is under any liability in respect of the disclaimed property; or
- c) where the disclaimed property is a dwelling house, any person who on the date of application for bankruptcy was in occupation of or entitled to occupy that dwelling house.

The Adjudicating Authority may on an application, make an order for the vesting of the disclaimed property in, or for its delivery to any of the persons mentioned. The Adjudicating Authority shall not make an order in favour of a person who has made an application except where it appears to the Adjudicating Authority that it would be just to do so for the purpose of compensating the person.

The effect of an order shall be taken into account while assessing loss or damage sustained by any person in consequence of the disclaimer.

❖ **Undervalued transactions (Section 164):**

A bankrupt enters into an undervalued transaction with any person if -

- a) he makes a gift to that person;
- b) no consideration has been received by that person from the bankrupt;
- c) it is in consideration of marriage; or
- d) it is for a consideration, the value of which in money or money's worth is significantly less than the value in money or money's worth of the consideration provided by the bankrupt.

The bankruptcy trustee may apply to the Adjudicating Authority in respect of an undervalued transaction between a bankrupt and any person.

The undervalued transaction should have

- a) been entered into during the period of two years ending on the filing of the application for bankruptcy and
- b) caused bankruptcy process to be triggered.

A transaction between a bankrupt and his associate entered into during the period of two years preceding the date of making of the application for bankruptcy shall be deemed to be an undervalued transaction.

On the application of the bankruptcy trustee, the Adjudicating Authority may -

- a) pass an order declaring an undervalued transaction void;
- b) pass an order requiring any property transferred as a part of an undervalued transaction to be vested with the bankruptcy trustee as a part of the estate of the bankrupt; and
- c) pass any other order it thinks fit for restoring the position to what it would have been if the bankrupt had not entered into the undervalued transaction.

The order shall not be passed if it is proved by the bankrupt that the transaction was undertaken in the ordinary course of business of the bankrupt:

❖ **Preference transactions (Section 165):**

A bankrupt shall be deemed to have entered into a transaction giving preference to any person if –

- a) the person is the creditor or surety or guarantor for any debt of the bankrupt; and
- b) the bankrupt does anything or suffers anything to be done which has the effect of putting that person into a position which, in the event of the debtor becoming a bankrupt, will be better than the position he would have been in, if that thing had not been done.

The bankruptcy trustee may apply to the Adjudicating Authority for an order, if a bankrupt has given a preference to any person.

The transaction giving preference to an associate of the bankrupt should have been entered into by the bankrupt with the associate during the period of two years ending on the date of the application for bankruptcy. Transaction giving preference should have been entered into by the bankrupt during the period of six months ending on the date of the application for bankruptcy. Further the transaction should have caused the bankruptcy process to be triggered.

On the application of the bankruptcy trustee, the Adjudicating Authority may –

- a) pass an order declaring a transaction giving preference void;
- b) pass an order requiring any property transferred in respect of a transaction giving preference to be vested with the bankruptcy trustee as a part of the estate of the bankrupt; and
- c) pass any other order it thinks fit for restoring the position to what it would have been if the bankrupt had not entered into the transaction giving preference.

The Adjudicating Authority shall not pass an order unless the bankrupt was influenced in his decision of giving preference to a person by a desire to produce in relation to that person an effect of giving preference.

❖ **Effect of order (Section 166):**

If the interest was acquired or the benefit was received -

- a) in good faith;
- b) for value;
- c) without notice that the bankrupt entered into the transaction at an under- value or for giving preference;
- d) without notice that the bankrupt has filed an application for bankruptcy or a bankruptcy order has been passed; and
- e) by any person who at the time of acquiring the interest or receiving the benefit was not an associate of the bankrupt.

An order passed by the Adjudicating Authority shall not, -

- a) give rise to a right against a person interested in the property which was acquired in an undervalued transaction or a transaction giving preference, whether or not he is the person with whom the bankrupt entered into such transaction; and
- b) require any person to pay a sum to the bankruptcy trustee in respect of the benefit received from the undervalued transaction or a transaction giving preference, whether or not he is the person with whom the bankrupt entered into such transaction.

❖ **Extortionate credit transactions (Section 167):**

An extortionate credit transaction is a transaction for or involving the provision of credit to the bankrupt by any person-

- a) on terms requiring the bankrupt to make exorbitant payments in respect of the credit provided; or
- b) which is unconscionable under the principles of law relating to contracts.

Any debt extended by a person regulated for the provision of financial services in compliance with the law in force in relation to such debt, shall not be considered as an extortionate credit transaction

On an application by the bankruptcy trustee, the Adjudicating Authority may make an order under this section in respect of extortionate credit transactions to which the bankrupt is or has been a party.

The transactions should have been entered into by the bankrupt during the period of two years ending on the bankruptcy

commencement date.

An order of the Adjudicating Authority may –

- a) set aside the whole or part of any debt created by the transaction;
- b) vary the terms of the transaction or vary the terms on which any security for the purposes of the transaction is held;
- c) require any person who has been paid by the bankrupt under any transaction, to pay a sum to the bankruptcy trustee;
- d) require any person to surrender to the bankruptcy trustee any property of the bankrupt held as security for the purposes of the transaction.

Any sum paid or any property surrendered to the bankruptcy trustee shall be included in the estate of the bankrupt.

❖ **Obligations under contracts (Section 168):**

- 1) This section shall apply where a contract has been entered into by the bankrupt with a person before the bankruptcy commencement date.
- 2) Any party to a contract, other than the bankrupt, may apply to the Adjudicating Authority for –
 - a. an order discharging the obligations of the applicant or the bankrupt under the contract; and
 - b. Payment of damages by the party or the bankrupt, for non-performance of the contract or otherwise.
- 3) Any damages payable by the bankrupt by virtue of an order shall be provable as bankruptcy debt.
- 4) When a bankrupt is a party to the contract under this section jointly with another person, that person may sue or be sued in respect of the contract without joinder of the bankrupt.

❖ **Continuance of proceedings on death of bankrupt (Section 169):**

If a bankrupt dies, the bankruptcy proceedings shall, continue as if he were alive.

❖ **Administration of estate of deceased bankrupt (Section 170):**

All the provisions of Chapter V relating to the administration and distribution of the estate of the bankrupt shall, so far as the same are applicable, apply to the administration of the estate of a deceased bankrupt.

While administering the estate of a deceased bankrupt, the bankruptcy trustee shall have regard to the claims by the legal representative of the deceased bankrupt to payment of the proper funeral and testamentary expenses incurred by them. The claims shall rank equally to the secured creditors in the priority provided under section 178.

If, on the administration of the estate of a deceased bankrupt, any surplus remains in the hands of the bankruptcy trustee after payment in full of all the debts due from the deceased bankrupt, together with the costs of the administration and interest as provided under section 178, such surplus shall be paid to the legal representatives of the estate of the deceased bankrupt or dealt with in such manner as may be prescribed.

❖ **Proof of debt (Section 171):**

The bankruptcy trustee shall give notice to each of the creditors to submit proof of debt within fourteen days of preparing the list of creditors.

The proof of debt shall –

- a) require the creditor to give full particulars of debt, including the date on which the debt was contracted and the value at which that person assesses it;
- b) require the creditor to give full particulars of the security, including the date on which the security was given and the value at which that person assesses it;
- c) be in such form and manner as may be prescribed.

In case the creditor is a decree holder against the bankrupt, a copy of the decree shall be a valid proof of debt. Where a debt bears interest, that interest shall be provable as part of the debt except in so far as it is owed in respect of any period after the bankruptcy commencement date. The bankruptcy trustee shall estimate the value of any bankruptcy debt which does not have a specific value.

The value assigned by the bankruptcy trustee shall be the amount provable by the concerned creditor. A creditor may prove for a debt where payment would have become due at a date later than the bankruptcy commencement date as if it were owed presently and may receive dividends in a manner as may be prescribed.

Where the bankruptcy trustee serves a notice and the person on whom the notice is served does not file a proof of security within thirty days after the date of service of the notice, the bankruptcy trustee may, with leave of the Adjudicating Authority, sell or dispose of any property that was subject to the security, free of that security.

❖ **Proof of debt by secured creditors (Section 172):**

- (1) Where a secured creditor realises his security, he may produce proof of the balance due to him.
- (2) Where a secured creditor surrenders his security to the bankruptcy trustee for the general benefit of the creditors, he may produce proof of his whole claim.

❖ **Mutual credit and set-off (Section 173):**

- 1) Where before the bankruptcy commencement date, there have been mutual dealings between the bankrupt and any creditor, the bankruptcy trustee shall -
 - a) take an account of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other; and
 - b) only the balance shall be provable as a bankruptcy debt or as the amount payable to the bankruptcy trustee as part of the estate of the bankrupt.
- 2) Sums due from the bankrupt to another party shall not be included in the account taken by the bankruptcy trustee under sub-section (1), if that other party had notice at the time they became due that an application for bankruptcy relating to the bankrupt was pending.

❖ **Distribution of interim dividend (Section 174):**

- 1) Whenever the bankruptcy trustee has sufficient funds in his hand, he may declare and distribute interim dividend among the creditors in respect of the bankruptcy debts which they have respectively proved.
- 2) Where the bankruptcy trustee has declared any interim dividend, he shall give notice of such dividend and the manner in which it is proposed to be distributed.
- 3) In the calculation and distribution of the interim dividend, the bankruptcy trustee shall make provision for -
 - a) any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their debts; and
 - b) any bankruptcy debts which are subject of claims which have not yet been determined;
 - c) disputed proofs and claims; and
 - d) Expenses necessary for the administration of the estate of the bankrupt.

❖ **Distribution of property (Section 175):**

- 1) The bankruptcy trustee may, with the approval of the committee of creditors, divide in its existing form amongst the creditors, according to its estimated value, any property in its existing form which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.
- 2) An approval shall be sought by the bankruptcy trustee for each transaction, and a person dealing with the bankruptcy trustee in good faith and for value shall not be required to enquire whether any approval required has been given.
- 3) Where the bankruptcy trustee has done anything without the approval of the committee of creditors, the committee may, for the purpose of enabling him to meet his expenses out of the estate of the bankrupt, ratify the act of the bankruptcy trustee.
- 4) The committee of the creditors shall not ratify the act of the bankruptcy trustee unless it is satisfied that the bankruptcy trustee acted in a case of urgency and has sought its ratification without undue delay.

❖ **Final dividend (Section 176):**

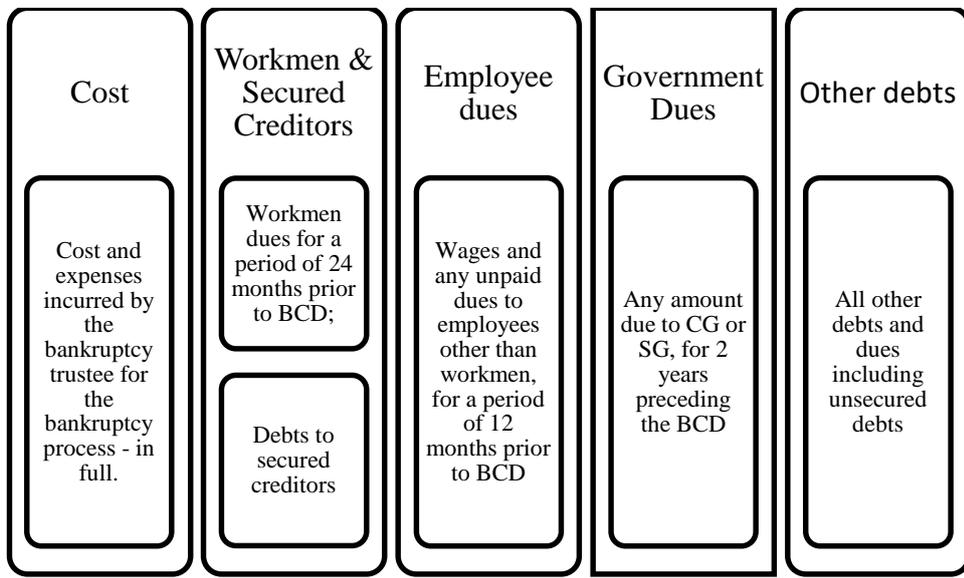
- 1) Where the bankruptcy trustee has realised the entire estate of the bankrupt or so much of it as could be realised in the opinion of the bankruptcy trustee, he shall give notice -
 - a) of his intention to declare a final dividend; or
 - b) that no dividend or further dividend shall be declared.
- 2) The notice shall contain such particulars as may be prescribed and shall require all claims against the estate of the bankrupt to be established by a final date specified in the notice.
- 3) The Adjudicating Authority may, on the application of any person interested in the administration of the estate of the bankrupt, postpone the final date referred.

- 4) After the final date, the bankruptcy trustee shall -
 - a. defray any outstanding expenses of the bankruptcy out of the estate of the bankrupt; and
 - b. if he intends to declare a final dividend, declare and distribute that dividend among the creditors who have proved their debts, without regard to the claims of any other persons.
- 5) If a surplus remains after payment in full with interest to all the creditors of the bankrupt and the payment of the expenses of the bankruptcy, the bankrupt shall be entitled to the surplus.
- 6) Where a bankruptcy order has been passed in respect of one partner in a firm, a creditor to whom the bankrupt is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

❖ **Claims of creditors (Section 177):**

1. A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but –
 - a. when he has proved the debt, he shall be entitled to be paid any dividend or dividends which he has failed to receive, out of any money for the time being available for the payment of any further dividend; and
 - b. any dividend or dividends payable to him shall be paid before that money is applied to the payment of any such further dividend.
2. No action shall lie against the bankruptcy trustee for a dividend, but if the bankruptcy trustee refuses to pay a dividend payable, the Adjudicating Authority may order him to –
 - a. pay the dividend; and
 - b. pay, out of his own money -
 - i. interest on the dividend; and
 - ii. the costs of the proceedings in which the order to pay has been made.

❖ **Order of Priority of Distribution:**



❖ **Priority of payment of debts (Section 178):**

- 1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or the State Legislature for the time being in force, in the distribution of the final dividend, the following debts shall be paid in priority to all other debts —

- a. firstly, the costs and expenses incurred by the bankruptcy trustee for the bankruptcy process in full;
 - b. secondly, -
- 2) the workmen's dues for the period of twenty-four months preceding the bankruptcy commencement date; and
- 3) debts owed to secured creditors
 - a. thirdly, wages and any unpaid dues owed to employees, other than workmen, of the bankrupt for the period of twelve months preceding the bankruptcy commencement date;
 - b. fourthly, any amount due to the Central Government and the State Government including the amount to be received on account of 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 bankruptcy commencement date;
 - c. lastly, all other debts and dues owed by the bankrupt including unsecured debts.
- 4) The debts in each class specified in sub-section (1) shall rank in the order mentioned in that sub-section but debts of the same class shall rank equally amongst themselves, and shall be paid in full, unless the estate of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.
- 5) Where any creditor has given any indemnity or has made any payment of moneys by virtue of which any asset of the bankrupt has been recovered, protected or preserved, the Adjudicating Authority may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks taken by him in so doing.
- 6) Unsecured creditors shall rank equally amongst themselves unless contractually agreed to the contrary by such creditors.
- 7) Any surplus remaining after the payment of the debts under sub-section (1) shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the bankruptcy commencement date.
- 8) Interest payments under sub-section (5) shall rank equally irrespective of the nature of the debt.
- 9) In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.
- 10) Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.



ADJUDICATING AUTHORITY FOR INDIVIDUALS AND PARTNERSHIP FIRMS

❖ Adjudicating Authority for individuals and partnership firms (Section 179):

- (1) Subject to the provisions of section 60, the Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the Debt Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person.
- (2) The Debt Recovery Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of -
 - a. any suit or proceeding by or against the individual debtor;
 - b. any claim made by or against the individual debtor;
 - c. any question of priorities or any other question whether of law or facts, arising out of or in relation to insolvency and bankruptcy of the individual debtor or firm under this Code.
- (3) Notwithstanding anything contained in the Limitation Act, 1963 (14 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

It is to be noted here that the notification of implementation of Section 94 to 187 have been done for Personal Guarantors and in case the CIRP is already running for the Corporate Borrower, the Adjudicating Authority will be same NCLT.

❖ Civil court not to have jurisdiction (Section 180):

- 1) No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal has jurisdiction under this Code.
- 2) No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal by or under this Code.

❖ Appeal to Debt Recovery Appellate Tribunal (Section 181):

- (1) An appeal from an order of the Debt Recovery Tribunal under this Code shall be filed within thirty days before the Debt Recovery Appellate Tribunal.
- (2) The Debt Recovery Appellate Tribunal may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within thirty days, allow the appeal to be filed within a further period not exceeding fifteen days.

❖ **Appeal to Supreme Court (Section 182):**

- (1) An appeal from an order of the Debt Recovery Appellate Tribunal on a question of law under this Code shall be filed within forty-five days before the Supreme Court.
- (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.

❖ **Expeditious disposal of applications (Section 183):**

Where an application is not disposed of or order is not passed within the period specified in the Code, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the Chairperson of the Debt Recovery Appellate Tribunal, after taking into account the reasons so recorded, extend the period specified in this Code, but not exceeding ten days.



OFFENCES AND PENALTIES

Punishment for false information etc., contravention of provisions, false information, concealment, etc., certain actions.
(Section 184 to 187)

| Section | Offence | Applicable to | Penalty |
|---------|---|-------------------------|--|
| 184(1) | False information etc. by creditor in insolvency resolution process | Creditor or debtor | Imprisonment for a term up to 1 year or fine up to Rs. 5 lakhs or both. |
| 184(2) | False information etc. by creditor in insolvency resolution process | Creditor | Imprisonment for a term up to 2 year or fine up to three times the amount or its equivalent of such money, property or security accepted by the creditor, or both. |
| 185 | Contravention of provisions | Insolvency professional | Imprisonment for a term up to 6 months or fine of minimum Rs. 1 lakhs up to Rs. 5 lakhs, or with both. |
| 186(a) | False information, concealment, etc. by bankrupt | Bankrupt | Imprisonment for a term up to 6 months or fine up to Rs. 5 lakhs, or both. |
| 186(b) | False information, concealment, etc. by bankrupt | Bankrupt | Imprisonment for a term up to 1 year or fine up to Rs. 5 lakhs or both. |
| 186(c) | Contravention of provisions of the Code | Bankrupt | Imprisonment for a term up to 6 months or fine up to Rs. 5 lakhs, or both. |
| 186(d) | Failed to deliver possession of property | Bankrupt | Imprisonment for a term up to 6 months or fine up to Rs. 5 lakhs, or both. |
| 186(e) | Failed to account for any loss incurred | Bankrupt | Imprisonment for a term up to 2 years or fine up to three times the value of loss or both. |
| 186(f) | Absconded or attempts to Abscond | Bankrupt | Imprisonment for a term up to 1 year or fine up to Rs. 5 lakhs, or both. |
| 187 | Punishment for certain actions | Bankruptcy trustee | Imprisonment for a term up to 3 years or fine not less than three times the value of loss caused. |