CLUSTER 9
Insolvency and Bankruptcy Code, 2016

1. Wisdom Ltd. commits a default against the debts taken from the financial creditors. Mr. F, a financial creditor initiated the corporate insolvency resolution process against the Wisdom Ltd. Mr. X, another financial creditor, thereof files an application for initiating corporate insolvency resolution process with an Adjudicating Authority. State the validity as to the filing of an application by Mr. X for initiation of corporate insolvency resolution process? [RTP May 2018]

Ans - In the given problem, on commission of default by the Wisdom Ltd., Mr. F filed an application for initiating corporate insolvency resolution process before adjudicating authority. Further, Mr. X another financial creditor moved an application for initiation of insolvency resolution process against the Wisdom Ltd.

According to the Section 6 of the Code, where any corporate debtor commits a default, a financial creditor, Operational creditor or the Corporate debtor itself may initiate insolvency resolution process against such corporate debtor.

But as per Section 13 of the Code, once an application is admitted by the Adjudicating authority, it shall by an order declare a moratorium for the purposes referred to in Section 14. Then causes a public announcement of the initiation of CIRP by IRP and call for the submission of claims under Section 15 and appoint an IRP in the manner as laid down in Section 16 of the Code. Public announcement lays down all the relevant information related to the CIRP. So that the all creditors entitled under the law can raise their claim in this case.

So, no further application for initiation of CIRP against the same debtor (i.e, Wisdom Ltd.) can be initiated. So, Mr. X, cannot file an application on initiation of CIRP, however, is entitled under the law to raise his claim in this case against the Wisdom Ltd.

2. Standard International Ltd. who is a foreign trade creditor having its office in Hong Kong wanted to file a petition under insolvency and bankruptcy code 2016 on default of the debtor in India. It moved a petition under Section 9 of the code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it couldn't submit a "certificate from financial institution" as required under the code. Whether the petition is permissible under the Insolvency & Bankruptcy Code, 2016? Decide. [RTP May 2018]

Ans- Section 1 of the Insolvency and Bankruptcy Code, 2016 specifies of the extent, commencement and applicability of the Code. According to this, it extends to the whole of India and shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of any company incorporated under the Companies Act, 2013 or under any previous law.
In view of this, the IBC Code, 2016 applies to the corporate debtor incorporated under the Companies Act, 2013 or under any previous laws.
As per the definition of the Creditor given in Section 3(10) of the Insolvency and Bankruptcy Code, 2016, it 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. So, Standard International Ltd. is a creditor under the purview of the Code.
As per the facts given in question, Standard International Ltd., is a foreign trade creditor. He wanted to file a petition under the under Section 9 of the Insolvency and Bankruptcy Code, 2016 for commencement of Insolvency process against the defaulter in India. Standard International Ltd. was not having any office or bank account in India.
As per the requirement of Section 9 of the Code, along with application certain documents were needed to be furnished by the creditor to the Adjudicating authority
Being a foreign trade creditor, Standard International Ltd was also required to provide a copy

of certificate from the financial institutions maintaining accounts of the creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Since, Standard International Ltd. was not having any office or bank account in India, it cannot furnish certificate from financial institution as defined under the Section 3(14) of the code. ***As per the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018., the certificate has to be filed only if available. Hence, the petition will be permissible after this amendment***

3. **MF Capital Private Limited accepted inter corporate deposits from JS Financial Services Private Limited. MF Capital Private Limited is a Non-banking Financial Company which has obtained a certificate from the Reserve Bank of India for carrying on the business of providing financial services. As there was a default in repayment of deposits, JS Financial Services Private Limited filed an application with the NCLT under Section 7 of the Insolvency and Bankruptcy Code, 2016. Examine the validity of the application. [CA Final May 2019]**

Ans. The given problem relates to clause (7) and clause (8) of Section 3 read with clauses (16), (17) and (18) of Section 3 and Section 7 of the Insolvency and Bankruptcy Code, 2016.

Provisions of the act

1. Section 7 gives power to a financial creditor to file an application before the Adjudicating Authority for initiating corporate insolvency resolution process against a corporate debtor who has committed a default, by complying with the requirements contained in Section 7.
2. Section 7 shall not be available if the person who has committed the default is not a corporate debtor.
3. As per Section 3(8), corporate debtor' means a corporate person who owes a debt to any person.
4. As per Section 3(7), 'corporate person' does not include any financial service provider.
5. As per Section 3(17), financial service provider means a person engaged in the business of providing financial services in terms of authorization issued or registration granted by a financial sector regulator.
6. As per Section 3(16), acceptance of deposits amounts to 'financial services'.
7. As per Section 3(18), the Reserve Bank of India is a 'financial sector regulator'.

Analysis of the case

1. MF Capital Private Limited is a Non-Banking Financial Company. It has obtained a certificate from the Reserve Bank of India, and it carries on the business of providing financial services.
2. Since MF Capital Private Limited is covered in the definition of "financial service provide', it does not fall within the meaning of 'corporate debtor'.
3. Since MF Capital Private Limited is not corporate debtor, the provisions of Section 7 cannot be invoked against it even though it has made a default.
4. These facts given in this question are same as the facts in Randhiraj Thakur, Director, Mayfair Capital Private Ltd v Jindal Saxena Financial Services and Mayfair Capital Private Ltd. It was held in this case that an application for initiating corporate insolvency resolution process against a Non-Banking Financial Company shall be dismissed.

Conclusion

The application made by JS Financial Services Private Limited for initiating corporate insolvency resolution process of MF Capital Private Limited is liable to be rejected.

4. **Mr. SP booked office space with Elegant Construction Limited. At the time of booking Rs. 36 lakhs was paid. Remaining amount of Rs. 10 lakhs was paid at the time of taking delivery. He entered into a Memorandum of Understanding (MoU) with the company having various terms and conditions of the sale/allotment. According to the MoU, Elegant Construction**

Limited was required to build and deliver the possession of the unit within 2 years from the date of execution of the MoU. It also stipulated payment of an assured return of Rs. 82,000 per month (subject to TDS u/s 194A of IT Act, 1961) till possession of the unit was delivered to Mr. SP. Elegant construction Limited failed to pay the assured return. Thereafter, Mr. SP filed an application for initiating insolvency resolution process. Decide about the validity of the said application in view of the provisions of Insolvency and Bankruptcy Code, 2016 as regards the definition of a financial creditor under Section 5(7) read with Section 5(8) of the Code. [CA Final Nov 2018]

Ans. The given problem relates to Section 7, Section 5(7) and Section 5(8) of the Insolvency and Bankruptcy Code, 2016.

Provisions of the act

Section 7 gives power to a financial creditor to file an application before the Adjudicating Authority for initiating corporate insolvency resolution process against a corporate debtor who has committed a default, by complying with the requirements contained in Section 7.

Analysis

1. The issue raised in the present problem is whether Mr. SP, who has paid Rs. 36 lakhs as booking amount of an office space, can be termed as a financial creditor and whether he can initiate the corporate insolvency resolution process against the builder (viz. Elegant Construction Limited), if the builder has failed to pay the assured return?
2. As per Section 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.
3. Section 5(8) defines the term 'financial debt'. As per this definition, 'financial debt' means a debt along with interest, if any, which is disbursed against the consideration for the time value of money. Further, transactions of the nature specified in sub-clauses (a) to (i) of Section 5(8) shall be included in the definition of financial debt. As per sub-clause (f) of Section 5(8), any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing shall be included in the meaning of the term financial debt. Explanation to sub-clause (f) of Section 5(8) states that 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.

Conclusion

1. It is evident from a careful reading of Sections 5{7) and 5(8) that where any immovable property is allotted to a person (viz. the allottee) in a real estate project, the amount paid by such allottee shall be "financial debt in the hands of the person who made such allotment (viz. the builder), and the allottee shall be a 'financial creditor'.
2. As per Section 5(8), the amount of Rs. 36 lakhs paid by Mr. SP is "financial debt' in the hands of Elegant Construction Limited. Therefore, Mr. SP is a financial creditor of Elegant Construction Ltd.
3. Elegant Construction Limited failed to pay assured return to Mr. SP resulting in a default within the meaning of Section 3(12). Since the amount of default is not less than Rs. 1 lakh, Mr. SP is empowered to file an application before the Adjudicating Authority for initiating corporate insolvency resolution process against Elegant Construction Limited., by complying with the requirements contained in Section 7.

5. Best Bank, a financial creditor sent a demand notice for a claim of Rs. 10.2 crores on XYZ Limited, a corporate debtor on 6th February 2018. When the petition was filed before NCLT under Insolvency and Bankruptcy Code, 2016, Best Bank claimed that the XYZ Limited has defaulted Rs. 29.8 crores instead of original amount of Rs. 10.2 crores. NCLT appointed an interim insolvency resolution professional. XYZ Limited made an appeal with NCLAT demanding that the Best Bank's claim is not maintainable as there Is a difference in the amount mentioned in the demand notice and the application filed under the Code.

Decide whether the contention of XYZ limited is correct. Also, state who can file Corporate insolvency Resolution Process under the Code? [CA Final Nov 2018]

Ans. The given problem relates to Section 7, Section 5(7) and Section 5(8) of the Insolvency and Bankruptcy Code, 2016.

Provisions of the act

1. Section 7 gives power to a financial creditor to file an application before the Adjudicating Authority for initiating corporate insolvency resolution process against a corporate debtor who has committed a default, by complying with the requirements contained in Section 7.
2. As per Section 7, the application shall be in such form and manner and accompanied with such fee as may be prescribed, and following documents and information shall be furnished along with the application:
   (a) Record of the default recorded with the information utility or such other record or evidence of default as may be Specified.
   (b) The name of the resolution professional proposed to act as an interim resolution professional.
   (c) Any other information as may be specified by the Board.

Analysis

1. In the present case, Best Bank (viz. a financial creditor) has made an application to the Adjudicating Authority against XYZ Limited (viz. the corporate debtor). In the application made to the Adjudicating Authority, Best Bank has claimed that XYZ Limited has defaulted in payment of Rs. 29.8 crores whereas in the demand notice sent to XYZ Limited, Best Bank has claimed Rs. 10.2 crores.
2. The facts similar to this question came before the National Company Law Appellate Tribunal (NCLAT) in Starlog Enterprises Ltd. v ICICI Bank Ltd. It was established before NCLAT that ICICI Bank Ltd. (i.e. the financial creditor) had wrongly calculated the default amount as Rs. 29.8 crores. NCLAT held that by showing an incorrect claim, moving the application in a hasty manner and obtaining an ex-parte order from the adjudicating authority, the financial creditor cannot disprove its malafide intention.
3. The Insolvency and Bankruptcy Code, 2016 does not provide for any such mechanism whereby after the admission of its application, the applicant financial creditor can modify the amount of its claim.
4. Therefore, the contention of XYZ Limited is correct, and the application made by Best Bank is not maintainable.

6. The financial creditor, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' payable on maturity, was issued by the M/s Asset Ltd. (corporate debtor). The zero interest OCD bonds amounted to 2 crore matured in 2016. The liability to redeem the debentures on maturity along with a redemption premium lay on the debtor, which was not made. Mr. Raman filed the Corporate Insolvency resolution process before the NCLT. Advise in the light of the given facts, the following situations:
State whether Mr. Raman is eligible for filing of application for initiation of CIRP? Do the redemption of debenture payable on the maturity date amounts to debt? [RTP May 2019]

Ans: As per Section 5(7) of the Insolvency and Bankruptcy Code, 2016, 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.

Whereas the term Financial debt defined under Section 5(8) means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised pursuant to the issue of bonds, notes, debentures, loan stock or any similar instrument.

As per the facts, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' issued by the Asset Ltd. With the debenture payable, as on the maturity date with interest, it was disbursed against consideration for the time value of the money. Thus, it can be said that debentures on maturity will come under that purview of Section 5(8)(c). Since Mr. Raman is a person to whom a financial debt is owed, he will come within the definition of Financial creditor. Being a debenture-holder and shareholder of the company, he, being a creditor is entitled to claim debt amount. Therefore, as per section 7, Mr. Raman is entitled to file an application to initiate CIRP against the M/s Asset Ltd.

7. **Creative India Limited owes a sum of Rs. 2,80,000 to S, who assigns this debt to his two creditors, Mr. R – to the extent of Rs.1,40,000 and Mr. M - to the extent of Rs.1,40,000. Mr. M makes a demand for his money from the company by giving a legal notice. The company could not meet Mr. M's demand or otherwise satisfy him till the expiry of four weeks from the date of notice. Mr. M, therefore, moves to NCLT with an application for initiation of Insolvency and Bankruptcy Code, 2016, decide whether an application filed by Mr. M can be accepted by NCLT [RTP Nov 2019]**

Ans: Financial creditor can initiate corporate insolvency resolution process himself or jointly with other financial creditors against corporate debtor on default of payment of debt of Rs. 1,00,000 or more. Assignee of financial debt is also financial creditor as per Section 5(7) of the IBC, 2016. Mr. M's application can be accepted by NCLT if company fails to pay debt within stipulated time. Application should be supported with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

8. **Standard International Ltd. who is a foreign trade creditor having its office in Hong Kong wanted to file a petition under Insolvency and Bankruptcy Code, 2016 on default of the debtor in India. It moved a petition u/s 9 of the Code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it could not submit a 'Certificate from a financial institution' as required under the Code. Whether the petition is permissible under the Insolvency and Bankruptcy Code, 2016? Decide [CA Final Nov 2017]**

Ans: The given problem relates to Section 9 of the Insolvency and Bankruptcy Code, 2016, as discussed below:

As per Section 9, an application for initiation of corporate insolvency resolution process may be made by an operational creditor against the corporate debtor. Such application is made to the Adjudicating Authority i.e the Tribunal (NCLT). Such application shall contain all the enclosures as specified under Section 9. One of such enclosures is a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available' [Section 9(3) (c)].

The words if available', used in Section 9(3)(c) makes it evident that the requirement of furnishing a copy of the certificate from the financial institutions shall apply only if such a copy is available. ***[As per the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.r.e.f. 6-6-2018]***

In the given case, Standard International Ltd. does not have any bank account in India. Accordingly, it is not possible for Standard International Limited to furnish a copy of the certificate from any financial institution, as such copy is not available. Thus, the requirement contained in Section 9(3)(c) is not applicable to Standard International Ltd.

Therefore, the petition made by Standard International Ltd. is maintainable under the Insolvency and Bankruptcy Code, 2016.

9. Rose Garden Ltd. was incurring continuous losses and its financial position went bad to worse. Black Stone (Private) Ltd., a trade creditor, issued notice under Section 271 of the Companies Act, 2013 for winding up of Rose Garden Ltd. on the ground that Rose Garden Ltd, was unable to pay its debts. After some time, Black Stone (Private) Ltd. being an operational creditor filed a petition before the Adjudicating Authority to initiate insolvency process under the insolvency and Bankruptcy Code, 2016. Demand Notice and copy of invoice were not served o Rose Garden Ltd. since a notice was earlier issued for winding up. All other formalities were complied with. The Adjudicating Authority initiated Insolvency Resolution Process by admitting the application and appointed Resolution Professional. After complying required formalities, the Adjudicating Authority issued orders for moratorium and other relief within the stipulated time. Being aggrieved by the order of Adjudicating Authority, Rose Garden Ltd. (Corporate debtor) filed an appeal before NCLAT under the Insolvency and Bankruptcy Code, 2016. Determine will the Company succeed in its appeal? [CA Final May 2018]

Ans. The given problem relates to Section 9 read with Section 8 of the Insolvency and Bankruptcy Code, 2016 and Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Provisions of the act

1. As per Section 9, an operational creditor is entitled to file an application before the Adjudicating Authority (viz. the Tribunal, i.e. NCLT) for initiating corporate insolvency resolution process if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under Section 8, within 10 days from the date of delivery of notice or invoice demanding payment under Section 8.
2. As per Section 8, where a default has occurred, an operational creditor may deliver a demand notice to the corporate debtor. The demand notice shall be accompanied by a copy of an invoice. The demand notice shall contain a demand requiring payment of the amount involved in the default. The notice shall be in such form and manner as may be prescribed.
3. It is evident that an operation creditor shall not be entitled to make an application to the Adjudicating Authority under Section 9 unless he has served upon the corporate debtor a demand notice in Form 3 in accordance with the provisions of Section 8.
4. In Prideco Commercial Projects Pvt. Ltd. v Era Infra Engineering, the operational creditor (viz. Prideco Commercial Projects Pvt. Ltd.) filed a petition for winding up of the corporate debtor (viz. Era Infra Engineering) under Section 271 of the Companies Act, 2013. Afterwards, the operational creditor (viz. Prideco Commercial Projects Pvt. Ltd.) filed an application before the Adjudicating Authority (viz. the Tribunal, i.e. NCLT) under Section 9 of the Insolvency and Bankruptcy Code, 2016. But, the operational creditor (viz. Prideco Commercial Projects Pvt. Ltd.) had not issued any notice to the corporate debtor viz. Era Infra Engineering) under Section 8 of the Insolvency and Bankruptcy Code, 2016 on the ground that the winding up petition filed under Section 271 of the Companies Act, 2013 was sufficient to meet the criteria of serving of notice under Section 8 of the Insolvency and Bankruptcy Code, 2016. The Adjudicating Authority admitted the application under the Insolvency and Bankruptcy Code, 2016.
5. The corporate debtor (viz. Era Intra Engineering) filed an appeal against the order made by the Adjudicating Authority. In this appeal (viz. Era Infra Engineering v Prideco Commercial Projects Pvt. Ltd.), the National Company Law Appellate Tribunal (NCLAT) held as under.
   a) The service of notice is mandatory in nature.
   b) NCLAT set aside the order passed by the Adjudicating Authority and quashed all orders and interim arrangements including declaration of moratorium and appointment of Interim Resolution Professional.

c) All actions taken by Interim Resolution Professional were invalid.
d) Service of notice under Section 271 of Companies Act, 2013 cannot be considered as sufficient notice as required to be served under Section 8 of the Insolvency and Bankruptcy Code, 2016.

In the given case, Black Stone (Private) Ltd. is the operational creditor and Rose Garden Limited is the corporate debtor. All other facts in the given case are exactly same as were in Era Infra Engineering v Prideco Commercial Projects Pvt. Ltd.

Applying the judgment given in Era Infra Engineering v Prideco Commercial Projects Pvt. Ltd., it can be said that Black Stone (Private) Ltd. was not entitled to make an application under Section 9 of the Code, and so Rose Garden Limited shall succeed in the appeal made by it to the NCLAT.

10. Mr. Ramlal, an Insolvency professional was appointed as a resolution professional for a corporate insolvency process initiated against the corporate debtor, Monotech Ltd. Mr. Ramlal is a partner of consulting firm M/s supervision and company which is entity recognized under the IBBI. It was discovered that M/s supervision and company had a transaction with the Monotech Ltd. amounting to 11% of its gross turnover in the last financial year 2017-2018. Analyse the given situation as per the Insolvency and Bankruptcy Code, 2016, and advise on the validity of appointment of Mr. Ramlal as resolution professional against Monotech Ltd. What if, the creditor of the Monotech Ltd. opines that the resolution professional appointed is required to be replaced. [ICAI Mock Exam August 2018]

Ans:

Provisions

1. As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor.
2. However such an Insolvency professional who is appointed as an resolution professional shall not be an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years, subject to compliance of other requirements.

Analysis and conclusion

1. In the given instance, Mr. Ramlal, was appointed as Resolution professional for a corporate insolvency process initiated against the Monotech Ltd.
2. During the process, it was discovered that Mr. Ramlal is a partner of a consultant firm M/s supervision and company, which has made transaction of 11% of the gross turnover of the firm in the financial year 2017-2018 with Monotech Ltd.
3. Accordingly, Mr. Ramlal being a partner of the Firm had made a transaction of more than 10% of the gross turnover of the firm in the previous financial year 2017-2018. So his appointment as resolution professional against Monotech Ltd for initiation of CIRP, is not valid.

Replacement of Resolution Professional: As per the Code, if a debtor or a creditor is of the opinion that the resolution professional appointed is required to be replaced,

1. he may apply to the Adjudicating Authority (AA) for replacement of such professional.
2. Within seven days of receipt of the application AA may make reference to the Board for Replacement of Resolution Professional.
3. As per Section 27 of the Code, the Committee of Creditors (CoC) may replace the insolvency Resolution Professional with another resolution professional by passing a

resolution for the same to be approved by a vote of sixty six percent of voting shares of the creditors.

4. The Committee of Creditors shall forward the name of the new proposed Insolvency Professional to the Adjudicating Authority, and after the confirmation of the proposed insolvency resolution professional by the Board he shall be appointed in the same manner as laid down in Section 16 which deals with the Appointment of IRP.

11. X Ltd. was intending to initiate voluntarily liquidation proceedings. A declaration was made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company. They declared that the company will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation. Analyze the given situation and comment whether X Ltd can initiate voluntary liquidation proceeding in compliance with the conditions given in the Insolvency and Bankruptcy Code, 2016. What are the required documents to be accompanied with the declaration? Also, state the consequences, where if the articles fixed the period of duration for which company may be continued and that period expires. [ICAI Mock Exam October 2019]

Ans: Section 59 of the Insolvency & Bankruptcy Code, 2016 empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default, to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process: -

(a) A declaration from majority of the directors of the company verified by an affidavit stating:

i. That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

ii. That the company is not being liquidated to defraud any person.

(b) The declaration shall be accompanied with the following documents, namely:

i. Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

ii. A report of the valuation of the assets of the company, if any, prepared by a registered valuer.

(c) After making the declaration the corporate debtor shall within four weeks -

i. Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.

ii. Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

Here, in the given situations, according to the above provisions, a declaration made with an affidavit of the some of the directors of the X Ltd. verifying that company have made full inquiry of the affairs of the company, is not in compliance, as the majority was the requirement for initiation of the voluntary liquidation proceedings. And the further declaration that the company is not being liquidated to defraud any person is not given in the affidavit. The documents to be accompanied with declaration shall be as per the point (b) given above in the stated provision

12. M/s TAS Constructions Private Limited, an operational creditor, on 2nd April, 2018 being the default date issued a demand notice through speed post to M/s Dheeraj Constructions Private Limited, an unpaid operational/corporate debtor demanding payment of its invoice dated 19th March, 2018 for Rs. 5,60,000 (15 days payment terms)

towards supply of certain works contract services as per the provisions of Section 8(1) of the Insolvency and Bankruptcy Code, 2016 and rules framed there under. Dheeraj Constructions Private Limited on receipt of the demand notice informed the operational creditor, that vide their e-mail dated 30th March, 2018, addressed to the company and all its directors, they have disputed the invoice on the quality of the services rendered and were withholding payment till the dispute is settled but without initiating any legal proceedings under any law for the time being in force. The operational creditor on expiry of the period of 10 days from the date of delivery of the demand notice and non-payment of its dues approached the Adjudicating Authority for the initiation of the corporate insolvency resolution process under Section 9(1) of the Insolvency and Bankruptcy Code, 2016. Will the application of the operational creditor filed under Section 9(1) read with Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016 be permitted? [CA Final May 2018]

Ans.

The given problem is based on Section 9(1) of the Insolvency and Bankruptcy Code, 2016.

1. According to the provision, after the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application before the Adjudicating Authority for initiating corporate insolvency resolution process.
2. However, as per Section 8(2)(a) of the Code, the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor about existence of dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute.
3. Facts given states that the Dheeraj Constructions Private Limited on receipt of the demand notice, informed M/s TAS Constructions Private Limited (Operational Creditor) that through email dated 30th March, 2018, addressed the company and all its directors, of the dispute on the invoice and withholding of the payment till the settlement of the dispute
4. The provision of Section 8(2)(a) envisages existence of dispute, if any and record of the pendency of the suit or arbitration proceedings filed by the Corporate Debtor before receipt of such notice or invoice in relation to such disputes: thus existence of disputes and record of pendency of the suit or arbitration proceedings both are to be filed. Whereas, Section 5 (6) defines "disputes" as disputes includes a suit or an arbitration proceedings relating to: (a) The existence of the amount of the debt
   (b) The quality of goods or service or
   (c) The breach of the representation or the warranties.
5. The Supreme Court has settled the position in the case of **Mobilox Innovations Private Limited Vs. Kirusa SoftWare Private Limited and Innoventive Industries Vs ICICI Bank** by deciding that "and" used in Section 8(2)(a) has to be read as disjunctively and "and" to be read as "or" else, the purpose of the IBC will be defeated.
6. Hence, the requirement of Section 8, to bring to the notice of the operational creditor about an existence of dispute only and not along with the record of the pendency of the suit or arbitration proceedings as settled by the Supreme Court in the cases referred above filed before the receipt of such notice or invoice in relation to such dispute have been complied with and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute, have been complied with. So, the application of M/s TAS Constructions Private Limited (Operational Creditor) shall not be permitted under Section 9 of the Insolvency and Bankruptcy Code, 2016 as Dheeraj Construction Private Limited has complied the provisions of Section

8(2)(a) of the IBC, 2016.

13. Nature India Limited filed a petition under Insolvency and Bankruptcy Code, 2016 with National Company Law Tribunal (NCLT) against Tulip Limited and the petition was admitted. After that, Nature India Limited wanted to withdraw the petition based on a settlement arrived between the parties. Whether it is permissible to withdraw the petition after it has been admitted? Decide. [CA Final Nov 2017]

Ans. The given problem relates to Section 12A of the Insolvency and Bankruptcy Code, 2016, as discussed below:

As per Section 12A, the Adjudicating Authority may allow the withdrawal of application admitted under Section 7 or Section 9 or Section 10, on an application made by the applicant with the approval of 90% voting share of the committee of creditors, in Such manner as may be specified.

In the given case, Nature India Limited's application against Tulip Limited has been admitted by the Adjudicating Authority (Viz. NCLT) under Section 9. Afterwards, Nature India Limited and Tulip Limited entered into a settlement and wanted to withdraw the application. Such withdrawal of application can be permitted by NCLT if application requesting the same is made to the Adjudicating Authority by Nature India Limited and such withdrawal of application is approved by committee of creditors with 90% voting share.

14. You are appointed as Interim Resolution Professional in XYZ Company Ltd. under the Insolvency and Bankruptcy Code, 2016. State the time limit to make Public Announcement? Also state the protocol for issuance of public notice. Who shall bear the expenses of public announcement? [CA Final May 2018]

Ans. The given problem is answered as follows:

Time limit for making public announcement

As per Section 13, the public announcement shall be made immediately after the appointment of the interim resolution professional.

As per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the expression 'immediately' means not later than 3 days from the date of appointment of the interim resolution professional.

Procedure for issuance of public notice

As per Section 15, the public announcement shall contain the following information:

(a) Name and address of the corporate debtor under the corporate insolvency resolution process

(b) Name of the authority with which the corporate debtor is incorporated or registered

(c) The last date for submission of claims

(d) Details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving clams

(e) Penalties for false or misleading claims

(f) The date on which the corporate insolvency resolution process shall close, which shall be the 180th day from the date of the admission of the application under Sections 7, 9 or Section 10, as the case may be.

The public notice shall be published in following:

(i) One English newspaper

(ii) One vernacular newspaper

(ii) Website of the Company

(iv)Website of the Insolvency and Bankruptcy Board of India

Who shall bear the expenses of public announcement?

As per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the expenses of public announcement shall

be borne by the applicant, and such expenses may be reimbursed by the Committee of Creditors, to the extent it ratifies them.

15. **M/s Systemtek India Private Limited (Appellant-Corporate Debtor) has challenged the order dated 3rd July, 2017 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai, in the National Company Law Appellate Tribunal (NCLAT). NCLT had admitted the application preferred by appellant under Section 10 of the Insolvency and Bankruptcy Code, 2016 and an order of Moratorium was passed and Insolvency Resolution Professional was ordered to be appointed by the Ld. Adjudicating Authority (NCLT). The only grievance of the appellant in its challenge is that the movable and immovable property of Guarantor (promoter) has been attached pursuant to a Corporate Insolvency Resolution Process initiated under Section 10 against the Appellant by the Ld. Adjudicating Authority (NCLT) which is violative of Section 14(1)(c) of the Insolvency and Bankruptcy Code, 2016 though the Code prescribes a Moratorium for certain types of transactions. Decide. [CA Final May 2018]**

Ans.

Provisions

1. The given problem relates to Section 14(1)(c) and Section 14(3) and the legal position as decided in Schweitzer Systemtek India (P.) Ltd. v Phoenix ARC (P.) Ltd.
2. As per Section 14(1)(c) read with Section 13, when the Adjudicating Authority (viz. the Tribunal) admits an application for corporate insolvency resolution process of a corporate debtor, if shall, by an order, declare moratorium prohibiting any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Analysis

1. The corporate debtor, viz. Systemtek India Private Limited, filed an application under Section 10 for initiating corporate insolvency resolution process. The application is admitted by the Adjudicating Authority and as a consequence, Interim Resolution Professional is appointed, and moratorium under Section 14 is declared.
2. Afterwards, the property of the guarantor, who is the promoter of the corporate debtor, is attached.
3. The corporate debtor has filed an appeal against the order attaching the property of the guarantor (promoter) passed by the Adjudicating Authority.
4. In Schweitzer Systemtek India (P.) Ltd. v Phoenix ARC (P.) Ltd, in an appeal filed with the National Company Law Appellate Tribunal, it held that when moratorium is declared, it results in prohibition on any action to recover or enforce any security interest created by the corporate debtor in respect of its' property (Section 14(1) (c).
5. The word 'its used in Section 14(1)(c) denotes the property owned by the corporate debtor. The property not owned by the corporate debtor does not fall within the ambit of the moratorium. Language used in Section 14(1) (c) should be read as it exists, and no word should be added or substituted or deleted, since this provision has been duly legislated.
6. Every word is to be read and interpreted as it exists in this provision with the natural meaning attached to the word. Since the language used in Section 14(1)(c) is plain, clear and unambiguous, there is no scope to assume any omission. Thus, the prohibition on attachment of assets shall apply only to the assets of the corporate debtor and not to any assets of a third party (like any director, promoter or any person other than the corporate debtor).
7. As a consequence, attachment of the property of the guarantor (promoter) does not fall within the clutches of the moratorium.

8. Similar issue was considered by the Appellate Tribunal in Alpha & Omega Diagnostics (India) Ltd. v Asset Reconstruction Co. of India Ltd.. and the Appellate Tribunal had decided the issue on the same lines as in Schweitzer Systemtek India (P) Ltd., v Phoenix ARC (P.) Ltd.
9. Further sub-Section (3) of Section 14 has been amended by the Insolvency and Bankruptcy Code (Second Amendment Act, 2018 (with retrospective effect from 6.6.2018) to provide that the provisions relating to moratorium, as contained in sub-Section (1) of Section 14, shall not apply to a surety in a contract of guarantee to a corporate debtor.

Conclusion

Thus, the attachment of movable and immovable property of the guarantor (promoter) is valid.

16. Continental Rubber Limited is a supplier of raw materials to Smooth Latex Limited. It filed a petition before the NCLT for the recovery of Rs. 10,00,000 from Smooth Latex Limited. Smooth Latex Limited, the Corporate Debtor, has other financial creditors to the extent of Rs. 1,50,00,000 and they also joined together and filed petitions to NCLT. The Corporate Debtor has a total of 40 financial creditors and 2 operational creditors. Further, al the financial creditors are having equal voting rights/shares. Notice was issued on 1st August, 2018 for the conduct of the first meeting to be held on 5th August, 2018 at a common venue. The meeting was attended by all 40 financial creditors and 2 operational creditors. A resolution was passed to appoint Mr. TK as a Resolution Professional. 25 of the financial creditors voted in favour of the resolution and 10 voted against the resolution and 5 financial creditors and 2 operational creditors abstained from voting. Decide whether the resolution passed is valid? In the light of the provisions of Insolvency and Bankruptcy Code, 2016 read with rules framed there under, explain the requirements of issue of notice and quorum for the conduct of the meeting. [CA Final May, 2019]

Ans. The given problem relates to Section 22 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 19 and Regulation 22 of the Insolvency and Bankruptcy Board or India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Validity of the resolution

As per Section 22, in the first meeting, the committee of creditors may, by a majority vote of not less than 66% of the voting share of the financial creditors, resolve to –
(a) appoint the interim resolution professional as a resolution professional; or
(b) replace the interim resolution professional by another resolution professional.
In the given case, the appointment of Mr. TK as a Resolution Professional could be made if financial creditors holding not less than 66% of the voting share (i.e. 27 or more financial creditors) would have voted in favor of such appointment. However, only 25 financial creditors have voted in favor of appointment.
Since the appointment of Mr. TK is a Resolution Professional has been approved by less than 27 financial creditors, such appointment is not valid.

17. Mr. Atul was appointed as the Insolvency Resolution Professional for XYZ Ltd. An application to replace the insolvency resolution professional was filed before the Adjudicating Authority by some financial creditors. The financial creditors propose to appoint Mr. K as the insolvency professional instead of Mr. Atul. Referring to the relevant provisions of the Insolvency and Bankruptcy Code, 2016, decide whether Mr. Atul can be replaced and if so, state the procedure to be followed to appoint another IRP in place of existing one. [CA Final May 2019]

Ans:

1. Power of the committee of creditors to replace the resolution professional

(a) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional is required to be replaced, it may replace him with another resolution professional.

(b) For this purpose, in a meeting of the committee of creditors, a vote of 66% of voting shares is required.

Before passing a resolution for replacing the resolution professional, the committee of creditors shall obtain a written consent from the proposed resolution professional in the specified form.

(c) The name of the proposed resolution professional decided in the meeting of the committee of creditors shall be forwarded by the committee of creditors to the Adjudicating Authority.

(d) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in Section 16.

2. Situation where disciplinary proceedings are pending against the proposed resolution professional

Where any disciplinary proceedings are pending against the resolution professional proposed by the committee of creditors, the resolution professional already appointed shall continue till the appointment of another resolution professional is made.

18. XY Ltd. filed a petition under Insolvency and Bankruptcy Code, 2016 with NCLT against DF Ltd. (Corporate Debtor) and the petition was admitted. There were only three financial creditors including XY Ltd. During the Corporate Insolvency Resolution Process, the Corporate Debtor settled the claims of all the 3 financial creditors. Whether such settlement agreement could be termed as a valid resolution plan? Also discuss whether a financial creditor in respect of whom there is no default can file an application before Adjudicating Authority (NCLT) for initiating Corporate Insolvency Resolution Process. Discuss.

Ans. The given problem relates to Section 5(26) and Section 30 of the Insolvency and Bankruptcy Code, 2016.

Provisions

1. Section 5(26) defines the term 'resolution plan' - means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II.

2. As per Section 30, -

(a) Resolution applicant may submit a resolution plan to the resolution professional.

(b) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan fulfils the conditions contained in Section 30(2).

(c) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm to the conditions referred to in Section 30(2).

(d) The committee of creditors may approve a resolution plan by a vote of not less than 66% of voting share of the financial creditors.

(e) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

Analysis

3. XY Ltd. (viz. a financial creditor) made a petition to the Adjudicating Authority for initiating corporate insolvency resolution process of the corporate debtor (viz. DF Ltd.). The petition was admitted by the Adjudicating Authority.

4. During the corporate insolvency resolution process, the corporate debtor settled the claims of all the 3 financial creditors.

5. Though the claims of all the 3 financial creditors were settled, the requirements of Section 30 with respect to submission of resolution plan by a resolution applicant to the resolution professional, examination of resolution plans by the resolution professional, presentation of resolution plans to the committee of creditors by the resolution professional, approval of resolution plan by the committee of creditors and submission of resolution plan to the Adjudicating Authority, have not been satisfied.

Conclusions

(i) The settlement agreement cannot be termed as a valid resolution plan, since the process prescribed under the Code with respect to examination of resolution plan, approval of resolution plan by the committee of Creditors and submission of resolution plan to the Adjudicating Authority has not been followed while arriving at such settlement.

(ii)Section 7 entitles a financial creditor to file an application before the Adjudicating Authority for initiating corporate insolvency resolution process against a corporate debtor when a default has occurred. For this purpose, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

Therefore, where a corporate debtor has not made any default in respect of a particular financial creditor, but has made a default in respect of some other financial creditor, the financial creditor in respect of whom there is no default is entitled to file an application before the Adjudicating Authority (NCLT) for initiating corporate insolvency resolution process.

19. The following particulars relate to M/s Star House (P) Limited which has gone into Corporate Insolvency Resolution Process (CIRP):

Sl. No.	Particulars	Amount In Rupees
1.	Amount realized from the sale of liquidation of assets	7,00,000
2.	Secured creditors who has relinquished the security	2,50,000
3.	Unsecured Financial Creditors.	2,00,000
4.	Income Tax Payable within a period of two years preceding the liquidation commencement date.	25,000
5.	Cess Payable to State Government within a period of one year preceding the liquidation commencement date.	10,000
6.	Fees payable to resolution professional.	37,500
7.	Expenses incurred by the resolution professional in running the business of M/s. Star House (P) Limited on going concern.	17,500
8.	Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen salary is equal per month.	1,50,000
9.	Equity Shareholders.	5,00,000

State the priority order in which the liquidator shall distribute the proceeds under the Insolvency & Bankruptcy Code, 2016. [CA Final May 2019]

Ans. The given problem relates to Section 53 of the Insolvency and Bankruptcy Code, 2016. As per Section 53, the proceeds from the sale of liquidation assets shall be distributed in the order of priority as detailed below:

(A)	Amount realized from the sale of liquidation assets	Rs. 7,00,000
(B)	**(B) Payments Priority No. 1** The insolvency resolution process costs and the liquidation costs to be paid in full (Rs. 37,500 being fees payable to resolution professional plus Rs. 17,500 being expenses incurred by the resolution professional in running the business of M/s. Star House (P) Limited on going concern)	**Rs. 55,000**
(C)	Balance remaining [(A)- (B)]	Rs. 6,45,000
(D)	**Payments Priority No. 2:** The following debts which shall rank equally among the following: (i) Workmen's dues for the period of 24 months preceding the liquidation commencement date (i.e. Rs. 1,50,000 x 24/30 = Rs. 1,20,000); and (ii) Debts owed to a secured creditor who has relinquished the security (i.e. Rs. 2,50,000). [Note: Workmen's dues of Rs. 30,000 not included in 'Payments Priority No. 2' shall be paid before payments shall be made to equity shareholders (since there are no preference shareholders)]	**Rs. 3,70,000**
(E)	Balance remaining [(C) - (D)]	Rs. 2,75,000
(F)	**Payments Priority No. 3:** Financial debts owed to unsecured creditors	**Rs. 2,00,000**
(G)	Balance remaining [(E) - (F)]	Rs. 75,000
(H)	**Payments - Priority No. 4:** Any amount due to the Central Government and the State Government within a period of 2 years preceding the liquidation commencement date: (i) Income Tax Payable within a period of 2 years preceding the liquidation commencement date: Rs. 25,000 (ii) Cess Payable to State Government within a period of 1 year preceding the liquidation commencement date: Rs. 10,000	**Rs. 35,000**
(I)	Balance remaining [(G) - (H]	Rs. 40,000
(J)	**Payments- Priority No. 5:** Balance workmen's dues of Rs. 30,000 which were not included in Payments – Priority No.2	**Rs. 30,000**
(K)	Balance remaining [(I)-(J)]	Rs. 10,000
(L)	**Payments Priority No. 6:** Equity shareholders of Rs. 5,00,000 (on pro-rata basis, Le. Every equity share holder shall get only 2% of the amount paid on shares held by him)	**Rs. 10,000**

20. As on March 31, 2018, the audited balance sheet of M/s Sharp Industries Limited, revealed total assets of Rs. 1 Crore. M/s Sharp Industries Limited, in the capacity of a corporate debtor, filed an application on July 1, 2018 with the Adjudicating Authority for initiating a fast track corporate insolvency resolution process. Explain under the provisions of Insolvency and Bankruptcy Code, 2016 the following:
(i) Whether the application made by M/s Sharp Industries Ltd, for initiating a fast track

corporate insolvency resolution process is admissible?
(ii) The time period including the extension of time period, if any, within which the fast track corporate insolvency resolution process shall be completed? [CA Final Nov 2018]

Ans. The given problem relates to Sections 55 to 58 of the Insolvency and Bankruptcy Code, 2016.

Provisions

1. As per Section 55, an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors:
   (a) A small company as defined under clause (85) of Section 2 of Companies Act, 2013; or
   (b) A Startup (other than the partnership firm) as defined in the notification number G.S.R. 501(E), dated the 23rd May, 2017, of the Government of India, in the Ministry of Commerce and Industry; or
   (c) An unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding Rs. 1 crore.
2. As per Section 57, an application for fast track corporate insolvency resolution process may be fled by a creditor or corporate debtor as the case may be, along with –
   (a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and
   (b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track Corporate insolvency resolution process.

Analysis

1. M/s Sharp Industries Limited has made an application to the Adjudicating Authority for initiating a fast track corporate insolvency resolution process. The total assets of M/s Sharp Industries Limited, as per the audited balance sheet as at 31st March, 2018, are of Rs. 1 crore.
2. Assuming that Sharp industries Ltd, is an unlisted company, the application made by Sharp industries Ltd. is in accordance with the provisions of Section 55 since Sharp industries Ltd. is covered in the categories of corporate debtors notified by the Central Government for this purpose (viz. an unlisted company with total assets not exceeding Rs. 1 crore).
3. Further, the application made by Sharp Industries Ltd. is valid as per Section 57, since Section 57 empowers the Corporate Debtor to itself make an application for fast track corporate insolvency resolution process. However, Sharp Industries Ltd, shall have to submit along with its application-
   (a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and
   (b) such other information as may be specified by the Board to establish that it is eligible for fast track corporate insolvency resolution process.

Conclusion

(i) The application made by Sharp Industries Ltd. fulfills the requirements of Sections 55 and 57, and is therefore, admissible.
(ii) The time period, including extension of time period, for completion of fast track corporate insolvency resolution process is contained in Section 56, as explained below;
(a) The fast track corporate insolvency resolution process shall be completed within a period of 90 days from the insolvency commencement date.
(b) If the Adjudicating Authority is satisfied that the subject matter of the case is such that fast track corporate insolvency resolution process cannot be completed within a period of 90 days, it may, by order, extend the duration of such process beyond the said period of 90 days by such further period, as it thinks fit, but not exceeding 45 days.
(c) Any extension of the fast track corporate insolvency resolution process shall not be

granted more than once.
(d) An application for extension of time period of the fast track corporate insolvency resolution process may be made to the Adjudicating Authority by the resolution professional if he is instructed to do so by a resolution passed at a meeting of the committee of creditors and supported by a vote of 75% of the voting share.

21. BDLK Limited decided to go for voluntary winding up and accordingly the Board of directors at a meeting of the Board are about to take the necessary steps to initiate the winding up proceedings. The Board of directors of the company approached you for guidance in this regard. Please list out the steps required under the Insolvency & Bankruptcy Code, 2016 before approval of such liquidation proposal with specific reference to meetings and actions of relevant stakeholders. [CA Final May 2018]

Ans:

1. Voluntary liquidation possible only if there is no default

A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter (viz. Chapter V consisting of Section 59).

2. Conditions for voluntary liquidation of a company

The voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:
(a) A declaration from majority of the directors of the company verified by an affidavit stating that-
(i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
(ii) the company is not being liquidated to defraud any person.
(b) Such declaration shall be accompanied with the following documents:
(i) Audited financial statements and record of business operations of the company for the previous 2 years or for the period since its incorporation, whichever is later;
(ii) A report of the valuation of the assets of the company, if any prepared by a registered valuer.
(c) Within 4 weeks of a declaration, there shall be -
(i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or
(ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator.
(d) If the company owes any debt to any person, creditors representing 2/3rd in value of the debt of the company shall approve the resolution passed by the members within 7 days of such resolution.

3. Intimation of resolution passed by the members to the Registrar and the Board

The company shall notify the Registrar of Companies and the Board about the resolution passed by the members to liquidate the company within 7 days of such resolution or the subsequent approval by the creditors, as the case may be.

4. Commencement of voluntary liquidation

The voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution passed by the members.

5. Application for dissolution of corporate person

Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

6. Order of dissolution

The Adjudicating Authority shall, on an application filed by the liquidator, pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

7. Filing of order of dissolution

A copy of the order of the Adjudicating Authority declaring the dissolution of the corporate debtor shall, within 14 days from the date of such order, be forwarded to the authority with which the corporate person is registered.