



Personal Guarantor to Corporate Debtor
Provisions and related Regulations

CA Khushboo Shah Rajani
CA Ayush J Rajani

19 DECEMBER 2021

Visit Us

www.akradvisors.com



Office #8, Ground Floor, Jolly Bhavan 1,
New Marine Lines, Marine Lines,
Mumbai – 400020 | +91 9819333810



INDEX

**FRAMEWORK FOR PERSONAL
GUARANTORS UNDER IBC**

**INSOLVENCY RESOLUTION
PROCESS**

BANKRUPTCY PROCESS

Framework For Personal Guarantors under IBC

In exercise of the powers conferred by sub-section (3) of Section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the **1st day of December, 2019** as the date on which the following provisions of the said Code only in so far as they relate to personal guarantors to corporate debtors, shall come into force:

- (1) clause (e) of section 2;
- (2) section 78 (except with regard to fresh start process) and section 79;
- (3) sections 94 to 187 [both inclusive];
- (4) clause (g) to clause (i) of sub-section (2) of section 239;
- (5) clause (m) to clause (zc) of sub-section (2) of section 239;
- (6) clause (zn) to clause (zs) of sub-section (2) of section 240; and
- (7) section 249.




Framework

Insolvency Resolution Process

- Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
- Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

Bankruptcy Process

- Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
 - Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
- 

TIMELINE

28.05.2016

- IBC enacted

15.11.2019

- Sections of the Code for Personal Guarantor notified

15.11.2019

- Rules for Personal Guarantor notified

20.11.2019

- Regulations for Personal Guarantor notified

01.12.2019

- Provisions along with Rules and Regulations For PG Insolvency Effective

Jurisdiction of NCLT for CD, CG and PG



Corporate
Debtor
CD

Corporate
Guarantor
CG

Personal
Guarantor
PG to CD



CD
Mumbai

CG
Delhi



**Jurisdiction
will get
transferred to
NCLT where
CD is
admitted**

Section 60 (2)


***PNB Vs Essar Shipping
Limited
NCLT Ahmedabad***

- 
- Two applications can be maintained for the same debt against CG and CD:

Dr. Vishnu Kumar Agarwal Vs. M/s. Piramal Enterprises Ltd. [2019] ibclaw.in 16 NCLAT & Shabad Khan Vs. M/s. Nisus Finance and Investment Manager & Ors. [2020] ibclaw.in 118 NCLAT

- If two Applications can be filed, for the same amount against Principal Borrower and Guarantor keeping in view the Sec. 60(2) & (3) of IBC, the Applications can also be maintained:

State Bank of India Vs. Athena Energy Ventures Private Limited (2020) ibclaw.in 344 NCLAT



➤ Whether a Bank/Financial Institution can institute or continue with proceedings against a Guarantor under the SARFAESI Act, when proceedings under the IBC have been initiated against the Principal Borrower & the same are pending adjudication?. The answer was answered in affirmative in following judgments :

Kiran Gupta Vs. State Bank of India & Anr. (W.P.(C) 7230/2020 & CM.APPL. 24414/2020(stay) – Delhi High Court & Industrial Investment Bank of India Limited Vs. Biswanath Jhunjhunwala [2017] ibclaw.in 24 SC.



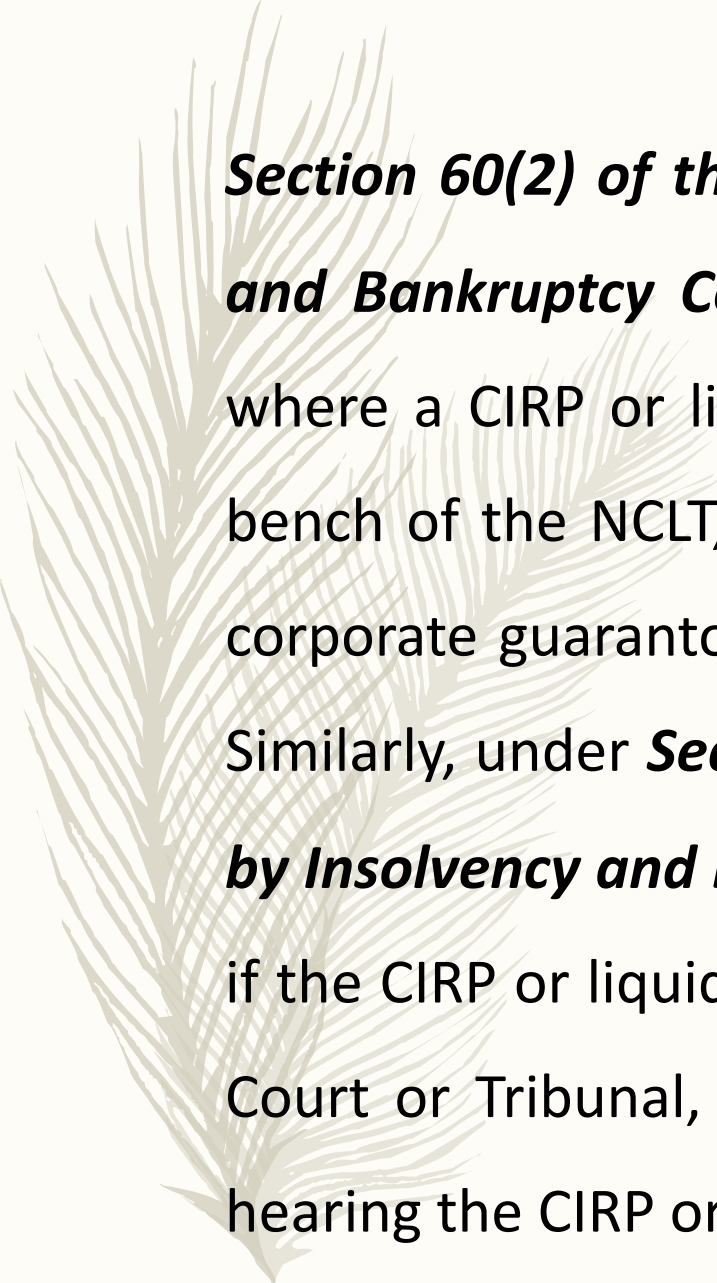
CD
Mumbai

Personal
Guarantor
PG to CD



**Jurisdiction will
get transferred
to NCLT of PG to
CD
Section 60 (2)**

**NCLT
Mumbai**

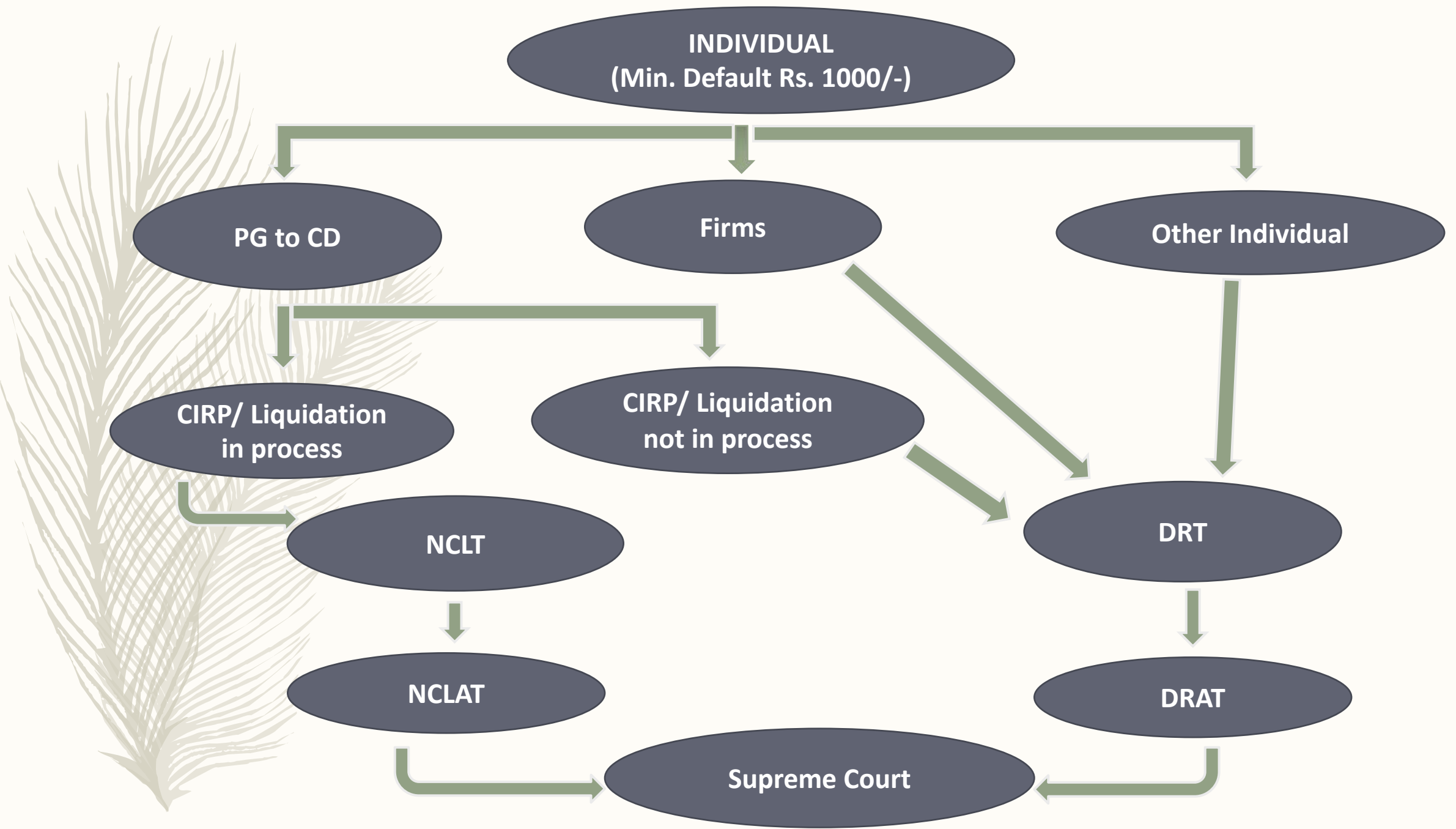


Section 60(2) of the Code w.e.f. 06 June 2018 (as amended by Insolvency and Bankruptcy Code, 2016 (Second Amendment) Act, 2018) states that where a CIRP or liquidation against a CD is in process before a particular bench of the NCLT, the application for CIRP or liquidation of a personal or corporate guarantor of such CD must also be filed before the same bench. Similarly, under ***Section 60(3) of the Code w.e.f. 06 June 2018 (as amended by Insolvency and Bankruptcy Code, 2016 (Second Amendment) Act, 2018)***, if the CIRP or liquidation of a PG or corporate guarantor is pending before a Court or Tribunal, the proceeding is to be transferred to the NCLT bench hearing the CIRP or liquidation of the principal borrower.

INSOLVENCY RESOLUTION PROCESS

ПРОЦЕСС





INDIVIDUAL
(Min. Default Rs. 1000/-)

PG to CD

Firms

Other Individual

**CIRP/ Liquidation
in process**

**CIRP/ Liquidation
not in process**

NCLT

DRT

NCLAT

DRAT

Supreme Court

Section 60

Adjudication Authority for Corporate Persons

- (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located.
- (2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal.
- (3) An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

Continue...

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of -

- (a) any application or proceeding by or against the corporate debtor or corporate person;
- (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
- (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate 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.

PERSONAL GUARANTOR

- Section 5 (22)
- “personal guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor

- Rule 3 (f) of IBBI (Application to AA) Rules
- Guarantor means a debtor who is personal guarantor to a CD and in respect of whom guarantee has been invoked by the creditor and remain unpaid in full or part.

SC upholds Insolvency Resolution Process for Personal Guarantors

Lalit Kumar Jain Vs Union of India

- Surety and Principal liability are co-extensive.
- Variance of contract which a principal borrower may secure by way of operation of law for instance in terms of a resolution plan, is "statutorily" presumed to be consented by the guarantors in question and does not result in discharge of surety under Section 133 of Indian Contract Act
- Approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee.

Insolvency Resolution Process for Personal Guarantors

Application for Insolvency Resolution Process for personal guarantor:-

- 1) By guarantor either personally or through RP (**Section 94**) in Form A with payment of Rs.2,000/- with service of the application to be made forth with to CD and all FC's of CD for whom guarantor is a personal guarantor. Additionally Rule 9 of Insolvency Process Rules, 2019 provides that the applicant shall provide a copy of the application filed to the resolution professional within three days of his appointment under sub section (5) of section 97, and to the Board for its record. Circular dated 02.02.2021 issued by IBBI requires for providing a copy of the application online to the Board.
- 2) Such application can only be submitted in respect of debts which are not excluded debts

Damages

Maintenance

Student Loan

Any other as
may be
prescribed

**Excluded Debt
Section 79(15)**

Fine imposed by
order



DEBTORS NOT
ABLE TO FILE
APPLICATION
Section 94 (4)

If debtor is an
undischarged bankrupt

undergoing a fresh start
process

undergoing an insolvency
resolution process

undergoing a bankruptcy
process

Insolvency Resolution Process for Personal Guarantors

Application for Insolvency Resolution Process for personal guarantor:-

- 1) By Creditor either by himself or jointly with other creditors or through RP (*Section 95*).
 - A demand notice to be **served** by the creditor upon the personal guarantor in Form B (Rule 7 of Insolvency Process Rules);
 - Within 14 (fourteen) days from the date of receipt of the demand notice, the personal guarantor shall pay the debt amount to the creditor, failing which the creditor reserves the right to file an insolvency application before the NCLT (Section 95 (4)(b));
 - Application to be filed in Form C with payment of fees of Rs. 2,000/-. Service of the application to be made forth with to CD and guarantors of CD for whom guarantor is a personal guarantor.

Insolvency Resolution Process for Personal Guarantors

Section 97 Appointment of RP:

In the event, application under Section 94 or 95 has been filed through resolution professional, AA to direct IBBI within 7 days from the date of application to confirm that no disciplinary action is pending against the resolution professional. (*Section 97(1)*). Board to communicate to AA within 7 days of receiving such direction from AA, either accepting or rejecting the name of the resolution professional (*Section 97(2) r.w. Rule 8(1) of Insolvency Process Rules, 2019*);

In case of rejection of name of the resolution professional by IBBI, it may share the database of the insolvency professionals, including information about disciplinary proceedings against them, with the Adjudicating Authority. (*Rule 8(1) of Insolvency Process Rules, 2019*);

In the event, application under Section 94 or 95 has been filed by debtor/ guarantor or creditor as the case may be, AA to direct IBBI within 7 days from the date of application to nominate a resolution professional. (*Section 97(3)*). Board to nominate within 10 days of receiving direction from AA (*Section 97(4)) r.w. Rule 8(2) of Insolvency Process Rules, 2019*);

There shall be specific order of AA to the effect of appointing a resolution professional.

Insolvency Resolution Process for Personal Guarantors

Case Law: Mr. Ravi Ajit Kulkarni versus State Bank of India (Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 316 of 2021 vide Order dated 12 August 2021):

- No hearing is required to be given to the debtor/ guarantor/respondent when an application under Section 95 is filed. The AA can straight proceed to appoint RP. Only limited notice to appear may be given to the Personal Guarantors so that when RP is appointed, he may provide material to RP for preparation of his Report;
- Once the application is “filed” (as per Section 95, 96 read with Rule 10) the AA has to act on it, and following principles of natural justice, give limited notice to Personal Guarantor to appear referring to the Interim Moratorium that has commenced as per terms of Section 96. Then the next stage is of appointing RP as per Section 97 read with Rules and Regulations. Third stage will be RP acting in terms of Section 99 and submitting Report. At the fourth stage comes in adjudication of the application under Section 100 which ought to be decided by giving hearing to parties keeping in view Application, evidence collected and report under Section 99;
- Stage for considering default would arrive when the matter is taken up under Section 100 of IBC.

```
graph TD; A[MORATORIUM] --> B[INTERIM (Section 96)]; A --> C[FINAL (Section 101)]; B --> D[From date of filing of application till its admission]; C --> E[From admission of Application till 180 days or approval of Repayment Plan, whichever is earlier];
```

MORATORIUM

INTERIM (Section 96)

From date of filing of application
till its admission

FINAL
(Section 101)

From admission of Application till
180 days or approval of Repayment
Plan, whichever is earlier



INTERIM MORATORIUM (Section 96)

During the interim-moratorium period –

- (i) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and**
- (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.**



Final Moratorium (Section 101)

During the moratorium period-

- (a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;**
- (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and**
- (c) the debtor shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficial interest therein;**



P Mohanraj and others v M/s Shah Brothers Ispat Ltd
(Order dated 01.03.2021 passed in Civil appeal No. 10355 of 2018)

Supreme Court held that the benefit of Section 14 shall apply to Corporate Debtor and not to the “natural persons”

In a way, no benefit to extend on directors/signatory

Vicarious liability

Strict Liability

Sanjeevani Booti = Moratorium

Moratorium u/s 14 Vs 101

Submission of Report by RP and admission or rejection of application (Section 99 and 100)

The resolution professional within 10 days of his appointment shall examine the application submitted under section 94 or section 95 as the case may be and to submit a report to the Adjudicating Authority recommending for approval or rejection of the application.

The objective of the report is to reduce the time taken by the Adjudicating Authority in examination of the application. No format is prescribed under the code in view of the reason that a set format will prove to be restrictive for different scenarios that may come up in individual insolvency cases. Resolution professional in his report may furnish details with regard to the following on the eligibility of the debtor in case if the application is submitted by the debtor under section 94.

Case Law: Mr. Anil Syal (NCLT Delhi Bench vide Order dated 28 October 2020) – grounds for admission of application, initiation of moratorium u/s 101 and process to be followed by the RP.



SECTION 104. PREPARATION OF LIST OF CREDITORS

RP prepare list on the basis of

the information disclosed in the application by the debtor

Claims Received by RP

The resolution professional shall prepare the list within 30 from Notice

Provide copy of list of creditors to creditors and AA



Option for Secured creditors

If relinquish its right on security
then have voting rights in meeting

If not relinquish its right on security
then have no voting rights in
meeting

If not relinquish its right then right
to vote exercised by the secured
creditor is only in respect of the
unsecured part of the debt



Meetings of creditors

RP call meeting if
requires (Section
107)

Quorum

Creditors representing
33% of voting share

Voting Share

Proportion to the
debt

Voting% required

75% for approval of
repayment plan and
50% for other
matters



**Withdrawal of
Application**

**Rule 11 of of
Insolvency
Process
Regulations**

Before admission

On the request of
applicant

After admission

On request of applicant
and 90% of creditors
approval for withdrawal

REPAYMENT PLAN

Section 105 and Reg. 17

Section 105 (3)

(3)The repayment plan shall include the following, namely: -

- (a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
- (b) provision for payment of fee to the resolution professional;
- (c) such other matters as may be specified.

Continue...

Reg.17. Contents of repayment plan.

(1) The repayment plan shall provide the following -

- (a) the term of the repayment plan and its implementation schedule, including the amounts to be repaid and dates of repayment to creditors;
- (b) the source of funds that will be used to pay resolution process costs and that such payment shall be made in priority over any creditor;
- (c) a minimum budget for the duration of the repayment plan, to cover the reasonable expenses of the guarantor and members of his immediate family to the extent they are dependent on him, provided that at least ten percent of the realisable income of the guarantor shall be utilised for repayment of debts;
- (d) financing required for implementation of the repayment plan;
- (e) if the guarantor has any business, the manner in which it is proposed to be conducted during the course of the repayment plan, and the role of the resolution professional;
- (f) the manner in which funds held for the purposes of the repayment plan, invested or otherwise dealt with, pending repayment to creditors;

Continue...

(g) the functions which are to be undertaken by the resolution professional, including supervision and implementation of the repayment plan;

(h) variation of onerous terms of a contract or transaction involving the guarantor;

(i) the details of excluded assets and excluded debts of the guarantor; and

(j) terms and conditions for the discharge of the guarantor.

(2) The repayment plan may provide for the following-

(a) transfer or sale of all or part of the assets of the guarantor along with the mode and manner of such sale;

(b) administration or disposal of any funds of the guarantor;

(c) satisfaction or modification of any security interest;

(d) reduction in the amount payable to creditors;

(e) curing or waiving of any breach of a debt due from the guarantor;

(f) modification in the terms of repayment of any debt due from the guarantor;

(g) part of the income of the guarantor to be used for the repayment of the debt, and the manner of calculating the income of the guarantor;

(h) the manner in which funds held for the purpose of repayment to creditors, and not so repaid at the end of the repayment plan, are to be dealt with; and

(i) such other matters as may be required by the creditors.



any unencumbered personal ornaments
of such value, as may be prescribed

any unencumbered life
insurance policy or pension
plan taken in the name of
debtor or his immediate
family;

unencumbered furniture, household
equipment and provisions as are necessary
for satisfying the basic domestic needs of the
bankrupt and his immediate family

unencumbered tools, books,
vehicles and other equipment as are
necessary for his personal use or for
the purpose of his employment,
business or vocation,

Excluded Assets Section 79(14)

an unencumbered single
dwelling unit owned by the
debtor of such value as may
be prescribed



Person
prohibited
to
purchase
assets
(Reg. 18)

the resolution professional or any partner or director of the insolvency professional entity of which the resolution professional is a partner or director

any professional appointed by the resolution professional for the resolution process

any creditor

any company where the guarantor or a creditor is a promoter or director;

any associate of the guarantor, creditor or resolution professional.

Report of RP on repayment plan (Section 106)

The report shall include that-


- (a) the repayment plan is in compliance with the provisions of any law for the time being in force;
- (b) the repayment plan has a reasonable prospect of being approved and implemented; and
- (c) there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:

Provided that where the resolution professional recommends that a meeting of the creditors is not required to be summoned, reasons for the same shall be provided.

Report of meeting of creditors on repayment plan (Section 112)

The report under sub-section (1) shall contain -

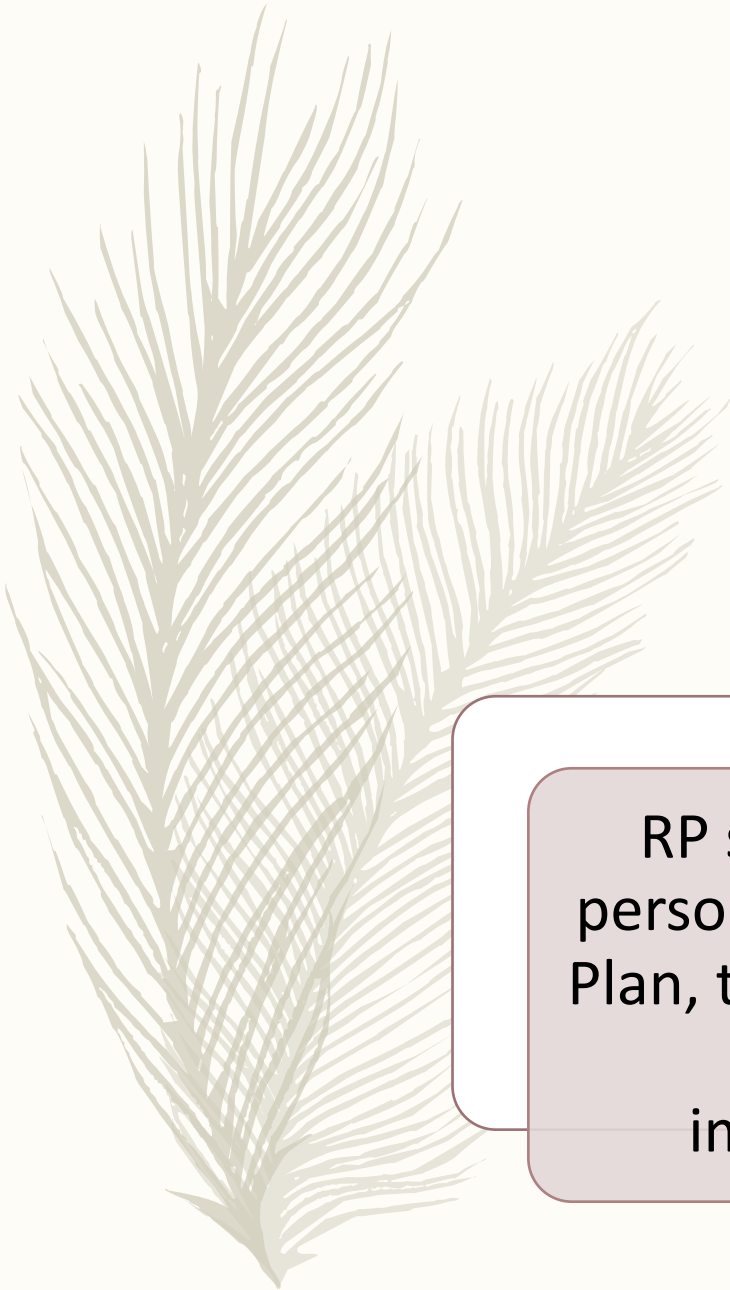
- (a) whether the repayment plan was approved or rejected and if approved, the list the modifications, if any;
- (b) the resolutions which were proposed at the meeting and the decision on such resolutions;
- (c) list of the creditors who were present or represented at the meeting, and the voting records of each creditor for all meetings of the creditors; and
- (d) such other information as the resolution professional thinks appropriate to make known to the Adjudicating Authority.



Approval of plan by Creditors
(Section 111)

RP to submit report to AA within
120 days

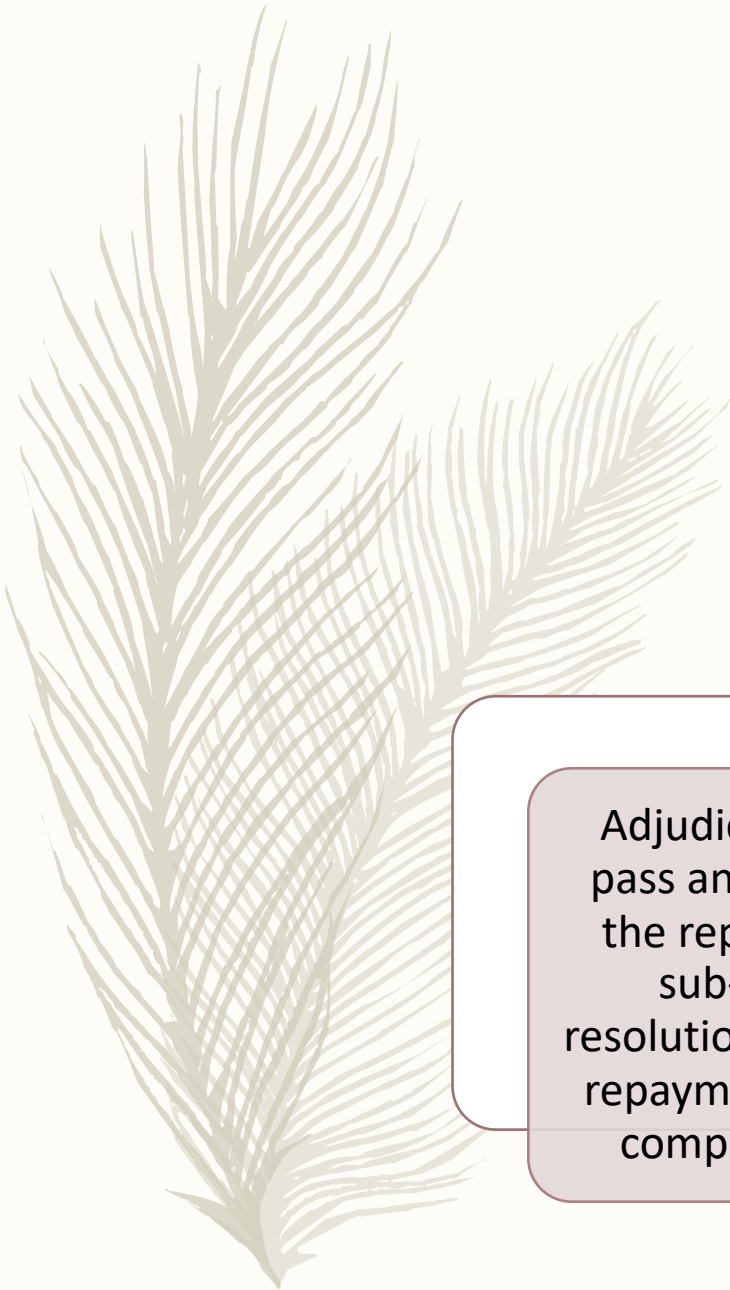
AA approve or reject the
repayment plan on the basis of
report of RP



Section 117
Full completion of
Repayment Plan

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

Report of RP
summarizing payment
made



Section 118 Premature Termination of Plan

Adjudicating Authority shall pass an order on the basis of the report submitted under sub-section (2) by the resolution professional that the repayment plan has not been completely implemented.

The debtor or the creditor, whose claims under repayment plan have not been fully satisfied, shall be entitled to apply for a bankruptcy order under Chapter IV.

DISCHARGE ORDER

(Section 119)

(1) On the basis of the repayment plan, the resolution professional shall apply to the Adjudicating Authority for a discharge order in relation to the debts mentioned in the repayment plan and the Adjudicating Authority may pass such discharge order.

(2) The repayment plan may provide for -

(a) early discharge; or

(b) discharge on complete implementation of the repayment plan

(3) The discharge order shall be forwarded to the Board, for the purpose of recording entries in the register referred to in section 196.

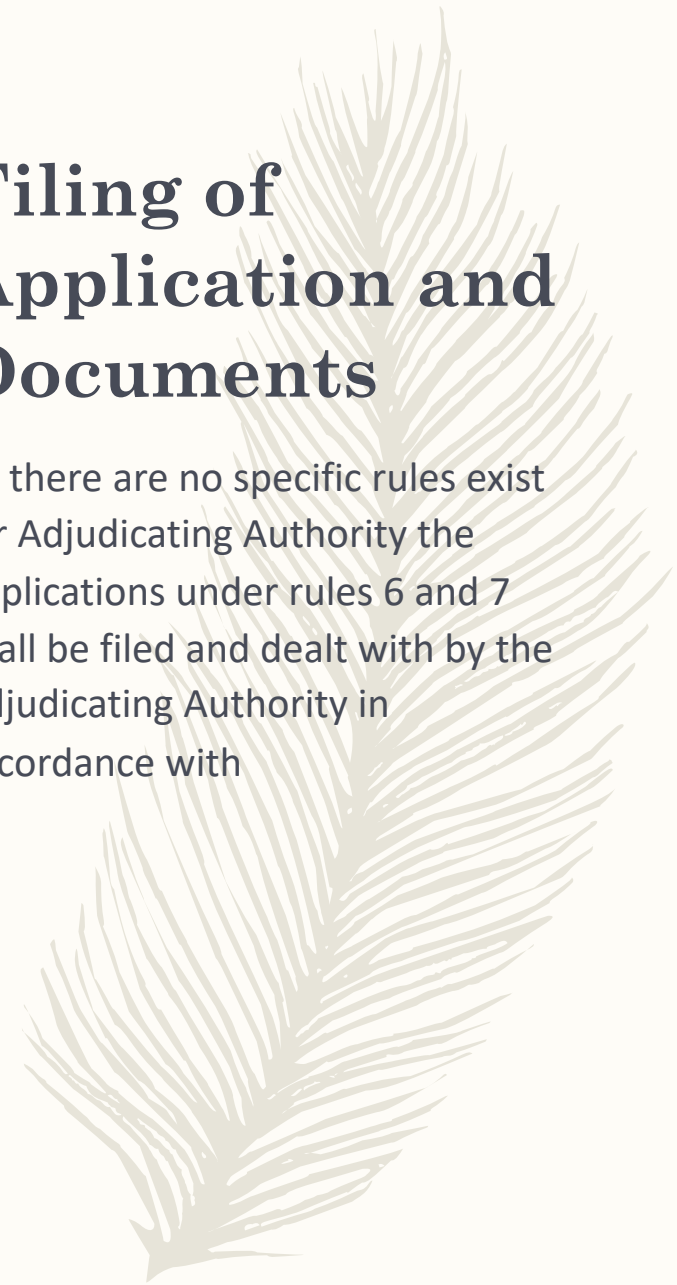
(4) The discharge order under sub-section (3) shall not discharge any other person from any liability in respect of his debt.

(A) Rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under section 469 of the Companies Act, 2013 (18 of 2013); or

(B) Rule 3 of the Debt Recovery Tribunal (Procedure) Rules, 1993 made under section 36 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) and regulations 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 made under section 22 of the Recovery of Debts and Bankruptcy Act, 1993

Filing of Application and Documents

As there are no specific rules exist for Adjudicating Authority the applications under rules 6 and 7 shall be filed and dealt with by the Adjudicating Authority in accordance with

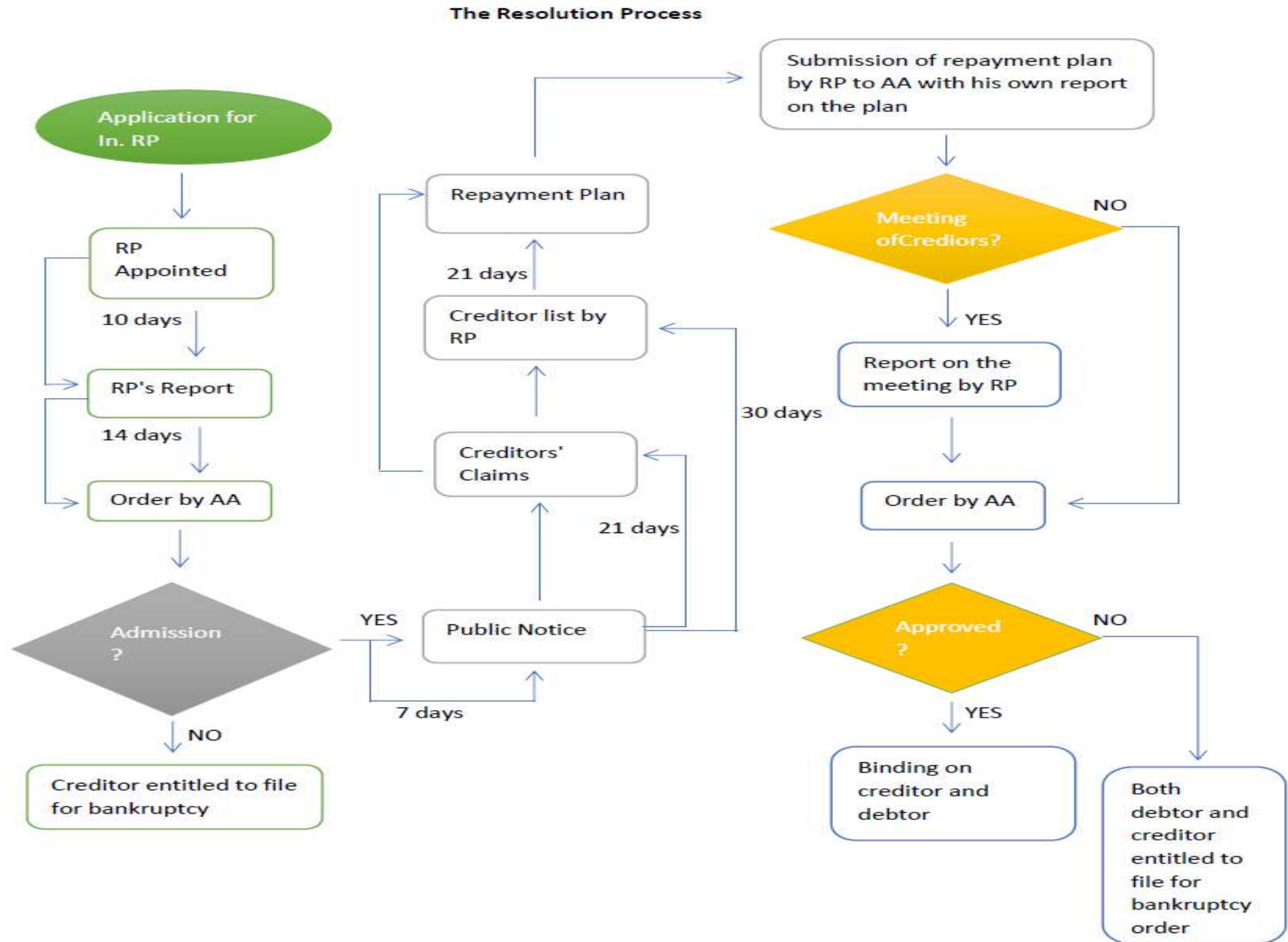


Withdrawal of Application

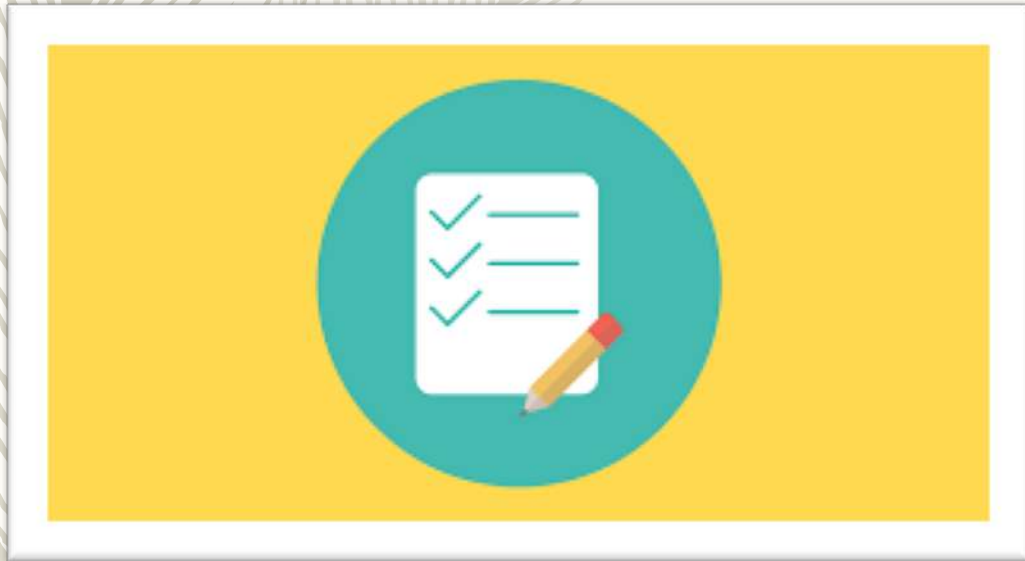


- (1) The Adjudicating Authority may permit withdrawal of the application submitted under rule 6 or rule 7, as the case may be,-
- (a) before its admission, on a request made by the applicant;
 - (b) after its admission, on the request made by the applicant, if ninety per cent. of the creditors agree to such withdrawal.
- (2) An application for withdrawal under clause (b) of sub-rule (1) shall be in Form D.

INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS



Various Forms Under Rules



FORM A

[See rule 6(1)]

APPLICATION BY GUARANTOR TO INITIATE INSOLVENCY RESOLUTION PROCESS**[Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]**

[Date]

To
The Adjudicating Authority
[Address]

From
[Name and address of the guarantor]

In the matter of [name of the guarantor]

Subject: Application to initiate insolvency resolution process in respect of [name of the guarantor].

Madam/Sir,

I/ We hereby submit this application to initiate an insolvency resolution process in respect of [name of guarantor]. The details for the purpose of this application are set out below-

Part-I

PARTICULARS OF THE GUARANTOR				
1.	Title and full name			
2.	Date of birth and e-mail address			
3.	Any other name, if any, by which the guarantor is or has been known			
4.	Address: (i) Present (ii) Permanent (iii) Business			
5.	Occupation/ Business/ Profession			
6.	Annual income in the preceding financial year (in Rs.)			
7.	List of associates of the guarantor, including relatives, who are its creditors	Name	Age	Address
8.	Bank account details (Joint and Several)	Account number	IFSC code	Name of Bank and Branch address
9.	Identification number	Aadhaar number	Passport number	PAN GSTIN
10.	Contact No.(s)	Home	Mobile	Business
11.	List of assets of guarantor and immediate family as on the application date. Note: This will include all assets of guarantor,	Immovable	Description	Estimated value Excluded asset or not



	irrespective of them being excluded assets. Please mention which assets may be excluded assets.	Movable	Description	Estimated value	Excluded asset or not	
		Vehicles				
		Shares in listed companies				
		Shares in other companies				
		Life insurance policy				
		Jewellery				
		Pension policy				
		Investment in mutual funds				
		Investment in other funds				
		Investment in partnerships and other business concerns				
Any other movable property						
12.	Number of directorships held in the last three preceding years (along with name of company in which directorship is held) and CIN of such companies					
13.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify if any other)					
14.	Details regarding guarantee(s) given by guarantor (in addition to information in serial numbers 1-13 of this part)-					
	Name of corporate debtor for which guarantee is given					
	Any current or past position held in the corporate debtor					
	Identification number of corporate debtor					
	Whether corporate debtor is an associate					
	Any securities held in corporate debtor for whom guarantee is given					
	Whether the guarantee has been invoked and proof thereof.					
15.	Where the guarantor is not a resident in India, the name and address of the person authorised to accept the service of process on guarantor's behalf, along with the authority					



Part – II

[Please complete this part if you have been self-employed, or a partner in a firm. If not, go to part III]

BUSINESS PARTICULARS OF GUARANTOR	
1.	Name of business and form of business
2.	Details of registration, if any
3.	Description of business
4.	Business address
5.	Annual income of guarantor
6.	If business organisation is a firm, mention the details below.
(i)	Date of joining firm
(ii)	Capital subscription as per latest balance sheet
(iii)	Profit sharing as per latest balance sheet
(iv)	Name, address and authority of person submitting application on behalf of the firm

Part - III

PARTICULARS OF DEBT [CREDITOR WISE, AS APPLICABLE]			
1.	Name(s) of creditor(s)		
2.	Address	Present	Permanent Business
3.	Total debt (including any interest or penalties)		
4.	Amount of debt in default		
5.	Interest or penalties, if any		
6.	Date when the debt was due		
7.	Date when the default occurred		
8.	Nature of the debt		
9.	Name, address and other particulars of corporate debtor		
10.	Secured debt including particulars of security held, the date of its creation, estimated value of security as per the creditor and details of security		
11.	Unsecured debt		
12.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers		
13.	Record of default with the information utility, if any		
14.	List of documents attached to this application in order to prove the existence of debt and the amount in default		

15.	Statement by guarantor in respect of excluded debts	I [guarantor] hereby state that the debt(s) for which the insolvency resolution process application is filed does not include any- (i) liability to pay fine imposed by a court or tribunal; (ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; (iii) liability to pay maintenance to any person under any law for the time being in force; (iv) liability in relation to a student loan; (v) any other debt prescribed under section 79(15)(e) of the Code.
-----	---	--

Part IV

PARTICULARS OF & DECLARATION BY RESOLUTION PROFESSIONAL (IF APPLICATION FILED THROUGH RESOLUTION PROFESSIONAL)			
1.	Title and full name		
2.	Address	Present	Permanent
			Business
3.	E-mail address(es)		
4.	Contact number	Home	Mobile
			Business

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

Yours sincerely,

DECLARATION

Signature of guarantor / person authorised to act on behalf of the guarantor [Please enclose the authorisation document if this application is being submitted on behalf of the guarantor]
Name in block letters
Address of person signing

I, [Name of applicant], currently residing at [insert address], hereby declare and state as follows:--

1. In respect of this application for insolvency resolution process, I have relied on the documents specified below: [Please list the documents relied on].

2. The contents of the said application along with the said documents are true, valid and genuine to the best of my knowledge, information and belief and nothing material facts have been concealed therefrom.

Date:

Place:

(Signature of the applicant)

5.	Declaration by resolution professional	<p>I, [<i>name of insolvency professional</i>], an insolvency professional enrolled with [<i>name of insolvency professional agency</i>] having registration number [<i>registration number</i>] have been proposed as the resolution professional by [<i>name of applicant guarantor</i>] in connection with the proposed insolvency resolution process of [<i>name of the guarantor</i>].</p> <p>I hereby:</p> <p>(i) agree to accept appointment as the resolution professional if an order of appointment is passed by the Adjudicating Authority;</p> <p>(ii) state that the registration number allotted to me by the Board is [<i>insert registration number</i>] and that I am currently qualified to practice as an insolvency professional;</p> <p>(iii) disclose that I am currently serving as an insolvency professional / resolution professional / liquidator/ bankruptcy trustee in [<i>insert number and details of the proceedings</i>];</p> <p>(iv) certify that there are no disciplinary proceedings pending against me with the Board or [<i>name of the insolvency professional agency he is a member of</i>];</p> <p>(v) affirm that I am eligible to be appointed as a resolution professional in respect of the guarantor in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019;</p> <p>(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 [<i>insert disclosures, if any</i>].</p> <p>(Signature of the insolvency professional) (Name in block letters)</p>
----	--	---

VERIFICATION

I, [*name of applicant*], do hereby verify that the contents of this application are true and correct to my knowledge and belief. Nothing is false and no material has been concealed therefrom.

Verified at _____ on this _____ day of _____ 201__

(Signature of the Applicant)

ATTACHMENTS: List of documents to be appended to the application:

1. All documents mentioned in serial number 14 of Part III of this form.
2. Copy of the income tax returns with detailed computation of the income of the guarantor, or the firm, as the case may be, for the previous three years.
3. Copy of the personal guarantee contract.
4. Copies of entries in a bankers' book in accordance with the Bankers Books Evidence Act, 1891 (18

of 1891)

5. The latest and complete copy of the financial contract reflecting all amendments and waivers to date.
6. Copies of relevant ownership and title documents for all assets.
7. Copy of the authorisation, wherever required under this form.
8. Proof that the application fee has been paid.
9. Documentary evidence of all information sought in each entry for each Part of the form.
10. A statement of affairs of the guarantor made up to a date not earlier than seven days from the date of the application including the following information and supporting documents, namely:-
 - (i) guarantor's assets (inclusive of assets which may be excluded assets) and liabilities for the previous three years;
 - (ii) secured and unsecured debts (inclusive of excluded debts mentioned in serial number 15 of Part III of the form) with names of the creditors, and all requisite details for the previous three years;
 - (iii) particulars of debt owed by guarantor to associates of the corporate debtor for the previous three years;
 - (iv) guarantees given in relation to any of the debts of the corporate debtor, and if any of the guarantors is an associate of the corporate debtor;
 - (v) financial statements with all annexures and schedules for the business owned by the guarantor, or of the firm in which the guarantor is a partner, as the case may be, for the previous three years, if applicable;
 - (vi) wealth tax statements, if any, filed by the guarantor, for the previous five years;
 - (vii) income statement of the guarantor, for the previous three years;
 - (viii) payment of indirect taxes including GST for the previous three years.

FORM B

[See rule 7(1)]

FORM OF DEMAND NOTICE

[Under rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019]

[Date]

To

[Name and address of the guarantor]

From

[Name and address of the creditor]

Subject: Demand notice in respect of unpaid debt in default due from [corporate debtor] under the Code.

Madam/Sir,

1. This letter is a demand notice of unpaid debt in default due from [name of corporate debtor].
2. Please find particulars of the unpaid debt in default below:

PARTICULARS OF DEBT	
1. Total outstanding debt (including any interest or penalties)	

2.	Amount of debt in default	
3.	Date when the debt was due	
4.	Date when the default occurred	
5.	Nature of the debt	
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable), and details of securities	
7.	Unsecured debt (as applicable)	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	
9.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	
10.	Record of default with the information utility, if any (attach a copy)	
11.	Details of succession certificate, or probate of a WILL, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	
12.	Provision of law, contract or other document under which debt has become due (attach a copy)	
13.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred	
14.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	

3. If you believe that the debt has been repaid before the receipt of this notice, please demonstrate such repayment by sending to us, within fourteen days of receipt of this notice, the following:--
- an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the guarantor; or
 - evidence of encashment of cheque for the unpaid amount issued by the guarantor; or
 - an attested copy of any record that [*name of the creditor*] has received the payment.
4. The undersigned request you to unconditionally pay the unpaid debt in default in full within fourteen days from the receipt of this letter failing which insolvency resolution process, under the Code, shall be initiated against you

Yours sincerely,

Signature of creditor/person authorised to act on behalf of the creditor [*Please enclose the authorisation document if this notice is being issued on behalf of the creditor*]

Name in block letters

Address of person signing

Instructions

- Please serve a copy of this notice on the guarantor, fourteen days in advance of filing an application under section 95 of the Code.

FORM C
[See rule 7(2)]

APPLICATION BY CREDITOR TO INITIATE INSOLVENCY RESOLUTION PROCESS
[Under rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]
[Date]

To
The Adjudicating Authority
[Address]

From
[Name and address of the creditor]

In the matter of [name of the guarantor]

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

Madam/Sir,
[Name of the creditor], hereby submits this application to initiate an insolvency resolution process in the case of [name of guarantor].

The details for the purpose of this application are set out below:

Part - I

PARTICULARS OF APPLICANT			
1.	Title and full name		
2.	Date of birth and e-mail address		
3.	Contact number(s)	Home	Mobile Business
4.	Identification number	Aadhaar number	CIN PAN GSTIN
5.	Address	Present	Permanent Business
6.	Bank Account details (Joint and Several)	Account number	IFSC Code Name of the Bank and Branch Address

Part - II

PARTICULARS OF THE GUARANTOR	
1.	Title and full name
2.	Date of birth and e-mail address (to the extent known)

3.	Any other name by which the guarantor is or has been known (as applicable) (to the extent known)				
4.	Address	Present	Permanent	Business	
5.	Occupation/ Business/ Profession				
6.	Annual income (to the extent known)				
7.	List of associates of the guarantor, including relatives, who may be creditors (to the extent known)	Name	Age	Address	
8.	Bank account details (Joint and Several)	Account number	IFSC Code	Name of the bank and Branch address	
9.	Identification number	Aadhaar number	Passport number	PAN	GSTIN
10.	Contact number(s)	Home	Mobile	Business	
11.	List of assets of guarantor as on the application date (to the extent known) Note: this will include all assets of guarantor, irrespective of them being excluded assets.	Immovable	Description	Estimated value	Excluded asset or not
		Movable	Description	Estimated value	Excluded asset or not
		Vehicles			
		Shares in listed companies			
		Shares in other companies			
		Life insurance policy			
		Jewellery			
		Pension policy			
		Investment in mutual funds			
		Investment in other funds			



		Investment in partnerships and other business concerns			
		Any other movable property			
12.	Number of directorships held in the preceding three years (along with name of company in which directorship is held) and CIN of such companies				
13.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other) (to the extent known)				
14.	Details regarding personal guarantor (in addition to information in serial numbers 1-13 of this part) -				
	Name of corporate debtor for which guarantee is given				
	Any current or past position held in the corporate debtor (to the extent known)				
	Identification number of the corporate debtor				
	Whether corporate debtor is an associate (to the extent known)				
	Any securities held in corporate debtor for whom guarantee is given				
15.	Where the guarantor is not resident in India, the name and address of person resident in India authorised to accept the service of process on guarantor's behalf				

Part-III
PARTICULARS OF DEBT

1.	Total debt (including any interest or penalties)	
2.	Amount in default	
3.	Date on which debt was due	
4.	Date on which default occurred	
5.	Nature of the debt	
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	
7.	Unsecured debt (as applicable)	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	

9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	
10.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	
11.	Record of default with the information utility, if any (attach a copy)	
12.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	
13.	Provision of law, contract or other document under which debt has become due (attach a copy)	
14.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred (attach a copy)	
15.	List of documents attached to this application in order to prove the existence of debt and the amount in default	
16.	Statement by creditor in respect of excluded debts	I [<i>creditor</i>] hereby state that the debt(s) for which the insolvency resolution process application is filed does not include any- <ul style="list-style-type: none"> (i) liability to pay fine imposed by a court or tribunal; (ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; (iii) liability to pay maintenance to any person under any law for the time being in force; (iv) liability in relation to a student loan; (v) any other debt prescribed under section 79(15)(e) of the Code.
17.	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the Code	<input type="checkbox"/> I agree to forfeit my right to enforce my security [<i>insert description</i>] during the period of the repayment plan. <input type="checkbox"/> I do not agree to forfeit my right to enforce my security [<i>insert description</i>] during the period of the repayment plan.

Part-IV

PARTICULARS OF & DECLARATION BY INSOLVENCY PROFESSIONAL (IF APPLICATION FILED THROUGH INSOLVENCY PROFESSIONAL)			
1.	Title and full name		
2.	Address	Present	Permanent
			Business
3.	E-mail address(es)		
4.	Contact number	Home	Mobile
			Business
5.	Declaration by insolvency professional	<p>I, [<i>name of insolvency professional</i>], an insolvency professional enrolled with [<i>name of insolvency professional agency</i>] having registration number [<i>registration number.</i>] have been proposed as the resolution professional by [<i>name of applicant guarantor</i>] in connection with the proposed insolvency resolution process of [<i>name of the guarantor</i>]. I hereby:</p> <p>(i) agree to accept appointment as the resolution professional if an order of appointment is passed by the Adjudicating Authority;</p> <p>(ii) state that the registration number allotted to me by the Board is [<i>insert registration number</i>] and that I am currently qualified to practice as an insolvency professional;</p> <p>(iii) disclose that I am currently serving as an interim resolution professional / resolution professional / authorized representative / liquidator/ bankruptcy trustee in [<i>insert number and details of the proceedings</i>];</p> <p>(iv) certify that there are no disciplinary proceedings pending against me with the Board or [<i>name of the insolvency professional agency he is a member of</i>];</p> <p>(v) affirm that I am eligible to be appointed as a resolution professional in respect of the guarantor in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019;</p> <p>(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 [<i>insert disclosures, if any</i>].</p>	

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

Yours sincerely,

Signature of creditor/ person authorised to act on behalf of the creditor [<i>Please enclose the authorisation document if this application is being submitted on behalf of the creditor</i>]
Name in block letters
Address of person signing

List of documents to be attached to the application:

1. All documents mentioned in serial number. 15 of Part III of this form.
2. Copy of the demand notice served on the guarantor in Form B.
3. Copy of the income tax returns with detailed computation of the income of the guarantor, or the firm, as the case may be, for the previous three years, if available.
4. Copy of the personal guarantee contract.

5. Copy of the authorisation, wherever required under this form.
6. Proof that the application fee has been paid.
7. Documents evidencing the debt and the default in relation to the debt, as may have been provided by the guarantor at any point in time, if available.
8. Documents evidencing the assets, liabilities, income and any other relevant information as may have been provided by the guarantor at any point in time, if available.
9. Documentary evidence of all information sought in each entry for each Part of the form.

Form D

[See rule 11(2)]

APPLICATION FOR WITHDRAWAL OF INSOLVENCY RESOLUTION PROCESS

[Under rule 11 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019]

[Date]

To
The Adjudicating Authority
[Address]

From
[Name and address of applicant]
In the matter of [name of guarantor]

Subject: Withdrawal of application for insolvency resolution process of [name of guarantor] admitted on

1. [Name of applicant], had filed an application bearing [particulars of application, i.e. diary number/ case number] on [date of filing] before the Adjudicating Authority under [Section 94/ Section 95] of the Code. The said application was admitted by the Adjudicating Authority on [date] bearing [case number].
2. I hereby withdraw the application bearing [particulars of application i.e. diary number/ case number] filed by [name of applicant] before the Adjudicating Authority under [Section 94/ Section 95] of the Code.
3. The creditor(s) have approved the request for withdrawal of the application under rule 11.
4. I have been authorised by the applicant to file this application of withdrawal with the Adjudicating Authority. (strike out if not applicable)
5. The required bank guarantee towards estimated cost incurred in the process by the resolution professional is attached.

(Signature of the applicant or person authorised by the applicant)

Date:
Place:

[File No 30/21/2018-Insolvency Section]
Gyaneshwar Kumar Singh
Joint Secretary to Government of India

Khushboo Shah Rajani



Khushboo Shah Rajani

LL.B; A.C.A

Head – Corporate Laws

Phone: +91 9892871451

Email:

khushboo@akradvisors.com

Khushboo has over 12 years experience in the fields of Tax Litigation and Corporate Law. She was a part of Firm managing one of the biggest transfer pricing litigation in the case of a Telecom Major, Vodafone.

Since January 2017, Khushboo has also been providing litigation support under the Insolvency and Bankruptcy Code before the NCLT. She has also been advising Resolution Professionals from Big 4s and others as “Process Advisor” during their tenure as RP with regard to corporate laws and complex issues and sought directions from NCLT.

She has also represented leading transnational companies across a range of industries such as Telecom, Real Estate, Manufacturing and more, before the Appellate Authorities i.e. the Income Tax Tribunals and High Courts on complex direct tax matters.

She is actively involved in insolvency resolution, arbitration, tax planning and other strategic projects. Khushboo and Ayush have co-authored a book on “**Insolvency and Bankruptcy in India – Law & Practice**” published by Bloomsbury in February 2020, 1st Edition, while the 2nd Edition is also published in March 2021. She has also argued more than 550 matters since 2017 on behalf of RP and FC.

She is an associate member of the Institute of Chartered Accountants of India and also holds a Bachelor’s degree in Law as well as a Bachelor’s degree in Commerce. She is a speaker at Indian Institute Insolvency Professionals of ICAI (“IIPI”)

Ayush J. Rajani



Ayush J. Rajani

F.C.A

**Head – Insolvency and
Bankruptcy Services and
International Tax**

Phone: +91 98193 33810

Email:
ayush@akradvisors.com

Ayush has over 14 years of professional experience which expands to Insolvency and Bankruptcy Code, 2016 [since 2017], Transfer Pricing and International Tax. He was previously associated with Deloitte for a period of over 7 years in his initial days before setting up his own practice.

He is a Fellow member of the Institute of Chartered Accountants of India.

Ayush has been providing services to financial lenders as well as corporates under the Insolvency and Bankruptcy Code. He has been advising and Resolution Professionals from Big 4s before the Hon'ble NCLT and Hon'ble NCLAT and others as “Process Advisors” throughout the corporate insolvency and resolution process and represented before NCLT and NCLAT with regards to complex issues including Resolution Plans and forensic applications.

Khushboo and Ayush have co-authored a book on **“Insolvency and Bankruptcy in India – Law & Practice” 1st Edition published by Bloomsbury in February 2020, while the 2nd Edition is also published in March 2021.**

He has also represented RPs in leading and contentious matters involving exposures of Rs. 2,000 to Rs. 11,000 crores and more, before Hon'ble NCLT and NCLAT and assisted RPs and Liquidators in resolving various issues. He has argued more than 500 matters so far before Hon'ble NCLT (pan India) and Hon'ble NCLAT representing RPs and FCs

He is a regular speaker at Indian Institute Insolvency Professionals of ICAI and has also authored and co-authored articles on Transfer Pricing published in International Taxation, Financial Chronicle, Taxsutra and other portals.

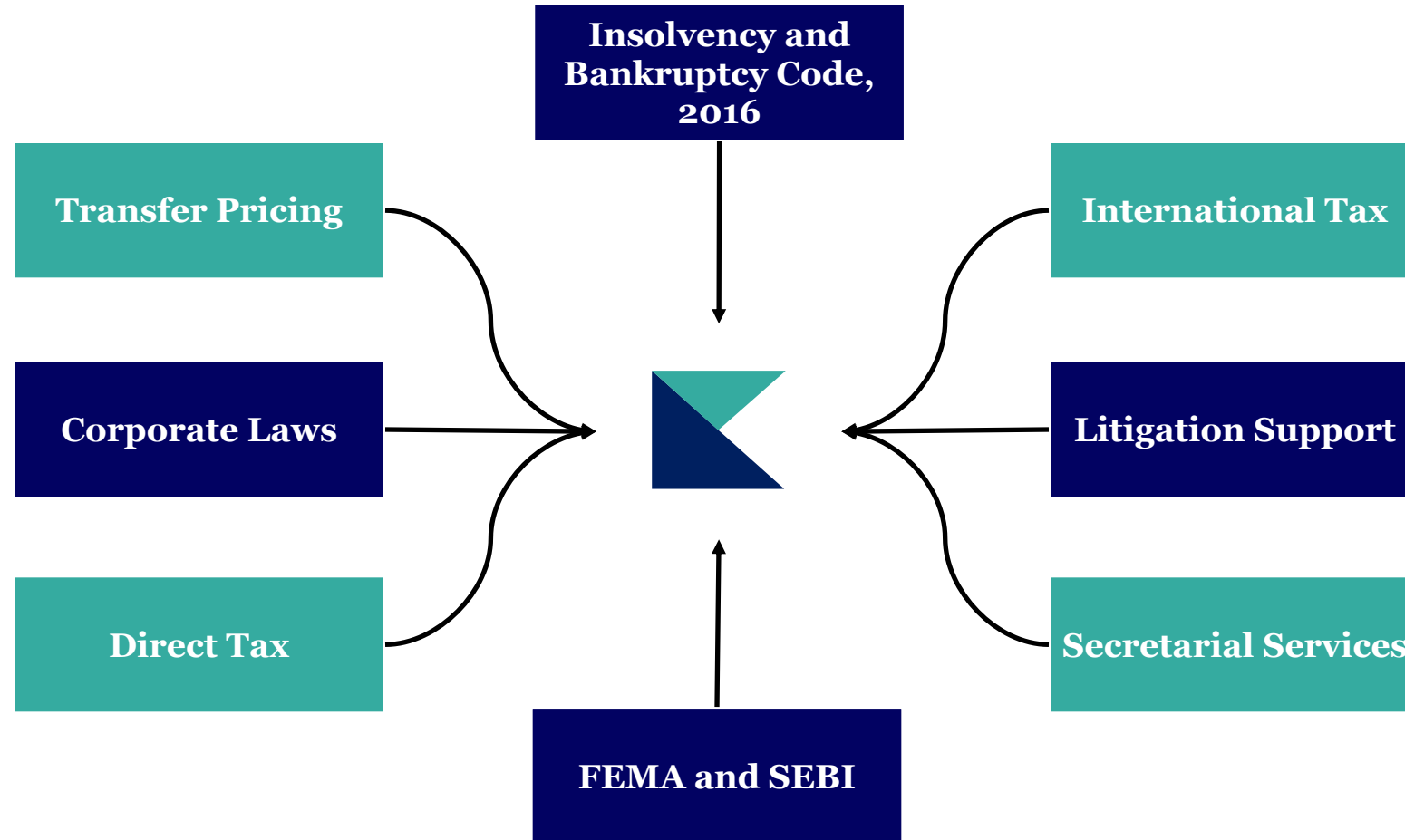


How We Can Help





We at AKR can Assist You





Let's Talk

Khushboo Shah Rajani

Head – Corporate Laws

LL.B; A.C.A

Phone: +91 98928 71451

Email: khushboo@akradvisors.com

Ayush J. Rajani

**Head – Insolvency and Bankruptcy Services
and International Tax**

F.C.A

Phone: +91 98193 33810

Email: ayush@akradvisors.com

Visit Us

www.akradvisors.com



Office #8, Ground Floor, Jolly Bhavan 1,
New Marine Lines, Marine Lines,
Mumbai – 400020 | +91 9819333810