



# **Best Practices on Individual Insolvency under IBC, 2016 (with Reference to PG to CD)**

Study By  
**Indian Institute of Insolvency Professionals of ICAI (IIPI)**



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**NEW DELHI**



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## Foreword

The Indian Institute of Insolvency Professionals of ICAI (IIPI) is pleased to present the report on Best Practices on Individual Insolvency (with Reference to PG to CD) under IBC 2016 prepared by the Study Group constituted by IIPI in this regard. This publication was released by Sh. Ravi Mital, Chairperson, IBBI on the occasion of 6th Annual Day Program organized by the IIPI on 25th November 2022.

The purpose of this publication is to provide guidance to IPs while discharging their roles and responsibilities in respect of individual insolvency resolution process and be market-ready before the full-fledged individual insolvency framework comes on stream. The guidance in this document is based on best practices, nationally and internationally, and are directory in nature. We hope that these guidelines will help the IPs in execution of their responsibilities in the context of individual insolvency resolution process, transparently and independently within the scope of law and regulations as envisaged under IBC.

I sincerely appreciate and thank CA. G. Ramaswamy, IP for steering the Study Group and providing his valuable guidance, along with members of the group who all worked hard to prepare the draft report.

I also appreciate the efforts put in by CA. Rahul Madan, Managing Director, and the Research Department of IIPI for providing their technical and administrative support in bringing out this publication.

Further, after gaining more experience, this Background Guidance Note shall be reviewed from time to time. I am sure that the professional members of IIPI and other stakeholders of IBC will find this publication immensely helpful.

**Date:** November 25<sup>th</sup> 2022

**Place:** New Delhi

**Dr. Ashok Haldia,**  
Chairman, IIPI-Governing Board



## Preface

The Study Group constituted by the Indian Institute of Insolvency Professionals of ICAI (IIPI) on "Best Practices on Individual Insolvency (with reference to PG to CD)" under IBC 2016 is pleased to present this report.

The Study Group was given a mandate to deliberate and recommend on best practices to be followed by IPs while carrying out their responsibilities in connection with Individual Insolvency Process (with reference to PG to CD) within the framework of IBC. The study group, consisting of members having rich experience in managing insolvency and bankruptcy, has attempted to develop a comprehensive document on the subject after wider consultation intra-group and with other stakeholders.

This report has been created with the objective of furthering transparency and equipping the IPs to execute their roles and responsibilities with respect to individual insolvency, more effectively. This report shall provide a framework to IPs on matters like identifying the common and divergent practices in Individual insolvency as compared with CIRP, grey areas and best practices across the resolution and bankruptcy process, effective coordination, and jurisdiction between connected CIRP and Individual Insolvency resolution, etc.

The study group is thankful to Dr. Ashok Haldia, Chairman, IIPI for providing an opportunity to develop the knowhow as above and providing his insights. The group is particularly thankful to CA..M. Suresh Kumar, IP for his efforts in creating the initial draft of the report. In addition, the group expresses gratitude to several other professionals including experienced IPs, legal experts and other professionals who have contributed directly and indirectly to the development of this report on 'Best Practices on Individual Insolvency (with reference to PG to CD) under IBC'.

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**Date:** November 25<sup>th</sup>, 2022

**Place:** New Delhi



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## Abbreviations

AA	Adjudicating Authority
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
DRT	Debt Recovery Tribunal
DRAT	Debt Recovery Appellate Tribunal
HC	High Court
IBBI	Insolvency and Bankruptcy Board of India
IBC / Code	Insolvency and Bankruptcy Code 2016
ICA	Indian Contract Act, 1872
ICAI	Institute of Chartered Accountants of India
IIIP-ICAI	Indian Institute of Insolvency Professionals of ICAI
IP	Insolvency Professional
IPA	Insolvency Professional Agency
IRP	Interim Resolution Professional
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
PG	Personal Guarantor
RP	Resolution Professional
SC	Supreme Court



## Background

Over last five years, since inception of IBC, jurisprudence has evolved and is still evolving as a significant economic legislation for reorganizing and resolving distressed businesses. IBC, as an effective deterrent, has successfully altered the behaviour of lenders and borrowers.

After the prepack insolvency framework recently introduced, it is expected that individual insolvency framework in its full-fledged form may become reality soon in India, after the framework for personal guarantors to CDs, was made effective from Dec, 2019. In fact, framework of such Individual Insolvency including partnership firms, is touted to be next big thing, for Indian IBC regime.

The momentum of PG to CD framework was halted due to various writ petitions in High Courts. Finally, Hon'ble SC judgement came in the case of SBI Vs. Anil D. Ambani in May'2021, which settled jurisprudence in respect of constitutional validity of the framework for PG to CD and clarifying some of the other aspects.

PG to CD framework has been in vogue for over two years now. Over 650 cases have been initiated. There are many dissimilarities, complexities and legal interpretations of provisions, in PG to CD cases as compared with CIRP and hence the need to develop a best practice document for guidance of IPs. The best practice document as proposed shall also help professionals and stakeholders, prepare in advance and be market-ready before the full individual insolvency framework comes on stream.

In view of above, IIP-ICAI proposes to constitute a study group to develop the best practice document on Individual Insolvency with specific reference to PG to CD framework. Once the draft of this best practice document is prepared, IBBI and other IPAs shall also be consulted before releasing the formal best practice document for the benefit of all IPs.

Though the Study Group (in its first meeting) can deliberate on contents/structure of study, our initial thoughts on likely structure/headings, for examining issues/grey-areas and recommending best practices thereon, are as follows:

- Identifying common and divergent practices in an Individual insolvency Resolution (PG to CD) Vs. CIRP, for better understanding.
- Jurisdiction and coordination between connected CIRP and Individual Insolvency Resolution (PG to CD)
- Other grey areas and best practices across the resolution and bankruptcy processes.
- Best practices can be supported by citing Case Laws especially from Hon'ble Supreme Court and NCLAT.

## Members of Study Group:

- CA G. Ramaswamy, IP (Chairman)
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# Legal Provisions

The act enacted in 2016 has underwent robust changes in the last 5 years considering the evolving jurisprudence in the corporate insolvency. The individual insolvency is just started in limited way, which needs to undergo many vagaries in the coming days. To start with, let's understand the brief structure of the code:

## Overall structure of Code

- In the Part III, the Chapter II is yet to be notified.
- Section 78-79 & Section 94-187 are notified w.e.f 01.12.2019 only in so far as they relate to personal guarantors to corporate debtors.

## Organisation of Sections of Part III

Section	Minor Heading
	<b>Chapter-I [Preliminary]</b>
78	Application
79	Definitions.
	<b>Chapter-II [Fresh Start Process] – {Not notified – Section 80-93}</b>
	<b>Chapter-III [Insolvency Resolution Process]</b>
94	Application by debtor to initiate insolvency resolution process.
95	Application by creditor to initiate insolvency resolution process.
96	Interim-moratorium.
97	Appointment of resolution professional.
98	Replacement of resolution professional.
99	Submission of report by resolution professional.
100	Admission or rejection of application.
101	Moratorium.
102	Public notice and claims from creditors.
103	Resistering of claims by creditors.
104	Preparation of list of creditors.
105	Repayment plan.
106	Report of resolution professional on repayment plan.
107	Summoning of meeting of creditors.
108	Conduct of meeting of creditors.

109	Voting rights in meeting of creditors.
110	Rights of secured creditors in relation to repayment plan.
111	Approval of repayment plan by creditors.
112	Report of meeting of creditors on repayment plan.
113	Notice of decisions taken at meeting of creditors.
114	Order of Adjudicating Authority on repayment plan.
115	Effect of order of Adjudicating Authority on repayment plan.
116	Implementation and supervision of repayment plan.
117	Completion of repayment plan.
118	Repayment plan coming to end prematurely.
119	Discharge order.
120	Standard of conduct.
	<b>Chapter-IV [Bankruptcy Order For Individuals And Partnership Firms]</b>
121	Application for bankruptcy.
122	Application by debtor.
123	Application by creditor.
124	Effect of application.
125	Appointment of insolvency professional as bankruptcy trustee.
126	Bankruptcy order.
127	Validity of bankruptcy order.
128	Effect of bankruptcy order.
129	Statement of financial position.
130	Public notice inviting claims from creditors.
131	Registration of claims.
132	Preparation of list of creditors.
133	Summoning of meeting of creditors.
134	Conduct of meeting of creditors.
135	Voting rights of creditors.
136	Administration and distribution of estate of bankrupt.
137	Completion of administration.
138	Discharge order.
139	Effect of discharge.

140	Disqualification of bankrupt.
141	Restrictions on bankrupt.
142	Modification or recall of bankruptcy order.
143	Standard of conduct.
144	Fees of bankruptcy trustee.
145	Replacement of bankruptcy trustee.
146	Resignation by bankruptcy trustee.
147	Vacancy in office of bankruptcy trustee.
148	Release of bankruptcy trustee.
	<b>Chapter-V [Administration And Distribution Of The Estate Of The Bankrupt]</b>
149	Functions of bankruptcy trustee.
150	Duties of bankrupt towards bankruptcy trustee.
151	Rights of bankruptcy trustee.
152	General powers of bankruptcy trustee.
153	Approval of creditors for certain acts.
154	Vesting of estate of bankrupt in bankruptcy trustee.
155	Estate of bankrupt.
156	Delivery of property and documents to bankruptcy trustee.
157	Acquisition of control by bankruptcy trustee.
158	Restrictions on disposition of property.
160	After-acquired property of bankrupt.
161	Onerous property of bankrupt.
162	Notice to disclaim onerous property.
163	Disclaimer of leaseholds.
164	Challenge against disclaimed property.
165	Undervalued transactions.
166	Preference transactions.
167	Effect of order.
168	Extortionate credit transactions.
169	Obligations under contracts.
170	Continuance of proceedings on death of bankrupt.
171	Administration of estate of deceased bankrupt.



172	Proof of debt.
173	Proof of debt by secured creditors.
174	Mutual credit and set-off.
175	Distribution of interim dividend.
176	Distribution of property.
177	Final dividend.
178	Claims of creditors.
	<b>Chapter-VI [Adjudicating Authority For Individuals And Partnership Firms]</b>
179	Adjudicating Authority for individuals and partnership firms.
180	Civil court not to have jurisdiction.
181	Appeal to Debt Recovery Appellate Tribunal.
182	Appeal to Supreme Court.
183	Expeditious disposal of applications.
	<b>Chapter-VII [Offences And Penalties]</b>
184	Punishment For False Information, Etc., By Creditor In Insolvency Resolution Process.
185	Punishment For Contravention Of Provisions.
186	Punishment For False Information, Concealment, Etc., By Bankrupt.
187	Punishment For Certain Actions.

## Related Rules & Regulations [Updated Upto 30.06.2022]

Upon notification of the relevant provision of the individual insolvency, the government has notified the following rules and regulations w.e.f 01.12.2019:

### Rules

1. The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019
2. The Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019

## Regulations

1. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019
2. The Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

## Adjudicating & Appellate Authority

<b>Adjudicating Authority</b>	National Company Law Tribunal (NCLT) – Section 60* Debt Recovery Tribunal (DRT) - Section 179
<b>Appellate Authority</b>	National Company Law Appellate Tribunal (NCLAT) – Section 61* Debt Recovery Appellate Tribunal (DRAT) -Section 181

### Section 60 Sub-section (2), (3) & (4)

(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 such 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.

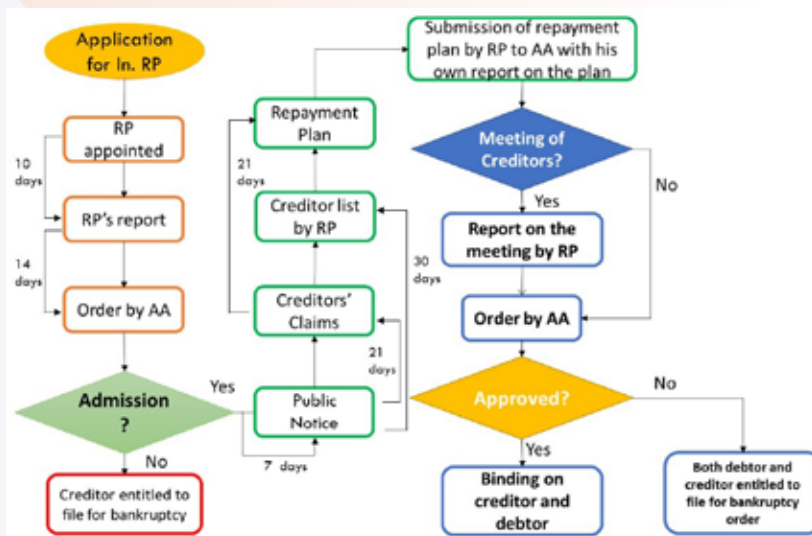
(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

\* Note: Refer - State Bank of India, *SAMB v. Mahendra Kumar Jajodia* judgement [(2022) ibclaw.in 89 NCLAT – Appeal against this order before SC was dismissed)

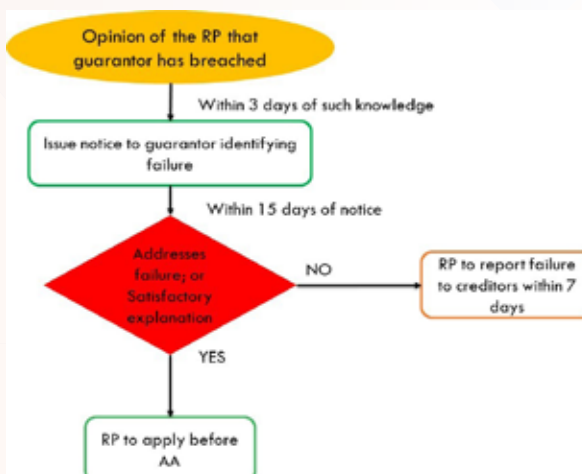
# Overall Flow of the Individual Insolvency Resolution Process

## Individual Insolvency Resolution Process

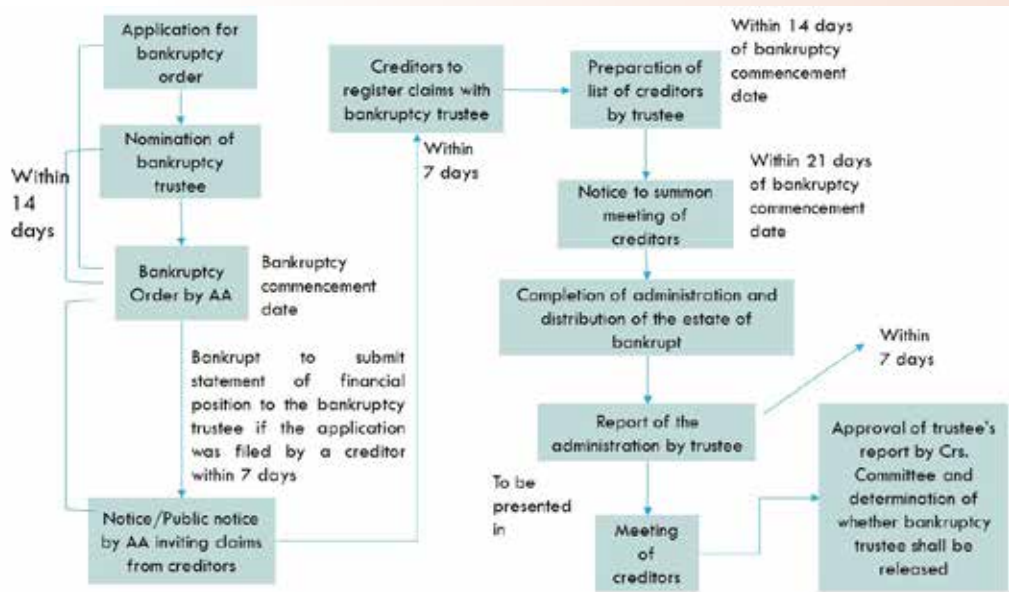
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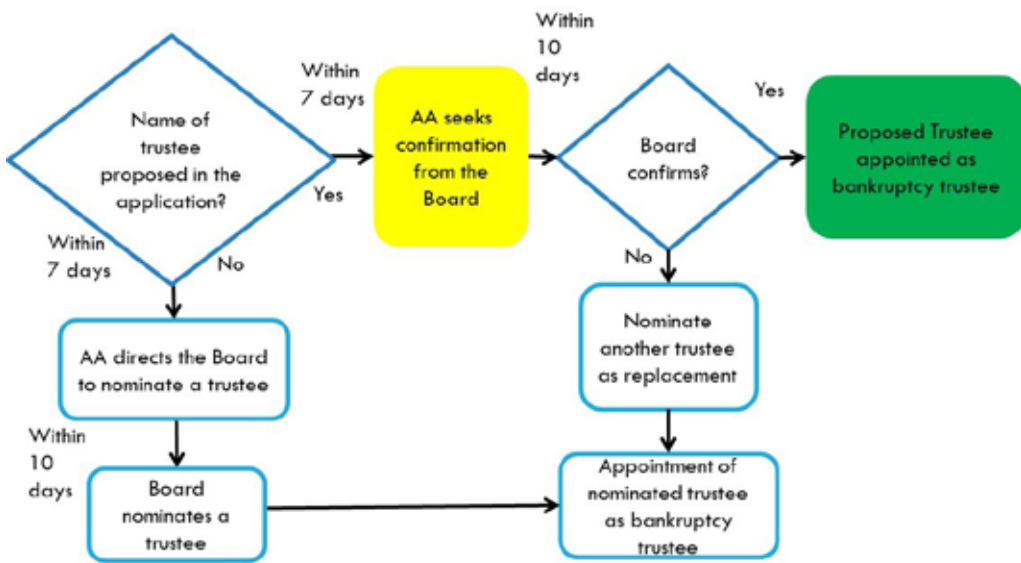
## Incase of Breach of Repayment Plan



## Bankruptcy Process:



## Appointment of Bankruptcy Trustee



## Relevant Legal Extracts – “Guarantee” / “Guarantors”

### Guarantee:

General Definition	Guarantee is a promise by one person, who is called the ‘guarantor’ or ‘surety’ to answer for the present or future debt of another person who is called the ‘principal debtor’, such promise being made to the party to whom the principal debtor is, or will become, liable.
Section 126 of ICA, 1872	<p>‘Contract of guarantee’, ‘surety’, ‘principal debtor’ and ‘creditor’</p> <p>A ‘contract of guarantee’ is a contract to perform the promise, or discharge the liability, of a third person in case of his default.</p> <p>The person who gives the guarantee is called the ‘surety’;</p> <p>The person in respect of whose default the guarantee is given is called the ‘principal debtor’, and the person to whom the guarantee is given is called the ‘creditor’.</p>

Mere omission of sign on the agreement cannot absolve him from his liability as the guarantor:

- P.J. Rajappan v Associated Industries (P) Ltd. [2017] ibclaw.in 16 SC
- Mathura Das vs. Secretary of State, Allahabad High Court

### Invalid Guarantees:

Section 142 [ICA]- Obtained by misrepresentation	Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.
Section 143 [ICA]- Obtained by concealment	Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid.
Section 144 [ICA]- Invalid if that other person does not join	As per section 144, where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

**Surety Liability:**

Section 128 [ICA]- Surety's liability	The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract.
Maharashtra State Electricity Board [2017] – Supreme Court	The fact that the company which is the principal debtor has gone into liquidation would not have any effect on the liability of the guarantor.
S. Chattanatha Karayalar vs. Central Bank of India Ltd. [2017] – Supreme Court	If a transaction is contained in more than one document between the same parties, they must be read and interpreted together. Although a guarantor may join the principal debtor in executing the promissory note he will not be a co-obligant where the underlying transaction and the conduct of the parties show that he is a surety under Section 126 of the Contract Act

**Discharge of Surety:**

Section 133 [ICA]- Discharge of surety by variance in terms of contract	Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance
Section 134 [ICA]- Discharge of surety by release or discharge of principal debtor	The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.
Section 135 [ICA]- Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor	A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.
Section 136 [ICA]- Surety not discharged when agreement made with third person to give time to principal debtor	Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.
Section 137 [ICA]- Creditor's forbearance to sue does not discharge surety	Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Section 138 [ICA]- Release of one co-surety does not discharge others	Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties
Section 139 [ICA]- Discharge of surety by creditor's act or omission impairing surety's eventual remedy	If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.



## Key Case Laws

<p>State Bank of India v. Mahendra Kumar Jajodia [2022] 136 taxmann. com 371 (NCL-AT)</p>	<p>Section 95, read with section 60, of the Insolvency and Bankruptcy Code, 2016 –</p> <p>Individual/firm's insolvency resolution process - Application by creditor - Appellant/financial creditor filed an application under section 95(1) for initiating Insolvency Resolution Process (CIRP) against personal guarantor:</p> <p>Whether object of section 60(2) was that when a CIRP or liquidation proceedings of corporate debtor is pending before a NCLT, application relating to insolvency process of a guarantor should be filed before same NCLT and it does not in any way prohibit filing of proceedings under section 95 if no proceedings against corporate debtor were pending before NCLT - Held, yes</p> <p>Whether, thus application filed by financial creditor was fully maintainable and could not be rejected on ground that no CIRP or liquidation proceedings of corporate debtor was pending before NCLT - Held, yes</p>
<p>Lalit Kumar Jain v. Union Of India [2021] 127 taxmann. com 368 (SC)</p>	<p>Section 2, read with sections 1, 78, 79, 94 to 187, 239 and 249, of the Insolvency and Bankruptcy Code, 2016</p> <p>Application of Code - Petitioners were associated with different corporate debtor companies as directors, promoters or in some instances, as chairman or managing directors - They furnished personal guarantees to banks and financial institutions - Notification No. S.O. 4126 (E), dated 15-11-2019 was issued by Central Government which brought into force sections 2(e), 78, 79, 94-187, 239(2)(g), 239(2)(h) &amp; 239(2)(i), 239(2)(m) to 239(2)(zc), 239(2)(zn) to 239(2)(zs) and 249 in relation to such 'personal guarantors to corporate debtors'</p> <p>Whether there is no compulsion in Code that it should, at same time, be made applicable to all individuals, (including personal guarantors) and there is sufficient indication in Code by sections 2(e), 5(22), sections 60 and 179 indicating that personal guarantors, though forming part of larger grouping of individuals, are to be, in view of their intrinsic connection with corporate debtors, dealt with differently, through same adjudicatory process and by same forum as such corporate debtors - Held, yes</p> <p>Whether further, impugned notification, has merely made provisions of Code applicable in respect of 'personal guarantors to corporate debtors' as another such category of persons to whom Code has been extended - Held, yes</p>



	<p>Whether, thus, impugned notification is not an instance of legislative exercise, or amounting to impermissible and selective application of provisions of Code and it being issued within power granted by Parliament, is valid - Held, yes</p> <p>Section 31, read with sections 1 and 2 of the Insolvency and Bankruptcy Code, 2016, and sections 128, 133 and 140 of the Contract Act, 1872</p> <p>Corporate insolvency resolution process - Resolution plan - Approval of</p> <p>Whether approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under contract of guarantee - Held, yes</p> <p>Whether release or discharge of a principal borrower from debt owed by it to its creditor by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve surety/guarantor of his/her liability which arises out of an independent contract - Held, yes</p> <p>Whether approval of resolution plan relating to corporate debtor does not discharge liabilities of personal guarantors - Held, yes</p>
<p>Ravi Ajit Kulkarni v. State Bank of India [2021] 130 taxmann. com 442 (NCL-AT)</p>	<p>Section 95, read with sections 96 and 99, of the Insolvency and Bankruptcy Code, 2016 read with rules 11 and 44 of the National Company Law Tribunal Rules, 2016</p> <p>Individual/firm's insolvency resolution process - Application by creditor:</p> <p>Whether once application under section 95 is filed, Adjudicating Authority has to act on it, and following principle of natural justice, it has to give limited notice to debtor/personal guarantor - Held, yes</p> <p>Whether limited notice has to be only to secure presence of debtor/personal guarantor referring to Interim Moratorium which has commenced so that when Resolution Professional is appointed, they may provide material in their favour as per section 99(2) - Held, yes</p> <p>Whether before appointment of Resolution Professional, debtor is not allowed to raise disputes, however, if debtor raises dispute on merit, same may be adjudicated only after receipt of report from Resolution Professional under section 99 - Held, yes</p> <p>Whether stage for considering default arrives when matter is taken up under section 100 - Held, yes</p>

<p>L. Ramalakshamma v. State Bank of India</p> <p>[2021] 133 taxmann. com 342 (NCLAT - Chennai)</p>	<p>Section 97 of the Insolvency and Bankruptcy Code, 2016, read with rule 8 of the Insolvency and Bankruptcy (Application to 'Adjudicating Authority' for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019</p> <p>Individual/firm's insolvency resolution process - Resolution professional, appointment of - 'Adjudicating Authority' had passed 'Impugned Orders' whereby and whereunder he had appointed an 'Interim Resolution Professional' - Appellants submitted that 'Impugned Orders' were cryptic, unreasoned, non est and non-speaking orders which were passed in violation of ingredients of IBC as 'Adjudicating Authority' by 'Impugned Orders' had appointed 'IRP' without adhering to mandatory section 97 - However, on going through word 'shall' employed in section 97(1), it is viewed that it is only 'Directory' and not 'Mandatory' and NCLT may pick up any one for appointment of 'IRP' - Moreover, if viewed from object and purpose to be achieved by 'IBC', word 'employed' in section 97(1) can only be construed as 'directory' and not a mandatory one, that too by adopting a purposeful, meaningful, practical, pragmatic and result oriented approach, with a view to prevent an aberration of justice and to secure ends of justice</p> <p>Whether therefore, provisions of section 97(1) and 97(2) of 'IBC' whereby 'Adjudicating Authority' is required to obtain confirmation of Board prior to appointment of 'Resolution Professional' being only directory in nature and not mandatory and 'Adjudicating Authority' having exercised its judicial discretion in fair manner for appointment of an 'IRP', same could not be found fault with - Held, yes</p>
<p>Babu A. Dhammanagi v. Union of India</p> <p>Ref1:</p> <p>[2022] 138 taxmann. com 406 (Karnataka)</p> <p>Ref2:</p> <p>(2022) ibclaw.in 81 HC</p>	<p>Section 95, read with section 97 and 100, of the Insolvency and Bankruptcy Code, 2016</p> <p>Individual/firm's insolvency resolution process - Application by creditor</p> <p>Whether insolvency proceedings initiated against personal guarantor under Code is a time bound process and aforesaid procedure contains filing of application under section 95 for appointment of Resolution Professional by Adjudicating Authority under section 99, submission of report by Resolution Professional under section 99, recording reasons for recommending request for acceptance or rejection of application and finally admission or rejection of application by Adjudicating Authority - Held, yes</p>

	<p>Whether as per procedure prescribed under sections 95 to 100, role of Resolution Professional is limited to make appropriate recommendation to Adjudicating Authority and final decision of admission or rejection of application referred to under section 95 solely lies with Adjudicating Authority - Held, yes</p> <p>Whether Adjudicating Authority is not bound by recommendation made by Resolution Professional - Held, yes</p> <p>Whether procedure prescribed under provisions contained in sections 95 to 100 are fair, rational and reasonable and same cannot be termed to be violative of Article 14 - Held, yes</p>
<p>Rohit Nath @ Rohit Rabindranath</p> <p>v.</p> <p>KEB Hana Bank Ltd.</p> <p>[2021] 129 taxmann.com 98 (Madras)</p>	<p>Section 95, read with section 94 of the Insolvency and Bankruptcy Code, 2016</p> <p>Individual/firm's insolvency resolution process - Application by creditor</p> <p>Whether Adjudicating Authority in respect of a guarantor who has furnished a personal guarantee in connection with credit facilities obtained by a corporate entity, would be appropriate Debts Recovery Tribunal - Held, yes</p> <p>Whether thus, a creditor may apply to jurisdictional Debts Recovery Tribunal for initiating an insolvency resolution process against appropriate persons under section 95 - Held, yes</p> <p>Whether section 95 pertains to applications by creditors to initiate insolvency resolution process and section 95(1) applies to any debtor, other than debtors against whom an insolvency resolution process may be initiated under other specific provisions - Held, yes</p> <p>Whether section 95 cannot be confined to only partnership debts or construed to permit insolvency resolution process to be initiated only against relevant firms or their partners - Held, yes</p> <p>---</p> <p>Section 60 of the Insolvency and Bankruptcy Code, 2016, read with section 128 of the Indian Contract Act, 1872</p> <p>Corporate person's Adjudicating Authorities - Adjudicating Authority</p>

	<p>Whether section 60 identifies adjudicatory authority in relation to insolvency resolution and liquidation for corporate persons - Held, yes</p> <p>Whether section 60(1) mandates that insolvency resolution and liquidation for corporate persons, including corporate debtors and personal guarantors, may be brought before NCLT having territorial jurisdiction over places where registered office of corporate person is located - Held, yes</p> <p>Whether further, section 60(2) discloses that section 60 would apply to an individual only if there is a corporate insolvency resolution process pertaining to corporate entity which is principal debtor, that has been filed or commenced - Held, yes</p>
State Bank of India Vs. Athena Energy Ventures Private Limited (2020) ibclaw. in 344 NCLAT	<p>NCLAT held that if two Applications can be filed, for the same amount against Principal Borrower and Guarantor keeping in view the Section 60(2) and (3), the Applications can also be maintained. Simultaneously remedy is central to a contract of guarantee and where Principal Borrower and surety are undergoing CIRP, the Creditor should be able to file claims in CIRP of both of them. The IBC does not prevent this. We are unable to agree with the arguments of Learned Counsel for Respondent that when for same debt claim is made in CIRP against Borrower, in the CIRP against Guarantor the amount must be said to be not due or not payable in law. Under the Contract of Guarantee, it is only when the Creditor would receive amount, the question of no more due or adjustment would arise. It would be a matter of adjustment when the Creditor receives debt due from the Borrower/Guarantor in the respective CIRP that the same should be taken note of and adjusted in the other CIRP.</p>
Gurmeet Sodhi Vs Union of India & ors WP (Civil) 307/2022	<p>Supreme Court has ordered for</p> <p>Stay on Personal Guarantor Proceedings</p> <p>Personal Guarantor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest</p> <p>Resolution Professional shall not proceed with filing of the report</p> <p>Objections raised by the appellants are that Sec 95,96,97,99 and 100 violation of Fundamental Right as per Article 32.</p> <p>[Note: Supreme Court has tagged the case with similar petitions pending before SC and awaits final orders]</p>

## Difference Between Corporate Insolvency & Individual Insolvency's

The major differences between the Corporate Insolvency Resolution Process and the Individual Insolvency Resolution Process are summarized as under:

Point of difference	Personal Insolvency	Corporate Insolvency
Application by creditor	No classification w.r.t. type of creditor i.e. operational or financial	Application may vary on the basis of type of creditor
Withdrawal of Application	Yes Requires 90% consent of creditors	Yes Requires 90% consent of CoC [if COC constituted]
CoC	No concept of CoC- All creditors have right to attend the meeting	Constitution of CoC mandatory- shall comprise of financial creditors only [if no FC, OC will constitute COC]
Meeting of Creditors	Not Mandatory- shall be conducted if deemed necessary by the RP – subject to conditions	Mandatory to conduct the CoC
Moratorium	Yes	Yes
Interim Moratorium	Yes	No
Approval of Plan	Requires 75% assent of creditors present and voting	Requires 66% assent of CoC
Rejection of plan	Application for bankruptcy may be filed	Leads to compulsory liquidation
Distinction b/w creditors	Creditors classified as financial, operational and other creditors	No classification b/w financial or operational- only secured & unsecured

## Difference Between Corporate Liquidation & Individual Bankruptcy

The major differences between the Corporate Liquidation and the Individual Bankruptcy are summarized as under:

Point of difference	Liquidation	Bankruptcy
Manner of initiation	Automatically triggered u/s 33  [at the end of CIRP time period 180/270 days, RP shall submit an application to AA to this effect]	Creditor/debtor become entitled to file for bankruptcy –  Section 100 – Rejection of insolvency resolution application by AA.  Section 115 – Rejection of repayment plan by AA.  Section 118 – Premature closing of repayment plan.
Reversibility/ modification or recall	No specific provision – right to appeal against AA's order – section 61.	Possible – by AA, on application or suo-motu – section 142 (either erroneous initiation or full repayment).
Interim-moratorium	No	Yes – sec. 124 (1)- on application – lasts till bankruptcy order is passed
Moratorium	Sec. 33 - On liquidation order being passed	Sec. 128 - On bankruptcy order being passed
Role of Insolvency Professional	As liquidator	As bankruptcy trustee
Estate of debtor	Liquidation estate held by liquidator as fiduciary for benefit of all creditors – section 36	Estate of the bankrupt vests in the bankruptcy trustee – section 154
Manner of vesting of estate	No conveyance, assignment – the estate is constructive	Section 154(2) provides that there is no need for conveyance, assignment or transfer for vesting of property in the trustee.

Involvement of creditors	Liquidator has to constitute Stakeholder's Consultation Committee (including creditors). No provision for a committee of creditors.	Considerable - meeting of creditors is summoned, a committee of creditors is appointed for approval of the report on administration of the estate; the bankruptcy requires approval of the committee for several acts (section 153), and the committee of creditors decides on the release of the bankruptcy trustee.
Priority of pay-out from estate	Sec. 53 – financial debts take priority over operational debts	Sec. 178 – distinction b/w financial creditor and operational creditor does not exist [even if the individual is carrying on business]
Final Stage	Dissolution – the entity loses its existence.	Discharge – releases the bankrupt from all bankruptcy debts.



# Role of RP's During Initiation of Individual Insolvency Resolution Process & Preparation of RP Report

Relevant Sections / Regulations / Rules.	Role of RPs	Challenges	Recommendations/ Best Practices
<b>Section 94: Application by debtor to initiate insolvency resolution process.</b>			
<ol style="list-style-type: none"> <li>1. A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.</li> <li>2. Where the debtor is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm unless all or a majority of the partners of the firm file the application jointly.</li> <li>3. An application under sub-section (1) shall be submitted only in respect of debts which are not excluded debts.</li> <li>4. A debtor shall not be entitled to make an application under sub-section (1) if he is – <ol style="list-style-type: none"> <li>(a) an undischarged bankrupt;</li> <li>(b) undergoing a fresh start process;</li> <li>(c) undergoing an insolvency resolution process; or</li> <li>(d) undergoing a bankruptcy process.</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>• RP shall verify the existence of the default and the quantum of the default.</li> <li>• Whether application is filed directly by the Debtor or through an RP, the RP shall assess his independence in term so Reg 4 and document the same.</li> <li>• The RP shall ensure to submit a written consent in Form A to the Adjudicating Authority.</li> <li>• RP can facilitate preparation of the NCLT application for initiation of the IRP against the debtor [Reg.6 Form A]</li> <li>• RP to ascertain and classify included and excluded debts</li> <li>• RP shall ensure to check the status of the existing CIRP / Liquidation proceedings against the Debtor and ascertain the appropriate Adjudicating Authority [NCLT / DRT]</li> <li>• RP shall ascertain the Territorial Jurisdiction of the AA, after careful review of Debtors usual place of residence / business / employment</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding of the Personal Guarantor of the IB Code, 2016 and process of the Individual Insolvency Resolution Process.</li> <li>• The Debtor may hide many facts, asset liability details, contracts etc., to negotiate a lower fees for the RP.</li> <li>• The Debtor may hide some assets with the intention to defraud the creditors.</li> <li>• The validation of the estimated value and excluded assets during the application stage will be challenging</li> </ul>	<ul style="list-style-type: none"> <li>• Irrespective of the details / information provided by the Debtor, the RP shall do a preliminary due-diligence about the client and public search of available information, before accepting assignment.</li> <li>• Ensure proper documentation of the facts and information shared / discussed with the Debtor and sign off all the discussion minutes with him as far as possible.</li> </ul>



<p>5. A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.</p> <p>6. The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.</p>	<ul style="list-style-type: none"> <li>• Incase of application filing is through RP, RP shall ascertain the detailed scope of work and sign an engagement letter with the debtor clearly specifying his scope of work as per IBC, his independence and fees payable.</li> <li>• Wherever the application is filed through RP, although the RP is signing only the Part IV of the form, the RP shall ensure due verification of all the contents of the form with appropriate documents before signing the form.</li> <li>• RP can request for income declaration certificate / ITR copies / Audited financial statements under an affidavit from the Debtor</li> </ul>		
<p><b>95 - Application by creditor to initiate insolvency resolution process.</b></p>			
<p>1. A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.</p> <p>2. A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—</p> <p>(a) any one or more partners of the firm; or</p> <p>(b) the firm.</p>	<ul style="list-style-type: none"> <li>• Copy of the demand notice served by the Creditor in Form B [Rule 7(1)] to the Debtor</li> <li>• All other roles as defiled above for Sec 94 related checks</li> </ul>	<ul style="list-style-type: none"> <li>• Same as stated above in Sec 94</li> </ul>	<ul style="list-style-type: none"> <li>• Same as stated above in Sec 94</li> </ul>

<p>3. Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.</p> <p>4. An application under sub-section (1) shall be accompanied with details and documents relating to—</p> <p>(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;</p> <p>(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and</p> <p>(c) relevant evidence of such default or non-repayment of debt.</p> <p>5. The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.</p> <p>6. The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.</p> <p>7. The details and documents required to be submitted under sub-section (4) shall be such as may be specified.</p>			
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96 - Interim-moratorium			
<p>1. When an application is filed under section 94 or section 95—</p> <p>(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and</p> <p>(b) during the interim-moratorium period—</p> <p>(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and</p> <p>(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.</p> <p>2. Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.</p> <p>3. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.</p>	<ul style="list-style-type: none"> <li>• Optional Roles [not mandatory]</li> <li>• List down all the debts and creditors to whom this moratorium applies and the RP can communicate with them regarding the filing of PG application and update them about the interim-moratorium in force. Even a copy of the application filing acknowledgement be shared with them for their records, which will prevent unwanted notices and continuation of litigations.</li> <li>• RP can intimate the respective courts, where the matters are pending</li> </ul>	<ul style="list-style-type: none"> <li>• In the initial days, the lack of knowledge about the individual insolvency and the moratorium are likely to cause lot of misunderstanding in the credit market, wherein they will continue with the legal cases....</li> <li>• The Debtors may file some bogus / incomplete applications to delay the legal cases of the creditors.</li> <li>• Although proceedings words are there, the government authorities are likely to continue their regular assessment proceedings [IT, GST, PF, ESI etc.] and pass orders during the moratorium.</li> </ul>	<ul style="list-style-type: none"> <li>• The RP who has already signed the Form A [application] can guide the Debtor to send in the fact of PG form filing to all the concerned authorities at the earliest, so that the authorities are appraised of the fact of filing of the PG-IRP petition.</li> </ul>
97 - Appointment of resolution professional.			
<p>1. If the application under section 94 or 95 is filed through a resolution professional, the Adjudicating Authority shall direct the Board within seven days of the date of the application to confirm that there are no disciplinary proceedings pending against resolution professional.</p>	<ul style="list-style-type: none"> <li>• If another RP name is suggested by IBBI, upon receipt of appointment of order from NCLT, RP should submit his consent form to the NCLT report appropriate Form as and when notified to IBBI / IIPICAI [currently IP-1 forms are notified only for CIRP process]</li> </ul>	<ul style="list-style-type: none"> <li>• The time RP signed the form and the time the matter is listed and RP is appointed may differ from few days to few months depending upon the workload of the NCLT and the legal jurisprudence.</li> </ul>	<ul style="list-style-type: none"> <li>• Keep track of all your consents given for CIRP / PG cases.</li> </ul>

<p>2. The Board shall within seven days of receipt of directions under sub-section (1) communicate to the Adjudicating Authority in writing either—</p> <p>(a) confirming the appointment of the resolution professional; or</p> <p>(b) rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.</p> <p>3. Where an application under section 94 or 95 is filed by the debtor or the creditor himself, as the case may be, and not through the resolution professional, the Adjudicating Authority shall direct the Board, within seven days of the filing of such application, to nominate a resolution professional for the insolvency resolution process.</p> <p>4. The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority under sub-section (3).</p> <p>5. The Adjudicating Authority shall by order appoint the resolution professional recommended under sub-section (2) or as nominated by the Board under sub-section (4).</p> <p>6. A resolution professional appointed by the Adjudicating Authority under sub-section (5) shall be provided a copy of the application for insolvency resolution process.</p>	<ul style="list-style-type: none"> <li>• The RP shall contact / write to the concerned Debtor / applicant for obtaining copy of the application, so that he can start the review and report preparation work.</li> <li>• The RP shall initiate collection of various data about the PG debtor from all the market sources available, in order to speed up the process timeline.</li> </ul>	<ul style="list-style-type: none"> <li>• The time estimates of the RP may go haywire due to delays in judiciary.</li> <li>• IBBI has replaced the recommendation with a 6 month empanelment list. At present scenarios, due to AFA expiry / renewal issues, one can get enlisted for only one term in the list in a year.</li> </ul>	<ul style="list-style-type: none"> <li>• In case if you are overloaded and can't take any more new cases, file a memo / request before AA seeking not to appoint you in delayed cases [because after appointment asking for change by the RP will not go well before AA]</li> </ul>
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98 - Replacement of resolution professional.			
<p>1. Where the debtor or the creditor is of the opinion that the resolution professional appointed under section 97 is required to be replaced, he may apply to the Adjudicating Authority for the replacement of the such resolution professional.</p> <p>2. The Adjudicating Authority shall within seven days of the receipt of the application under sub-section (1) make a reference to the Board for replacement of the resolution professional.</p> <p>3. The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (2), recommend the name of the resolution professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.</p> <p>4. Without prejudice to the provisions contained in sub-section (1), the creditors may apply to the Adjudicating Authority for replacement of the resolution professional where it has been decided in the meeting of the creditors, to replace the resolution professional with a new resolution professional for implementation of the repayment plan.</p> <p>5. Where the Adjudicating Authority admits an application made under sub-section (1) or sub-section (4), it shall direct the Board to confirm that there are no disciplinary proceedings pending against the proposed resolution professional.</p>	<ul style="list-style-type: none"> <li>• Submit appropriate consent form [Form A]</li> <li>• If the RP change matter is discussed in the creditors meeting, the existing RP shall ensure to minimize the detailed discussion and consider the resolution among the creditors. In case of the existing RP is not in support of such change for any specific reason, the RP shall inform the creditors and document the same in the minutes, for appropriate consideration of the NCLT during adjudication of the change over request.</li> <li>• Existing RP shall prepare a comprehensive list of handover documents, as may be application under various provisions of the act, rules and regulations and take a proper acknowledgement of the handover from the new RP</li> <li>• The RP shall ensure to retail such hard copy / soft copy of all the data as may be prescribed by the IBBI as per the preservation of records regulations.</li> <li>• As far as possible, the existing RP shall make a detailed day-wise progress of the case, minutes of all discussion in a very detailed report and provide the same to the new RP, so that the entire facts are appraised to the new RP for further success of the IRP process</li> </ul>	<ul style="list-style-type: none"> <li>• The lack of proper documentation and handover by the erstwhile RP cause extreme difficulties for new RP to pursue the case.</li> <li>• The inordinate delays of the Adjudicating authority in hearing and deciding the new RP appointment matters will hinder the flow of the resolution Process.</li> </ul>	<ul style="list-style-type: none"> <li>• Maintaining a detailed daily report of the facts, actions taken in the PG insolvency case will facilitate a proper handover and also preparation of progress reports as and when needed.</li> </ul>

<p>6. The Board shall send a communication within ten days of receipt of the direction under sub-section (5) either—</p> <p>(a) confirming appointment of the nominated resolution professional; or</p> <p>(b) rejecting appointment of the nominated resolution professional and recommend a new resolution professional.</p> <p>7. On the basis of the communication of the Board under sub-section (3) or sub-section (6) , the Adjudicating Authority shall pass an order appointing a new resolution professional.</p> <p>8. The Adjudicating Authority may give directions to the resolution professional replaced under sub-section (7)—</p> <p>(a) to share all information with the new resolution professional in respect of the insolvency resolution process; and</p> <p>(b) to co-operate with the new resolution professional in such matters as may be required.</p>			
<p><b>99 - Submission of report by resolution professional.</b></p>			
<p>1. The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.</p> <p>2. Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing—</p> <p>(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;</p>	<ul style="list-style-type: none"> <li>• All the roles as listed above from Section 94 &amp; 95 to be done by the RP</li> <li>• RP shall verify all the information and facts furnished in the application with the relevant source documents and keep appropriate audit evidence of such verification and validation by him</li> <li>• RP shall immediately write to all tax authorities, banks and all other known creditors to ascertain the correctness of all the debts reported in the form</li> </ul>	<ul style="list-style-type: none"> <li>• Timeline of getting the details from the debtor and the creditors will become a big issue, as the report to be submitted within 10, wherein the communication, making concerned people understand about the law and furnish information will take longer time in the early days.</li> </ul>	<ul style="list-style-type: none"> <li>• If the application is filed through the RP, then the concerned RP shall start collating the data well in advance before AA orders.</li> <li>• RP shall prepare a clear checklist of details to be collected, be clear with all the available sources of information, etc., [a good networking of the RP with others will facilitate faster retrieval of required information].</li> </ul>

<p>(b) evidence of encashment of a cheque issued by the debtor; or</p> <p>(c) a signed acknowledgment by the creditor accepting receipt of dues.</p> <p>3. Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.</p> <p>4. For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.</p> <p>5. The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.</p> <p>6. The resolution professional shall examine the application and ascertain that—</p> <p>(a) the application satisfies the requirements set out in section 94 or 95;</p> <p>(b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).</p> <p>7. After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.</p> <p>8. Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.</p>	<ul style="list-style-type: none"> <li>• RP shall carry out such due-diligence check to validate the existence and title of all the assets reported in the application, to establish appropriate comfort before certifying the form</li> <li>• RP shall carry out discrete enquiry and verification of various assets of the Debtor, to ascertain any intentional or unintentional missout of the asset or liability</li> <li>• Wherever needed, RP can take appropriate legal opinions on the contracts, so as to arrive at a proper conclusion and recommend to the Adjudicating Authority for acceptance / rejection of the application</li> <li>• RP shall formally minutize all the discussion with the Debtors, Creditors and all other stakeholders and ensure proper documentation and preservation of the same, as the AA may call for any evidence for forming such an opinion of acceptance / rejection.</li> </ul>	<ul style="list-style-type: none"> <li>• The Debtor may not extend his co-operation and furnish the information [especially incase of Sec 95- creditor filed cases]. Without Debtor co-operation, report preparation will be very tough and likely chance of many missouts</li> <li>• The statutory authorities are likely to take longer time to furnish the information, as the nodal officers are not yet in place to facilitate such information sharing.</li> </ul>	<ul style="list-style-type: none"> <li>• As much as possible, RP shall ensure to submit all the supporting evidences and the reasoning for his opinion in the report with all required annexures. RP need not worry about bulkiness of the report. It can have a synopsis for faster perusal of AA. However, RP shall ensure that the report is comprehensive to defend any objections.</li> </ul>
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<p>9. The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).</p> <p>10. The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.</p>			
<p><b>100 - Admission or rejection of application.</b></p>			
<p>1. The Adjudicating Authority shall, within fourteen days from the date of submission of the report under section 99 pass an order either admitting or rejecting the application referred to in section 94 or 95, as the case may be.</p> <p>2. Where the Adjudicating Authority admits an application under sub-section (1), it may, on the request of the resolution professional, issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan.</p> <p>3. The Adjudicating Authority shall provide a copy of the order passed under sub-section (1) along with the report of the resolution professional and the application referred to in section 94 or 95, as the case may be, to the creditors within seven days from the date of the said order.</p> <p>4. If the application referred to in section 94 or 95, as the case may be, is rejected by the Adjudicating Authority on the basis of report submitted by the resolution professional that the application was made with the intention to defraud his creditors or the resolution professional, the order under sub-section (1) shall record that the creditor is entitled to file for a bankruptcy order under Chapter IV.</p>	<ul style="list-style-type: none"> <li>• An RP shall monitor the progress of the case and provide such assistance to the AA for final orders, as may be called upon by the AA during the course of the hearing</li> <li>• Incase AA directs for negotiation, RP shall ensure free and fair negotiation between debtor and all the creditors as the case may be. RP shall analyse and facilitate the negotiation process with ground realities of the law, money realizable, potential risk of litigation delays etc., and facilitate for a negotiation / compromise arrangement.</li> <li>• RP shall ensure that the copies of the order are received by all the respective parties in time. Wherever there are miss out in communication, RP shall ensure that such communication are sent from his desk to ensure smooth flow of insolvency process.</li> </ul>	<ul style="list-style-type: none"> <li>• Wherever the RP is appointed by the NCLT from the empanelment list, there is lot of uncertainty in fees and expense realization for the RP.</li> <li>• The timeline delay in application admission leaves the RP in lurch, as he can't plan his work timelines and commit for taking other assignments</li> </ul>	<ul style="list-style-type: none"> <li>• RP shall keep monitoring the progress of the case and assist AA with additional details as and when called for by the AA during the application adjudication process.</li> </ul>



101: Moratorium.			
<p>1. When the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.</p> <p>2. During the moratorium period—</p> <p>(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;</p> <p>(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and</p> <p>(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;</p> <p>3. Where an order admitting the application under section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.</p> <p>4. The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.</p>	<ul style="list-style-type: none"> <li>• RP shall prepare a list of all pending cases, Outstanding debts and communicate to all the creditors regarding the commencement of Insolvency Process and the moratorium declared, so as to avoid unnecessary notices.</li> <li>• Wherever there are contradictory stands against the said moratorium, RP shall approach AA appropriately for necessary directions, to ensure smooth process if insolvency resolution process.</li> </ul>	<ul style="list-style-type: none"> <li>• Despite moratorium, the government agencies like tax authorities [Income Tax, GST, PF, ESI etc.] continue to issue notices and carry-on their assessment. Any amount of written letters to those department regarding the moratorium is of no use in current practice.</li> <li>• As there is no mention about Civil or Criminal suits in the statute, whether the criminal cases like Cheque bounce [Sec 138 of NI Act], etc., can continue against the debtor – will be a question?</li> <li>• The legal actions and cases in foreign jurisdictions will continue, until a bilateral arrangement and cross border insolvency process are established.</li> <li>• Whether the Debtor is allowed to travel abroad will be a big question. As there is no express rule here for impounding passport, this will be a challenging area wherein the RP has to act in time to avoid any mischiefs by the debtor.</li> </ul>	<ul style="list-style-type: none"> <li>• Depending on the gravity of the case, location of assets etc., RP may apply for passport impounding in advance before the AA.</li> <li>• Proactive communication to all the concerned legal authorities and courts regarding the moratorium will help RP to reduce unwanted progress of the litigations.</li> </ul>

## Role of RP's During Claim Processing / Admission / List of Creditors

Relevant Sections / Regulations / Rules.	Role of RPs	Challenges	Recommendations/ Best Practices
<b>102 - Public notice and claims from creditors.</b>			
<p>1. The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty-one days of such issue.</p> <p>2. The notice under sub-section (1) shall include—</p> <p>(a) details of the order admitting the application;</p> <p>(b) particulars of the resolution professional with whom the claims are to be registered; and</p> <p>(c) the last date for submission of claims.</p> <p>3. The notice shall be—</p> <p>(a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;</p> <p>(b) affixed in the premises of the Adjudicating Authority; and</p> <p>(c) placed on the website of the Adjudicating Authority.</p>	<ul style="list-style-type: none"> <li>Although the law specific AA for issuance of public notice, in general practice, the AA directs the RP to make the public notice.</li> </ul>	<ul style="list-style-type: none"> <li>No specific format of public notice defined in the Rules and Regulations. As the minimum requirements only are specified in the law, there may be wide varieties of format will be used and the parties may even litigate this public notices.</li> <li>There won't be any books of accounts in most of the individual cases. They won't have any balance sheet. Even the debtor himself will keep on adding and deleting asset related information from time to time.</li> <li>Law provides for display of notice in AA webportal. The AA portals are not yet upgraded / are designed for such numerous notice uploads. This will be a non-compliance in the initial days until the time the IBBI or AA defines a process and procedure for the same.</li> <li>Publication of notice in newspaper – the law specifies "In Circulation in State" – whether it has to be published across the entire state OR in the specific edition where he resides – these points will be a bigger concern for RP, as the parties may raise objection on the coverage issue later.</li> <li>Who will fund for the public notice expenses is a big question. Getting money from Debtor is difficult. Funding becomes a challenge?</li> </ul>	<ul style="list-style-type: none"> <li>RP shall make a choice of newspaper having wider coverage in the locality where he resides [eg: choice of newspaper edition should be such that the locality and the district is covered].</li> <li>Ensure proper translated copy of the notice in vernacular language is published [no English notice in vernacular newspaper].</li> <li>Depending upon the nature of business, lenders and creditors type in each case, adapt such other mediums of communication of the notices [incl.whatsapp etc..] so that the notice reaches the maximum number of creditors at the earliest and they submit their claims.</li> </ul>

103 - Registering of claims by creditors.			
<p>1. The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.</p> <p>2. In addition to the claims referred to in sub-section (1) , the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.</p>	<ul style="list-style-type: none"> <li>• The RP shall define a details process for receipt and verification of claims [Form B] in their office covering receipt of claim by various modes, acknowledging those claims, preliminary review, calling for additional details, final review and acceptance / rejection of claim, communication to the said claimant regarding acceptance / rejection etc.,</li> <li>• As the law specifies a maximum threshold of days for verification of claims, RP shall ensure proper review and claim admissions within the stipulated time, so that the process timelines are adhered to.</li> <li>• Wherever there are ambiguity in amounts or the claim is not fully crystallised, the RP shall ensure proper documentation with reasoning for admitting the claim with best estimates and shall periodically review such claims with the additional information / evidence received due course.</li> </ul>	<ul style="list-style-type: none"> <li>• The claims won't be received in time. There will be lot of belated claims OR some cases claims may come after finalization of the repayment plan.</li> <li>• Some of the claims may be time barred may be 5/10 years old. Whether the RP has power to reject those claims on the grounds to limitation of time is an unanswered question. Even the AA has not clarified such issues in the CIRP cases.</li> </ul>	<ul style="list-style-type: none"> <li>• RP shall prepare and maintain clear work papers for each claims received and verified. The work papers are the most crucial documents to evidence proper review and admission / rejection of claims.</li> </ul>

104- Preparation of list of creditors.			
<p>1. The resolution professional shall prepare a list of creditors on the basis of—</p> <p>(a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;</p> <p>(b) claims received by the resolution professional under section 102.</p> <p>2. The resolution professional shall prepare the list mentioned in sub-section (1) within thirty days from the date of the notice.</p>	<ul style="list-style-type: none"> <li>• The RP shall prepare a detailed list of creditors containing the details of the creditor including address and identification details, claims amount and nature of claims, details of security interest etc.,</li> <li>• Considering the limited timelines, RP shall ensure to keep the list prepared parallel to the claim verification process, as some debtors case will be flooded with voluminous claims running into many thousands.</li> <li>• RP shall ensure proper display of the list of creditors in the Gurantors website and ensure that the said list is available for inspection to the claimants.</li> </ul>	<ul style="list-style-type: none"> <li>• The delay in receipt of claim from various creditors will be big challenge in finalizing this list of creditors. The claims may continue to flow even after finalization of the list. Whether the RP is empowered to accept belated claims and make modification to the list of creditors is not expressly provided in the law. There are likely disputes in this front in the day to come</li> </ul>	<ul style="list-style-type: none"> <li>• For claim review and admission, List of creditors etc., adopting a standardized templates will facilitate RP for efficient functioning. May be adoption of some software [new software are now available in market] will help RP's to stream line the process.</li> <li>• Defining an inspection process and fixed timing for creditors inspection of the said list will ease the process.</li> </ul>

# Role of RP's During Repayment Plan & Meeting Creditors for the Approval/Consideration of the Repayment Plan

Relevant Sections / Regulations / Rules.	Role of RPs	Challenges	Recommendations/ Best Practices
<b>105. Repayment Plan</b>			
<p>1. The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs.</p> <p>2. The repayment plan may authorise or require the resolution professional to -</p> <p>(a) carry on the debtor's business or trade on his behalf or in his name; or</p> <p>(b) realise the assets of the debtor; or</p> <p>(c) administer or dispose of any funds of the debtor.</p> <p>3. The repayment plan shall include the following, namely: -</p> <p>(a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;</p>	<ul style="list-style-type: none"> <li>• To provide assistance, wherever required, in the preparation of Repayment Plan to personal guarantor as per Section 105.</li> <li>• To perform such functions and duties, if authorised or required to be done by Resolution Professional in the repayment plan, as per section 105(2) of the Insolvency and Bankruptcy Code, 2016.</li> <li>• To identify the assets owned by personal guarantor and his/ her immediate family members and preparation of list of these assets.</li> <li>• To prepare a chart of his/ her immediate family members as per Section 79 (17) and associates as per Section 79(2) of IB Code, 2016 read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.</li> <li>• To ascertain the excluded assets and excluded debt as per Section 79 sub-section 14 for excluded asset and sub-section 15 for excluded debt.</li> <li>• Checking reasonableness of the proposed justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan.</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of Cooperation from the Personal Guarantor which includes tile documents of his/ her property, location of the assets and such other information/ documents as may be necessary.</li> <li>• Difficulty in tracking the actual position of the available assets in the name of the personal guarantor.</li> <li>• Taking possession of the individual properties is a challenging task due to emotional values attached with the personal guarantor as well as his/ her family members.</li> <li>• Non-disclosure of his/ her immediate family/ relatives/ associates by personal guarantor.</li> <li>• To determine the consequences in case of non-implementation of Repayment Plan effectively.</li> </ul>	<ul style="list-style-type: none"> <li>• Try to establish a healthy relationship with the personal guarantor in order to obtain the relevant details or information in effective manner.</li> <li>• To generate Credit Rating Report such as CIBIL, CRIF High Mark, Equifax etc in order to cross verify the debt owed by personal guarantor.</li> <li>• To obtain due-diligence report from expert agencies in order to identify the shareholding, directorship and other relevant information.</li> </ul>

<p>(b) provision for payment of fee to the resolution professional;</p> <p>(c) such other matters as may be specified.</p>	<ul style="list-style-type: none"> <li>• To estimate the Insolvency Process Cost and to ensure the provision for payment of fee to the resolution professional.</li> <li>• To determine the consequences in case of non-implementation of Repayment Plan effectively and in timely manner.</li> <li>• Any other matters on case-to-case basis as RP may deem fit/ necessary.</li> </ul>	<ul style="list-style-type: none"> <li>• Sometimes the person changed their residential location from one to another and it is difficult to trace their present location to carry out the process.</li> </ul>	
<p><b>106. Report of resolution professional on repayment plan.</b></p>			
<p>1. The resolution professional shall submit the repayment plan under section 105 along with his report on such plan to the Adjudicating Authority within a period of twenty-one days from the last date of submission of claims under section 102.</p> <p>2. The report referred in sub-section (1) shall include that-</p> <p>(a) the repayment plan is in compliance with the provisions of any law for the time being in force;</p> <p>(b) the repayment plan has a reasonable prospect of being approved and implemented; and</p>	<ul style="list-style-type: none"> <li>• Vetting of the Repayment Plan in confirmation with the contents as specified under Reg. 17 of IBBI (Insolvency Resolution Process of Personal Guarantor to Corporate Debtors) Regulations, 2019 and other applicable provisions.</li> <li>• To ascertain the reasonable prospect of approval and implementation of Repayment Plan.</li> <li>• To record the reasons whether there is a requirement for summoning the meeting of creditors or not.</li> <li>• To specify such date, time and place of meeting which is to be held if he thinks that a meeting of creditors should be summoned and such date, time and venue of meeting shall be in accordance with Section 106(4) of the Insolvency and Bankruptcy Code, 2016.</li> </ul>	<ul style="list-style-type: none"> <li>• To determine the reasonable prospect of the Repayment Plan.</li> <li>• To define and justify the hair cut proposed in the Repayment Plan.</li> <li>• To justify the futuristic implementation of the Repayment Plan in an effective and efficient manner.</li> <li>• To determine the genuineness of the source of funds proposed by the personal guarantor for the purpose of Repayment Plan.</li> </ul>	<ul style="list-style-type: none"> <li>• To obtain affidavit/ undertaking from personal guarantor with respect to:                         <ul style="list-style-type: none"> <li>(a) assets owned by personal guarantor;</li> <li>(b) his/ her immediate family members, relatives and</li> </ul> </li> </ul>

<p>(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.</p> <p>3. The report referred to in sub-section (2) shall also specify the date on which, and the time and place at which, the meeting should be held if he is of the opinion that a meeting of the creditors should be summoned.</p> <p>4. For the purposes of sub-section (3) -</p> <p>5. the date on which the meeting is to be held shall be not less than fourteen days and not more than twenty-eight days from the date of submission of report under subsection (1);</p> <p>6. the resolution professional shall consider the convenience of creditors in fixing the date and venue of the meeting of the creditors.</p>	<ul style="list-style-type: none"> <li>• To submit his report along with Repayment Plan to the Adjudicating Authority within specified time period.</li> <li>• Resolution Professional to ensure that his report includes and covers items mentioned in Section 106(2) of the Insolvency and Bankruptcy Code, 2016.</li> <li>• To ensure the priority of payment of debts as per Section 178 of IB Code, 2016.</li> <li>• Valuation of the assets in case personal guarantor proposed to make the payment by realisation from sale of his/ her assets.</li> </ul>	<ul style="list-style-type: none"> <li>• To establish the reasonableness of the reasonable expenses as per Reg. 17(1)(c) of IBBI (Insolvency Resolution Process of Personal Guarantor to Corporate Debtors) Regulations, 2019.</li> <li>• To adhere to the prescribed timelines as there may be lack of cooperation from the personal guarantor.</li> </ul>	<ul style="list-style-type: none"> <li>(c) associates;</li> <li>(d) excluded assets;</li> <li>(e) reasonable expenses to determine minimum budget.</li> <li>• Appointment of detective agency to trace the assets of the personal guarantor.</li> <li>• Draft repayment plan may be discussed with various stakeholders for their inputs/ suggestions before finalisation.</li> <li>• To enquire about the standard of living of personal guarantor with the neighbours/ relatives/ friends/ else in order to justify he minimum budget proposed by the personal guarantor in the Repayment Plan as per Reg. 17(1)(c) of IBBI (Insolvency Resolution Process for Personal Guarantor to the Corporate Debtors) Regulations, 2019.</li> <li>• To obtain undertaking for reasonable assurance in case personal guarantor proposed to bring funds for the purpose of repayment plan from external sources.</li> <li>• To appoint valuer for valuation of assets in case personal guarantor proposes to bring funds by sale of assets.</li> </ul>
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107. Summoning of meeting of creditors.			
<p>1. The resolution professional shall issue a notice calling the meeting of the creditors at least fourteen days before the date fixed for such meeting.</p> <p>2. The resolution professional shall send the notice of the meeting to the list of creditors prepared under section 104.</p> <p>3. The notice sent under sub-section (1) shall state the address of the Adjudicating Authority to which the repayment plan and report of the resolution professional on the repayment plan has been submitted and shall be accompanied by -</p> <p>(a) a copy of the repayment plan;</p> <p>(b) a copy of the statement of affairs of the debtor;</p> <p>(c) a copy of the said report of the resolution professional; and</p> <p>(d) forms for proxy voting.</p> <p>4. The proxy voting, including electronic proxy voting shall take place in such manner and form as may be specified.</p>	<ul style="list-style-type: none"> <li>• To verify the claims received and preparation of list of creditors accordingly.</li> <li>• To prepare the sheet representing the voting share of each creditor as per the admitted claim amount.</li> <li>• To issue a notice calling the meeting of creditors at least 14 days before the date of such meeting and send such notice to the creditors as per list of creditors prepared under section 104 of the Insolvency and Bankruptcy Code, 2016.</li> <li>• Resolution Professional to ensure that the notice issued under section 107(1) should contain and be accompanied by such items as mentioned in section 107(3) of the Insolvency and Bankruptcy Code, 2016 and Regulation 12 of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.</li> <li>• The notice shall contain venue, time, date of the meeting and option shall be available to the participants to attend the meeting either in person, through video conferencing or by electronic mode/ proxy.</li> <li>• The notice shall carry the necessary agenda to be discussed in the meeting along with detailed notes to agenda with documents related to it.</li> <li>• The notice shall contain the Insolvency Resolution Process Cost incurred by RP till the date of meeting.</li> <li>• Resolution Professional to ensure that proxy voting and electronic proxy voting shall be conducted as per applicable rules and regulations.</li> </ul>	<ul style="list-style-type: none"> <li>• To determine claim amount to be admitted in case of Resolution Plan of CD is pending for approval before Adjudicating Authority or distribution of funds under Liquidation is in process.</li> <li>• Coordination with various creditors for seeking information/ documents required for the purpose of claim verification.</li> <li>• To collate the assets and liabilities of personal guarantor, excluded assets and debts, Income Tax Returns, Debt owed by guarantor to his associates, guarantees given in relation to his debts, and whether any of the guarantors is an associate of the guarantor, details of business owned by the guarantor or of his firm in which he is a partner, as the case may be or any other related information required for preparation of statement of affairs.</li> <li>• There is no standard format available for preparation of statement of affairs.</li> </ul>	<ul style="list-style-type: none"> <li>• RP may serve notice of meeting through various modes of communication i.e., electronically (Email, WhatsApp), R.P.A.D./ Courier, etc.</li> <li>• It is advisable to have a meeting with creditors and record their inputs and suggestions on repayment plan.</li> <li>• Venue for meeting may be decided as per the location of largest no. of creditors.</li> <li>• To prepare notice of the meeting with detailed agenda items to be discussed.</li> <li>• The notice shall carry the necessary agenda to be discussed in the meeting along with detailed notes to agenda with documents required to participants for decision making and draft resolutions wherever necessary for voting upon.</li> </ul>



	<ul style="list-style-type: none"> <li>• RP shall convene a meeting of creditors suo-moto or on a request by creditors having thirty-three percent of voting share of creditors.</li> <li>• To prepare the statement of affairs as per Regulation 10 of IBBI (Insolvency Resolution Process for personal guarantor to the Corporate Debtors) Regulations, 2019.</li> </ul>		
<b>108. Conduct of meeting of creditors.</b>			
<p>1. The meeting of the creditors shall be conducted in accordance with the provisions of this section and sections 109, 110 and 111.</p> <p>2. In the meeting of the creditors, the creditors may decide to approve, modify or reject the repayment plan.</p> <p>3. The resolution professional shall ensure that if modifications are suggested by the creditors, consent of the debtor shall be obtained for each modification.</p> <p>4. The resolution professional may for a sufficient cause adjourn the meeting of the creditors for a period of not more than seven days at a time.</p>	<ul style="list-style-type: none"> <li>• The Resolution Professional shall ensure that criteria of the quorum are fulfilled if creditors representing at least thirty-three percent of voting share are present in person, by proxy or through video conferencing as per Reg. 13 of IBBI (Insolvency Resolution Process for personal guarantor to the Corporate Debtors) Regulations, 2019.</li> <li>• Resolution Professional to ensure that the meeting is conducted in compliance with the provisions of this section and sections 109, 110 and 111 read with Reg. 14 of IBBI (Insolvency Resolution Process for personal guarantor to the Corporate Debtors) Regulations, 2019.</li> <li>• The resolution professional shall ensure that if modifications are suggested by the creditors, consent of the debtor shall be obtained for each modification.</li> <li>• Resolution Professional to ensure that all the agenda items mentioned in the notice of the meeting are discussed and voted upon wherever necessary.</li> <li>• The Resolution Professional shall ensure that the required quorum is present throughout the meeting by taking roll call.</li> </ul>	<ul style="list-style-type: none"> <li>• To obtain the consent of debtors as per the suggestions of the creditors on the repayment plan as they do not agree easily on the terms and conditions.</li> <li>• To collate the assets and liabilities of personal guarantor, excluded assets and debts, Income Tax Returns, Debt owed by guarantor to his associates, guarantees given in relation to his debts, and whether any of the guarantors is an associate of the guarantor, details of business owned by the guarantor or of his firm in which he is a partner, as the case may be.</li> <li>• To obtain unanimous consensus among the creditors on the terms and conditions proposed in the repayment plan.</li> </ul>	<ul style="list-style-type: none"> <li>• To ensure the proper connectivity, compatibility and other necessary infrastructure in case meeting to be conducted electronically.</li> <li>• To ensure proper sitting arrangement(s), recording facility and other requirements at the venue of the meeting i.e., conference hall, office in case of physical meeting.</li> <li>• Opportunity to present their views/ suggestions should be given to each and every creditor on the agenda items proposed to be discussed in the meeting.</li> <li>• Brief note may be presented by RP about the actions taken in insolvency resolution process till the date of meeting.</li> </ul>

	<ul style="list-style-type: none"> <li>• No person other than participants and any other person whose presence is required by RP, shall be allowed access to the meeting without the permission of RP.</li> <li>• The resolution professional may for a sufficient cause, if need arises, adjourn the meeting of the creditors for a period of not more than seven days at a time.</li> </ul>		
<b>109. Voting rights in meeting of creditors.</b>			
<p>1. A creditor shall be entitled to vote at every meeting of the creditors in respect of the repayment plan in accordance with voting share assigned to him.</p> <p>2. The resolution professional shall determine voting share to be assigned to each creditor in the manners specified by the Board.</p> <p>3. A creditor shall not be entitled to vote in respect of a debt for an unliquidated amount.</p> <p>4. A creditor shall not be entitled to vote in a meeting of the creditors if he —</p> <p>(a) is not a creditor mentioned in the list of creditors under section 104; or</p> <p>(b) is an associate of the debtor.</p>	<ul style="list-style-type: none"> <li>• The Resolution Professional shall prepare minutes of the meeting, including who voted for, against or abstained from voting on the items put to vote in the meeting.</li> <li>• RP shall circulate the minutes of meeting by electronic means to all participants of the meeting within forty-eight hours of the conclusion of the meeting.</li> <li>• Resolution Professional to assign voting share percentage to each creditor in the manner specified by the board.</li> <li>• Resolution Professional to ensure that every creditor eligible to vote shall vote and creditors not entitled to vote shall not vote as per provisions of section 109.</li> <li>• Resolution Professional to ensure that an individual appointed as a proxy on behalf of the creditor shall not be an associate of the guarantor. <ul style="list-style-type: none"> <li>▪ To prepare the sheet representing the voting share of each creditor as per the admitted claim amount.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Facing technical difficulties in case of e-voting proposed for agenda items.</li> <li>• Due to non-availability of information of guarantor like associates, relatives etc., it cannot be determined that whether the creditor is an associate of the debtor or not as mentioned in Section 109(4) of IB Code, 2016.</li> <li>• To obtain unanimous consensus among the creditors on the proposed agenda items of the meeting.</li> </ul>	<ul style="list-style-type: none"> <li>• To prepare the minutes of meeting in a proper manner covering a. attendance of the creditors;</li> <li>• the views of each and every creditor and detailed discussions on the agenda of the meeting;</li> <li>• proposed resolution for meeting</li> <li>• To appoint voting agency for conduct of e-voting among the creditors for the proposed agenda items in the meeting.</li> <li>• To give sufficient time to the creditors to vote on the agenda items proposed to be passed/ approved in the meeting.</li> <li>• To ensure proper voting facility and coordination with the creditors to make sure the voting of each and every creditor on agenda items proposed for voting.</li> </ul>

	<ul style="list-style-type: none"> <li>• In case of voting by proxy, RP shall obtain Form C from the creditor, duly completed at least twenty-four hours prior to the meeting of creditors as per Reg. 16 of IBBI (Insolvency Resolution Process for personal guarantor to the Corporate Debtors) Regulations, 2019.</li> <li>• Resolution Professional to ensure opening of voting window for atleast 24 hours from the circulation of the minutes and circulation of voting results within twenty-four hours of the conclusion of the voting.</li> <li>• To ensure that a creditor shall not be entitled to vote in respect of a debt for an unliquidated amount.</li> </ul>		
<b>110. Rights of secured creditors in relation to repayment plan.</b>			
<p>1. Secured creditors shall be entitled to participate and vote in the meetings of the creditors.</p> <p>2. A secured creditor participating in the meetings of the creditors and voting in relation to the repayment plan shall forfeit his right to enforce the security during the period of the repayment plan in accordance with the terms of the repayment plan.</p> <p>3. Where a secured creditor does not forfeit his right to enforce security, he shall submit an affidavit to the resolution professional at the meeting of the creditors stating -</p>	<ul style="list-style-type: none"> <li>• In case a secured creditor does not forfeit his right to enforce security, Resolution Professional has to ensure that an affidavit stating –                         <ul style="list-style-type: none"> <li>(a) that the right to vote exercised by the secured creditor is only in respect of the unsecured part of the debt; and</li> <li>(b) the estimated value of the unsecured part of the debt.</li> </ul> </li> <li>• To verify the estimated value of the unsecured part of the debt.</li> <li>• Resolution Professional to treat secured and unsecured debts of the secured creditor as separate debts in case a secured creditor participates in voting by submitting an affidavit.</li> </ul>	<ul style="list-style-type: none"> <li>• To verify the estimated value of the unsecured part of the debt.</li> <li>• To coordinate with the secured creditors and guarantor in such manner that rights of secured creditors are protected.</li> </ul>	<ul style="list-style-type: none"> <li>• To obtain clarity from the creditors at the time of admission of their claim.</li> </ul>

<p>(a) that the right to vote exercised by the secured creditor is only in respect of the unsecured part of the debt; and</p> <p>(b) the estimated value of the unsecured part of the debt.</p> <p>4. In case a secured creditor participates in the voting on the repayment plan by submitting an affidavit under sub-section (3), the secured and unsecured parts of the debt shall be treated as separate debts.</p> <p>5. The concurrence of the secured creditor shall be obtained if he does not participate in the voting on repayment plan but provision of the repayment plan affects his right to enforce security.</p> <p><i>Explanation.</i> – For the purposes of this section, “period of the repayment plan” means the period from the date of the order passed under section 114 till the date on which the notice is given by the resolution professional under section 117 or report submitted by the resolution professional under section 118, as the case may be.</p>	<ul style="list-style-type: none"> <li>• Resolution Professional should coordinate with the secured creditors and guarantor in such manner that rights of secured creditors are protected.</li> <li>• To obtain concurrence of the secured creditor, if he does not participate in the voting on repayment plan but provision of the repayment plan affects his right to enforce security.</li> </ul>		
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<b>111. Approval of repayment plan by creditors.</b>			
<p>The repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.</p>	<ul style="list-style-type: none"> <li>• Resolution Professional ensure that the repayment plan prepared by the debtor or if any modification if any shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.</li> </ul>	<ul style="list-style-type: none"> <li>• To convince the stakeholders on various terms and conditions/ modifications on the Repayment Plan.</li> <li>• To obtain the approval of creditors more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.</li> </ul>	<ul style="list-style-type: none"> <li>• To coordinate properly with the creditors and convince them to vote of the repayment plan.</li> <li>• To explain pros and cons of the repayment plan to the creditors for their approval or dissent.</li> </ul>
<b>112. Report of meeting of creditors on repayment plan.</b>			
<p>1. The resolution professional shall prepare a report of the meeting of the creditors on repayment plan.</p> <p>2. The report under sub-section (1) shall contain -</p> <p>(a) whether the repayment plan was approved or rejected and if approved, the list the modifications, if any;</p> <p>(b) the resolutions which were proposed at the meeting and the decision on such resolutions;</p>			

<p>(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</p> <p>(d) such other information as the resolution professional thinks appropriate to make known to the Adjudicating Authority.</p>	<ul style="list-style-type: none"> <li>• To prepare a report of the meeting of creditors on repayment plan.</li> <li>• To ensure that the report should contain:                             <ul style="list-style-type: none"> <li>(a) whether the repayment plan was approved or rejected and if approved, the list the modifications, if any;</li> <li>(b) the resolutions which were proposed at the meeting and the decision on such resolutions;</li> <li>(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</li> <li>(d) such other information as the resolution professional thinks appropriate to make known to the Adjudicating Authority.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• To adhere to the timelines in preparation of the report of meeting of creditors on repayment plan.</li> </ul>	<ul style="list-style-type: none"> <li>• Report of the meeting of creditors on repayment plan should be drafted in a proper manner covering all the detailed discussion and decision on proposed resolution and approval/ rejection/ modification of the repayment plan etc.</li> </ul>
<b>113. Notice of decisions taken at meeting of creditors.</b>			
<p>The resolution professional shall provide a copy of the report of the meeting of creditors prepared under section 99 to -</p> <ul style="list-style-type: none"> <li>(a) the debtor;</li> <li>(b) the creditors, including those who were not present at the meeting; and</li> <li>(c) the Adjudicating Authority.</li> </ul>	<ul style="list-style-type: none"> <li>• The Resolution Professional ensure that copy of the report of the meeting of the creditors to be served to all the person as prescribed in section 113 of IBC, 2016.</li> <li>• The resolution professional shall file the repayment plan, as approved by the creditors, along with the report mentioned in section 106 or 112, as the case may be, with the Adjudicating Authority on or before completion of 120 days from the resolution process commencement date.</li> <li>• The resolution professional shall provide the copies of the documents filed with the Adjudicating Authority under sub-regulation (1) to the guarantor and the creditors, within three days from the date of such meeting.</li> </ul>	-	<ul style="list-style-type: none"> <li>• RP may serve copy of the report of the meeting of the creditors through various modes of communication i.e., electronically (Email, WhatsApp), R.P.A.D./ Courier, etc.</li> </ul>

114. Order of Adjudicating Authority on repayment plan.			
<p>1. The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional under section 112:</p> <p>2. Provided, that where a meeting of creditors is not summoned, the Adjudicating Authority shall pass an order on the basis of the report prepared by the resolution professional under section 106.</p> <p>3. The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan.</p> <p>4. Where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution professional to re-convene a meeting of the creditors for reconsidering the repayment plan.</p>	<ul style="list-style-type: none"> <li>• To ensure the compliance of order passed by the adjudicating authority.</li> <li>• If in the opinion of adjudicating authority there is a requirement of any modification in the repayment plan then at the direction of adjudicating authority the Resolution Professional shall re-convene a meeting of the creditors for reconsidering the repayment plan.</li> <li>• To ensure implementation of repayment plan in an effective and timely manner.</li> <li>• If in the opinion of the resolution professional, the guarantor has failed in implementation of the repayment plan, the resolution professional shall within three days of knowledge of such failure issue a notice to guarantor identifying the failure and requiring him, within fifteen days of receipt of the notice to address such failure along with proper explanation.</li> </ul>	<ul style="list-style-type: none"> <li>• To ensure implementation of repayment plan in an effective and timely manner.</li> </ul>	<ul style="list-style-type: none"> <li>• To draft checklist/ layout for proper implementation of repayment plan.</li> </ul>

115. Effect of order of Adjudicating Authority on repayment plan.			
<p>1. Where the Adjudicating Authority has approved the repayment plan under section 114, the repayment plan shall –</p> <p>(a) take effect as if proposed by the debtor in the meeting; and</p> <p>(b) be binding on creditors mentioned in the repayment plan and the debtor.</p> <p>2. Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.</p> <p>3. A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196.</p>	<ul style="list-style-type: none"> <li>• The resolution professional shall provide the copy of the order of Adjudicating Authority to the stakeholders and board.</li> </ul>	-	-



## Role of RP's During Implementation of Resolution Plan

Relevant Sections / Regulations / Rules.	Role of RPs	Challenges	Recommendations/ Best Practices
<b>116. Implementation and supervision of repayment plan</b>			
<ol style="list-style-type: none"> <li>1. The resolution professional appointed under section 97 or under section 98 shall supervise the implementation of the repayment plan.</li> <li>2. The resolution professional may apply to the Adjudicating Authority for directions, if necessary, in relation to any particular matter arising under the repayment plan.</li> <li>3. The Adjudicating Authority may issue directions to the resolution professional on the basis of an application under sub-section (2).</li> </ol>	<ul style="list-style-type: none"> <li>• Resolution Professional ensure that if the Adjudicating Authority has approved the repayment plan under section 114 will implemented effectively as per the direction of AA and plan proposed by the debtor.</li> <li>• To determine the consequences in case of non-implementation of Repayment Plan effectively and in timely manner.</li> <li>• To ascertain the reasonable prospect of approval and implementation of Repayment Plan.</li> </ul>	<ul style="list-style-type: none"> <li>• To determine the consequences in case of non-implementation of Repayment Plan effectively.</li> <li>• To justify the futuristic implementation of the Repayment Plan in an effective and efficient manner.</li> </ul>	
<b>117. Completion of repayment plan</b>			
<ol style="list-style-type: none"> <li>1. The resolution professional shall within fourteen days of the completion of the repayment plan, forward to the persons who are bound by the repayment plan under section 115 and the Adjudicating Authority, the following documents, namely -               <ol style="list-style-type: none"> <li>(a) a notice that the repayment plan has been fully implemented; and</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>• On successful implementation of repayment plan, resolution professional sent a notice that repayment plan has been fully implemented and a copy of a report by the resolution professional summarising all receipts and payments made in pursuance of the repayment plan and extent of the implementation of such plan as compared with the repayment plan approved by the meeting of the creditors, within 14 days of completion of repayment plan.</li> </ul>		

<p>(b) a copy of a report by the resolution professional summarising all receipts and payments made in pursuance of the repayment plan and extent of the implementation of such plan as compared with the repayment plan approved by the meeting of the creditors.</p> <p>2. The resolution professional may apply to the Adjudicating Authority to extend the time mentioned in sub-section (1) for such further period not exceeding seven days.</p>	<ul style="list-style-type: none"> <li>• In case repayment plan not get completed within the timelines mentioned in the repayment plan, resolution professional may apply to adjudicating authority to extend the time for such further period not exceeding seven days.</li> </ul>		
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118. Repayment plan coming to end prematurely			
<p>1. A repayment plan shall be deemed to have come to an end prematurely if it has not been fully implemented in respect of all persons bound by it within the period as mentioned in the repayment plan.</p> <p>2. Where a repayment plan comes to an end prematurely under this section, the resolution professional shall submit a report to the Adjudicating Authority which shall state-</p> <p>(a) the receipts and payments made in pursuance of the repayment plan;</p> <p>(b) the reasons for premature end of the repayment plan; and</p> <p>(c) the details of the creditors whose claims have not been fully satisfied.</p> <p>3. The 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.</p> <p>4. 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.</p>	<p>• Where the repayment plan comes to an end prematurely, either in case it has not been fully implemented in respect of all persons bound by it within the period as mentioned in the repayment plan or successful implementation of repayment plan before the timelines mentioned in the repayment plan, then in that case resolution professional shall submit a report to Adjudicating Authority which shall state:</p> <p>(a) the receipts and payments made in pursuance of the repayment plan;</p> <p>(b) the reasons for premature end of the repayment plan; and</p> <p>(c) the details of the creditors whose claims have not been fully satisfied.</p>		

<p>5. The Adjudicating Authority shall forward to the persons bound by the repayment plan under section 115, a copy of the -</p> <p>(a) report submitted by the resolution professional to the Adjudicating Authority under sub-section (2); and</p> <p>(b) order passed by the Adjudicating Authority under sub-section ( 3) .</p> <p>6. The Adjudicating Authority shall forward a copy of the order passed under subsection (4) to the Board, for the purpose of recording entries in the register referred to in section 196.</p>			
<p><b>119. Discharge order</b></p>			
<p>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.</p> <p>2. The repayment plan may provide for -</p> <p>(a) early discharge; or</p> <p>(b) discharge on complete implementation of the repayment plan.</p> <p>3. The discharge order shall be forwarded to the Board, for the purpose of recording entries in the register referred to in section 196.</p> <p>4. The discharge order under sub-section (3) shall not discharge any other person from any liability in respect of his debt.</p>	<ul style="list-style-type: none"> <li>• On completion of repayment plan or early discharge if mentioned in the repayment plan, resolution professional shall apply to adjudicating authority for a discharge order in relation to the debts mentioned in the repayment plan.</li> <li>• As per Reg. 21 of IBBI (Insolvency Resolution Process for personal guarantor to the Corporate Debtors) Regulations, 2019, resolution professional shall for the purpose of discharge order, file an application along with the copies of the notice and report under section 117 of IB Code, 2016, to the adjudicating Authority under Section 119.</li> </ul>		

120. Standard of conduct			
<p>The resolution professional shall perform his functions and duties in compliance with the code of conduct provided under section 208.</p>	<ul style="list-style-type: none"> <li>• Resolution Professional shall abide by the following code of conduct: –                             <ul style="list-style-type: none"> <li>(a) to take reasonable care and diligence while performing his duties;</li> <li>(b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;</li> <li>(c) to allow the insolvency professional agency to inspect his records;</li> <li>(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and</li> <li>(e) to perform his functions in such manner and subject to such conditions as may be specified.</li> </ul> </li> </ul>		

## List of Exceptional Scenarios & Suggested Sop's

Identify and Validate excluded Assets U/s. 79(14)		
Unencumbered Tools/books/ Vehicles	<ul style="list-style-type: none"> <li>• For employment/ business/ vocation</li> <li>• For Eg., Apple laptop/desktop Whether essential</li> <li>• High Cost business Softwares/Apps etc.,</li> <li>• Apple I Phone – Whether essential</li> <li>• Old Books of commercial /Antique value</li> <li>• Audi/Benz/BMW Car or Maruti Car</li> <li>• Imported/ Hi Value Two wheelers</li> <li>• Antiques</li> <li>• Intellectual property Rights?</li> <li>• Royalty?</li> </ul>	<p>As are necessary for the purpose of his employment/vocation. So,</p> <ul style="list-style-type: none"> <li>• Validate, whether the listed out tools are necessary for employment/business / vocation.</li> <li>• If so, identify the nature and volume of income generated in the past 3 years and the potential for generating income for next 3 years.</li> <li>• For Eg., Desktop/laptop used by professionals for professional drawing/with specific professional application - can be exmpt.</li> <li>• Otherwise, used for entertainment can not be considered necessary.</li> <li>• To be treated as Assets available for distribution</li> <li>• Intellectual property rights - Validate from IPR Website -</li> <li>• IBBI has to come out with guidance on the NATURE and quantum of permitted tools</li> </ul>
Unencumbered Furniture/ household equipments	<ul style="list-style-type: none"> <li>• For Satisfying basic needs of the family.</li> <li>• Home Theatre/wi-fi enabled hi-tech devices</li> <li>• Cozy Sofa/bed, Jacuzzi, Other posh devices</li> <li>• Antiques display</li> </ul>	<ul style="list-style-type: none"> <li>• Basic Needs and Basic standard to be specified by IBBI/Govt.</li> <li>• Antiques are different class and hence can not be left to the Defaulted Individual.</li> <li>• Antiques are taken over and to be treated as available for distribution.</li> <li>• Similarly Jacuzzi/Cozy bed etc.,</li> </ul>
Personal ornaments of such value, which cannot be parted with, as per religious usage..	<ul style="list-style-type: none"> <li>• Mangal sutra over more than 10 Soverigns</li> <li>• Other attached ornaments with Mangal Sutra which they claim as part of mangal sutraHigh Cost ornaments worn regularly, claimed to be part of the religious requirements</li> </ul>	<ul style="list-style-type: none"> <li>• 79(14)(c) states “as may be prescribed”.</li> <li>• Once the Govt/IBBI prescribes the minimum weightages, then the difference can be taken over. It is now prescribed that up to Rs.1 lakh (Rule 5)</li> <li>• As per the religious requirements, the additional ornaments have to be evaluated.</li> <li>• Help of “Registered Valuer” can be taken</li> </ul>

Unencumbered Life Insurance policy and pension plan	<ul style="list-style-type: none"> <li>• Hi Value Insurance Policy unencumbered – Can it be part of source for repayment?</li> <li>• Pension plan of more than prescribed value – can it be part of source for repayment plan?</li> <li>• Keyman Insurance Policy</li> </ul>	<ul style="list-style-type: none"> <li>• Policy need to be evaluated for its expected benefits.</li> <li>• Where the expected benefit is in excess of the basic requirement for maintaining the family</li> <li>• Whether keyman proceeds to be payable to the CD or to the Individual. Policy details to be validated</li> </ul>
Unencumbered Single dwelling unit	<ul style="list-style-type: none"> <li>• Single dwelling unit – means what? – Flat with single bedroom</li> <li>• Multiple flats joined together as single flats</li> </ul>	<ul style="list-style-type: none"> <li>• Definition of Single Dwelling unit to be validated – Now it is prescribed Rs. 10 lakhs in Rural Area and Rs. 20 lakhs in Urban area. (Rule 5)</li> <li>• Dwelling unit for Self and dependents to be validated</li> <li>• Specific size to be notified by IBBI</li> <li>• In GST, there is a concept of “affordable housing”. Whether the area as per “affordable housing” can be a single dwelling unit? Need Clarification from authorities.</li> <li>• Multiple flats joined together can not be a single dwelling unit. However, official clarification has to be issued by IBBI in this regard</li> </ul>
<b>1. Excluded Debts – Sec. 79(15):</b>		
Court fine / penalty	<ul style="list-style-type: none"> <li>• Whether penalty on the Civil Side/ Criminal Side</li> <li>• Whether compoundable offence</li> <li>• What is the priority</li> </ul>	<ul style="list-style-type: none"> <li>• Official clarification on penalties of CD devolved on the Individual / penalties on cases against individual to be clarified</li> <li>• Whether Court fine/penalty levied on defaults of CD payable by director .. Eg., in PF, the personal liability attached to the employer for failure of the CD, whether covered</li> <li>• Or Penalty/fine levied on Cases against specific individual</li> <li>• Where punishment like imprisonment compounded by Financial penalty covered</li> </ul>
Damages for Statutory/ contractual or other legal obligation Results of failure to pay damages – Impact?	<ul style="list-style-type: none"> <li>• Cheque bounce cases</li> <li>• Where compounding/settlement is possible</li> </ul>	<ul style="list-style-type: none"> <li>• Individual cases to be validated on the following attributes on meeting excluded debts</li> <li>• Damages not charged to any asset</li> <li>• Damages not related to individual case</li> <li>• Damages not related to CD case</li> </ul>

Maintenance to any person under any law in force	<ul style="list-style-type: none"> <li>• Maintenance paid to parents, by custom not by law</li> <li>• Maintenance paid to Disabled relative – not legally dependant</li> </ul>	<ul style="list-style-type: none"> <li>• If not mandated by law then not excluded debt</li> <li>• If mandated by contract, verify whether contract is voidable on Insolvency/ bankruptcy</li> <li>• Mandated by custom, not enforceable</li> </ul>
Student loan	<ul style="list-style-type: none"> <li>• Student loan for self and dependant children</li> <li>• Student loan for sponsored children</li> </ul>	<ul style="list-style-type: none"> <li>• Unless excluded specifically student loan cover both for self as well as dependant children</li> <li>• For sponsored children, not covered – can be claimed along with regular debt.</li> </ul>
<b>2. Immediate family – Sec. 79(17)</b>		
	<ul style="list-style-type: none"> <li>• Parents living with the Individual,</li> <li>• Parents living with other siblings</li> <li>• Parents having own pension/source of income</li> <li>• Parents under Resolution plan</li> <li>• Parents under bankruptcy</li> </ul>	<ul style="list-style-type: none"> <li>• No condition that the parents to live with the individual</li> <li>• Parents not dependant – not covered</li> <li>• Parents under resolution plan and/or bankruptcy also covered under Immediate family. But parents' debt not covered in this proceedings.</li> </ul>
<b>3. Qualifying Debt – Sec. 79(19)</b>		
Qualified Debt	✓ A liquidated sum – Means debts should have been determined	✓ Debt should have been crystallized, either by adjudication or otherwise
Guarantees	<ul style="list-style-type: none"> <li>• Guarantees for Company Debt</li> <li>• Guarantees for other personal debts</li> <li>• Personal Guarantee without specific assignment of any property</li> <li>• Enforceability of Guarantee</li> </ul>	<ul style="list-style-type: none"> <li>• Guarantees when invoked, become crystallized</li> <li>• Guarantee not covered by specific security interest – unsecured claim</li> </ul>
Unsecured Debt	<ul style="list-style-type: none"> <li>• Except - Secured Debt – What is secured debt – How to validate creation of security interest- undocumented security interest creation by word of mouth – possession of property without evidence of having been given as security</li> </ul>	<ul style="list-style-type: none"> <li>• Security interest should have been created by any legal means like Charge, mortgage etc.,</li> <li>• Undocumented security interest by word of mouth can not be validated.</li> <li>• Possession given has to be redeemed.</li> </ul>
<b>4. Interim Moratorium</b>		
	<ul style="list-style-type: none"> <li>• Is it applicable even to the specifically charged asset? Secured debts are not qualifying debt.</li> </ul>	<ul style="list-style-type: none"> <li>• Sec. 96(1) (a) states in relation to “all the debts” and (b) states proceedings in respect of “any debt”.</li> </ul>



5. Individual in Real Estate Business:		
	<ul style="list-style-type: none"> <li>• Claim of allottees – Financial creditor? Any priority?</li> <li>• Claim of JV land holder</li> <li>• Claim of JV land holder on the realization from UDS of JV Land.</li> <li>• Claim of Bank on the hypothecated JV property</li> <li>• Sale of land in normal course of business or Sec. 43?</li> </ul>	<ul style="list-style-type: none"> <li>• There is no differentiation between the creditors in the individual insolvency</li> <li>• Verify the individual documents on the basis of which claim made and validate the claim</li> <li>• JV land holder is a Joint Venturer. Validate whether he is part of the Venture itself. If so, no separate claim. If not, only as an investor of property for the business, validate the same and admit claim.</li> <li>• Hypothecated JV property – to the extent of the share of the Developer is the property of the Individual – To Validate and admit claim</li> <li>• Sale of land in normal course – to validate with agreements and other documents w.r.t. to time, place, value, rate and other conditions</li> </ul>
6. Exception in Claims		
	<ul style="list-style-type: none"> <li>• Recently created Debt for repayment of another Debt – Preferential treatment? Exceptionally high value debt disproportionate to asset</li> <li>• Exceptional losses reported</li> <li>• Gambling/Other Speculative Debts</li> <li>• Doubtful encumbrances created over assets</li> <li>• Claims of HUF, in which the Individual is Karta/Not a karta</li> <li>• Time barred debt/claim – only oral confirmation on renewal of debt</li> </ul>	<ul style="list-style-type: none"> <li>• Recently created – how created – document to be validated</li> <li>• If for repayment of other debt – whether in normal course or prepayment to determine Preference</li> <li>• High Value debt – Usury interest to validate</li> <li>• For the Debt contracted through an enforceable valid law of the land only claim can be raised. Gambling and speculative transaction debt to be validated whether it is in compliance with the laws of the land.</li> <li>• Encumbrances to be validated with the respective registering authority. If not registered can not be recognized</li> <li>• Claim of HUF – in relation to nature, purpose, validity, contract to be validated for admission. Even if admitted shall be related party claim only</li> <li>• Limitation act applies. If time barred – cannot be admitted. Renewal/ack of debt to be validated with documentary evidence</li> </ul>
7. Exception in Assets:		
	<ul style="list-style-type: none"> <li>• Unauthorisedly confiscated goods (For Eg., vehicles taken over- with charge/ without charge) – Other Assets taken over</li> <li>• Recently bought assets at Exorbitant value disproportionate to market value</li> </ul>	<ul style="list-style-type: none"> <li>• Validate ownership of goods. Confiscation during moratorium is not permissible. Reclaim the goods</li> <li>• Purchase at exorbitant value disproportionate to market value, can be covered U/s. 43 and reclaim the payment</li> </ul>

	<ul style="list-style-type: none"> <li>• Difference in perception over the value of assets</li> <li>• Not Easy to liquidate/realize Asset – encumbrance created</li> <li>• Related party encumbrances on the assets</li> <li>• Possession in the hands of related party for dubious debts – Father in law refusing to hand over land claiming the rights of the Grand children</li> <li>• Hereditary property</li> <li>• Rights of legal heirs over hereditary property</li> <li>• Rights of legal heirs over self acquired property</li> <li>• Self acquired property shown as HUF Property</li> <li>• Share in HUF property</li> <li>• Property under lease with third party</li> <li>• Property with rights for enjoyment only/ without right to sell – For Eg. Rental income enjoyed but no right to sell. Whether future rent can be capitalized and valued?</li> <li>• Valuable lease hold rights of commercial property</li> </ul>	<ul style="list-style-type: none"> <li>• Appointment of approved valuer shall address</li> <li>• NRRR assets, the same procedure as applicable to Corporate Liquidation process</li> <li>• Encumbrances to be validated with appropriate documents. Registration with the Authorities to be validated.</li> <li>• Dubious debts, to validate with claim paper. Re-claim possession through application to AA</li> <li>• Family property – Arrive at the pro-rata entitlement as per the law and claim the same and include in the List of assets</li> <li>• From Hereditary property pro-rata eligible claim as per law to taken to the list of Assets</li> <li>• Right of legal heir not disturbed by the Individual's insolvency</li> <li>• Self – Acquired property of the individual shall be covered in the list of asset and the balance of the property after meeting all the liabilities can be transmitted to legal heir</li> <li>• Share in HUF property shall form part of the list of Assets of the individual</li> <li>• Property under lease with third party shall be part of the list of Asset. However, advance paid for the lease shall form part of the claim of the lessee</li> <li>• The right for enjoyment has to be evaluated and value is to be arrived at by the Regd. Valuer to include the same in the list of assets</li> <li>• Value of lease hold rights to be evaluated and valued by the Regd. Valuer for inclusion in the list of assets</li> </ul>
<b>8. Exceptions in Creditors meeting:</b>		
	<ul style="list-style-type: none"> <li>• Non Cooperative Creditor – minority disrupting the meeting</li> <li>• Non Cooperative Creditor – Majority</li> <li>• Creditor posing personal threat to Individual – manhandling by Creditors</li> <li>• Collection Agency of some of the Creditors</li> </ul>	<ul style="list-style-type: none"> <li>• RP is the chairman of the meeting and is empowered to discipline the non cooperative creditor and conduct the meeting</li> <li>• Majority Non cooperative creditor – try to reason out and obtain cooperation, failing which apply to AA for direction</li> <li>• RP entitled to seek and obtain protection for both himself and the Individual Guarantor also</li> </ul>

	<ul style="list-style-type: none"> <li>• Creditor using foul languages to receive the money from the Individual</li> <li>• Rights of the Individual for protection</li> </ul>	<ul style="list-style-type: none"> <li>• Moratorium covers the activities of the Collection agency also</li> <li>• RP is empowered to discipline the Creditor or seek direction from the AA</li> <li>• Individual has the right of protection. He needs to apply to AA</li> </ul>
<b>9. Other Exceptions</b>		
	<ul style="list-style-type: none"> <li>• Medical emergency of Individual or Immediate family during the process– Expenses how to be met</li> <li>• Functions in the immediate family / individual</li> <li>• Theft of assets of the individual during the process</li> <li>• Loss of assets by the individual during the process</li> </ul>	<ul style="list-style-type: none"> <li>• Medical emergency need to be addressed and the assets/funds used shall be treated as legitimate expenses. However, appropriate documentation to be obtained by RP</li> <li>• RP has no role on the functions in the family. To ensure that the list of Assets declared is not impaired by the functions</li> <li>• Theft of assets/ loss of assets have to be recognized and list has to be appropriately impaired. However, proper documentation on the same to be obtained by RP and to be reported to the AA in the Progress Report</li> </ul>
	<ul style="list-style-type: none"> <li>• Contingency claim materializing</li> <li>• Accidents during the process – damage to property and damage to third party</li> </ul>	<ul style="list-style-type: none"> <li>• Contingency crystallisation has to be validated by the appropriate document and value to be frozen with the help of professionals of the related field also</li> <li>• Damage to property due to accidents – to be recognized and to be appropriately documented</li> <li>• Damages to third party shall form part of the list of claims</li> </ul>

## Appendices

- a) Annexure A - Specimen of RPs' report to AA u/s 99
- b) Annexure B – Specimen of Public Notice of RP u/s 102
- c) Annexure C - Specimen of List of Creditors u/s 104
- d) Annexure D - Specimen of RP's report on Repayment plan u/s 106

## APPENDIX – A

### BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

AT \_\_\_\_\_ – BENCH \_\_\_\_

CP/(IB)/.....(.....)/.....

**In the matter of Insolvency and Bankruptcy Code, 2016**

And

.....

.....

.....Applicant

**Vs**

.....

.....

.....

.....Respondent

a) Details of the Resolution Professional

Name : .....

IBBI Reg.No. ....

Address -----

Contact Mail .....

Mobile .....

b) Address for Service of Notice and Processes on the Resolution Professional:

.....

.....

**REPORT FILED BY THE RESOLUTION PROFESSIONAL  
U/S 99 OF INSOLVENCY AND BANKRUPTCY CODE 2016**

1. [narrate details of the CIRP / Liquidation of the related Corporate Debtor].
2. It is submitted that, in the hearing held on ....., the Hon'ble NCLT Passed an order for appointing me as Resolution Professional u/s 97 of IBC 2016 and intimation and copy of said order has been received through email on ..... As per the order, I have been directed to submit Report u/s 99 of the IBC 2016 and accordingly the report of Resolution Profession is submitted. A Copy of the said order is annexed herewith as Annexure – 1.
3. It is submitted that, the Application u/s 95 (1) of IBC, 2016 has been filed by the Creditor and to submit the Report u/s 99 and I have examined the application and ascertained the Satisfaction of requirements set out in Section 95 as under :

Section		Observation of the Resolution Professional
95(1)	A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.	[narrate all the observations in detail. Enclose all the supporting documents as appropriate annexures]
95(2)	A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—  (a) any one or more partners of the firm; or  (b) the firm.	
95(3)	Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.	

95(4)	An application under sub-section (1) shall be accompanied with details and documents relating to—	
95(4)(a)	the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;	
95(4)(b)	Failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and	
95(4)(c)	The failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and	
95(5)	The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.	
95(6)	The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.	
95(7)	The details and documents required to be submitted under sub-section (4) shall be such as may be specified.	

4. It is submitted that, as provided in Section 99(6)(b) of IBC 2016, the applicant has provided information and given explanation sought by me u/s 99(4) except the record of ..... The applicant has evidenced that the balance outstanding of Rs ..... as on ..... and no repayment received from the ....., Personal Guarantors after issue of Demand Notice in Form – B [Enclosed as Annexure – ....]
5. It is submitted that, I have also sent a letter to the Personal Guarantor ..... S/o, D/o, W/o ..... on ..... requesting to provide the proof for repayment of dues as provided u/s 99(2) of IBC 2016 and no reply received as on date of the report. The Copy of the Letter attached herewith as Annexure – .....

6. It is submitted that, in view of the reasons recorded in para 3,4 & 5 of this report, I hereby recommend for the acceptance of the application No. CP(IB)/..... (...)/20... filed u/s 95(1) of the IBC 2016 by the Creditor ..... to initiate Insolvency Resolution Process against Personal Guarantor ..... of the Corporate Debtor M/s ..... and the Adjudicating Authority may appropriate order u/s 100 of IBC, 2016 for admission of the application.

Place: .....

Date: .....

Name of the RP: \_\_\_\_\_

Resolution Professional

IBBI Reg.No. \_\_\_\_\_

AFA Valid upto \_\_\_\_\_



**PUBLIC NOTICE****(Under Section 102 of the Insolvency and Bankruptcy Board Code, 2016)**

FOR THE ATTENTION OF THE CREDITORS OF [NAME OF PERSONAL GUARANTOR]

Relevant Particulars		
1.	Name of Personal Guarantor [PG]	
2.	Address of the registered office / principal office / Residence of PG	
3.	Details of Order of Adjudicating Authority	
4.	Date of commencement of Insolvency Resolution Process	
5.	Name and registration number of the Resolution professional	
6.	Address and e-mail of the Resolution professional, as registered with the Board	
7.	Address and e-mail to be used for correspondence with the Resolution professional	
8.	Last date for submission of claims	

Notice is hereby given that the Adjudicating Authority [NCLT (\_\_\_\_) / DRT (\_\_\_\_)] has ordered the commencement of a insolvency resolution process of [name of PG] on [insolvency commencement date] u/s 100.

The creditors of [name of the PG], are hereby called upon to submit their claims with proof on or before [insert the date falling 21 days from the date of issue] to the resolution professional at the address mentioned against entry No. 7.

Submission of false or misleading proofs of claim shall attract penalties.

Name and Signature of Resolution Professional :

AFA Validity Date :

Date and Place :

**Note:**

- This notice to be published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides.
- affixed in the premises of the Adjudicating Authority; and
- placed on the website of the Adjudicating Authority

## APPENDIX – C

In the Matter of Individual Insolvency Resolution Process of Shri./Smt.

[IRP commencement order no. \_\_\_\_\_ Dt. \_\_\_\_\_]

### List of Creditors

[Prepared under Section 104 of Insolvency and Bankruptcy Code 2016]

Revision No. \_\_\_\_\_

S. No	Name of the Creditor	
	Date	Details of Claim Received
	Amount Claimed	
	Amount disclosed in the application [Sec 94 / 95]	
	Amount Admitted	Details of Claim Admitted
	Nature of Claim	
	Amount Covered by Security Interest	
	Details of Security Interest	
	Amount Covered by Guarantee	
	Whether Related Party	
	Whether Security Interest Relinquished	
	% of voting share in Creditors meeting	
	Amount of Contingent Claim	
	Amount of Claim Rejected	
	Amount of Claim under verification	
	Remarks (if any)	

**Note:** The claims received upto \_\_\_\_\_ are verified and updated.

Name of the RP: \_\_\_\_\_

Resolution Professional

IBBI Reg.No. \_\_\_\_\_

AFA Valid upto \_\_\_\_\_

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT \_\_\_\_\_ – BENCH \_\_\_\_**

**CP/(IB)/.....(.....)/.....**

**In the matter of Insolvency and Bankruptcy Code, 2016**

And

.....

.....

.....Applicant

**Vs**

.....

.....

.....

.....Respondent

**a) Details of the Resolution Professional**

Name : .....

IBBI Reg.No. ....

Address .....

Contact Mail .....

Mobile .....

**REPORT FILED BY THE RESOLUTION PROFESSIONAL  
ON REPAYMENT PLAN  
U/S 106 OF INSOLVENCY AND BANKRUPTCY CODE 2016**

1. [narrate details of the CIRP / Liquidation of the related Corporate Debtor].
2. [narrate details of the Individual insolvency commencement process [order of appointment of RP, Report of RP, order of AA commencing IRP etc.,]
3. [narrate the details of public notice, claim processed, list of creditors etc.,]
4. It is submitted that, in compliance with the Sec 105 of Insolvency and Bankruptcy code 2016 read with Regulation 17 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, a repayment plan has been received from the Personal Guarantor Shri./Smt. \_\_\_\_\_ on \_\_\_\_\_ along with affidavit and other documents.
5. I have perused the detailed repayment plan to ascertain its compliance with the IBC Code & related regulations as amended from time to time, reasonableness of its prospects.
6. As per the requirements of Section 106 of IBC, I have prepared this detailed report on the repayment plan,
7. **Compliance with the Provisions of any Laws [Sec 106(2)(a)]**

S.No.	Applicable Laws with Section reference	Compliance Requirement	Status of Compliance along with Remarks
1	Insolvency Law	....	....
2	Contract Law	.....	.....
3	Direct Taxes	.....	.....
4	Indirect Taxes	....	....
5	Labour Laws	....	....
6	Statutory Registration and Compliance related laws	....	....
7	.....	.....	.....
8	....	....	....
9	....	....	....
10	....	....	....

#### 14. Compliance to Mandatory Contents of Repayment Plan [Sec 105]

Sec. Ref.	Requirements of Section	Compliance [clause reference]
105(1)	Repayment plan contains a proposal to the creditors for restructuring of his debts or affairs	.....
105(2)(a)	The repayment plan authorise or require the resolution professional to carry on the debtor's business or trade on his behalf or in his name	.....
105(2)(b)	The repayment plan authorise or require the resolution professional to realise the assets of the debtor	.....
105(2)(c)	The repayment plan authorise or require the resolution professional to administer or dispose of any funds of the debtor	
105(3)(a)	The repayment plan provides for justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan	
105(3)(b)	The repayment plan makes appropriate provision for payment of fee to the resolution professional	
105(3)(c)	The repayment plan such other matters as may be specified	[Refer the detailed compliance report of regulation requirements in clause ____ below]

#### 15. Compliance to Mandatory Contents of Repayment Plan [Reg 17(1)]

Reg. Ref.	Requirements of Regulation	Compliance [clause reference]
17(1)(a)	the term of the repayment plan and its implementation schedule, including the amounts to be repaid and dates of repayment to creditors;	.....
17(1)(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	.....

17(1)(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	.....
17(1)(d)	financing required for implementation of the repayment plan	
17(1)(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	
17(1)(f)	the manner in which funds held for the purposes of the repayment plan, invested or otherwise dealt with, pending repayment to creditors	
17(1)(g)	the functions which are to be undertaken by the resolution professional, including supervision and implementation of the repayment plan	
17(1)(h)	variation of onerous terms of a contract or transaction involving the guarantor	
17(1)(i)	the details of excluded assets and excluded debts of the guarantor	
17(1)(j)	terms and conditions for the discharge of the guarantor	

## 16. Compliance to Recomendatory Contents of Repayment Plan [Reg 17(2)]

Reg. Ref.	Requirements of Regulation	Compliance [clause reference]
17(2)(a)	transfer or sale of all or part of the assets of the guarantor along with the mode and manner of such sale	.....
17(2)(b)	administration or disposal of any funds of the guarantor	.....
17(2)(c)	satisfaction or modification of any security interest	.....
17(2)(d)	reduction in the amount payable to creditors	

17(2)(e)	curing or waiving of any breach of a debt due from the guarantor	
17(2)(f)	modification in the terms of repayment of any debt due from the guarantor	
17(2)(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	
17(2)(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	
17(2)(i)	such other matters as may be required by the creditors ..... .....	

#### 17. Prospects of the Repayment Plan [Sec 106(2)(b)]

S.No.	Nature of Approvals Required for plan implementation	Possibility of getting approval / Remarks if any
1	.....	.....
2	.....	.....
3	.....	.....

18. It is submitted that, the assets are not purchased by any person as specified under regulation 18 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

[OR]

It is submitted that, the following assets are purchased by the list of persons covered under Regulation 18 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 with the specific approval of Adjudicating Authority as detailed hereunder:

19. It is submitted that, the meeting of the creditors need to be summoned to discuss and vote on the repayment plan for the following Reason [in compliance with Section 106(2)(c) of Insolvency and Bankruptcy Code 2016 and the said meeting is scheduled on \_\_\_th day of \_\_\_\_\_ 20\_\_\_ at \_\_\_[place]\_\_\_ on \_\_\_\_\_ [time]\_\_\_\_\_.

[OR]

It is submitted that, the meeting of the creditors not required to be summoned for discuss and vote on the repayment plan for the following Reason [in compliance with Proviso to Section 106(2)(c) of Insolvency and Bankruptcy Code 2016:

Brief note of impact of the repayment plan to the creditor	Reason for holding / not-holding creditors meeting

20. It is submitted that, in compliance with the requirements of IBC, I have received all the required details from .....[PG]..... [including latest state of affairs] except the following documents .....
21. It is submitted that the Repayment plan complies with the requirements of IBC on overall terms, more specifically into all compliance requirements as tabulated above in this report and can be taken up for appropriate consideration for voting / approval suitably.

[OR]

It is submitted that the Repayment plan does not complies with the requirements of IBC on overall terms, more specifically into specific compliance requirements as tabulated above in this report and can be decided upon suitably by respective authorities.

Place: .....

Date: .....

Name of the RP: \_\_\_\_\_

Resolution Professional

IBBI Reg.No. \_\_\_\_\_

AFA Valid upto \_\_\_\_\_





## Indian Institute of Insolvency Professionals of ICAI (IIPI)

*(A Section 8 Company & Wholly Owned Subsidiary of ICAI and Registered as an IPA with IBBI)*

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