

Insolvency Professionals
&
Registered Valuers

Statutory Valuations

1. Companies Act ,2013
2. IBC
3. Income Tax Act
4. RBI/FEMA
5. Prohibition of Benami Property Transactions Act
6. SEBI Regulations
7. Financial Reporting-IFRS & Ind AS

Valuation Under Companies Act

- ❖ Section 62(1)(c): Valuation Report for further Issue of Shares
- ❖ • Section 192(2): Valuation of Assets involved in Arrangement of Non-Cash Transactions with Directors
- ❖ Section 230(2): Valuation of shares, property and assets of Company under a scheme of Corporate Debt Restructuring
- ❖ • Section 230(3): Valuation Report along with Notice of creditors/shareholders meeting- Under scheme of Compromise/ Arrangement
- ❖ Section 232(3): The Valuation report made by Tribunal for exit option of transferor company under scheme of Compromise/ Arrangement in case where transferor is Listed and transferee is unlisted company

Valuation Under Companies Act

- ❖ Section 232(3): The Valuation report made by Tribunal for exit option of transferor company under scheme of Compromise/ Arrangement in case where transferor is Listed and transferee is unlisted company
- ❖ Section 236(2): Valuation of Equity Shares held by Minority Shareholders.
- ❖ Section 260(2): Valuation Report in respect of Shares and Assets to arrive at the reserve price for company Administrator
- ❖ Section 281(1): Valuing assets for submission of report by liquidator

Valuation Under Companies Act

- ❖ Return of Allotment-Rule 12 of the Companies(Prospectus and Allotment of Securities) Rules,2014
- ❖ Issue os Sweat Equity Shares- Rule 8 of the Companies (Share Capital and Debentures) Rules,2014
- ❖ Provision of money by company for purchase of its own shares by employees or trustees for the benefit of employees-Rule 16
- ❖ Exclusions from Deposits-Rule 2(1)(ix)-Bonds or Debentures secured by charge of assets

Valuation Under Companies Act

- ❑ Section 247 deals with Registered Valuers
- ❑ Companies (Registered Valuers and Valuation) Rules,2017
- ❑ Transitional arrangement extended up to 31.01.2019 (Rule-11)
- ❑ Central Govt. delegated powers and functions u/s 247 to IBBI

Valuation Under Companies Act

Asset Classes

1. Land and Buliding
2. Plant and Machinery
3. Securities or Financial Assets

Valuation Under Companies Act

Securities or Financial Assets: eg

- 1. Stocks**
- 2. Shares**
- 3. Debentures**
- 4. Securities**
- 5. Goodwill**
- 6. Brand**
- 7. Other Assets**
- 8. Net Worth**
- 9. Liabilities**

Valuation Under Companies Act

Duties of Valuer

- 1. Impartial**
- 2. Exercise due diligence**
- 3. Make valuation in accordance with Valuation standards**
- 4. Not undertake valuation of any asset in which he has direct or indirect interest**

Eligibility

- 1. Possesses qualification and experience prescribed**
- 2. A valuer member of a Registered Valuers Organisation (ICAI RVO, ICMA RVO etc)**
- 3. Passed the Valuation Examination**
- 4. Not suffering from other statutory disabilities (not a minor, not of unsound mind, not an undischarged insolvent, resident, no conviction, not levied penalty u/s 271 J of Income Tax Act, a fit and proper person)**
- 5. Registered Valuers as Partnership/Company**

Registered Valuers of IBBI

No. of Registered Valuers as on date (10-12-2018)

1. Land and Buliding- 177
2. Plant and Machinery- 38
3. Securities or Financial Assets- 87

International Valuation Standards

Standards Issued by International Valuation Standards Council (IVSC)

- ✓ IVS-101-Scope of Work
- ✓ IVS-102-Investigations and Compliance
- ✓ IVS-103-Reporting
- ✓ IVS-104-Bases of Value
- ✓ IVS-105-Valuation Approaches and Methods
- ✓ IVS-200-Businesses and Business Interests
- ✓ IVS-210-Intangible Assets
- ✓ IVS-300-Plant and Equipment
- ✓ IVS-400-Real Property Interests
- ✓ IVS-410-Development Property
- ✓ IVS-500-Financial Instruments

Basic Concepts

Bases of Value

- Also called standard of value
- The fundamental premise on which the reported value will be based
- IVS defined bases of Value-Market Value, Equitable Value, Investment value, Synergic value, Liquidation value
- Other bases- FV, FMV
- To be selected according to the terms and purpose of assignment

Basic Concepts

Premise of Value

- ❖ Also called assumed use
- ❖ Describes the circumstances of how an asset or liability is used
- ❖ Some common Premises are- highest and best use, current use/existing use, orderly liquidation, forced sale

Approaches & Methods

Valuation Approaches & Methods

A. Market Approach

B. Income Approach

C. Cost Approach

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INSOLVENCY PROFESSIONAL UNDER IBC

Professional Opportunities under IBC

- Issue of Demand Notice
- Preparation and filing of application
- Appearance before NCLT
- IRP
- RP
- Authorised Representative in CoC
- Preparation and Evaluation of Resolution Plan
- Monitoring and Implementation of Plan
- Liquidator
- Liquidator under Voluntary Liquidation
- Advisory Services

Preamble of Insolvency and Bankruptcy Code, 2016

Contains 255 Sections and
11 Schedules.

Multi-purpose legislation
simultaneously amended

Eleven other Central Acts

An Act to consolidate and amend laws relating to :
reorganization and insolvency resolution of
corporate persons, partnership firms and individuals -
in a time bound manner for

- (i) maximization of value of assets of such persons,
- (ii) to promote entrepreneurship,
- (iii) availability of credit, and
- (iv) balance the interests of all the stakeholders
including alteration in the order of priority of
payment of Government dues,

and

to establish an Insolvency and Bankruptcy Board of
India, and for matters connected therewith or incidental
thereto.

Other 11 Acts amended through enactment of IBC 2016

By amending other 11 Acts, the powers vested in National Company Law Tribunal (NCLT) and its role is Adjudicating Authority.

Appellate Authority in IBC 2016 is National Company Law Appellate Tribunal (NCLAT). & DRT for Individuals and Firms

Schedule	Amendment to the Act
I	Indian Partnership Act, 1932
II	Central Excise Act, 1944
III	Income Tax Act, 1961
IV	Customs Act, 1962
V	Recovery of Debts Due to Banks and Financial Institutions 1993
VI	Finance Act, 1994
VII	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
VIII	Sick Industrial Companies (Special Provisions) Repeal Act, 2003
IX	Payment and Settlement Systems Act, 2007
X	Limited Liability Partnership Act, 2008
XI	Companies Act, 2013

Arrangement of Sections

IBC 2016

contains 255 sections
and XI schedules

Chapter/ Part	Sections	Subject matter
Part I	1-3	Preliminary – short title, extent, commencement, application, definitions
Part II /Ch.I	(4-77) 4-5	Insolvency Resolution and Liquidation for Corporate persons (application of this part, definitions)
Ch. II	6-32	Corporate Insolvency Resolution Process (CIRP) (from initiation to appeal)
Ch. III	33-54	Liquidation Process
Ch. IV	55-58	Fast Track Corporate Insolvency Resolution Process
Ch. V	59	Voluntary Liquidation of Corporate Persons
Ch. VI	60-67	Adjudicating Authority for Corporate

Part / Ch.	Sections	Particulars
Part III	(78-187)	Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms
Ch. I	78-79	Application, definitions.
Ch.II	80-93	Fresh Start Process
Ch. III	94-120	Insolvency Resolution Process
Ch.IV	121-148	Bankruptcy order for Individuals and Partnership Firms.
Ch. V	149-178	Administration and Distribution of the Estate of the bankrupt
Ch. VI	179-183	Adjudicating Authority for Individuals and Partnership Firms
Ch. VII	184-187	Offences and Penalties

Part/Ch.	Sections	Particulars
Part IV	188-223	Regulation of Insolvency Professionals, Agencies and Information Utilities
Ch. I	188-195	The Insolvency and Bankruptcy Board of India (IBBI)
Ch. II	196-198	Powers and Functions of the Board
Ch. III	199-205	Insolvency Professional Agencies (IPA's)
Ch. IV	206-208	Insolvency Professionals (IRP)
Ch. V	209-216	Information Utilities (IU)
Ch. VI	217- 220	Inspection and Investigation
Ch. VII	221-223	Finance, Accounts and Audit of IBBI

Two Acts repealed

In terms of Section 243 the following two Acts were repealed:

- (i) The Presidency Towns Insolvency Act, 1909
- (ii) The Provincial Insolvency Act, 1920.

However, all proceedings pending under the above Acts shall continue to be governed under them and be heard and disposed of by the concerned courts or tribunals as if the aforementioned Acts have not been repealed.

Rules and Regulations under IBC 2016

Sl. No.	Name of Rules / Regulations
1.	The Insolvency and Bankruptcy Board of India (Model Bye-laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
2.	IBBI (Insolvency Professional Agencies) Regulations, 2016
3.	IBBI (Insolvency Professionals) Regulations, 2016
4.	IBBI (Application to Adjudicating Authority) Rules, 2016
5.	IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
6.	IBBI (Liquidation Process) Regulations, 2016.
7.	IBBI (Engagement of Research Associates and Consultants) Regulations, 2017
8.	IBBI (Procedure for Governing Board Meetings) Regulations, 2017
9.	IBBI (Advisory Committee) Regulations, 2017

Corporate Insolvency Resolution Process

Chapter II

Sections 6 to 32

Sec.	Subject matter	Important points
6	Who can initiate corporate insolvency resolution.	Pre-condition is 'default committed by corporate debtor'. A Financial Creditor, or Operational Creditor, or Corporate Debtor itself
7	Application by Financial Creditor	When default occurred , the Financial Creditor either alone or along with other Financial Creditors can file application before Adjudicating Authority. To furnish record of default or give evidence , and name of Resolution Professional to act as Interim Resolution Professional (IRP). Within 14 days, Adjudicating Authority ascertain the existence of a default from records of information utility, or on the basis of other evidence furnished by financial creditor. If satisfied, Adjudicating Authority admit such

Insolvency resolution by Operational Creditor (Sec. 8)

Sec.	Subject matter	Important points
8	Issue of statutory notice by Operational Creditor	<p>On occurrence of default, deliver a demand notice of unpaid operational debtor, copy of invoice demanding payment of the amount involved in the default to corporate debtor in such form. (Form No.3 or 4)</p> <p>Within 10 days of the receipt of demand notice, corporate debtor shall bring to the notice of the operational creditor</p> <p>(a) existence of a dispute, if any, and record of pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute.</p> <p>(b) The repayment of unpaid operational debt by sending attested copy of record of electronic transfer of the unpaid amount from the bank account of the corporate debtor, or sending an attested copy of record</p>

Initiation of corporate insolvency resolution process by Corporate Applicant

U/s 10 of IBC

Sec.	Subject matter	Important points
10	Application by Corporate Applicant itself (Special Resolution with 3/4 th majority)	In Form No.6. and Information relating to books of account etc., Resolution Professional proposed to be appointed as IRP, Adjudicating Authority shall within 14 days admit if it is complete by an order or reject and give a notice to rectify the defects in the application within 7 days from date of receipt of such notice from Adjudicating Authority. CIRP shall commence from date of admission of application.
11	Persons not entitled to make application	Corporate Debtor undergoing CIRP; Having completed CIRP 12 months preceding the date of making application; if violated any terms of approved resolution plan 12 months before making application; if liquidation order has been made.

Time limit for completion of insolvency resolution process & moratorium

Sections 12, 13 and 14

Sec.	Subject matter	Important points
12	Time limit for completion of insolvency resolution process	180 days from date of admission of application. If % 66% of Committee of Creditors instruct, RP can request for extension and maximum 90 days can be given by Adjudicating Authority.
13	Declaration of moratorium and public announcement	Declare moratorium u/s 14 and cause public announcement immediately after appointment of IRP, calling for submission of claims under Sec. 15.
14	Moratorium	Adjudicating Authority declare by order moratorium prohibiting institution of suits or continuation of pending suits, including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; recovery of any property by an owner or lessor where such property is occupied by or in possession of corporate debtor.

Consequences of appointment of IRP

Sec.	Subject matter	Important points
17	Management of affairs of corporate debtor by IRP	<p>From the date of appointment of IRP, the management of affairs of corporate debtor shall vest in the interim resolution professional;</p> <p>Powers of board of directors or partners of corporate debtor shall stand suspended and be exercised by the IRP;</p> <p>Officers and managers of corporate debtor shall report to the IRP and provide access to such documents and records as may be required by IRP;</p> <p>Etc.</p>
18	Duties of IRP (a) to (g)	<p>Collect information relating to assets, finances and operations of corporate debtor for determining the financial position; receive and collate all claims submitted by creditors to him; constitute Committee of Creditors; monitor assets and manage affairs until RP is appointed; take control and custody of any asset over which corporate debtor has ownership etc.</p>

1. Allottees in Real Estate Projects (Home Buyers) to be treated as Financial reditors –Sec 5(80 (f)

2. Initiation of CIRP by Corporate Debtor-Special Resolution with $3/4^{\text{th}}$ majority required-Sec 10(3)(c)

3.

Withdrawal of Application admitted U/s
7, 9,10- With 90% approval of COC -Sec
12A

4.

COC-Voting threshold limits for

- i. -Major Decisions-: 66%
- ii. - Routine Items : 50%

Major Decisions: (examples)

-Application for extension beyond 180 days; Approval of
Resolution Plan ; Resolution for Liquidation

-Appointment/Replacement of RP

5.

Moratorium not apply to Personal or Corporate Guarantees –Sec 14(3)(b)

6

.RP shall be responsible for legal compliances eg. Companies Act, SEBI, Labour laws etc –Sec 17(e)

7.

Exemption for regulated Financial Creditors from the term “ Related Party” for participation in COC (if debts converted in to equity or instruments convertible in to equity)-

8.

Applicability of Limitation Act, 1963- Sec 238A

9.

Certain Relaxations in Sec 29A

- NPA holders for more than one year at the time of submission of Resolution Plan only ineligible

- Disqualification not apply to FI which is not a related party of CD

- Not apply if NPA acquired under a CIRP during last 3 years

- Relaxation for MSME (Sec 288A)

Professional Opportunities

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- Appearance before NCLT
- IRP
- RP
- Authorised Representative in CoC
- Preparation and Evaluation of Resolution Plan
- Monitoring and Implementation of Plan
- Liquidator/Voluntary Liquidation
- Advisory Services

Thank you...

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