



2ND Dr. R. U. SINGH MEMORIAL NATIONAL MOOT COURT COMPETITION

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VENUE:

Faculty of Law

University of Lucknow

New Campus,

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ORGANIZED BY:

Lucknow University Moot Court Association

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MOOT PROPOSITION

1. Disslocatia is the world's largest democracy and the second fastest growing economy of the world. The GDP of the country is only second to the superpower of the world. But the economy has been suffering with setbacks from the demon of Non-Performing Assets. NPA has been a major obstacle in the growth of Disslocatia. The Capital of Disslocatia, Belwa is a metropolitan city.
2. Disslocatia in order to fight NPA has made several legislations like Recovery of Debts Due to Bank and Financial Institutions, 1993 and The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. But both the Acts have failed to curb the menace of NPA on major front and NPA has increased tremendously.
3. The International Agency of Economy in its report of 2015 founded that value of NPA in Disslocatia is around Rs 3500 Million dollars, which has increased by 13% in current financial year. Seeing this staggering data, the Government of Disslocatia made up its mind to enact a new legislation to curb this demon of NPA. A committee of 9 members was constituted in July 2015 under chairmanship of Miss S. Lezznar, Governor, Reserve Bank of Disslocatia, to submit its report and make recommendations regarding the new law.
4. The Committee recommended the enactment of a New Separate Master Act constituting an independent body like Reserve Bank of Disslocatia to look into realization of NPA. The new Act should have absolute power ranging from recovery of debts, securitization and initiating insolvency resolution of corporate debtor. The Committee also recommended the eradication of all previous laws.




5. The Government of Disslocatia without paying any heed to these recommendations drafted and enacted The Insolvency and Bankruptcy Code, 2016. This step was met with huge criticism from Jurists, Corporate eminent personalities and opposition government. The opposition demanded the bill be referred to the Standing Committee, which was denied by the Government. There have been several instances where Supreme Court of Disslocatia has reprimanded The Government for by passing the established procedure of the Legislation. Recent one is the introduction of a Taxation Legislation as Money Bill.
6. Monsthug Thread Company Ltd. (Company hereafter) is a private limited company registered under the Companies Act, 1956 now under Companies Act, 2013 doing the business of manufacture and sale of art, silk, brocaded work border, lace, etc. in Suplex City. The company is well established one in their business sector and has an esteemed goodwill. The present Director of the Company, Mr. Tony Stark is a well renowned business tycoon and has earned a good repute.
7. Small Industries Development Bank of Disslocatia (Bank hereafter) is a public financial institution which is providing financial services for development of industry in Micro, small and medium sector.
8. Company approached Bank for availing financial assistance of Rs. 9,00,00,000 (Nine Crores Only) under Secured Business Loan to MSMEs manufacturing sector/ financial assistance for their business through its Director/Guarantors. The Bank suggested that the Company needs to purchase more property to mortgage them as security for availing financial assistance. The officials of the bank pressed the Company to purchase specific properties for granting letter of intent immediately. The Company was in need of loan and putting faith and trust upon the representatives of the Bank, the Company purchased those specific properties (which were later found to have very low value in market). Pursuant to this a Letter of Intent was granted by Bank on 04.02.2015.
9. Both entered into a Loan Agreement on date 05.03.2015 and security documents including guarantees and other securities inter alia agreed. The rate of interest was



decided to be @ 12.25% p.a. in respect of Terms Loan account compoundable with monthly rate plus 2% penal interest p.a. for period of default. Additional interest of 1% p.a. was also agreed in case of non-creation of security. Company agreed to repay the said loan in 78 monthly instalments.

10. Company also executed an undertaking for non-disposal of shareholding, over run, and non-withdrawal of the unsecured loans and agreed not to transfer or sale the shares of the Company. The financial assistance was secured by the creation of equitable mortgage by memorandum of deposits of title deeds (in respect of immovable properties of the company) with the Bank. The charges over security were created and registered with ROC and with Central Registry of Securitization Assets Reconstruction and Security Interest of Disslocatia. Affidavits were submitted by all the 8 guarantors including the Director of the company in their personal capacity.
11. After 6 months of regular payment of loan the Company found the fact that the representatives of the Bank had induced the company to purchase those immovable properties due to their own interest. The Company has purchased properties which had very low value in market. Thereafter Company failed to make payment of instalments on regular basis and committed defaults in making repayment of loan. The company had approached Bank from time to time requesting to grant concessions by restructuring/ rescheduling principal instalments. On 03.07.2016 the term loan account was restructured, and instalments were rescheduled. But the defaults and irregularities continued and Company along with Guarantors appeared to be wilful defaulters. The Company committed serious breach and defaulted in honoring its repayment obligations towards the Bank. Pursuant to this the account was classified as NPA on 08.11.2016 in terms of guidelines issued by the Reserve Bank of Disslocatia.
12. Bank issued recall notice on 19.01.2017 to Company, having failed to regularize its term loan account. The notice was also issued to all the Guarantors invoking the guarantee furnished, which was met with no response. On 05.02.2017 the bank issued Demand notice under section 13(2) of Securitization Act, 2002. The Company did not repay the




dues within 60 days and therefore, Bank issued Possession Notice on 12.04.2017 to Company for peaceful possession of the mortgaged property. The bank stated that it reserves the right to sale under the provisions of the Securitization Act, 2002 to realize its dues.

13. On 13.06.2017, Bank filed an Original Application no. 645 of 2017 u/s 19 of Recovery of Debts due to bank and Bankruptcy Act, 1993 in DRT II, Suplex City to recover its dues. The said Original Application is pending for adjudication. Meanwhile on 30.01.2018, Chief Metropolitan Magistrate, Belwa issued order u/s 14 of Securitization Act, 2002 directing Company to make payment of Rs. 25000 to Bank and appointed Assistant Superintendent to be the Court Commissioner to take possession of the secured assets in favour of SIDBD.
14. On 02.02.2018, the Director of the Company and Guarantor as well Mr. Tony Stark had flown to United Province to escape his liability. Several attempts have been made by different authorities to bring him back but all in vain. The process of extradition has been initiated by the Government but the likeliness of him being extradited is very less.
15. On 02.03.2018, Company filed a Securitization Application no. 13 of 2018, before DRT I, Suplex City challenging the actions taken against them under section 14 of the Securitization Act, 2002. The Company contested that the order passed by the Learned Chief Metropolitan Magistrate is illegal and bad in law. The Company tried many times to negotiate with the Bank but all was in vain. The Company argued that Original Application filed by the Bank is pending before DRT II, Suplex City thus no liability is crystallized against the Company. Company further asserted that order of payment of Rs 25000 is alien to process & law of Securitization. The appointment of Asst. Superintendent is also questioned. Company lastly contested the judgment relied by section 14 is not proper as Section 14 of the Securitization Act, 2002 was amended. Company also asserted that Bank is not governed by the guidelines of the Reserve Bank of Disslocatia as per their Act, thus NPA classification is bad in law.



16. Upon hearing both sides, The DRT I, Suplex City granted stay against Securitization action. The Bank invoked writ jurisdiction of High Court of Belwa against the stay, the same is pending for adjudication.
17. On 29.11.2018, the Company filed a Special Civil Suit no. 943 of 2018 before Civil Court, Suplex City for recovery on account of damages against Bank. The company submitted that for granting the financial assistance, the Bank induced the Company to purchase more property. The Company was in need of loan and putting faith and trust upon the representatives of the Bank, the Company has purchased properties which had very low value in market. The Company asserted that there was collusion between the representatives of the Bank and original owners of the property. Because of this, the Company had suffered unwarranted loss. And the same prevented the Company from paying the regular instalments of the Loan. The securitization proceedings were initiated against the Company without due notice. This all compelled the Company to enter into multiplicity of legal proceedings and complicated issues of law. The same is pending for adjudication till date.
18. In January 2019, SIDBI as financial creditor, filed application before NCLT, Suplex City bench for Initiation of Corporate Insolvency Resolution Process against Company u/s 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016. The Notice had been issued by Tribunal to Company returnable on 10.03.2019.
19. The Central Bar Association of Disslocatia filed a Public Interest Litigation on 25th January 2019 requesting the Court to look into the legislative framework of Country with respect to Recovery of NPA and declare the newly drafted IBC, 2016 to be unconstitutional. The Bar Association contested that the recommendation of the Committee was not respected. Moreover, the NPA has been increasing significantly. The Bar Association also submitted that due to various legislations, the process of recovery has become much complicated. There has been not even a single case where recovery of NPA has been successful. The Bar Association also brought to the attention of the



Court towards the multiplicity of the proceedings. It also cited that the recent case of Monsthus Thread Company Ltd. has also lasted for more than 2 years but nothing has been recovered. Company has obtained stay under Securitization Act, 2002 and application under DRB Act, 1993 is pending.

20. Many petitions have flooded to Supreme Court regarding the protection of Flat Buyers and questioning the status of Flat Builders. Petitioners prayed that Insolvency and Bankruptcy Code be amended so that Flat Buyers be given protection under Insolvency and Bankruptcy Code, 2016. The Supreme Court took notice of the concern and ordered the Government of Disllocatia to present the concerns of flat buyers behind recovery of NPA.
21. The Company filed writ petition before the Supreme Court of Disllocatia on 1st Feb, 2019 contesting the Constitutionality of Insolvency and Bankruptcy Code, 2016. The company contested that the new Act violates Article 14, 19, 21 and has many other discrepancies. The company contested the Constitutionality of the Act on following grounds:
 - a. The section 7, 8 of the Code violates Article 14 as it discriminates between financial and operational creditor,
 - b. Section 7 read with Rules 4(3) and 6(2) of the Insolvency and Bankruptcy (Application of Adjudicating Authority Rules) 2016 violates principles of Natural Justice,
 - c. The provision of the Code violates Article 19(6),
 - d. Section 29(2) read with section 5(25) of the Code violates Right to Privacy and Confidentiality as enshrined under Article 21 of the Constitution,
 - e. Section 29,30,31 mentions 'Resolution applicant' but is nowhere defined in the code
 - f. Article 323B holds that Parliament is not competent to create a tribunal for Insolvency and Liquidation of Company.
 - g. The code violated Section 41 of the Evidence Act.



22. The Supreme Court clubbed all three petitions pending before Supreme Court and High Court of Belwa and listed all on 24th February, 2019 for final hearing of the following issues:

- a. Whether section 3(12), 5(7), 6,7,12, 14, 29, 62, 231, 238 of the Insolvency and Bankruptcy Code, 2016 is constitutional or not?
- b. Whether the legislative enactments behind recovery of NPA are full-fledged and uncomplicated or is there a need of a completely new master Act?
- c. Whether the proceeding of Securitization adopted by Bank against Company was just and fair or not?

The proposition has been drafted by MR. ANUPAM KISHORE SINHA, Managing Associate, Luthra & Luthra Law Offices.

Notes: All the laws and constitution of Disslocatia are analogous to the laws and Constitution of India. Indian Laws and judgments of the courts in India (based on hierarchy) shall have persuasive value for this country. The counsels are expected to operate within the four walls of the facts and are free to raise additional issues. The relevant statutes, reports and documents are given in Annexure



ANNEXURE

RELEVANT STATUTES

CONSTITUTION OF DISSLOCATIA

ARTICLE 14: EQUALITY BEFORE LAW

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

ARTICLE 19: PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH ETC-

(1) All citizens shall have the right

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) omitted
- (g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.



(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

ARTICLE 21: PROTECTION OF LIFE AND PERSONAL LIBERTY-

No person shall be deprived of his life or personal liberty except according to procedure established by law.



ARTICLE 32: REMEDIES FOR ENFORCEMENT OF RIGHTS CONFERRED BY THIS PART.

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

ARTICLE 136: SPECIAL LEAVE TO APPEAL BY THE SUPREME COURT-

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, and sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

ARTICLE 323(B): TRIBUNALS FOR OTHER MATTERS.

(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:—



- (a) levy, assessment, collection and enforcement of any tax;
 - (b) foreign exchange, import and export across customs frontiers;
 - (c) industrial and labour disputes;
 - (d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;
 - (e) ceiling on urban property;
 - (f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;
 - (g) production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;
 - (h) rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants;
 - (i) offences against laws with respect to any of the matters specified in sub-clauses (a) to (h) and fees in respect of any of those matters;
 - (j) any matter incidental to any of the matters specified in sub-clauses (a) to (i).
- (3) A law made under clause (1) may—
- (a) provide for the establishment of a hierarchy of tribunals;
 - (b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
 - (c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;



(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;

(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation.—In this article, “appropriate Legislature”, in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.

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THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

SECTION 13(2): ENFORCEMENT OF SECURITY INTEREST-

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as on- performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub- section (4).

SECTION 14: CHIEF METROPOLITAN MAGISTRATE OR DISTRICT MAGISTRATE TO ASSIST SECURED CREDITOR IN TAKING POSSESSION OF SECURED ASSET-

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him-

- (a) take possession of such asset and documents relating thereto; and
- (b) forward such asset and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub- section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

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THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

SECTION 19: APPLICATION TO THE TRIBUNAL-

(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arises: 27 [Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application: Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has claim to recover its debt, then, the later bank or financial



institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed: Provided that the fee may be prescribed having regard to the amount of debt to be recovered: Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31.

(4) On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

(8) A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent



action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application, make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,—

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest, the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (14).

(16) If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void.



(17) In the case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order—
(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956 (1 of 1956) the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due upto the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) the Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the



property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated: Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

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INSOLVENCY AND BANKRUPTCY CODE, 2016

SECTION 5:

In this Part, unless the context otherwise requires-

(25) "Resolution Applicant" means any person who submits a resolution plan to the resolution professional.

SECTION 7:

(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation. For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that



(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

SECTION 8:

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed. Persons who may initiate corporate insolvency resolution process. Initiation of corporate insolvency resolution process by financial creditor. Insolvency resolution by operational creditor.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor-

(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;



(b) the repayment of unpaid operational debt

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor. Explanation.—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

SECTION 29:

(1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes-

(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and

(c) not to share relevant information with third parties unless clauses (a) and (b) of this subsection are complied with.

Explanation.—For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.

SECTION 30:

(1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.



(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent. of voting share of the financial creditors.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

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

SECTION 31:

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be



binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.





**INSOLVENCY AND BANKRUPTCY (ADJUDICATING AUTHORITY)
RULES, 2016**

RULE 4: APPLICATION BY FINANCIAL CREDITOR-

(1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) Where the applicant under sub-rule (1) is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer.

(3) The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

(4) In case the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf.

RULE 6. APPLICATION BY OPERATIONAL CREDITOR-

(1) An operational creditor, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 9 of the Code in Form 5, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) The applicant under sub-rule (1) shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

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THE INDIAN EVIDENCE ACT, 1872

SECTION 41: RELEVANCY OF CERTAIN JUDGMENTS IN PROBATE, ETC., JURISDICTION-

A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

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