- Fast Track, and Voluntary Liquidation for Corporates.
- Insolvency Resolutions and Bankruptcy for Individuals and Partnership Firms, Fresh Start Process.

CA HEMANT J. MEHTA
B.COM, FCA, DISA, MBF (ICAI),
REGD. INSOLVENCY PROFESSIONAL

APMH & Associates LLP
ABBREVIATIONS USED IN THE PRESENTATION AND IBC

- IBC - Insolvency and Bankruptcy Code
- CD - Corporate Debtors
- FC - Financial Creditors
- OC - Operational Creditors
- CoC - Committee of Creditors
- AA - Adjudicating Authorities like NCLT or DRT
- IP - Insolvency Professional
- IRP - Interim Resolution Professional
- RP - Resolution Profession
- CIRP - Corporate Insolvency Resolution Process.
- IBBI - Insolvency and Bankruptcy Board of India.
- IUs - Information Utilities.
Fast Track Corporate Insolvency Resolution Process (Sec.55-58)- Chapter IV

1) Applicable in respect of following Corporate Debtors:
   a) Assets and Income below a level. or
   b) With such class of Creditors or such amt. of debts. or
   c) Such Other Category of Corporate persons,
      As may be notified by the Central Govt.

2) Completed with in a period of 90 days.

extension- if RP apply for the same, with 75% vote by CoC, extension of 45 days by AA only once.
Voluntary Liquidation of Corporate Persons
Sec. 59 (Chapter V)

Corporate Committed any default?

Yes, then can not go.

No

Declaration from majority of Directors – Affidavit of no negative NW or not to Defraud

With 2 yrs. Aud. BS and Valuation Report

4 weeks of Declaration, Sp. Resolution in GM and appointing IP.

Creditors 2/3rd in value of debts to pass resolution in 7 days.

Contd...2
Voluntary Liquidation of Corporate Persons
Sec. 59 (Chapter V) Contd...2

Public Announcement within 5 days in News papers
• Of Commencement date, stating Claims and last date of submission

Intimation to ROC and IBBI within 7 Days of CoC approval
• Sec.35 to 53 of Chapter III shall apply to the Proceedings of Liquidation

Application to AA for Dissolution upon liquidation
• AA will pass an Order which shall be filed with ROC in 14 days.
Amount of default – Not less than Rs. 1,000/- (Central Government may modify which shall not be less than Rs. 1,00,000/-)

Important Definitions

Adjudicating Authority here refers to Debt Recovery Tribunal

"excluded assets" for the purposes of this part includes—

(a) unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation;

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

(c) any unencumbered personal ornaments of such value, as may be prescribed, of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;

(d) any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family; and
(e) an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed;

Relevance – Section 155 (2) estate of Bankrupt shall not include excluded assets along with other assets specified therein.

- "excluded debt" means—
  
  (a) liability to pay fine imposed by a court or tribunal;
  
  (b) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;
  
  (c) liability to pay maintenance to any person under any law for the time being in force;
  
  (d) liability in relation to a student loan; and
  
  (e) any other debt as may be prescribed;

Relevance – Section 94 (3) where debtors cannot apply for excluded debts and Section 139 (d) where the order does not discharge the bankrupt from excluded debt.
"partnership debt" means a debt for which all the partners in a firm are jointly liable;

"qualifying debt" means amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time and does not include—

(a) an excluded debt;

(b) a debt to the extent it is secured; and

(c) any debt which has been incurred three months prior to the date of the application for fresh start process
Eligibility – A debtor unable to pay his debts and fulfil the conditions specified under sub section 2 of Section 82 entitled to make an application (either personally or through Resolution Professional) for a fresh start for discharge of his qualifying debt under this Chapter

**Conditions for discharge of his qualifying debts under this Chapter –**

(a) the gross annual income of the debtor does not exceed Rs. 60,000/-

(b) the aggregate value of the assets of the debtor does not exceed Rs. 20,000/-

(c) the aggregate value of the qualifying debts does not exceed Rs. 35,000/-

(d) he is not an undischarged bankrupt;

(e) he does not own a dwelling unit, irrespective of whether it is encumbered or not;

(f) a fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; and

(g) no previous fresh start order under this Chapter has been made in relation to him in the preceding twelve months of the date of the application for fresh start
Debtor unable to pay debts

Eligibility for FSP

Application to AA supported by an Affidavit

Filed personally or Filed through RP

Appointment of RP

RP examines application. Submits Report to AA recommending acceptance/rejection. Sends copy of the report of debtor

Interim Moratorium Starts
Order of AA

Admission

Interim Moratorium Ends

State the amounts accepted as Qualifying debts/other amounts eligible for discharge for Fresh Start

Rejection

AA to pass such order as deems fit

Within 7 days
Copy of order + copy of applications to creditors

Contd...3
Within 10 days, Objection, by application to RP

Investigation, acceptance/rejection by RP

Challenge by debtor/creditor; application to AA

Order of AA

Application accepted

Order forwarded to Board

Board may take action against RP

Application rejected
Admission of Debtor's Application

Moratorium commences in respect of all debts

RP prepares final list of Qualifying debts

Submission of the list

Moratorium ends

Discharge order by AA

To Board

180 days

At least 7 days prior to end of Moratorium period
Insolvency Resolution Process – Sec.94-120
Application to AA

By debtor committing the default – Other than Fresh Start

- Debtor Personally or through RP
- In respect of a partnership firm, all or majority of the partners shall jointly apply; single partner is not eligible.
- Only in respect of debts which are not excluded debts
- An undischarged bankrupt, or a debtor already undergoing FSP, IRP or Bankruptcy order not eligible to apply. Also, if there is an existing IRP, admitted during 12 months preceding the date of submission of application

By creditor

- Personally, or jointly with other creditors, or through RP
- Against the firm or any one or more partners of the firm
- Copy of application to the debtor

Manner of appointment of RP - Same as that in FSP

Effect of filing application - Commencement of interim-moratorium

- To end on admission of such application
Insolvency Resolution Process: First Phase (Sec 94-120)

1. Application to AA
2. Interim moratorium commences
3. Appointment of RP
4. RP examines application
   - Within 10 Days
   - Submission of Report with recommendation
5. Approval
6. Rejection
   - Treatment of Application as FSP
   - Copy of report to Debtor/Creditor

Continued...
Submission of report with recommendation

Order of AA

Admission of Application

Rejection of Application

Within 7 Days

Copy of order + Report of RP + Application to creditors

Within 14 days

Creditor Entitled to file for bankruptcy order
Insolvency Resolution Process: Second Phase

Order of Admission of Application

Moratorium commences in respect of all debts

Public notice by AA inviting claims from creditors

Creditors register claims with RP within last date specified in notice

Preparation of repayment plan by debtor in consultation with RP

Submission of repayment plan by RP to AA along with his own report on the plan

Continued…
Meeting of creditors (if called)

Report on the meeting by RP

Copy of Reports to creditors, debtors, AA

Order of AA, on the basis of report

To board

To IPA for realizing performance security

Approval

Rejection

Continued...2
Insolvency Resolution Process: 3rd phase

- Approval of repayment plan
  - Supervision by RP
    - Within 14 days, extendable to max. 7 days
      - Yes: Notice of completion and report by RP to all persons bound by repayment plan
      - No: Premature end of repayment plan
        - Yes: Report by RP to AA
        - No: Continued...
Order by AA

Dr./Cr. Whose claims not satisfied, eligible to apply for a bankruptcy order

Application for discharge order by RP to AA

Before completion of repayment plan

After Completion of repayment

Discharge order by AA

To the Board and the IPA for releasing performance security
Application for bankruptcy order  
Sec : 121-148

To AA

By a creditor, individually or jointly with other creditors

By debtor

- In case of a firm, application may be filed by any of its partners

Within 3 months of the order passed by AA under Section 100(4), or 115(2), or 118(3), as the case may be (refer succeeding slide)

Applicant may propose an insolvency professional to act as bankruptcy trustee

Application shall not be withdrawn without the leave of AA

Interim moratorium commences once application is filed

- Terminates on bankruptcy commencement date

- Such interim-moratorium provisions not to apply to transactions notified by the Central Government in consultation with any financial sector regulator
When can one apply for Bankruptcy Order?

Order by AA

Creditors entitled to file
Application for IRP is rejected by AA under Section 100(4)

Both debtor and creditor entitled to apply
Order by AA recording rejection of repayment plan by meeting of creditors (Section 115(2))

The debtor or the creditor, whose claims have not been fully satisfied entitled to apply
Order of AA on premature ending of the repayment plan under Section 118(3)
Appointment of bankruptcy Trustee
Sec 125

Name of trustee proposed in the application

No

Within 7 days

Board nominates a trustee

Yes

Within 7 days

Board confirm

No

Proposed Trustee appointed as bankruptcy trustee

Yes

Within 10 days

AA seeks confirmation from the board

Within 7 days

Appointment of nominated trustee as bankruptcy trustee
By AA, within 14 days of nomination of bankruptcy trustee

Effective till discharge of the bankrupt

Effects

- the estate of the bankrupt to vest in the bankruptcy trustee
- the estate of the bankrupt to be divided among his creditors
- bar on a creditor to commence proceedings in respect of a debt claimed as bankruptcy debt
- right of a secured creditor to realize or otherwise deal with his security interest not affected
- No entitlement to any interest in respect of debt after the bankruptcy commencement date if no steps are taken to realise the security within 30 days from the said date.

Modification or recall of bankruptcy order is possible under Section 142
Bankruptcy Order (2/2)

Application for Bankruptcy order

Nomination of bankruptcy trustee
Within 14 days

Bankruptcy order by AA
Within 10 days

Notice/ Public notice by AA inviting claims from creditors
Within 7 days

Bankruptcy to submit statement of financial position to the bankruptcy Trustee if the application was filed by a creditor within 7 days

Creditors to register claims with bankruptcy trustee

Interimmoratorium

Continued..
Preparation of list of creditors trustee

Notice to summon meetings of creditors

Completion of administration and distribution of the estate of bankruptcy

Report of the administration by trustee

To be presented in

Meetings of creditors

Approval of trustee’s report by Crs. Committee and determination of whether bankruptcy trustee shall be released

Within 14 days of bankruptcy commencement date

Within 21 days of bankruptcy commencement date

Within 7 days
Estate of Bankrupt Sec 155

Vesting
- In the bankruptcy trustee immediately from the date of his appointment
- Effective without any conveyance, assignment or transfer

Inclusions in the estate
- All property belonging to or vested in the bankrupt at the bankruptcy commencement date
- Capacity to exercise powers over such property (or capacity to initiate proceedings for exercising such powers) existing at the bankruptcy commencement date or before the date of discharge order
- Property, which by virtue of this law, is comprised in the estate

Exclusions from the estate
- Excluded assets
- Property held on trust
- Assets as notified by the Central Government in consultation with financial regulator
Undervalued transaction (Sec 45 – Corporate & Sec 164 – Individuals)

- What is not an arm's length transaction is an undervalued transaction.
- Imply unequal exchange.

What constitutes an „undervalued transaction”?
- Gift
- Significantly less value

Not of „proportionate value” but „ordinary course of business” – Is it covered under undervalued transaction?

- In Hill vs Spread Trustee Co Limited- creation of security interest has been regarded as undervalued transaction.
Preferential transactions

- Sec 43 - Corporates & Sec 165 – Individuals
- Examples:
  - payment or set-off of debts not yet due;
  - performance of acts - no obligation to perform;
  - granting of a security interest to secure existing unsecured debts;
  - unusual methods of payment;
  - payment of a debt of considerable size in comparison to the assets of the debtor;
  - payment of debts in response to extreme pressure from a creditor

Defences available

- transaction as consistent with normal commercial practice
- ordinary course of business
- “new” credit & “new” value
- counterparty proves that it was unaware of a preference
- no knowledge of the debtor’s insolvency
Discharge Order
Application by bankruptcy trustee to AA

Earlier of –

- Expiry of 1 year from the bankruptcy commencement date
- Within 7 days of the approval of the committee of creditors of the completion of administration of estate of the bankrupt, if the said approval is accorded before the expiry of 1 year from the bankruptcy commencement date

Effects

- Bankrupt is released from all bankruptcy debts
- In case the application for discharge is filed within 7 days of the creditors’ approval, the discharge does not affect
- functions of the bankruptcy trustee
- the operation of the provisions of Chapters IV and V of Part III

These remain unaffected

- Right of the secured creditor to enforce his security for the payment of a debt from which the bankrupt is discharged
- Bankrupt is not released in respect of debts incurred by means of fraud or breach of trust to which he was a party
- Bankrupt is not released from any excluded debt
Proof of Debt Sec 171

Bankruptcy trustee to give notice to every creditor

- Within 14 days from days of preparing list of creditors

Copy of decree – valid proof

Interest on debt - provable as part of the debt

- Except in so far as owed in respect of period after bankruptcy commencement date

Proof of debt by secured creditors-

- Realises his security, produce proof of the balance due to him;
- Surrenders security to the bankruptcy trustee for the general benefit of the creditors

May produce proof of his whole claim
The costs and expenses incurred by the **bankruptcy trustee**

Secondly,

- The **workmen's dues** for the period of **24 months** preceding the bankruptcy commencement date; and

- Debts owed to **secured creditors**;

Wages and any unpaid dues owed to **employees**, other than workmen, of the bankrupt for the period of **12 months** preceding the bankruptcy commencement date;

Central Government and the State Government dues

- All other debts and dues owed by the bankrupt including unsecured debts
Adjudicating Authority for Individuals and firm Sec 179-183

The Debt Recovery Tribunal (constituted under the RDDBFI Act)
- having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain

Appellate authority is the Debt Recovery Appellate Tribunal
- Appeal to be filed within 30 days
- Extension of maximum 15 days possible, provided there is “sufficient cause"

Appeal to Supreme Court
- Against an order of DRAT (on question of law), within 45 days
- Extension possible for further 15 days, in case there is “sufficient cause"

Jurisdiction of any Civil court or authority barred

Abidance to timelines
- In case order is not passed by DRT/DRAT within specified timelines, reasons shall be recorded in writing
- Chairperson of the DRAT may extend the timelines
- Extension limits not specified, unlike in the case of NCLT/NCLAT
THANK YOU

Email – hemant@apmh.in
Web – www.apmh.in