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**Note: It is advisable to go through Economic Laws Question Bank for practice, the same can be purchased from Apna mentor website.**

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## **Prohibition of Benami Property Transactions Act,1988**

Benami literally means 'without a name'. In this Act, the word "benami" is used to refer to a property/asset with no name attached to it i.e., **the actual owner is not the person who has the legal title to the property**. Here, property, shares, debentures, fixed deposits and bank accounts are held by one person for another. The former lends his name to the latter and is called a Benamidar; he does not have any beneficial interest in the property/asset. Benamidar is mere a name lender, a mask who hides the real owner of the property.

The Benami Transaction (Prohibition Act, 1988) **The Benami Transactions (Prohibition) Act, 1988** was enacted to prohibit benami transactions and the right to recover properly held benami and for matters corrected therewith or incidental thereto. **It extends to the whole of India including the State of Jammu and Kashmir w.e.f. 31.10.2019**

**The Benami Transactions (Prohibition) Amendment Act, 2016** came into effect from **1<sup>st</sup> November 2016**. The act is going to be an important weapon to track black money supplementing the Income Declaration Scheme,2016 of the Income Tax Department.

### **Important Definitions**

#### **Section 2 (5) – Attachment**

In an attachment, the person has to maintain status quo of the property. "Attachment" means the prohibition of transfer, conversion, disposition or movement of property, by an order issued under this Act

#### **Section 8 – Benami Property**

"Benami property" means any property which is the subject matter of a benami transaction and also includes the proceeds from such property. Benami property means property without a name. Here, the person who pays for the property does not buy it under his own name. The person who finances the deal is the real owner of the property. The person in whose name the property has been purchased is called the Benamidar . **The onus of proving that the apparent was not the real is on the party who claimed it to be so.**

#### **Section 2(9) - Benami transaction -It means (MOST IMPORTANT)**

**1.a) a transaction where property is transferred or to held by one person and the consideration for such property paid by another person and**

**b) property held for immediate or future benefit of person who gave the consideration, EXCEPT WHEN PROPERTY IS HELD BY-**

**i) Karta or Member of HUF**

ii) a person in **fiduciary capacity** for benefit of another person like trustee, partner, director of company or depository as agent of the actual buyer.

iii) an individual in name of **spouse and child**

iv) **Joint owners** (brother or sister, lineal ascendant or descendant).

2. transaction in **fictitious name**

3. transaction where owner of property **unaware or denies ownership** 4.

transaction **where source of consideration is unknown**. (Not traceable)

**Important Note:**

**Benami transaction shall not include any transaction under Section 53A of the Transfer of Property Act, 1882, if,**

- (i) **consideration** for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property.
- (ii) **stamp duty** on such transaction or arrangement has been paid; and
- (iii) **the contract has been registered.**

**Few Examples of Benami Transaction (Important for MCQs)**

| Sr. No | Example   | Whether a benami transaction or not?  |
|--------|---|---|
| 1.     | Mr. X, a non-resident Indian, purchased a flat for ₹ 10,00,000 in the joint name of his brother and himself from his NRE account.   | <b>No as it comes under exception of benami transaction.</b>  |
| 2.     | Mr. X, a non-resident Indian, purchased a flat for ₹ 10,00,000 and paid 5,00,000 in by account payee cheque of his own account and rest in cash. The registry was done at a value of Rs 5,00,000 which was paid by cheque | <b>Since the property is in the name of Mr. X and not in others name, it is not a Benami Transaction.</b> |
| 3.     | Mr. X, a non-resident Indian, purchased a flat for ₹ 10,00,000 in the joint name of his brother and himself and made the payment from unknown source.   | <b>Yes, Since the source of payment is not traceable.</b>   |
| 4.     | Mr. X, a resident Indian is holding a property which is in the name of unknown person.  | <b>Yes, as the property is hold in name of fictitious name.</b>   |

|     |  |  |
|-----|--|--|
| 5.  | Mr. X, a non-resident Indian, purchased a flat for ₹ 10,00,000 in the name of his wife from his NRE account.   | <b>No, as spouse comes under exception and payment source is also known.</b>   |
| 6.  | Mr. X, a non-resident Indian, purchased a flat for ₹ 10,00,000 and paid 5,00,000 in by account payee cheque of his own account and ₹ 2,50,000 cheque of other unknown person and rest Rs 2,50,000 in cash. The registry was done at a value of Rs 7,50,000 which was paid by his own cheque and others cheque. | <b>Since the cheque for ₹ 2,50,000 is from unknown person cheque, to that extent it may be a Benami Transaction.</b> |
| 7.  | Mr. X, a resident Indian, purchased a flat for ₹ 10,00,000 in the name of his son a USA resident but he denies the ownership of the flat.  | <b>Yes, since the owner of property is unaware and denies the ownership.</b>   |
| 8.  | Mr. X, a resident Indian sold a flat which was not in his name and was in unknown person name. But deposited the sale proceeds in his own account.   | <b>Yes as Mr. X sold the benami property and such transactions are null and void.</b>                                |
| 9.  | Mr. X, a resident Indian, a flat was purchased for ₹ 10,00,000 and payment was made by unknown person.   | <b>Yes, as consideration is paid by fictitious person.</b>   |
| 10. | Property held by Rajesh in the name of his spouse and consideration paid out of known legal sources  | <b>No, as it comes under exception of benami and consideration paid out of legal sources</b>                         |

### **Important tests to determine whether a transaction is benami or not? (Important)**

#### **Bhim Singh & Anr vs Kan Singh (Supreme Court)**

1. The burden to prove a transaction is benami or **not lies on the person who claims it to be benami.**
2. If consideration paid by different person other than in whose favour property is transferred, then **purchase is assumed to be for benefit of person who paid consideration.**
3. Intention of person **who paid consideration** is most important .
4. Intention is decided on **current circumstances ,relationship of parties, motives behind the transaction and their subsequent conduct.**

### **Section 2 (10) – Benamidar**

"Benamidar" means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name.

### **Section 2 (12) - Beneficial owner**

"Beneficial owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a Benamidar.

The beneficial owner provides or pays consideration for purchase of property. Beneficial owner can be any person.

### **Section 2 (16) Fair Market Value**

"Fair market value (FMV)", in relation to a property, means—

- (i) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and
- (ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as prescribed in Rule 3 of *Prohibition of Benami Transactions Rules, 2016*.

### **Section 2 (24) – Person**

Individual +HUF +Company +AOP (Associate person) +BOI (Body of Individual) + every artificial judicial (body corporate).

### **Section 2 (26) – Property**

"Property" means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property

**Section 2 (29) - Transfer** – "Transfer" includes sale, purchase or any other form of transfer of right, title, possession or lien.

## **SECTION 3 - PROHIBITION OF BENAMI TRANSACTION**

**Before Amendment** – No person shall enter into benami transaction. Punishment up to 3 years of jail, fine or both.

**After Amendment** – Rigorous imprisonment **up to 7 years** and **fine up to 25% of fair value of such property**.

**Section 4 – Prohibition of Right to Recover Property Held Benami**

- 1) **No right in property** which has been held benami.
- 2) **No defense** shall be allowed in respect of property held benami.

**Section 5 - Property held in benami liable to confiscation-** This is given in section 27.

**Section 6- Prohibition on re-transfer of property by benamidar**

If it is re-transferred then it will be **declared null and void** unless as per section 190 of Finance Act, 2016, where if undisclosed property could be disclosed then it will be valid.

**ATTACHMENT, ADJUDICATION AND CONFISCATION**

**Various Authorities Involved**

| Sec       | Authority              | Who has powers?  | Functions   |
|-----------|------------------------|--|---|
| Sec 2(19) | Initiating Officer     | Assistant Commissioner/ Deputy Commissioner  | <b>Notice and attachment of property (Section 24)</b>       |
| Sec 2(4)  | Approving Authority    | Additional Commissioner or Joint Commissioner  | <b>Notice to furnish evidence (Section 24)</b>              |
| Sec 2(1)  | Adjudicating Authority | AA appointed under Section 7 (1 chairperson and at least 2 other members. Commissioner of Income Tax or member of Indian Legal Service | <b>Confiscation and vesting of property (Section 27)</b>    |
| Sec 2(2)  | Administrator          | Income Tax Commissioner  | <b>Possession and Management of Confiscated property</b>    |
| Sec 2(3)  | Appellate Tribunal     | Chairperson and at least 2 other members (1 judicial member and one administrative member)   | <b>Hears appeals against order of Adjudicating Officer.</b> |

### **Section 24- Notice and Attachment of property involved in benami transaction (IMP)**

There are 5 main steps-

- 1) **Step 1 -Initiating officer** shall give notice to the **Benamidar** as to why the property should not be treated as Benami Property.
- 2) **Step 2- Copy of notice** shall also be given to **Beneficial owner, if** his identity is known.
- 3) **Step 3** – Where IO believes that Benamidar may alienate or transfer the property, then with **prior approval of Approving authority, may** attach the property on **provisional basis for 90 days from the last day of month in which notice was issued.**

The IO shall make inquiry and call for information, records and evidence. Further he shall pass an order of extension or revocation of Provisional Attachment order if already made, or order of attachment, if it was not done earlier with the notice **within 90 days from the last day of month in which notice was issued.**

#### **(IMPORTANT)**

**([Explanation. —For the purposes of this section, in computing the period of limitation, the period during which the proceeding is stayed by an order or injunction of any court shall be excluded:**

Provided that where immediately after the exclusion of the aforesaid period, **\*\*the period of limitation referred to in sub-section (4) available to the Initiating Officer for passing order of attachment is less than thirty days, such remaining period shall be deemed to be extended to thirty days.**

Interpretation: It is simply saying that in computing the period of 90 days, if any stay order comes in between, such period will be excluded and after removal of stay order, **if that remaining period is less than 30 days, then such remaining period shall be deemed to be extended to thirty days.** (Note: It is extended to thirty days, not by thirty days. there is a difference between by and to)

E.g., 90 days are getting over on 25.05.2020, Stay removed on 10.05.2020 then in such case , the remaining period is 15 days, so it will be extended to 30 days i.e., **09.06.2020, not 30 days after 25.05.2020.**

**Note: In simple words, we can say that to decide for extension, check the remaining period (Days after removal of stay to the date on which 90 days are getting over), if it is less than 30 , increase such remaining days to 30 days, if it's 30 or more days, no extension has to be done.)**

- 4) **Step 5-** where the IO passes an order for continuing the provisional attachment or for provisionally attaching the property, then he shall **within 15 days from the date of attachment** , prepare a statement of case and submit it to Adjudicating Authority.

**Interpretation:** It is simply saying that in computing the period of 15 days, if any stay order comes in between, such period will be excluded and after removal of stay order, if that remaining period is less than 7 days, then such remaining period shall be deemed to be extended to 7 days.

### Section 25- Manner of service of notice (sec 24 (1) and (2))

**Method:** Either by post or as a Summon by the court.

|       | <b>In case of -</b>                          | <b>Notice to be addressed to -</b>          |
|-------|--|---|
| (i)   | An individual                                | such individual                             |
| (ii)  | A firm                                       | managing partner or the manager of the firm |
| (iii) | A Hindu Undivided Family                     | Karta or any member of such family          |
| (iv)  | A company                                    | principal officer thereof                   |
| (v)   | Any other association or body of individuals | principal officer or any member thereof     |
| (vi)  | Any other person (not being an individual)   | person who manages or controls his affairs  |

### Summon has mainly 5 characteristics-

- 1) Name of Authority who issued it.
- 2) Person name- against whom notice is served (beneficial owner or Benamidar)
- 3) Date and time
- 4) Place
- 5) Sign and stamp of issuing Authority.

### Section 26- Adjudication of benami property

**Step 1 :** The Adjudicating Authority shall issue a notice to **benamidar, beneficial owner, any interested party including a banking company or any person who made claim in that property within 30 days of receipt** of notice under Section 24 to furnish documents/Particulars/Evidences.

**Note :** If property is held jointly by more than one person ,**the AA shall serve notice to all persons holding the property**, although if notice is served on any one of the persons, the said notice **cannot be called as invalid on ground that it is not served to all persons holding the property.**



**Step 2:** The notice shall a period **not less than 30 days** to the person to whom notice is issued to furnish the information.

**Step 3 :** The AA shall –

- a) Consider the reply ,if received ,to the notice issued.
- b) Conduct inquiries and call for reports and evidence as it deems fit.
- c) Take into account all relevant material and give opportunity of being heard to the parties concerned and pass order
  - i) Revoking the attachment order of Benami property or confirming it.
  - ii) Treat only part of property as benami or
  - iii) Treat a new property as benami,if it has reasons to believe that it is benami
  - iv) It may strike out name of any party or add the name of party as joint owner, if its necessary for adjudication.

**Note: No order shall be passed after the expiry of 1 year from the end of the month in which the reference under section 24 was received.**

**In section 26 of the principal Act, in sub-section (7), with effect from the 1st day of September 2019, the following Explanation shall be inserted, namely:—**

“Explanation.—For the purposes of this sub-section, in computing **the period of limitation (one year under 26 (7))**, the period during which the proceeding is stayed by an order or injunction of any court shall be excluded.

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation available to the Adjudicating Authority for passing order is less than sixty days, such remaining period shall be deemed to be extended to sixty days.”.

### **Section 27- Confiscation and Vesting of benami property**

- 1) Confiscation order passed by **the Adjudicating Authority** after giving the opportunity of being heard to the person concerned (Benamidar)
- 2) If any person held or acquired property from benamidar **for adequate consideration prior to issue of notice under section 24** without knowing it to be benami. **Rule 6 for confiscation won't apply here. (IMP)**
- 3) All rights and title vested in Central Government free from all encumbrances with no compensation.
- 4) Any transfer to any third person to defeat confiscation is Null and void.

#### **Rule 6 for Confiscation**

- i) **In case of immovable property- Issue of notice to CG /SG by authorized officer for Registration** of such confiscated property in name of CG/SG ,attach a copy of order at place of immovable property that it is confiscated.
- ii) **In case of Movable Property-The authorized officer** issue notice to

person who has custody of such movable property about confiscation. **If its liable to speedy and natural decay or its expenses for maintenance is likely to exceed its value**, with the leave of the concerned Adjudicating Authority, and **sell the property and deposit the sale proceeds** in the nearest Government Treasury or branch of the State Bank of India or its subsidiaries or in any nationalized bank in fixed deposit and retain the receipt .

### **Section 28- Management of properties confiscation**

- 1) Power of Administrator to receive and manage property confiscated.
- 2) Central government appoints Administrator (Notification in official Gadget).
- 3) Administrator may take measure as deem fit to dispose off such property.

### **Section 29- Possession of property**

- 1) If confiscation order under section 27 has been passed, then Administrator shall proceed by notice in writing ,**order within 7 days** of the date of service of notice ,to surrender or deliver possession of property.
- 2) If not complied, then Administrator give order for immediate possession of property.
- 3) Request police to take action.
- 4) Possession (forcibly acquires.)

### **Section 30**

### **Section 30**

**For the words "the Adjudicating Authority", the words "any authority" shall be substituted.**

**i.e. Now the amended provision says**

**The CG shall, by notification establish an Appellate Tribunal to hear appeals against the orders of any Authority under this Act.**

## **APPEALS**

### **Section 46 -Appeal to Appellate Tribunal**

- i) **Who can file Appeal ? Any Person including Initiating Officer**
- ii) **Against whom order appeal filed? Against the order of Adjudicating Authority**
- iii) **Time -Limit within 45 days from the date of order under Section 26,the AT may entertain any appeal after 45 days, if it is satisfied that the appellant had sufficient cause .**

### Insertion of Section 46(1A) - Appeals to Appellate Tribunal (May 20 Addition)

Any person aggrieved by an order passed by the authority under **section 54A** may prefer an appeal in such form along with such fees, as may be prescribed, to the Appellate Tribunal against the said order **within a period of forty-five days from the date of that order.**

### Section 47 – Rectification of mistakes

The Appellate Tribunal or the Adjudicating Authority may, in order to rectify any mistake apparent on the face of the record, amend any order made by it under section 26 and section 46 respectively, **within a period of 1 year from the end of the month in which the order was passed.**

### Section 49 – Appeal to high court

- i) Who can file Appeal ? Any Party
- ii) Against whom order appeal filed? **Against the order of Appellate Tribunal**
- iii) Time -Limit **within 60 days** from the date of order of AT on question of law, the High Court may entertain any appeal **after 60 days**, if it is satisfied that the appellant had sufficient cause .
- iv) The High Court shall follow the same procedure as mentioned in the provisions of the Code of Civil Procedure, 1908.

### Section 50- Special Court

There will be some court to look after matter. They are as follows-

- 1) Control government plus chief justice of high court, designate session court which turns to special court.
- 2) Criminal possession court (CrPC, 1973). There will be investigation, enquiry and trial (guilty or not).
- 3) Special court not to take cognizance of any offence **except complaints from authority or any officer of Central government.**
- 4) Conclusion of Trial by special court **within 6 months** from the date of filing of the complaint.

### Section 53 -Penalty for benami transaction

| Offence | Where any person enters into benami Transaction   |
|---------|---|
| Motive  | (a) to defeat the provisions of any law or<br>(b) to avoid payment of statutory dues or<br>(c) to avoid payment to creditors. |

|                   |  |
|-------------------|--|
| Who is punishable | (a) the beneficial owner,<br>(b) benamidar and<br>(c) any other person who abets or induces any person to enter into the benami business<br><br>Shall be guilty of the offence of benami transaction.  |
| Punishment        | (a) rigorous imprisonment for a term which shall not be less than 1 year, but which may extend to 7 years and<br><br>(b) shall also be liable to fine which may extend to 25% of the fair market value of the property.  |
| Sanction Required | Prosecution shall be instituted only after the previous sanction of the <del>CBDT</del> Competent Authority. (Section 55)<br><br><b>Amendment May 2020 in Section 55</b><br>For the word “Board”, the words “competent authority” shall be substituted. “competent authority” means a Commissioner, a Director, a Principal Commissioner of Income-tax or a Principal Director of Income-tax as defined in clause (16), clause (21), clause (34B) and clause (34C), respectively, of section 2 of the Income-tax Act, 1961.<br>The implication of this change is that Now prosecution shall be initiated against any person in respect of any offence under Sections 3, 53 or Section 54 with the sanction of competent authority. Now sanction of CBDT is not required. |

### Section 54 – Penalty for false information

Any person who is required to furnish information under this act knowingly gives false information, then he/she shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine which may extend to ten per cent of the fair market value of the property.

### Section 54A -Penalty for failure to comply with notices or furnish information (w.e.f.01.09.2019)

1 Any person who fails to-

- i comply with summons issued under sub-section (1) of section
- ii 19; or furnish information as required under section 21

shall be liable to pay penalty of twenty-five thousand rupees for each such failure

2 The penalty under sub-section (1) shall be imposed by the authority who had issued the summons or called for the information.

**3** No order under sub-section (2) shall be passed by the authority unless the person on whom the penalty is to be imposed has been given an opportunity of being heard: Provided that no penalty shall be imposed if, such person proves that there were good and sufficient reasons which prevented him from complying with the summons or furnishing information.

### IMPORTANT CASE LAWS KEY TAKEAWAYS

#### Case Law 1: Smt. P. Leelavathi vs V. Shankarnarayana Rao

**Key takeaway:** In the case of *Binapani Paul v. Pratima Ghosh* the court had held that “the source of money had never been the sole consideration, and is only merely one of the relevant considerations but not determinative (deciding) in character.” “It is true that, at the time of purchase of the suit properties, some financial assistance was given by Late G. Venkata Rao. However, as observed by this Court in the aforesaid decisions, that cannot be the sole determinative factor/circumstance to hold the transaction as benami in nature.

**It is not a benami transaction. Only financial assistance by the father in purchasing of the property will not confer it to be a benami transaction.**

#### Case Law 2: Bhim Singh v. Kan Singh

**Key takeaway:** Two kinds of benami transactions are generally recognised in India. Where a person buys a property with his own money but in the name of another person without any intention to benefit such other person, the transaction is called benami. The second case which is loosely termed as benami transaction is a case where a person who is the owner of the property executes a conveyance in favour of another without the intention of transferring the title to the property thereunder. In this case, the transferor continues to be the real owner.

**The question whether a transaction is a benami transaction or not mainly depends upon the intention of the person who has contributed the purchase money in the former case and upon the intention of the person who has executed the conveyance in the latter case.**

An order is passed directing the defendant to deliver possession of the suit house to plaintiff No. 2 (Bhim Singh Son) as Bharat Singh who purchased the property and handed the pattas (title deeds) to Bhim Singh, his intentions were clear to give property to Bhim Singh's Son and to pay profits to him at the rate of Rs. 50/- per month from September 20, 1956 till today.

#### Case Law 3: Niharika Jain W/o Shri Andesh Jain Vs Union of India

**Key takeaway: Whether amendments in section 3 of Prohibition of Benami Transaction are “retrospective” or “prospective” in nature?**

While holding the said sub-section (3) as prospective, the Rajasthan High Court observed that—Unless a contrary intention is reflected, a legislation is presumed and intended to be prospective.

Where an amendment affects rights or imposes obligations or casts a new duties or attached a new disability is to be treated as prospective; **Accordingly, the Rajasthan High Court threw the entire transactions entered by the petitioner before amendment out of the purview of Benami Act.**

## REAL ESTATE REGULATION ACT, 2016

### {Summary Compilation of Important Areas}

#### Parties Involved

1. Promoters
2. Allottees {Buyer of Projects}
3. Real Estate Agents {Negotiators}

#### Important Features of the Act

- i. The Act applies to **both residential and commercial properties.**
- ii. Builders would be liable for any structural defects brought to his notice **within 5 years from the date of possession.**
- iii. **70%** of the amount must be kept in a designated account in a scheduled bank exclusive for the current project.
- iv. Exemption from registration:
  - a. Projects being developed on land **less than 500 square metres.**
  - b. Number of units **does not exceed 8 (All phases). Phases will be checked in total, not individually, if the project is being done in multiple phases.**
  - c. Obtained completion certificate for the project before commencement of the Act.
  - d. Renovation/ Repair of the project which does not involve marketing, advertisement and selling or new allotment.
- v. Application or booking fee **cannot be more than 10%** of the cost of the apartment, plot or building, as the case may be.
- vi. Every allottee shall take physical possession **within two months** of the occupancy certificate issued for the said apartment.
- vii. If there is Alteration in sanctioned plan by promoters, **written consent by 2/3<sup>rd</sup> of allottees.**
- viii. In case, a **buyer has been deceived into purchase through false representation or advertisement, he has an option to exit the project. The developer, in such case, will have to return the money along with interest.**
- ix. If there is **delay in giving possession**, allottee shall be entitled to claim **refund of amount** paid along with **interest and compensation** as prescribed.
- x. Carpet area has now been defined in the Act. Now the promoter cannot charge the buyers on the basis of super built up area.

Note : **Completion certificate vs Occupancy certificate**

- ⇔ Occupancy certificate relates to permitting the occupation of the apartment/building, which has provision for civic infrastructure such as water, sanitation and electricity and is habitable.

- ⇔ Completion certificate relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority.

### **Registration of a Real Estate Project under RERA**

#### **Section 3-Prior Registration of Property under RERA**

1. RERA came into force on **1/5/2016**. All undergoing projects which have not obtained completion certificate would have to obtain registration within **3 months**.
2. All Real Estate Agents are also required to get registered with authority to facilitate purchase/sell of project under RERA.
3. If the project is developed in **multiple phases**, every phase is to be considered as a separate project and **separate registration is to be obtained for every phase**.
4. The registration obtained is valid for a period specified by builder in the application form.
5. Exemption from Registration
  - ⇔ Proposed Area of land does **not exceed 500 sq m** or
  - ⇔ Proposed no. of **apartments/unit** does **not exceed 8**
  - ⇔ **Renovation/Repair/Redevelopment** of **project** where **no** marketing/advertising/selling/new allotment is involved.

#### **Section 4-Promoter to apply to the Authority for Registration**

The Promoter should accompany the following details with the application process submitted to the Authority for Registration

- (a) Details of enterprise
- (b) Sanctioned Plan/Layout Plan and specification of proposed project
- (c) Details of projects launched in the last 5 years
- (d) Names and address of Promoters
- (e) Names and address of Real estate agents
- (f) Number, type and Carpet Area of Apartments
- (g) **Declaration verified by affidavit** that
  - he has legal title to the land on which development is proposed
  - land is free from all incumbrance
  - time period within which he undertakes to complete the project
  - **70 % of amount realised** would be kept in **scheduled bank** to cover cost of construction and land cost & **withdrawal of money shall be on completion basis after certifying it by Engineer, Architect and Chartered Accountant.**

**The promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project.**

  - He shall get his accounts audited by a CA in Practice **within 6 months** after end of every Financial Year.

#### **Section 5-Authority to Grant Registration**

- The authority shall grant or reject registration within **30 days**.

- If no communication is made by the authority within 30 days, it shall be deemed that Authority has given the registration.
- **Within 7 days after the expiry of 30 days**-Registration No, Login ID and password shall be given to the promoter.
- No Registration shall be cancelled by the Authority before giving **opportunity of being heard** to the promoter.

### Section 6-Extension of Registration

- The Registration granted under Section 5 can be extended by the Authority on an application made by the promoter due to **force majeure**{unforeseen circumstances like fire, flood, earthquake etc} and on payment of prescribed fees.
- The registration granted shall be extended for a period **not exceeding 1 year**.
- No application for extension of registration shall be cancelled by the Authority before giving **opportunity of being heard** to the promoter.

### Section 7-Revocation of Registration

Registration granted shall be revoked on the following 3 grounds after giving opportunity of being heard

- Promoter makes a default in complying with requirement of **Act, Rules or Regulations**.
- Promoter **violates any of the terms of conditions of the approval** given by the competent authority.
- Promoter is involved in any kind of **unfair practice or irregularities**.

### Section 19 Rights and Duties of Allottees

1. **To make timely payments**. He is liable to pay interest to the promoter for delay in payment. However, the rate of interest cannot be more than what the allottee is entitled from the promoter for delay in possession.
2. Every allottee shall take **physical possession** of the apartment, plot or building etc **within a period of 2 months** of the occupancy certificate issued for the said apartment, plot or building.

### Provisions relating to Real Estate Agents{Section 9 and 10}

#### Section 9 -Registration of Real Estate Agents

1. No real estate agent shall facilitate the sale or purchase of any real estate project registered under RERA without obtaining registration under this Section.
2. The Real Estate Agent shall make an **application in writing** for registration to the Authority.
3. The Authority shall be within the prescribed time period **accept or reject the application**.
4. No application shall be rejected by the Authority without giving **opportunity of being heard**.



## Section 10 -Functions of Real Estate Agents

1. No real estate agent registered under section 9, shall facilitate the sale or purchase of any real estate project which is not registered under RERA.
2. Every real estate agent shall **maintain and preserve such books of accounts, records and documents** as may be prescribed.
3. No real estate agent shall engage himself in any kind of **unfair trade practices** {Example, giving false and misleading information}.

### Disputes and Appeals under RERA

1. Any dispute between the allottee and promoter shall be referred to the Real Estate Regulatory Authority.
2. Authority also has the power to levy penalties on promoters, real estate agents and allottees for contravention of the Act.
3. If any person is aggrieved by the order of Authority, **appeal may be made to Appellate Tribunal within 60 days** { 60 days extension is possible on genuine grounds}.
4. AT shall make endeavour to dispose off the matter in 60 days.
5. If any person is aggrieved by the order of Appellate Tribunal , **appeal may be made to High Court within 60 days** { 60 days extension is possible on genuine grounds}.

### Important Penalties under RERA

#### 1. On Promoters

- ⇔ **Section 59 - If promoter fails to obtain registration under section 3 , penalty up to 10 % of project cost shall be levied.**

If any promoter does not comply with the orders, decisions or directions issued under sub- section (1) or continues to violate the provisions of section 3, he shall be punishable with **imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent.** of the estimated cost of the real estate project, or with both.

- ⇔ **Section 60 - If promoter contravenes Section 4 or provides false information made thereunder, he shall be liable to a penalty which may extend up to 5 % of project cost.**
- ⇔ **Section 61 -If promoter contravenes any other provisions of this Act or rules or regulations** made thereunder other than Section 3 and 4 , he shall be liable to a penalty which may extend **up to 5 %** of project cost
- ⇔ **Section 63-If promoter fails to comply with, or contravenes any of the orders or directions of the Authority,** he shall be liable to a penalty for every day during which such default continues , which may cumulatively extend **up to 5 %** of cost of the project.
- ⇔ **Section 64-If promoter fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal,** he shall be punishable with

imprisonment which may extend **up to 3 years** or with fine for every day during which such default continues, which may cumulatively extend **up to 10 %** of estimated cost of the project, or both.

## 2. On Real Estate Agents

- ⇔ **Section 62-** If any real estate agents fails to comply with provisions of **Section 9 and 10**, he shall be liable to pay a **penalty of Rs. 10,000** for every day during which such default continues , which may cumulatively extend **up to 5 %** of cost of the project.
- ⇔ **Section 65 -**If any real estate agent fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues , which may cumulatively extend **up to 5 %** of cost of the project.
- ⇔ **Section 66-** If any real estate agent fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, he shall be punishable with imprisonment which may extend **up to 1 year** or with fine for every day during which such default continues, which may cumulatively extend **up to 10 %** of estimated cost of the project, or both.

## 3. On Allottees

- ⇔ **Section 67-** If any allottee fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues , which may cumulatively extend **up to 5 %** of cost of the project.
- ⇔ **Section 68-**If any allottee fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, he shall be punishable with imprisonment which may extend **up to 1 year** or with fine for every day during which such default continues, which may cumulatively extend **up to 10 %** of estimated cost of the project, or both.

**Note : For easy learning of penalties**

**If Promoters, Real estate agents and Allottees-**If anyone fails to comply with decision of **RERA (Authority) -Penalty for every day subject to maximum of 5 %** of the cost of the project. **(NO IMPRISONMENT)**

**If Promoters, Real estate agents and Allottees-**If anyone fails to comply with decision of **Appellate Tribunal -Penalty for every day subject to maximum of 10 %** of the cost of the project. **IMPRISONMENT can be extended up to 3 years for Promoters and up to 1 year for Real estate agents and allottees respectively or with both penalty and imprisonment.**

### 3.COMPETITION ACT, 2002

#### ● Definitions:

Page  
| 3.1

#### Agreement

includes any arrangement or understanding or action in concert,—

(I) whether or not, such arrangement, understanding or action is formal or in writing; or

(ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

#### Cartel

includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;

#### Enterprise

- ⊙ means a person or a department of the Government.
- ⊙ engaged in any activity (production, storage, supply, distribution, service etc.
- ⊙ Investment-directly or through subsidiary.
- ⊙ **Not including sovereign functions provided by the central govt- atomic energy, currency, defence and space.**

#### Consumer

##### Buyer of Goods

↓  
Buys any goods for a consideration.

Including user of such goods.

whether such purchase of goods is for resale or for any commercial purpose or for personal use.

##### Hires or avails of any services

↓  
hires or avails of any services for a consideration.

and includes any beneficiary of such services.

whether such hiring or availing of services is for any commercial purpose or for personal use.



# SUMMARY NOTES OF ECONOMIC LAWS

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By CA Sanidhya Saraf

## Goods

Means goods as defined in the Sale of Goods Act, 1930 and includes—

- (A) Products manufactured, processed or mined.
- (B) Debentures, stocks and shares **after allotment.**
- (C) In relation to goods supplied, distributed or controlled in India.

## Person

Includes-individual, HUF, company, firm, AOP, BOI. corporate established under any law, body cooperate, co-operative society, local authority, any other artificial judicial person.

### Section 3- Anti Competitive Agreements

#### Agreements between persons or enterprises including cartels

- ⊙ directly or indirectly determines purchase or sale price
- ⊙ directly or indirectly results in bid rigging or collusive bidding
- ⊙ limits or controls production, supply, markets, technical development, investment or provision of services;
- ⊙ shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- ⊙ shall be presumed to have an appreciable adverse effect on competition and regarded as void.

### Section 4-Abuse of Dominant Position

- ⊙ No enterprise shall abuse its dominant position
- ⊙ There shall be abuse of dominant position if
  - (a) Unfair or discriminatory condition is imposed **including predatory pricing**
  - (b) Limits or restricts- production, scientific or technical development,
  - (c) Indulges in practices resulting in **denial of market access,**
  - (d) forceful **supplementary obligations** having no connection with subject matter of contract
  - (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

**Section 3(4)**-Agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- a) “tie-in arrangement” includes any agreement requiring a purchaser of goods, as a condition of
  - a. such purchase, to purchase some other goods.
- b) “Exclusive supply agreement” includes any agreement restricting in any manner the purchaser in
  - a. the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller
  - b. or any other person.

# SUMMARY NOTES OF ECONOMIC LAWS

Page no.3.3

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- c) "Exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.
- d) "Refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought.
- e) "Resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

## What is combination? (SECTION-5)

-Acquisition/Control/Merger/Amalgamation

### (A) Individual (Acquirer plus enterprise acquired)

| <u>LOCATION</u>           | <u>ASSETS</u>  | <u>TURNOVER</u>   |
|---------------------------|--|---|
| In India                  | Rs 2000 Crore  | Rs 6000 Crore   |
| In India or outside India | >1000 million US \$(of which at least Rs 1000 crore in India). | > 3000 million US\$ (of which at least Rs.3000 Crore in India). |

### (B) Group

| <u>LOCATION</u>           | <u>ASSETS</u>  | <u>TURNOVER</u>   |
|---------------------------|--|---|
| In India                  | Rs 8000 Crore  | Rs 24000 Crore  |
| In India or outside India | >4000 million US \$(of which at least Rs 1000 crore in India). | >12000 million US\$ (of which at least Rs.3000 Crore in India). |

## Regulation of combinations (SECTION-6)

- No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.
- Any person or enterprise proposes to enter into combination shall give notice to competition commission in prescribed form within 30 days of:
  - + Approval of BOD of proposal relating to merger or amalgamation.
  - + Execution of any agreement relating to acquisition or acquiring control.

## NOV 2022 Amendments

### Section 5

- (i) **Vide notification S.O. 988 (E) dated 27th March 2017 -Extended for further 5 years through Vide Notification No. S.O. 1192(E) [F. No. COMP-05/3/2022-COMP-MCA], Dated 16-3-2022,**

De Minimis exemption is granted from the application of section 5 for a period of **five-ten years from the date of publication of the notification** (i.e. 27th March 2017 itself) if the target enterprise whose control, shares, voting rights, or assets are being acquired, has either assets of the value of not more than INR 350 crore in India or turnover of not more than INR 1000 crore in India.

### Section 6

- (ii) **Amendment in Notification No. 2039(E), Dated 29-6-2017**

Vide Notification S.O. 1193(E) [F. No. COMP-05/4/2022-COMP-MCA], Dated 16-3 2022 in the exercise of the powers conferred by clause (a) of section 54,

the Central Government, in the public interest, **exempts every person or enterprise who is a party to a combination as referred to in section 5 from giving notice within thirty days mentioned in sub-section (2) of section 6, but subject to the provisions of sub-section (2A) of section 6 and section 43A, for a period of five-ten years from the date of publication of this notification in the Official Gazette** (i.e. 29th June 2017 itself)



**Factors** to be considered by Commission while determining whether enterprise enjoys dominant position:

- Market Share
- Size of enterprise/Competitor.
- Economic power.
- Monopoly exercised.
- Dependence of consumers.
- Countervailing buying power.
- Relative advantage by way of economic development.
- Other factors.

**The** Commission shall, while determining the “relevant geographic market”, have due regard to all or any of the following factors, namely:

- (a) Regulatory trade barriers.
- (b) Local specification requirements.
- (c) National procurement policies.
- (d) Adequate distribution facilities.
- (e) Transport costs.
- (f) Language.
- (g) Consumer preferences.
- (h) Need for secure or regular supplies or rapid after-sales services.

**The** Commission shall, while determining the “relevant product market”, have due regard to all or any of the following factors, namely:

- (a) physical characteristics or end-use of goods;
- (b) price of goods or service
- (c) consumer preferences;
- (d) exclusion of in-house production;
- (e) existence of specialised producers;
- (f) classification of industrial products



# SUMMARY NOTES OF ECONOMIC LAWS

Page 3.6

By CA Sanidhya Saraf

## ● IMPORTANT POWERS OF CCI:

- ↳ Powers of Civil Court
- ↳ Inquire into certain agreements or dominant position of enterprise Suo moto or on complain received.
- ↳ Power to call upon experts from various fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry or proceeding before it.
- ↳ If after enquiry by the Director General, the commission finds that the agreement entered are in contravention of Section 3, it may pass all or any of the following orders.
  - (a) Direct to discontinue and not to reenter such agreement.
  - (b) impose penalty up to 10% of average turnover for last 3 preceding FY's.
  - (c) Direct to modify the agreement.
  - (d) Give directions including payment of costs.

## ● CHAIRMAN AND MEMBERS OF CCI (IMPORTANT PROVISIONS)

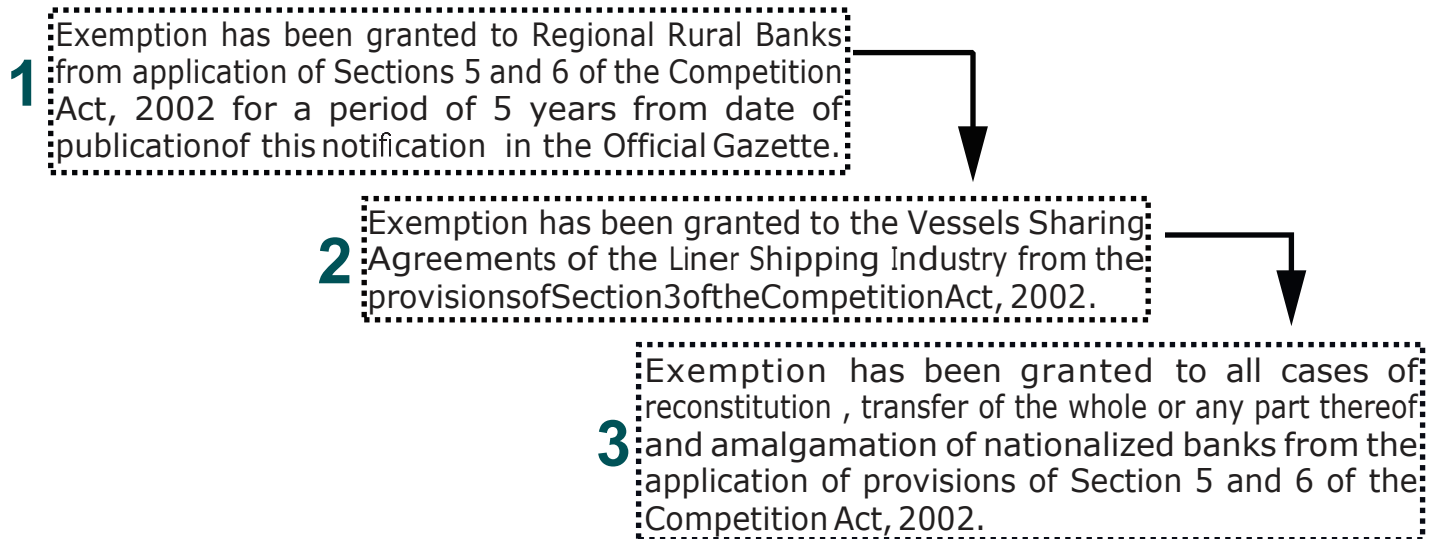
|   |  |   |
|---|--|---|
| <p>A) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than 15 years in various fields.</p> <p><b>B) Term of office of Chairperson and other Members</b></p> <ul style="list-style-type: none"><li>◎ 5 years</li><li>◎ Max age - 65 years</li></ul> | <p>C) Resignation shall be valid from : (Section 11)</p> <p>expiry of three months from the date of receipt of such notice or</p> <p>b) until a person duly appointed as his successor enters upon his office or</p> <p>c) until the expiry of his term of office</p> <p>d) he is permitted by the Central Government, whichever is earliest.</p> <p>Removal-4 grounds- insolvent, convicted of moral turpitude, paid employment, acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or) has so abused his position as to render his continuance in office prejudicial to the public interest; or mentally become incapable.</p> <p>Whenever CG forms an opinion that any commission has acquired financial interest in any enterprise or abused his position, it shall make a reference to Supreme Court. The S.C. shall hold an enquiry and then report that the member in question ought to be removed from his office</p> | <p>D) Restriction on employment of Chairperson and other Members</p> <ul style="list-style-type: none"><li>◎ 2 years from the date on which they cease to hold office of, any enterprise which has been a party to a proceeding before the Commission under this Act.</li></ul> <p>Exception:</p> <ul style="list-style-type: none"><li>a) employment under the Central Government or a State Government.</li><li>b) local authority.</li><li>c) statutory authority or any corporation established by or under any Central, State or Provincial Act</li><li>d) Government company.</li></ul> |
|---|--|---|



### ● Factors that the Competition Commission of India shall consider while determining whether and action has appreciable adverse effect on competition in India?

- Creation of barriers to new entrants in the market.
- Driving existing competitors out of the market.
- Foreclosure of competition by hindering entry into the market.
- Accrual of benefits to consumers.
- Improvements in production or distribution of goods or provision of services.

### ● RTP MAY2018:



The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019, w.e.f. 15th August, 2019

#### 1. Insertion of Regulation 5A: Notice for approval of combinations under Green Channel

**GREEN CHANNEL FAST TRACK APPROVAL OF COMBINATION UNDER COMPETITION ACT, 2002 – Done as a part to improve Ease of Doing Business in India.**

## Page 3.8

(1) For the category of combination mentioned in **Schedule III**, the parties to such combination may, at their option, give notice in Form I pursuant to regulation 5 along with the declaration specified in Schedule IV.

(2) Upon filing of a notice under sub-regulation (1) and acknowledgement thereof, the **proposed combination shall be deemed to have been approved by the Commission** under sub-section (1) of section 31 of the Act:

Provided that where the Commission finds that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is **incorrect**, the notice given and the approval granted under this regulation shall be **void ab initio** and the Commission shall deal with the combination in accordance with the provisions contained in the Act:

Provided further that the Commission shall give to the parties to the combination an **opportunity of being heard** before arriving at a finding that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is incorrect.”;

### Analysis of Regulation 5A

Regulation 5A provides for a "**green channel**" for obtaining an approval from the CCI ("Green Channel Route") in relation to specified transactions which may constitute a combination i.e. **Companies don't have to wait for 30 days for approval from CCI. It will be provisionally approved on the same day as Form I is submitted to the CCI.** The CCI has emphasized that the Green Channel Route is predominantly aimed to sustain and promote a speedy, transparent and accountable review of combination cases, create a culture of compliance, and support economic growth. The parties are given a **provisional approval to the combination**, subject to the CCI analysing the combination. If any information in the application is incorrect, such provisional approval shall be **void-ab-initio**.

### Extra Readings for more clarity:

**Note : Schedule III [See sub-regulation (1) of Regulation 5A]**

The Amendment has listed out various criteria in relation to the combinations that would be eligible to apply through the Green Channel Route in terms of Schedule III of the Amendment. The eligibility conditions mandate that the parties to a combination, being the acquirer and the target company and/or their respective group companies **do not have any overlaps, horizontal, vertical or complementary, i.e.:**

Considering all plausible alternative market definitions, the parties to the combination, their respective group entities and/or any entity in which they, directly or indirectly, hold shares and/or control:-

- (a) do not produce/provide similar or identical or substitutable product(s) or service(s);
- (b) are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product(s) or provision of service(s) which are at different stage or level of production chain; and
- (c) are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product(s) or provision of service(s) which are complementary to each other.

Note 1 : After the issuance of the Guidance notes, the term 'overlap' includes:

- (i) direct or indirect shareholding of more than 10%;
- (ii) a right which is unavailable to an ordinary shareholder (some commercial advantage for example), and
- (iii) a right to appoint a director or an observer in another undertaking.

Note 2 : The updated 'Notes to Form-I' clarify that complementary products/services are those which are combined and used together (for example, printers and ink cartridges), and that the competition assessment for such products would be undertaken in a manner similar to vertically related products.

**If they fulfil the criteria under Schedule III ,then only green channel Route will be applicable on them .**

**2. In regulation 13, of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, following are the amendments-**(a) **For sub-regulation (1A), the following sub-regulation shall be substituted, namely:** -“(1A) A summary of the combination, not containing any confidential information, in not more than 1000 words, comprising details regarding: (a) name of the parties to the combination; (b) the nature and purpose of the combination; (c) the products, services and business(es) of the parties to the combination; and (d) the respective markets in which the parties to the combination operate, shall be filed for the purpose of publishing the same on the website of the Commission”;

**(b) sub-regulation (1B) shall be omitted.**

**Note : It's a factual amendment in Regulation 13 (1A) ,earlier the words were 2000.**

# SUMMARY NOTES OF ECONOMIC LAWS

## PREVENTION OF MONEY LAUNDERING ACT

### Definitions:

#### Money Laundering

- In the PMLA, 2002, money laundering has been defined as “any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property”.  
**(Section 3)**
- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in process of money laundering shall be punished as:-
  - ⊙ 3 years to 7 years imprisonment and fine.
  - ⊙ 3 years to 10 years imprisonment and fine if offences committed under Narcotics and Psychotropic substances Act, 1985**(Section 4)**.

#### Proceeds of Crime

Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property **or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.**

#### Scheduled offence

- (a).** The offences specified under Part A of the Schedule; or
- (b).** The offences specified under Part B of the Schedule if the total value involved in such offences is **ONE CRORE** or more.
- (c).** The offences specified under Part C of the Schedule.

Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence and the occurrence of the same is a prerequisite for initiating investigation into the offence of money laundering.

# SUMMARY NOTES OF ECONOMIC LAWS

## Property

"Property" means any property or assets of every description, whether **corporeal (material object)** or **incorporeal, movable or immovable, tangible or intangible** and includes **deeds and instruments evidencing title to, or interest in, such property or assets, wherever located**. Further, property includes, property of any kind used in the commission of an offence under this Act or any of the scheduled offences [Section 2(1)(v)].

## Payment System

"Payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement services or all of them. It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

## Process of Money Laundering

- (a). Placement: - introduces the illegal funds into the financial systems.
- (b). Layering: - a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin
- (c). Integration: - The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc.

**Only I can change my life. No one can do it for me.**

# SUMMARY NOTES OF ECONOMIC LAWS

## Obligations of Banks/FI (Section-12)

- ✘ Maintain record of all transactions prescribed to reconstruct individual transaction.
- ✘ shall **verify the identity of its clients.**
- ✘ They shall maintain record of documents evidencing identity of its clients and beneficial owners (KYC Norms) for 5 years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later. (including accounts files and business files)
- ✘ **identify the beneficial owner**
- ✘ furnish prescribed information to the director of Financial Intelligence unit.

**Monetary fine if above info not submitted on directors/EE's of reporting entity**



### ● Provision of appeals:

- (a) Appeal against the order of Adjudicating Authority to the Appellate Tribunal within 45 days accompanied by such fee prescribed.
- (b) AT may condone the delay if sufficient cause.
- (c) AT may confirm/modify/set aside the order.
- (d) Appeal against the order of AT may be filed to High Court within 60 days of communication of decision of AT.
- (e) HC may condone the delay maximum by further 60 days.

**Note-**Money Laundering does not only mean siphoning of funds but also means conversion of money which is illegally obtained by placing the funds into the financial system.

# SUMMARY NOTES OF ECONOMIC LAWS

## ● Provision regarding special courts:

- ⊙ Special Court Constituted under this Act is the authority to take cognizance of offence for which accused is committed upon a complaint made.
- ⊙ **The Special Court cannot take cognizance of any offence under the Act, unless a complaint in writing is made by:**
  - (a) The Director, or
  - (b) Any officer of CG/SG authorized in writing by CG by general or special order.

## ● Nature of offence:

Cognizable and Non-bailable.

Exceptions where Special Court may direct to release the person on bail

- (a) Age <16 years or
- (b) Accused is Woman or
- (c) Sick or infirm person.
- (d) **Accused either on his own or along with other co-accused of money laundering a sum of < 1 cr may be released on bail.**

## ● Attachment of property involved in Money Laundering:

1

The Investigating Authority can Provisionally attach Property { i.e. proceeds of crime } if he has any reason to believe that the person who is found in possession of any proceeds of crime and such proceeds of crime are likely to be concealed or transferred or dealt with in unlawful manner.

2

Such property can be provisionally attached **for a period of 180 days.** { For the purpose of computing the period of 180 days, the period during which the proceedings under this section is stayed by the high court shall be excluded }.

## ● Remedy against provisional attachment of property:

The process of appeals as discussed above shall apply.

# SUMMARY NOTES OF ECONOMIC LAWS

## ● **Recovery of fine or penalty:**

If any fine or penalty imposed by the Adjudicating Authority under the POMLA Act, is not paid within 6 months from the date of imposition of fine or penalty, the Director or any other officer of the Adjudicating Authority authorized by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax 1961 for the recovery of arrears and the concerned person shall have all the powers of the Tax Recovery officer.

## ● **Punishment for false information or failure to give information:**

|   |  |   |
|---|--|---|
| <b>1</b>  | <b>2</b>   | <b>3</b>  |
| Any person willfully or maliciously giving false information- Liable for imprisonment for a term which may extend to 2 years or fine which may extend to Rs 50,000 or both. | Punishment for refusing to produce books, sign any statement, answer any question put before by the Authority exercising power- Penalty of Minimum Rs 500, Maximum-Rs 10000 for each default or failure. | No penalty shall be levied by the authority on any person before giving the opportunity of being heard. |

## ● **Procedure to collect evidence if evidence is available in a foreign country(Contracting State) with which agreement has been entered for exchange of information:**

- 1** The investigating officer or any officer superior in Rank may place the request to the Special Court.
- 2** The Special Court on being satisfied that the evidence is required in connection with the Investigation, may issue a letter of request to a court or an authority in the Contracting State to deal with such a request and to forward the required evidence after examining the facts and circumstances



# SUMMARY NOTES OF ECONOMIC LAWS

## Amendment in section 8 vide Finance Act, 2019, w.e.f. 20 -3-2019

Where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under section 5(1) or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

- a continue during investigation for a period not exceeding three hundred and sixty- five days {E a r l i e r it was 90 days} or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case
- b become final after an order of confiscation is passed

### Explanation

For the purposes of computing the period of three hundred and sixty- five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

## Insertion of section 11A vide the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019

Every reporting entity shall verify the identity of its clients and the beneficial owner, by

- a authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 if the reporting entity is a banking company; or
- b offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016
- c use of passport issued under section 4 of the Passports Act, 1967
- d use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf

The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.

If, for identification of a client or beneficial owner, authentication or offline verification is used, neither his core biometric information nor his Aadhaar number shall be stored.

# SUMMARY NOTES OF ECONOMIC LAWS

## Amendment through NOV 2021 Academic update

### (i) Section 11A- Verification of Identity by Reporting Entity

**Provided that the Central Government may, if satisfied that a reporting entity other than banking company, complies with such the standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and it is necessary and expedient to do so, by notification, permit such entity to perform authentication under clause (a**

Provided further that no notification under the first proviso shall be issued without consultation with the **Unique Identification Authority of India** established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and the appropriate regulator.

#### **NEW INSERTION**

**CG has notified "National Payments Corporation of India (NPCI)" to undertake Aadhaar authentication service of the Unique Identification Authority of India under section 11A of the Prevention of Money-laundering Act, 2002. NPCI can verify identity of its client and beneficial owner through AADHAR verification.**

**Note: Online Aadhaar Authentication means the process by which the Aadhaar number along with the demographic information or biometric information of a Aadhaar number holder is submitted to the Central Identities Data Repository (CIDR) for its verification.**

### ii) "Person carrying on designated business or profession" means, —

- (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- (ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908), as may be notified by the Central Government;"

**(iii) real estate agent, as may be notified by the Central Government;**

**"Real Estate Agents", as a person engaged in providing services in relation to sale or purchase of real estate and having annual turnover of ₹ 20 Lakhs or above**

- (iv) **dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;**

**The Central Government hereby notifies the dealers in precious metals, precious stones as persons carrying on designated businesses or professions - if they engage in any cash transactions with a customer equal to or above ₹ 10 Lakhs, carried out in a single operation or in several operations that appear to be linked.**

- (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
- (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time;

**Note: Point iii and iv have been amended as CG notifies the limit under it.**

# SUMMARY NOTES OF ECONOMIC LAWS

## Section 12- Reporting entity to maintain records (Prevention of Money laundering (Maintenance of Records) Rules, 2005 (MAY 2022 Update)

### Rule 3- Maintenance of records of transactions

Every reporting entity shall maintain records of following:

- (i) Cash transactions of value of more than **₹ 10 lakhs** in foreign currency.
- (ii) Series of cash transactions if total in a month exceeds **₹ 10 lakhs** in foreign currency.
- (iii) Cash transactions where forged or counterfeit currency or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions
- (iv) Suspicious transactions: whether or not made in cash by deposits, withdrawals, transfers, cheques, credit or debit in non-monetary accounts like d-mat, security account, money transfers, loans and advances, collection services of currency etc.
- (v) All transactions involving receipts by non-profit organisations of value more than **₹ 10 lakhs or its equivalent in foreign currency.**

#### Meaning of Suspicious Transaction – Rule 2(g)

Suspicious transaction means a transaction referred to in Sec. 2(h), including an attempted transaction, whether or not made in cash, which, to a person acting in good faith:

- (a) gives rise to a reasonable ground of suspicion that it may involve the proceeds of an offence specified in the Schedule to the Act, regardless of the value involved;
- (b) appears to be made in circumstances of unusual or unjustified complexity;
- (c) appears to have no economic rationale or bona fide purpose; or
- (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.

### Rule 4- Records containing information

The records shall contain information about nature of transaction, amount of transaction, currency, date of transaction and parties to transaction.

### Rule 5- Procedure and manner of maintaining information

The records will be maintained in hard and soft copies in accordance with procedure and manner as may be specified by its Regulator (e.g. RBI, SEBI, IRDA etc.). Internal mechanism will be developed by Banking company, FI and intermediary to maintain such information.

# SUMMARY NOTES OF ECONOMIC LAWS

## Nov 2022 Amendment

### **Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 - Rule 9(1A) shall not apply to Foreign Portfolio Investor**

The Central Government in consultation with the regulatory authority, namely the **Securities and Exchange Board of India**, in the public interest and in the interest of the regulated entity, namely **the Foreign Portfolio Investor**, hereby directs that the provisions of sub-rule (1A) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 **shall not apply to the Foreign Portfolio Investor**.

#### **Note : Rule 9 Client Due Diligence**

**Rule 9 (1A)**- Every reporting entity shall **within ten days** after the commencement of an account-based relationship with a client, file the electronic copy of the client's KYC records with the Central , KYC Records Registry;

## 5) Insolvency and Bankruptcy Code 2016

**Note : It is a summary notes for IBC,2016.It's highly advisable to go through sections in detail before referring this file.**

### What is Insolvency and Bankruptcy?

The term insolvency is used for both individuals and organizations. For individuals, it is known as **bankruptcy** and for corporate it is called **corporate insolvency** i.e., when an individual or company are not able to pay the debt in present or near future and the value of assets held by them are less than liability. If untreated, insolvency will lead to bankruptcy for non-corporates and liquidation of corporates.

Insolvency is a situation which arises due to **inability to pay off the debts due to insufficient assets**, bankruptcy is a situation wherein application is made to an authority declaring insolvency and seeking to be declared as bankrupt, which will continue until discharge.

### Purpose/ Preamble of IBC

“consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for **maximization of value** of assets of such persons, to **promote entrepreneurship, availability of credit** and 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”.

### Extent and Commencement of The Code

As per **Section 1** of the Insolvency and Bankruptcy Code, it extends to the whole of India except Part III (Insolvency Resolution and Bankruptcy for Individuals and Partnership Firm) which excludes the state of Jammu and Kashmir. **(However, now even Part-III is applicable to Jammu & Kashmir w.e.f. 18th March 2020). The Code came into an enforcement on 28th May 2016.**

### Distinct Features of The Code

It is a **comprehensive law**, the code has withered away multiple laws covering recovery of debts and insolvency and liquidation process and presents **single platform** for all the reliefs relating to recovery of debts and insolvency, it provides a **time-bound resolution (180 days, extension 90 days)** and defines **fixed time of 330 days (other 60 days are provided to complete legal proceedings)** frames for insolvency resolution of companies and individuals, **fast track resolution** of corporate insolvency within **90 days**. It has been drafted to provide **one window clearance**. There is a **clear and unambiguous process** to be followed by stakeholders, **shift of control from shareholders and promoters to creditors**. One chain authority, **NCLT for companies and DRT (Debt Recovery Tribunal) for individuals**. It **protects the interests of workmen and employees**. It provides new authority '**Insolvency and Bankruptcy Board of India**' to regulate professionals, agencies, partnership firms and individuals.

A unique feature of code is **establishment of Information Utilities** which are intended to function as a databank to collect, collate and disseminate financial information and to facilitate insolvency resolution.

### Structure of The Code

Part I - Preliminary (Sec 1-3),

Part II- Insolvency Resolution & Liquidation for Corporate Persons (Sec 4-77),

Part III- Insolvency Resolution & Bankruptcy for individuals and Partnership firms (sec 78-187),

Part IV- Regulation of Insolvency Professionals, Agencies, & Information Utilities (sec 188-233),

Part V- Miscellaneous (sec 224-255)

### Five Pillars of the Code

- I. **Insolvency Professionals-** The role of IP encompasses a wide range of functions adhering to procedure of law, accounting and finance related functions,
- II. **Insolvency Professional Agencies-** To enroll and regulate insolvency professionals as its members. They are registered with IBBI.
- III. **Information Utilities-** To collect, collate, authenticate and disseminate financial information of debtors in centralized electronic data bases at all times,
- IV. **Insolvency and Bankruptcy Board of India-**The Code provides for establishment of a Regulator who will oversee these entities and to perform legislative, executive and quasi-judicial functions. **Also, referred as “Board” in the act.**
- V. **Adjudication Authority-** The AA for corporate insolvency and liquidation is **NCLT** and **DRT** for Individuals and Partnership firms. Appeals arising out of NCLT orders lie to NCLAT and thereafter to SC of India.

### Applicability of the Code?

Companies, Individuals, Partnership firms, LLP's, Notified Entities, Personal **Guarantors to Corporate Debtors** **w.e.f. 1st day of December,2019**

### Non-Applicability of the Code? (IMP)

The Code is not applicable to corporates in finance sector. Section 3(7) of Insolvency & Bankruptcy Code, 2016 states that "**Corporate person**" shall not include any financial service provider.

**Thus, the Code does not cover Bank, Financial Institutions, Insurance Company, Asset Reconstruction Company, Mutual Funds, Collective Investment Schemes or Pension Funds. It implies that IBC Code, 2016 cannot be initiated against these institutions even if they have made a default.** However, NBFC is engaged in various activities and hence NBFC is not ipso facto excluded from definition of 'corporate person' under section 3(7) of Insolvency Code. **NBFC can be a 'corporate debtor'** [Jindal Saxena Financial Services v. Mayfair Capital (2018)]

**Applicability of IBC ,2016 on NBFC:** The Central Government in consultation with the Reserve Bank of India notifies that the insolvency resolution and liquidation proceedings of the **non-banking finance companies** (which include housing finance companies) **with asset size of Rs.500 crore or more**, as per last audited balance sheet shall be done according to IBC,2016

**Enhancement in the minimum amount of default to ₹ 1 crore .**

**Note:** Previously, this minimum amount was ₹ 1 Lakh only.

**Note :** Provisions of this Code to override other laws: Section 238 of the Code, 2016 states that the Code shall have overriding effect over other laws.

### Comprehensive Flow of Corporate Insolvency Process

- I. Filing of application before NCLT, Admission or Rejection of application.
- II. Moratorium and Public Announcement
- III. Appointment of Interim Resolution Professional
- IV. Formation of Committee of Creditors
- V. Appointment of Resolution Professional
- VI. Submission of Resolution Plan -Approval of Resolution Plan
- VII. Consequences of non-submission of the Resolution Plan

### Important Definitions

1. [Section 3(1)] - **Board** means the Insolvency and Bankruptcy Board of India (IBBI) established under section 188(1)

2. **Section 5 (12) – Definition of Insolvency Commencement Date Amendment Nov 20**

“**Insolvency commencement date**” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be.

~~Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority; (omitted)~~

**Effect :** Now, the insolvency commencement date is the date on which application is admitted by the NCLT.

3. [Section 5(7)] **Financial creditor** means any person to whom a financial debt is owed and includes a person to whom such debt has been **legally assigned or transferred to**.
4. [Section 5(20)] **Operational creditor** means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

## Who can initiate Corporate Insolvency Resolution Process? (Section 6)

**The financial Creditor, Operational Creditor and the corporate debtor itself.**

### Initiation of CIRP by Financial Creditor (Section 7)

Default should be occurred, \*\*\* **FC either by itself or jointly with other FC** may file an application for initiation of corporate insolvency process before AA, FC shall along with application furnish record of default, name of resolution professional proposed to act as IRP.

AA shall within **14 days** of receipt of application, **ascertain existence of default**, AA may accept or reject application after determining whether any disciplinary proceeding is pending against proposed IRP. **If the AA rejects the application**, AA shall give a notice to the applicant **to rectify the defect** in his application **within 7 days** of receipt of such notice from the Adjudicating Authority.

\*\*\* **Filing of application in certain special cases**

- i)** Where the FC relates to Section 21(6A) (a) ,(b) i.e. Security/deposit holders /Debenture holders – The application can be filed jointly by **100** of such creditors of same class or **10% of the total no.of creditors** in the same class, **whichever is less.**
- ii)** Where the FC relates to **allottees under a real estate project**– The application can be filed jointly by **100** of such allottees of same class or **10% of the total no.of allottees** in the same class, **whichever is less.**

**Note : According to the existing provision, even one deposit holder or one debenture holder or one home buyer could have filed an Insolvency application under IBC Code, which was felt to be effecting the interest of the other creditors or other home buyers who are allottees in other real estate projects of the same corporate debtor.**

**After the said Amendment, a single home buyer or one deposit holder or one debenture holder cannot file the IBC Case against the builder and disrupt the Company's functioning.**

### Initiation of CIRP by Operational Creditor (Section 9)

Default should be occurred, Operational Creditor shall first send a **demand notice** and copy of invoice to corporate debtor, on receipt of notice , **the corporate debtor is either required to pay off within 10 days or give notice of dispute**, **After expiry of ten days, if operational creditor does not receive payment or notice of dispute it may file an application before AA for initiating process.**

Along with application it shall furnish copy of record with information utility confirming that there is no payment of unpaid operational debt, and any other proof. An operational creditor initiating a corporate insolvency resolution process , **may** propose a resolution professional to act as an IRP.



AA shall within **14 days** of receipt of application, **ascertain existence of default**, AA may accept or reject application after determining whether any disciplinary proceeding is pending against proposed IRP. **If the AA rejects the application**, AA shall give a notice to the applicant **to rectify the defect** in his application **within 7 days** of receipt of such notice from the Adjudicating Authority.

### Initiation of CIRP by Corporate Applicant (Section 10)

“**Corporate applicant means** – (a) **Corporate debtor**, or (b) **a member or partner** of the corporate debtor who is authorized to make an application for the CIRP under the constitutional document of the corporate debtor; or (c) an individual who is in charge **of managing the operations** and resources of the corporate debtor; or (d) a person who has the **control and supervision over the financial affairs** of the corporate debtor;

Default should have occurred, application should be made to AA with prescribed books and documents, name of IRP should also be proposed in application, AA shall **within 14 days approve/ reject application**, in case of rejection ,notice shall be given within 7 days to rectify any defect, if any.

### Persons not entitled to make application (Section 11)

The following persons shall not be entitled to make application if –

- a) CD is **undergoing** a CIRP.
- aa) a **financial creditor or an operational creditor of a corporate debtor undergoing a PPIRP**.
- b) CD has **completed CIRP 12 months preceding the date of making application**.
- ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A,12 months preceding the date of making of the application; or
- c) CD’s **liquidation order** has been made.
- d) **CD or FC has violated any terms of resolution plan** which was approved 12 months before the date of making application for CIRP. **Note 1 :A Corporate debtor includes its corporate applicant.**

**Note 2 : It is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor." (IMPORTANT)**

**Effect : This step is likely to enhance the maximization of value of a corporate debtor as it would be now able to recover its debts from its creditors ,which will ultimately serve the objective of the code.**

Here, (CD- Corporate Debtor ,FC-Financial Creditor)

### Time Limit for completion of CIRP (Section 12)

The corporate insolvency resolution process shall be completed within a period of 330 days (**180 days + 90 days extension + 60 days for completing the pending litigation**) from the date of admission of the application to initiate such process.

## New timeline

$$180 \text{ days} + 90 \text{ days} + 60 \text{ days} = 330 \text{ days}$$

Note : The amendment is effective from 16th August,2019.This date is important as on this date, IBC cases have to be checked and **if the case had already crossed 330 days** ,then only 90 days will be given to complete its CIRP. **It's a transitional measure only.**

### Withdrawal of application admitted under Section 7,9,10 (Section 12A)

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of **90% voting share of the committee of creditors.**

### Declaration of moratorium and public announcement (Section 13)

The Adjudicating Authority, after admission of the application, shall, by an order—

- Declare Moratorium under Section 14
- Cause a public announcement of the initiation of corporate insolvency resolution process and call for submission of claims, and appoint an interim resolution professional.

### Moratorium (Section 14) (IMPORTANT)

After the commencement of corporate insolvency resolution, a calm period for **180 days** is declared, during which all suits and legal proceedings etc. against the Corporate Debtor are kept in abeyance to give time to the entity to resolve its status. **It is called the Moratorium Period.**

**Following acts will be prohibited during moratorium period:-**

- (i) the **institution of suits or continuation of pending suits** or proceedings against corporate debtor.
- (ii) **transferring, encumbering, alienating or disposing** off by the corporate debtor **any of its assets** or any legal right or beneficial interest therein.
- (iii) Any **action to foreclose, recover or enforce any security interest** created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002.
- (iv) **the recovery of any property by an owner or lessor** where such property is occupied by or in the possession of the corporate debtor.

Note : **Supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period** subject to the condition that **there is no default in payment of current dues.**

**Analysis:** It means that supply of the critical goods and services will not be suspended but the corporate debtor has to make payment for such critical supplies DURING THE MORATORIUM PERIOD. If it fails to make payment for such critical supplies, it might get terminated.

**Note 1:** The provision of section 14(1) of the Code is not applicable on a surety in a contract of guarantee to a corporate debtor. Thus, recovery proceedings, insolvency resolution process or bankruptcy proceedings against surety (guarantor) can be initiated even if moratorium is granted to corporate debtor.

**Note 2 :** The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process. Moratorium period shall cease when AA approves the resolution plan or passes an order for liquidation of corporate debtor.

### Appointment and tenure of Interim Resolution Professional (Section 16)

The Adjudicating Authority shall appoint an interim resolution professional on the insolvency commencement date.

Term-IRP shall continue till appointment of resolution professional

**Effect :** It has been done to expedite the CIRP as to IRP will be appointed on the same date as when the insolvency commences i.e. the date on which the application is admitted by NCLT ,so it has removed the 14 days window period now.

**Exception :** What if Operational Creditor don't propose the name of IRP while filing application under Section 9 ,in such as a case ,AA will ask IBBI (Board) to recommend name of IRP and within 10 days the board has to do so. So, it's clear that here IRP can't be appointed on the same date on which application is admitted.

**Hence, in this case the date of admission of application (Insolvency Commencement Date ) and Date of appointment of IRP will differ.**

### Appointment of Resolution Professional (Section 22)

1. The First Meeting shall be held within 7 days of constitution of committee of creditors.
2. In the first meeting, the CoC may, by majority vote of not less than 66 % of the voting share of FC,either appoint the IRP as RP or replace IRP by another resolution professional.

### Eligibility for Resolution Professional (Regulation 3)

An insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is the insolvency professional entity of which he is partner or director are independent of corporate debtor.i.e.

1. He is eligible to be appointed as an **independent director** on board of corporate debtor u/s 149 of companies act,2013 where corporate debtor is a company.
2. He **is not a related party** of corporate debtor,
3. He is **not an employee or proprietor or a partner** of a firm of auditors or CS in practice or cost auditors of the corporate debtor in **last 3 FYs**  
or He is not an employee or proprietor of **legal or consulting firm** that has or had any transaction with Corporate debtor amounting to **5% or more of gross turnover** of such firm in **last three FYs**

**Functions of Resolution Professional-** The resolution professional shall conduct entire process and manage operations of corporate debtor , shall exercise powers and perform duties as are vested or conferred on IRP.

Appeal can be made against approval of resolution plan if any criteria is not fulfilled. The committee of creditors may approve a resolution plan by a vote of not less than 66% of voting share of financial creditors. The resolution professional shall submit resolution plan as approved by CoC to AA, further AA may approve or reject the resolution plan.

### Committee of Creditors (Section 21)

The committee of creditors shall comprise of **all financial creditors** of corporate debtor.

**Where financial creditors don't exist**, where the corporate debtor has no financial debt or where all financial creditors are related parties of corporate debtor, the committee shall be formed comprising of **18 largest operational creditors by value (in case less than 18, include all), 1 representative elected by all workmen, 1 representative elected by all employees.**

### Meeting of Committee of Creditors (Section 24)

#### Important Points:

- Quorum for the Meeting-**A meeting of committee of creditors shall quorate if members represent **at least 33% of voting rights** are present either in person or by video/ audio means, if requisite not fulfilled, meeting cannot be held and shall automatically stand adjourned at same time and place on next day.
- Voting share-**Where corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each shall be part of creditors and **their voting share shall be determined on basis of financial debts owed to them.**  
Where **any person is a financial creditor as well as operational creditor** such person shall be a financial creditor, to the extent of financial debt owed by corporate debtor and shall be included in committee of creditors, with voting share proportionate to extent of financial debts owed to such creditor.
- All decisions of committee of creditors shall be taken by a vote not less than **66%** of voting share of financial creditors.

- iv) **No right of vote to directors, partners and representatives of OC ,they can only attend meetings of CoC.**
- v) **A related party** to whom a corporate debtor owes a financial debt **shall not have any right** of representation , participation or voting in a meeting of the Committee of Creditors

### **Right to ask for financial information of CD**

The CoC has right to ask for furnishing any financial information in relation to corporate debtor at any time during the corporate insolvency resolution process ,RP shall make any financial information available within a period of **7 days of such requisition.**

**Approval of committee of creditors (66%)** for certain actions of resolution professional such as raise any interim finance, create any security interest over assets of corporate, change capital structure of corporate debtor, record any change in ownership interest of corporate debtor, undertake related party transaction, etc.

**Note :** CoC may take decision **(66%) to liquidate corporate debtor** , any time after its constitution under sub-section (7) of section 21 and **before confirmation of resolution plan** , including at any time before preparation of information memorandum.

### **Person not eligible to be Resolution Applicant (Section 29A)**

**Undischarged insolvent, willful defaulter as per RBI guidelines, imprisoned for 2 years or more, disqualified u/s 164, prohibited by SEBI, has been promoter/ in management or control of corporate debtor where preferential/ undervalued/extortionate credit transactions has taken place , or has executed an enforceable guarantee in favor of a creditor, has a connected person which has defaulted as per above provisions.**

**Note- It is strictly advisable to go through section 29A from main notes.**

### **Submission and Approval of Resolution Plan (Section 30,31)**

Approval of Resolution Plan by the CoC- **66% voting share .The AA may approve the RP if it meets requirements of Section 30.** The Resolution Plan shall provide for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

- i) The amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
- ii) The amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

**whichever is higher**, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (7) of section 53 in the event of a liquidation of the corporate debtor.

### Liability of prior offences etc. (Section 32A)

Section 32A provides that Corporate Debtor shall not be prosecuted for an offence committed **prior to commencement of Corporate Insolvency Resolution Process (CIRP)** once Resolution Plan has been approved by Adjudicating Authority (AA). **There cannot be any attachment or confiscation of assets of Corporate Debtor, as otherwise same will defeat objects of the Code.**

**It provides that no action shall be taken against property of Corporate Debtor covered under such a Resolution Plan.**

### Liquidation Process

#### Circumstances under which AA may pass a liquidation order

- The AA may order for liquidation of corporate debtor in cases where before expiry of Insolvency Resolution Process or **within 180 days** of initiation of CIRP or fast track corporate insolvency process u/s 56, **the AA does not receive Resolution Plan.**
- If CoC before expiry of resolution process intimate the AA of their decision approved by not less than 66% of voting share that they have passed an order of liquidation of corporate debtor,
- Where **resolution plan is contravened** by concerned corporate debtor, any person other than debtor whose interests are affected may make an application.

Once AA passes an order of liquidation, a **moratorium** is imposed on pending legal proceedings against corporate debtor, and assets of debtor vest in liquidation estate.

Where AA passes an order for liquidation, **the resolution professional** appointed for corporate insolvency resolution process subject to submission of a **written consent by resolution professional** to AA in specified form, act as **liquidator** for purpose of liquidation unless replaced by AA.

To be a **liquidator**, a person **should be independent of corporate debtor. (Regulation 3 conditions, same as RP, that will be checked for Liquidator too)**

The liquidator has the **power** to verify all claims of creditors, to take all assets, property, effects and actionable claims of corporate debtor into his custody, to evaluate the assets and property of corporate debtor, to carry out business of corporate debtor for its beneficiary liquidation, to make progress report of corporate debtor.

For purpose of liquidation, liquidator shall form an estate of assets, which will be called **liquidation estate**, includes tangible and intangible assets, asset that may or may not be in possession of corporate debtor, assets subject to determination of ownership by court or authority, etc.

**Assets not forming part of liquidation estate** Assets owned by a **third party** in possession of corporate debtor, **personal assets** of any shareholder or partner of a corporate debtor, assets of any **Indian or foreign subsidiary**, assets in **security collateral** held by financial service providers and subject to netting and set off in multi-lateral trading or clearing transactions, any other assets as may be specified by board. **(IMP FOR MCQ)**

The liquidator shall receive or collect claims of creditors within a period of **30 days** from date of commencement of liquidation process. The liquidator shall communicate his decision of admission or rejection of claims to creditor and corporate debtor **within 7 days** of such admission or rejection of claims. **A creditor may appeal to AA against decision of liquidator rejecting its claims within 14 days.**

### **Distribution Order (Section 53)**

- i) The insolvency resolution process costs and liquidation costs paid in full ,
- ii) Workmen dues for period of **24 months** preceding liquidation commencement date , and debts owed to secured creditors in the event such secured creditors has relinquished security, shall rank equally,
- iii) wages and unpaid dues owed to employees other than workmen for period of 12 months preceding liquidation commencement date,
- iv) **financial debts owed to unsecured creditors,**

- v) Amount due to CG and SG and debts owed to secured creditors for any unpaid amount after enforcement of security interest, shall rank equally,
- vi) remaining debts and dues, preference shareholders and equity shareholders or partners, a case maybe.

### **Voluntary Liquidation Process**

Section 59 of Code empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default to initiate voluntary liquidation proceedings . Any corporate person registered as a company shall meet conditions such as declaration from majority of directors of company verified by affidavit stating that they have made a full inquiry into the affairs of company and **company is not being liquidated to defraud any person**, the declaration shall be accompanied with **documents namely**, audited financial statements and a record of business operations of previous two years or period since incorporation whichever is later, a report of valuation of assets of company, prepared by registered valuer.

After making declaration, **within four weeks, pass a special resolution** at a general meeting, stating the company should be liquidated voluntarily and insolvency professional to act as liquidator may be appointed.

### **Fast-track CIRP (Section 55 to 58)**

**Eligible Corporate Debtor :** A Small Company, a startup or an **Unlisted company with total assets not exceeding 1 crore in the immediately preceding FY.**

A fast track insolvency resolution is a process wherein process shall be completed in an expeditious manner within **90 days** from insolvency commencement date (extension by AA of **not exceeding 45 days, such extension shall not be granted more than once**).

**Validity of Undervalued and Overvalued Transaction with Related Parties** If corporate debtor enters into undervalued or overvalued transactions with its related parties, the resolution professional may report about such transactions to NCLT and NCLT **may declare such transaction null and void and may reverse such transactions.**

**CHAPTER III A. PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS**  
**An overview of sections under Chapter III A**

| Section   | Provisions  |
|---|---|
| <b>54 A. Corporate debtors eligible for PPIRP</b>                         | <ul style="list-style-type: none"> <li>➤ <b>Corporate Debtor -MSMEs i.e., Company and LLP</b></li> <li>➤ <b>Minimum amount of default- ₹ 10 Lakhs</b></li> <li>➤ <b>Certain restrictions on corporate debtor for initiating PPIRP-</b> <ol style="list-style-type: none"> <li>a) it has not undergone PPIRP or CIRP, during the period of three years preceding the initiation date; (<b>cooling off period of 3 years</b>)</li> <li>b) it is <b>not undergoing a CIRP</b>;</li> <li>c) <b>no liquidation order</b> passed against it</li> <li>d) it is eligible to submit a resolution plan under section 29A;</li> <li>e) <b>Appointment of Resolution Professional by Unrelated FC (66% approval by FC)</b></li> <li>f) <b><u>Declaration given by Directors- BRP would be submitted within a definite time not exceeding 90 days, PPIRP not initiated to defraud any person and name of RP will be proposed with application.</u></b></li> <li>g) <b><u>Special Resolution (75%) approval by members or partners thereof required for initiating PPIRP</u></b></li> </ol> </li> </ul> |
| <b>54 B. Duties of resolution professional before initiation of PPIRP</b> | <ul style="list-style-type: none"> <li>➤ <b>Duties of Proposed RP-Prepare a report that corporate debtor meets the requirements of section 54A, and the base resolution plan, files such report to Board.</b></li> <li>➤ <b>Cease of Duties of Proposed RP-</b> <ul style="list-style-type: none"> <li>• <b>the corporate debtor fails to file an application for initiating PPIRP i.e. Within 90 days from submission of declaration under Section 54</b></li> <li>• the application for initiating PPIRP is <b>admitted or rejected</b> by the Adjudicating Authority</li> </ul> </li> <li>➤ <b>Proposed RP fees - form part of the pre-packaged insolvency resolution process costs, if the application for initiation PPIRP is admitted.</b></li> </ul>   |
| <b>54 C. Application to initiate PPIRP</b>                                | <ul style="list-style-type: none"> <li>➤ The application under shall be filed in such form (<b>***Form 1 with fee of ₹ 15,000</b>)</li> <li>➤ <b><u>Attachments required with application –</u></b> <ul style="list-style-type: none"> <li>○ Declaration by directors as given under 54A ,SR of members and approval of FCs.</li> <li>○ Name and written consent of insolvency professional proposed to be appointed as <b>resolution professional.</b></li> <li>○ a declaration regarding the existence of <b>any transactions</b> of the corporate debtor e.g., Fraudulent or wrongful trading</li> <li>○ <b>information relating to books of account</b> of the corporate debtor (<b>Last 2 years Audited financial statements and provisional financial statements for current year.</b>)</li> </ul> </li> </ul>  |



|   |  |
|---|--|
|   | <ul style="list-style-type: none"> <li>➤ <b>Decision of AA-within 14 days</b> of the receipt of the application, Accept or reject the application. Before rejecting, give notice to the applicant to <b>rectify the defect in the application within 7 days from date of receipt of notice.</b></li> <li>➤ <b>PPIRP Commencement-</b> The pre-packaged insolvency resolution process shall commence from <b><u>the date of admission of the application.</u></b></li> </ul>  |
| <b>54 D. Time-limit for completion of PPIRP</b>                             | <p>The resolution professional shall submit the resolution plan, to the Adjudicating Authority, within a period of <b>90 days</b> from PPIRP commencement. The complete process should be done within <b>120 days</b> from PPIRP commencement date.</p> <p><b>Termination of PPIRP-</b> Where <b><u>no resolution plan is approved by the committee of creditors within 90 days,</u></b> the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the PPIRP</p>  |
| <b>54 E. Declaration of moratorium and public announcement during PPIRP</b> | <p>The AA shall on PPIRP commencement date, along with the order of admission under section 54C –</p> <ul style="list-style-type: none"> <li>➤ Declare moratorium (Sec 14 under CIRP)</li> <li>➤ Appoint <b>resolution professional</b> as named in the application if no disciplinary proceeding is pending against him or as recommended by Board if disciplinary proceeding is pending against him.</li> <li>➤ cause a <b>public announcement</b> of the initiation of PPIRP to be <b>made by the resolution professional,</b> in such form 9 and manner as may be specified, <b>immediately (within 2 days)</b> after his appointment.</li> </ul> <p><b>Cease of Moratorium-</b> The order of moratorium shall have effect from the date of such order <b>till the date on which PPIRP period comes to an end.</b></p> |
| <b>54 F. Duties and powers of resolution professional during PPIRP</b>      | <p>The resolution professional shall conduct PPIRP of a corporate debtor during the PPIRP period.</p> <p style="text-align: center;"><b>Duties of RP</b></p> <ul style="list-style-type: none"> <li>➤ <b>Confirm list of claims</b> submitted by CD, maintain an <b><u>updated list of claims, inform creditors</u></b> regarding their claims or in the event of <b><u>breach of any of the obligations of the Board of Directors or partners.</u></b></li> <li>➤ <b>monitor management of the affairs of the corporate debtor.</b></li> <li>➤ constitute the <b><u>committee of creditors</u></b> and convene and attend all its meetings</li> <li>➤ prepare the <b><u>information memorandum</u></b> on the basis of the <b><u>preliminary information memorandum</u></b></li> </ul>                                    |

- file applications for **avoidance of \*\*\*transactions under Chapter III or fraudulent or wrongful trading under Chapter VI,**

**(\*\*\*Preferential transactions, undervalued transactions. Extortionate credit transactions, Transactions defrauding creditors)**

### **Powers of RP**

- **Access to books of accounts, electronic records** of CD from an **information utility** having financial information of the corporate debtor, or available with **Government authorities, statutory auditors, accountants.**
- **Attend meetings of members, Board of Directors and committee of directors, or partners.**
- **Appoint accountants, legal or other professionals (registered valuers or actuaries)**

collect all information relating to **the assets, finances and operations of the corporate debtor,** including information relating to —

- business operations for the previous two years** from PPIRP commencement date;
- financial and operational payments for the previous two years** from the date of PPIRP commencement date;
- list of assets and liabilities as on the initiation date;**

### **Few other Points**

**Financial Institutions to co-operate with RP, Co-operation of Personnel of CD, its promoters with RP, fees of the RP (decided by CoC, provided further that the fees and expenses for the period prior to the constitution of the committee of creditors shall be subject to ratification by CoC.)**

#### **54 G. List of claims and preliminary information memorandum. (PIM)**

- **Corporate Debtor to submit List of claims and PIM to RP within 2 days of PPIRP commencement date.**
- **Liability for mis-information in List of claims or preliminary information memorandum- Who will be liable in such case?**  
every person who—
  - is a **promoter or director or partner of the corporate debtor**, at the time of submission of the list of claims or the preliminary information memorandum by the corporate debtor; or
  - has authorised the submission of the list of claims or the preliminary information memorandum by the corporate debtor, shall, without prejudice to