



SUPPLEMENTARY

IMPACT OF INSOLVENCY AND BANKRUPTCY CODE 2016 ON THE COMPANIES ACT, 2013



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BACKGROUND

In India, prior to the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) there were multiple laws like Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the Companies Act, 2013 dealing with insolvency and bankruptcy of companies, limited liability partnerships, partnerships firms, individuals and other legal entities. As a result High Courts, District Courts, the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR) and the Debt Recovery Tribunals (DRTs), have jurisdiction at various stages, giving rise to the potential of systemic delays and complexities in the process whereas liquidation of companies is handled by the high courts, individual cases are dealt with under the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920. The legal framework prior to the IBC, does not aid lenders in effective and timely recovery of defaulted assets and causes undue strain on the Indian credit system.

'Insolvency means the situation where an entity cannot raise enough cash to meet its obligations or to pay debts as they become due for payment and bankruptcy means when a person voluntary declares him as an insolvent and goes to the court. On declaring the person as 'bankrupt', the court is responsible to liquidate the personal property of the insolvent and distribute it among the creditors of the insolvent.

In the year 1999, the Government of India set up a High Level Committee headed by Justice V.B. Eradi, Judge of Supreme Court of India to examine and make recommendations with regard to the desirability of changes in existing law relating to winding up of companies so as to achieve more transparency and avoid delays in the final liquidation of the companies. The committee completed its work and submitted its report to the Central Government in the year 2000. The committee recommended that the jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal instead of the High Court.

In December 2002, Indian Parliament passed the Companies (Second Amendment) Act, 2002 to restructure the Companies Act, 1956 including the setting up of NCLT and NCLAT. Dr J J Irani committee was set up to deal with weaknesses of the Second Amendment Act. On 31st May, 2005, Dr J J Irani

committee handed over its report to Government of India. Key recommendations of the committee were time bound proceedings, applicability and accessibilities, moratorium and suspension of proceedings, operating agencies, appointment of Administrators and their duties, Creditor's committee and liquidators, increased role of professionals, insolvency practitioners, cross border insolvency etc.

Considering the above mentioned recommendations, the Government set in motion a plan to overhaul the existing bankruptcy laws and replace them with one that will facilitate easy and time-bound closure of businesses. The draft legislation was based on the report of a high-level panel headed by former law secretary T.K. Viswanathan. The Finance Ministry put up the Insolvency and Bankruptcy Bill, 2015 on its website for public comments and it was passed on 05th May, 2016 by the Parliament as The Insolvency and Bankruptcy Code, 2016 and came into force vide notification dated 28th May, 2016.

Multiplicity of laws and adjudicating authorities for Insolvency and bankruptcy of various entities were a hindrance towards resolution of recovery problems of creditors and declaration of insolvency, their revival plan and liquidation of corporate entities. The objective of IBC is to consolidate multiple laws and adjudicating authorities dealing with insolvency, bankruptcy, revival and/or liquidation of various entities including individual, partnership firms, corporate entities etc. Earlier laws pertaining to DRT and SARFAESI were the exclusive forums for banks/financial institutions while BIFR and Companies Act had limited application for sick companies, their revival and/or liquidation. It was envisaged that the IBC will overcome these kind of problems.

The Insolvency and Bankruptcy Code, 2016 extends to the whole of India (except Part III which deals with Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms of the Code which shall not extend to the State of Jammu and Kashmir). In order to welcome foreign investors to invest in the Indian economy and with a view to ease doing business in India, it is expected that the IBC is going to play a vital role in the economic system of the country.

This IBC is not applicable to the entities which are engaged in providing financial services like for instance the NBFCs, investment companies etc. The IBC offers a uniform, comprehensive insolvency legislation encompassing all companies, partnerships and individuals (other than financial firms). The Government proposed a separate framework for bankruptcy resolution in failing banks and financial sector entities.

THE COMPANIES ACT, 2013

In the meanwhile, the Companies Bill was passed by the Parliament during 2013, received the assent of the President on August 29, 2013, and notified on August 30, 2013 as the Companies Act, 2013 consisting of 29 Chapters, 470 Sections and 7 Schedules as against 658 sections under 13 Parts and 15 schedules in the Companies Act, 1956. The Companies Act, 2013 consolidates and amends the law relating to the companies and replaces the Companies Act, 1956 in phases, which is 56 years old.

THE COMPANIES (AMENDMENT) ACT, 2015

Though, the Companies Act, 2013 and the rules notified there under, intended to revamp the corporate law regulations from the Companies, 1956, were subject to onerous provisions creating interpretational and implementing issues, resulting in hassles for smoother business administration and not achieved its objectives in several respects.

Consequently, pursuant to various representations made by the stakeholders and with a focus to ease the restrictions and promote business, the Government of India (Ministry of Corporate Affairs) has suitably amended certain provisions of the Act vide the Companies (Amendment) Act, 2015 effective from 29 May 2015.

THE COMPANIES (AMENDMENT) BILL, 2017

The Companies (Amendment) Bill, 2017, introduced in Lok Sabha on 16 March, 2016 as The Companies (Amendment) Bill, 2016 was referred to the Standing Committee on Finance on 12 April, 2016. The Committee after hearing the views of the representatives of the Chambers of Commerce and Industry as well as professional bodies adopted its report on 30th November, 2016. The Government after considering the suggestions of the Committee and also the experience gained by it, gave notice of amendments as approved by the Cabinet to the Lok Sabha. The Lok Sabha has passed the Companies (Amendment) Bill, 2017 on July 27, 2017 provides for more than 40 amendments to the Companies Act, 2013, by amending more than 100 Sections.

The major amendments proposed include simplification of the private placement process, rationalization of provisions related to loan to directors, omission of provisions relating to forward dealing and insider trading, doing away with the requirement of approval of the Central Government for managerial remuneration above prescribed limits, aligning disclosure requirements in the prospectus with the regulations to be made by SEBI, providing for maintenance of register of significant beneficial owners and filing of returns in this regard to the ROC and removal of requirement for annual ratification of appointment or continuance of auditor.

The major official amendments subsequently introduced include continuing with the provisions relating to layers of subsidiaries, continuing with the earlier provisions with respect of memorandum, making offence for contravention of provisions relating to deposits as non-compoundable, requiring attaching of financial statement of associate companies, stringent additional fees of Rs 100 per day in case of delay in filing of annual return and financial statement etc.

The Bill now awaits the approval of the Rajya Sabha.

THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)

The Insolvency and Bankruptcy Code, 2016 (IBC) deals with:

- (a) Insolvency Resolution and Liquidation of Corporate Entities; and
- (b) Bankruptcy of individuals and partnership firms.

OBJECTIVES OF THE IBC, 2016

- (a) Consolidate the laws relating to insolvency, reorganisation and liquidation/ bankruptcy of all persons, including companies, individuals, partnership firms and limited liability partnerships ('LLPs') under one statutory umbrella and amending relevant laws.
- (b) Time bound resolution of defaults and seamless implementation of liquidation / bankruptcy and maximising asset value.
- (c) Encourage resolution as means of first resort for recovery. Plugging the loopholes in the existing debt recovery procedures.
- (d) It does not make any distinction between the rights of international and domestic creditors or between classes of financial institutions. The Code has sought to balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues.
- (e) Promotion of entrepreneurship, availability of credit and ease of doing business.
- (f) Creating infrastructure which can eradicate inefficiencies involved in bankruptcy process by introducing National Company Law Tribunal ('NCLT'), Insolvency Resolution Professional Agencies ('IRPAs'), Insolvency Professionals ('IPs') and Information Utilities ('IUs').

- (g) Facilitate the application of consistent and coherent provisions to different stakeholders affected by Business failure and inability to pay debt
- (h) Address the challenges being faced for swift and effective bankruptcy resolution
- (i) Improve the handling of conflict between creditors and debtors
- (j) Improve ease of doing business ranking for India
- (k) To develop a vibrant market for debt
- (l) To increase flow of lending by banks and reduce rate of interest

SALIENT FEATURES OF THE IBC, 2016

- (1) Application on default - Any financial or operational creditor(s) can apply for insolvency on default of debt or interest payment.
- (2) Moratorium period - Adjudication authority will declare moratorium period during which no action can be taken against the company or the assets of the company.
- (3) Credit committee - A credit committee of financial creditors will be constituted. Operational creditors are certain to act as observer in the credit committee meeting. Resolution plan to be approved by the credit committee with at least 75 per cent of the financial creditors by value.
- (4) Process of revival - Existing management have no say during the process of revival as well as resolution, accordingly no fetters by them.
- (5) Liquidation procedure - Fast track liquidation procedure has been introduced. Failure to approve the resolution plan within specified days will cause initiation of liquidation. Debtors can also opt for voluntary liquidation by a special resolution in a general meeting.

OVERRIDING EFFECT OF THE IBC, 2016 OVER OTHER LAWS

The IBC, 2016 repeals the Presidency Towns Insolvency Act, 1909, and Provincial Insolvency Act, 1920. The Code also brings with itself certain amendments to the following 11 Legislations:

Sl. No.	Name of the Legislation	Remarks
1.	The Indian Partnership Act, 1932	Section 245 R/w First Schedule
2.	The Central Excise Act, 1944	Section 246 R/w Second Schedule
3.	The Income-Tax Act, 1961	Section 247 R/w Third Schedule
4.	The Customs Act, 1962	Section 248 R/w Fourth Schedule
5.	The Recovery of Debts Due to Banks and Financial Institutions Act, 1993	Section 249 R/w Fifth Schedule
6.	The Finance Act, 1994	Section 250 R/w sixth Schedule
7.	The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;	Section 251 R/w Seventh Schedule
8.	The Sick Industrial Companies (Special Provisions) Repeal Act, 2003	Section 252 R/w Eighth Schedule
9.	The Payment and Settlement Systems Act, 2007	Section 253 R/w Ninth Schedule
10.	The Limited Liability Partnership Act, 2008,	Section 254 R/w Tenth Schedule
11.	The Companies Act, 2013	Section 255 R/w Eleventh Schedule



The overall Impact of IBC on Other Corporate Laws shall be:

- 1) Section 238 of the IBC provides for overriding nature of the provisions of IBC.
- 2) Once a corporate entity comes within the process as envisaged under the IBC, all the other applicable provisions of law have to be give way to the IBC proceedings.
- 3) All the other proceedings against a company undergoing restructuring now fall within the exclusive jurisdiction of the IBC proceedings. (Section 14 moratorium order and Section 231 bar on jurisdiction of civil courts).
- 4) The Companies Act, 2013 has been majorly amended and made harmonious to the provisions of the IBC. (Discussed herein after in detail)

AMENDMENTS MADE TO COMPANIES ACT, 2013 THROUGH IBC, 2016

[Section 255 read with Schedule XI of (IBC)]

Highlights of Amendments

- (1) Reference of winding up under IBC in Companies Act, 2013 by amending following sections 2(94A), 224(2), 249(1)(e) & 419]
- (2) Definition of company liquidator to also include liquidator under IBC [2(23), 77(3) & 230(1) & (6)]
- (3) Voluntary winding up provisions removed from Companies Act, 2013 & put in IBC:
 - (a) Provisions omitted – 304 to 323 & 342(2), (3)&(4)
 - (b) Provisions amended – 117(3)(f), 329, 334, 336(1), 337, 343(1), 347(1), 348(1), 357 & 468
 - (c) Corresponding provisions under IBC – 59 read with 35 to 53
 - (d) Major change : Company which has made any default cannot make application for voluntary liquidation.
 - (e) Default under IBC means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid.
- (4) Sick companies provisions removed from Companies Act, 2013 & put in IBC:
 - (a) Provisions omitted – 253 to 269
 - (b) Provisions amended – 280

Sick Companies:

Following enactments were brought in as to Sick Companies :-

- (1) SICA -1985 read with 1991 &1993 amendment
- (2) (Amend) Act, 2002 – Never made effective
- (3) SICA (Special Provision) Repeal, Act – Not yet effective & now amended by IBC
- (4) Act, 2013 – Never made effective & now omitted by IBC
- (5) IBC – provisions to be notified

As IBC provides opportunity of resolution & liquidation to both financial & operational creditor on a speedy basis hence sick Company provisions omitted.

Further SICA Repeal Act has been amended to facilitate transfer of proceedings from BIFR/AABIFR to NCLT/NCLAT.

- (5) Petition for winding up by NCLT cannot be made by a creditor under CA, 2013 – Section 272 of CA, 2013 amended and creditor removed from entitlement of making application for winding up to tribunal. Sufficient remedy is given in IBC that they first have right to initiate resolution of insolvency proceedings on failure of which liquidation application may be made.

TABLE SHOWING THE AMENDMENTS MADE TO COMPANIES ACT, 2013 THROUGH IBC, 2016

[Vide Section 255 read with Schedule XI of IBC, 2016]

Section	Description/ Purpose	Before Amendment / As per Companies Act, 2013	After Amendment / As per IBC, 2016	Remarks
2(23)	Definition of "Company Liquidator"	Power to Appoint Liquidator - the Tribunal in case of winding up by the Tribunal - the company or creditors in case of voluntary winding up	"Company Liquidator" means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act. Power to Appoint Liquidator is only with Tribunal (NCLT)	Substituted by IBC, 2016
2(94A)	Definition of "winding up"	Earlier there was no definition of winding up under CA-2013.	"winding up" means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.	New Insertion through IBC, 2016
8(9)	Winding up of companies with charitable objects, etc	If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269	If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016	Modified by IBC, 2016
66(8)	Reduction of share capital	Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim,...	for the words, brackets and figures "is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim," the words and figures "commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim," shall be substituted	Substituted by IBC, 2016

77(3)	Duty to register charges	Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other Creditor	the words "the liquidator", the words and figures "appointed under this Act or the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted.	Substituted by IBC, 2016
117(3) (f)	Resolutions & Agreements required to be filed with ROC	The provisions of this section shall apply to the resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304 (Circumstances in which company may be wound up voluntarily)	the word and figures "section 304", the words and figures "section 59 of the Insolvency and Bankruptcy Code, 2016" shall be substituted. (Voluntary Liquidation of Corporate Persons)	Substituted by IBC, 2016
224(2)	Actions to be taken in pursuance of Inspector's Report	If any company or other body corporate is liable to be wound up under this Act	the words "wound up under this Act", the words and figures "or under the Insolvency and Bankruptcy Code, 2016" shall be inserted.	Substituted by IBC, 2016
230(1)	Power to compromise or make arrangements with creditors and members	The Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator	in sub-section (1), after the word "liquidator", the words "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted;	Amended by IBC, 2016
230(6)	Power to compromise or make arrangements with creditors and members as to meeting held in pursuance of sub-section (1)	Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.	in sub-section (6), after the word "on the liquidator", the words "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted	Amended by IBC, 2016

249(1) (e)	Restrictions on making application under section 248 in certain situations	An application under sub-section (2) of section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company is being wound up under Chapter XX, whether voluntarily or by the Tribunal	An application under sub-section (2) of section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company is being wound up under Chapter XX, or under the Insolvency and Bankruptcy Code, 2016.	Amended by IBC, 2016
253 to 269	Revival and rehabilitation of sick companies	Section 253 to 269 under Chapter XIX of the Companies Act, 2013 deals with - Revival and rehabilitation of sick companies	Entire Chapter XIX dealing with Revival and rehabilitation of sick companies has been Omitted	Omitted by IBC, 2016
270	Modes of Winding up	(1) The winding up of a company may be either— (a) by the Tribunal; or (b) Voluntary. (2) Notwithstanding anything contained in any other Act, the provisions of this Act with respect to winding up shall apply to the winding up of a company in any of the modes specified under sub-section (1)	The provisions of Part I (Winding up by Tribunal) shall apply to the winding up of a company by the Tribunal under the Insolvency and Bankruptcy Code, 2016.	Amended by IBC, 2016
271	Circumstances in which company may be wound up by Tribunal.	A company may, on a petition under section 272, be wound up by the Tribunal. [Here 7 situations are given a, b, c, d, e, f, g]	A company may, on a petition under section 272, be wound up by the Tribunal,— (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal; (b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality; (c) if on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have	Substituted by IBC, 2016

			<p>been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;</p> <p>(d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or</p> <p>(e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.".</p> <p>[Here only 5 situations are given a,b,c,d,e,f,g]</p> <p>Impact:</p> <p>This Section has been completely substituted by the Insolvency and Bankruptcy Code, 2016. In earlier section there were 7 situations in which petition to be filed with tribunal for winding up of the Company but in new section substituted by I&B Code 2016 only 5 situations are there.</p> <p>Following two situations are deleted:</p> <p>(a) if the company is unable to pay its debts;</p> <p>(d) if the Tribunal has ordered the winding up of the company under Chapter XIX;</p> <p>It may be noted that if a Company is unable to pay its debts, creditors can't file petition in tribunal in this circumstance for winding up of the company.</p>	
272	Petition for winding up.	A petition to the Tribunal for the winding up of a company shall be presented by. [Here 7 situations are given a,b,c,d,e,f,g]	<p>(1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—</p> <p>(a) the company;</p> <p>(b) any contributory or contributories;</p> <p>(c) all or any of the persons specified in clauses (a) and (b);</p> <p>(d) the Registrar;</p> <p>(e) any person authorised by the Central Government in that behalf; or</p>	Submitted by IBC, 2016

			<p>(f) in a case falling under clause (b) of section 271, by the Central Government or a State Government.</p> <p>(2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.</p> <p>(3) The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section: Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition: Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.</p> <p>(4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.</p> <p>(5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.</p>	
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			<p>[Here only 6 situations are given a,b,c,d,e,f,g]</p> <p>Impact:</p> <p>This Section has been completely substituted by the Insolvency and Bankruptcy Code, 2016. In earlier section there were 7 situations in which petition to be filed with tribunal for winding up of the Company but in new section substituted by I&B Code 2016 only 6 situations are there.</p> <p>Following situation is deleted:</p> <p>(b) any creditor or creditors, including any contingent or prospective creditor or creditors;</p> <p>It may be noted that if a Company is unable to pay its debts, creditors can't file petition in tribunal in this circumstance for winding up of the Company. Section 272 amended and creditor removed from the entitlement of making application for winding up to tribunal. As, sufficient remedy is given in IBC that they first have right to initiate resolution of insolvency proceeding on failure of which liquidation application may be made.</p>	
275(2)	Company Liquidators and their appointments	(2) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants	<p>for sub-section (2), the following sub-section shall be substituted, namely:— “(2) The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016;”</p> <p>Impact:</p> <p>Only the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016 can be appointed as liquidator or official liquidator by the Company or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters.</p>	Substituted by IBC, 2016

275 (4)	Removal of the name of any person or firm or body corporate from the panel maintained under sub-section (2)	(4) The Central Government may remove the name of any person or firm or body corporate from the panel maintained under sub-section (2) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence: Provided that the Central Government before removing him or it from the panel shall give him or it a reasonable opportunity of being heard.	sub-section (4) shall be omitted.	Omitted by IBC, 2016
280	Jurisdiction of Tribunal.	Provisions under section 280 of the Companies Act, 2013 as to the Jurisdiction of the Tribunal have been substituted by IBC, 2016.	The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,— (a) any suit or proceeding by or against the company; (b) any claim made by or against the company, including claims by or against any of its branches in India; (c) any application made under section 233; (d) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company, whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.	Substituted by IBC, 2016
289	Power of Tribunal on application for stay of winding up	Provisions under section 289 of the Companies Act, 2013 as to the Power of Tribunal on application for stay of winding up have been Omitted by IBC, 2016.	-	Omitted by IBC, 2016
Part II			The heading "Part II.—Voluntary winding up" shall be omitted	

304 to 323	Voluntary winding up	Section 304 to 323 under Part II Voluntary winding up in Chapter XX - Winding up have been omitted by IBC, 2016.	-	Omitted by IBC, 2016
325	Application of insolvency rules in winding up of insolvent companies	Provisions under section 325 of the Companies Act, 2013 as to Application of insolvency rules in winding up of insolvent companies have been Omitted by IBC, 2016.	-	Omitted by IBC, 2016
326	Overriding preferential payments.	Provisions under section 326 of the Companies Act, 2013 as to Overriding preferential payments have been substituted by IBC, 2016.	<p>(1) In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts:—</p> <p>(a) workmen's dues; and</p> <p>(b) where a secured creditor has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security (if payable under the law), whichever is less, pari passu with the workmen's dues:</p> <p>Provided that in case of the winding up of a company, the sums referred to in sub-clauses (i) and (ii) of clause (b) of the Explanation, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.</p> <p>(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that subsection shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.</p> <p>Explanation.—For the purposes of this section, and section 327—</p>	Substituted by IBC, 2016

			<p>(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause(s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947);</p> <p>(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—</p> <p>(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);</p> <p>(ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;</p> <p>(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (19 of 1923), rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;</p> <p>(iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;</p>	
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			<p>(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.</p> <p>Illustration</p> <p>The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs.3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000</p>	
327 (7)	Preferential payments	-	<p>after sub-section (6), the following sub-section shall be inserted, namely:-</p> <p>" (7) Sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code, 2016.";</p>	New Insertion through IBC, 2016
327	Explanation clause (c) to 327	(c) the expression relevant date means....	<p>in the Explanation, for clause (c), the following clause shall be substituted, namely:—</p> <p>"(c) the expression "relevant date" means in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date under the Insolvency and Bankruptcy Code, 2016</p>	Substituted by IBC, 2016

329	Transfers not in good faith to be void.	Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal or the passing of a resolution for voluntary winding up of the company, shall be void against the Company Liquidator.	Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal under this Act shall be void against the Company Liquidator	Substituted by IBC, 2016
334	Transfer, etc., after Commencement of winding up to be void.	Provisions under section 334 of the Companies Act, 2013 as to Transfer, etc., after Commencement of winding up to be void' have been modified by IBC, 2016.	In the case of a winding up by the Tribunal, any disposition of the property including actionable claims, of the company and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up shall, unless the Tribunal otherwise orders, be void.	Modified by IBC, 2016
336	Offences by officers of companies in liquidation	If any person, who is or has been an officer of a company which, at the time of the commission of the alleged offence, is being wound up, whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,	In section 336, in sub-section (1) , in the opening paragraph, for the words "whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up", the words "by the Tribunal under this Act or which is subsequently ordered to be wound up by the Tribunal under this Act" shall be substituted. It may be noted that the provisions of Voluntary winding up has been removed from this section.	Modified by IBC, 2016
337	Penalty for frauds by officers	If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up	In section 337, for the words "or which subsequently passes a resolution for voluntary winding up," the words "under this Act", shall be substituted	Substituted by IBC, 2016

342 (2), (3) and (4)	Prosecution of delinquent officers and members of company	Sub section (2), (3) and (4) to Section 342 of Companies Act, 2013 deals with Prosecution of delinquent officers and members of company.	-	Omitted by IBC, 2016
343 (1)	Company Liquidator to exercise certain powers subject to sanction	(1) The Company Liquidator may- (a) with the sanction of the Tribunal, when the company is being wound up by the Tribunal; and (b) with the sanction of a special resolution of the company and prior approval of the Tribunal, in the case of a voluntary winding up,—	The Company Liquidator may, with the sanction of the Tribunal, when the company is being wound up by the Tribunal,— It may be noted that, now Company Liquidator can't exercise power by sanction of a Special Resolution.	Substituted by IBC, 2016
347	Disposal of books and papers of company	When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the Company Liquidator may be disposed of as follows:— (a) in the case of winding up by the Tribunal, in such manner as the Tribunal directs; and (b) in the case of voluntary winding up, in such manner as the company by special resolution with the prior approval of the creditors direct.	(1) When the affairs of a company have been completely wound up and it is about to be dissolved, the books and papers of such company and those of the Company Liquidator may be disposed of in such manner as the Tribunal directs	Substituted by IBC, 2016
348 (1)	Information as to pending liquidations	Provisions under section 348(1) of the Companies Act, 2013 as to 'Information as to pending liquidations' have been modified by IBC, 2016.	If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing, either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals,	Substituted by IBC, 2016

			if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, with the Tribunal: Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply	
357	Commencement of winding up by Tribunal	(1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken. (2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.	The winding up of a company by the Tribunal under this Act shall be deemed to commence at the time of the presentation of the petition for the winding up. It may be noted that the provisions of Voluntary winding up removed from this section.	Substituted by IBC, 2016
370	Continuation of pending legal proceedings.	This section has been modified by IBC, 2016.	In the proviso, after the words "obtained for the winding up the company", the words "in accordance with the provisions of this Act or of the Insolvency and Bankruptcy Code, 2016" shall be inserted	Modified by IBC, 2016
372	Power of Court to stay or restrain proceedings	This section has been modified by IBC, 2016.	After the words "The provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted	Modified by IBC, 2016
419 (4)	Benches of Tribunal.	This section has been modified by IBC, 2016.	The Central Government shall, by notification, establish such number of benches of the Tribunal, as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under Part II of the Insolvency and Bankruptcy Code, 2016	Substituted by IBC, 2016

424	Procedure before Tribunal and Appellate Tribunal	This section has been modified by IBC, 2016.	<p>(i) in sub-section (1), after the words, "other provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016" shall be inserted;</p> <p>(ii) in sub-section (2), after the words, "under this Act", the words "or under the Insolvency and Bankruptcy Code, 2016" shall be inserted</p>	Modified by IBC, 2016
429 (1)	Power to seek assistance of Chief Metropolitan Magistrate, etc.	This section has been substituted by IBC, 2016.	<p>The Tribunal may, in any proceedings for winding up of a company under this Act or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—</p> <p>(a) take possession of such property, books of account or other documents; and</p> <p>(b) cause the same to be entrusted to the Tribunal or other persons authorized by it.</p>	Substituted by IBC, 2016
434	Transfer of certain Pending proceedings	This section has been substituted completely by IBC, 2016.	<p>(1) On such date as may be notified by the Central Government in this behalf,—</p> <p>(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;</p>	Substituted by IBC, 2016

			<p>(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order: Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and</p> <p>(c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer: Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.</p> <p>(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.</p>	
468 (2)	Powers of Central Government to make rules relating to winding up.	This section has been substituted by IBC, 2016.	<p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—</p> <p>(i) as to the mode of proceedings to be held for winding up of a company by the Tribunal under this Act;</p> <p>(ii) for the holding of meetings of creditors and members in connection with proceedings under section 230;</p> <p>(iii) for giving effect to the provisions of this Act as to the reduction of the capital;</p>	

			<p>(iv) generally for all applications to be made to the Tribunal under the provisions of this Act;</p> <p>(v) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;</p> <p>(vi) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;</p> <p>(vii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;</p> <p>(viii) the making of calls; and</p> <p>(ix) the fixing of a time within which debts and claims shall be proved.</p>	
Schedule V	in Part II, in section III, for clause (b)	The provisions contained under schedule V have been substituted by IBC, 2016.	<p>in Part II, in section III, for clause (b), the following clause shall be substituted, namely:—</p> <p>“(b) where the company—</p> <p>(i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or</p> <p>(ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction for a period of five years from the date of sanction of scheme of revival, or</p> <p>(iii) is a company in relation to which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval, it may pay remuneration up to two times the amount permissible under section II</p>	Substituted by IBC, 2016