

Companies Act, 2013

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**“NCLT & NCLAT – Practical aspects for
Professionals”**

New Horizon in Corporate Jurisdiction

- Jurisdiction & Scope
- Grievance Redressal Mechanism
- Nuances of Drafting
- Art of Appearance & Court Craft
- Handling of Clients & Practice Setup

- Expeditious Disposal – Three months time frame for disposal of petition & application – Sec. 422
- Power of Contempt now with Tribunal – Sec. 425
- Only Tribunal for Corporate Matters – Sec. 430
- Limitation Act to apply – Sec. 433
- NCLAT as Appellate Tribunal – Sec. 421
- Appeal from order of NCLAT to Supreme Court

Procedural Matters

- Change of Financial year - Sec-2(41);
 - In Re: Adva Optical Networking India Pvt. Ltd. (C.P. No. 2/36/16) (04.08.2016-NCLT-ND); Haier Appliance (India) Pvt. Ltd. (C.P. No. 02/10/15) (21.11.2016 - NCLT - New Delhi) - *Change of financial year because of being a subsidiary of a company having different financial year*

- Defend Companies against Removal of Name [proviso (i) to Cl.7(7)];
 - In Re: Hamilton Estates Pvt. Ltd. (C.P. No. 561/2016) (19.04.2017-NCLT-ND) – *Defend that due steps were taken before striking off its name proved to be good*

- Rahul Rice Mills Pvt. Ltd. (C.P. No. 171/2016) (21.04.2017 - NCLT - New Delhi) – *Merely because directors are now in position to infuse funds in the company would not be sufficient ground to restore the company's name*
- Conversion of Company from Public to Private; Sec-18
- Radiant Chemical Co. Ltd., (1943) 13 Com Cases 186,188; AIR 1943 Pat 278 - *This section doesn't prevent conversion of public company into a private company by alteration of its articles*

- Variation of Right of Members; Sec-48;
 - Hindustan General Electric Corporation, (1959) 29 Com Cases 144 : AIR 1959 Cal 679 – *A variation which merely affects the enjoyment of a right without modifying the right itself doesn't come within the section*
 - Sitarama Reddy v. bellary Spinning & Weaving Co. Ltd., (1984) 56 Com Cases 28 1 (Kar) – *Articles shall be followed to alter the class rights*

- ❑ Rollover of Preference Shares – Consent of 75% holders;
 - Mangalore Chemicals and Fertilizers Ltd. (C.P. No. 60/80A/SRB/93) (CLB) – *Consent was accorded to issue further redeemable preference shares in lieu of the unredeemed preference shares*
- ❑ Consolidation and division which results in changes in the voting percentage of shareholders; Members' application for calling AGM/EGM by Company;
- ❑ Appeal against refusal to allow inspection of minutes of AGM;

- ❑ Approval for voluntary revision of financial statements or DR
 - Promark Technologies Pvt. Ltd. (C.P. No. 03/131/2007) (03.07.2017-NCLT-ND) ; Glaze Trading India Pvt. Ltd. (C.P. No. 04/131/2007) (03.07.2017-NCLT-ND) – *Filing of revised financial statements was permitted*
- ❑ Compounding of offences
 - Shri Subhinder Singh Prem Vs. Union of India Through ROC [CA (AT) No.101 to105/2017] – *The compounding of offence as made above will not come in the way of investigation by SFIO and other proceedings pending against Appellant*

under the Indian Penal Code, 1908 or under any other law.

- *Gopala Polyplast Ltd. & Ors. Vs. Registrar of Companies, Ahmedabad, Gujarat [CA (AT) No.33/2016] – The Tribunal while passing the order of compounding shall notice different factors and grounds apart from nature of offence. In view of the same, the compounding fees was settled at a lesser amount*
- *Goyal Achal Sampatti Vikas and Niyojan Nigam Limited (C.P. No. 16/100/17) (11.08.2017-NCLT-ND) – Compounding of offence u/s 137 of Companies Act, 1956 read with AS-29 was allowed*
- *Dharampal Satyapal Limited (C.P. No. 16/162(ND)17) (29.08.2017-NCLT-ND) – Compounding of offence u/s 211 read with Schedule VI of Companies Act, 1956 was allowed*

Scope of Litigating matters

- ❑ Appeal against refusal to register transfer – Sec-58;
- ❑ Rectification of Register of Members – Sec-59;
- ❑ Reduction of Capital; Sec-66;
- ❑ Extension of time for re-payment of deposits; Sec-74(2) & Application by Depositors for payment S.73 ;
- ❑ Application by members for Investigation of affairs ; (100 members or 10%); Sec-213;
- ❑ Removal of Auditors; Sec-140;
- ❑ Oppression and Mismanagement / Class Action Suits - Sec-241-246

NCLT Rules : Key Features

165 Rules

29 Definitions

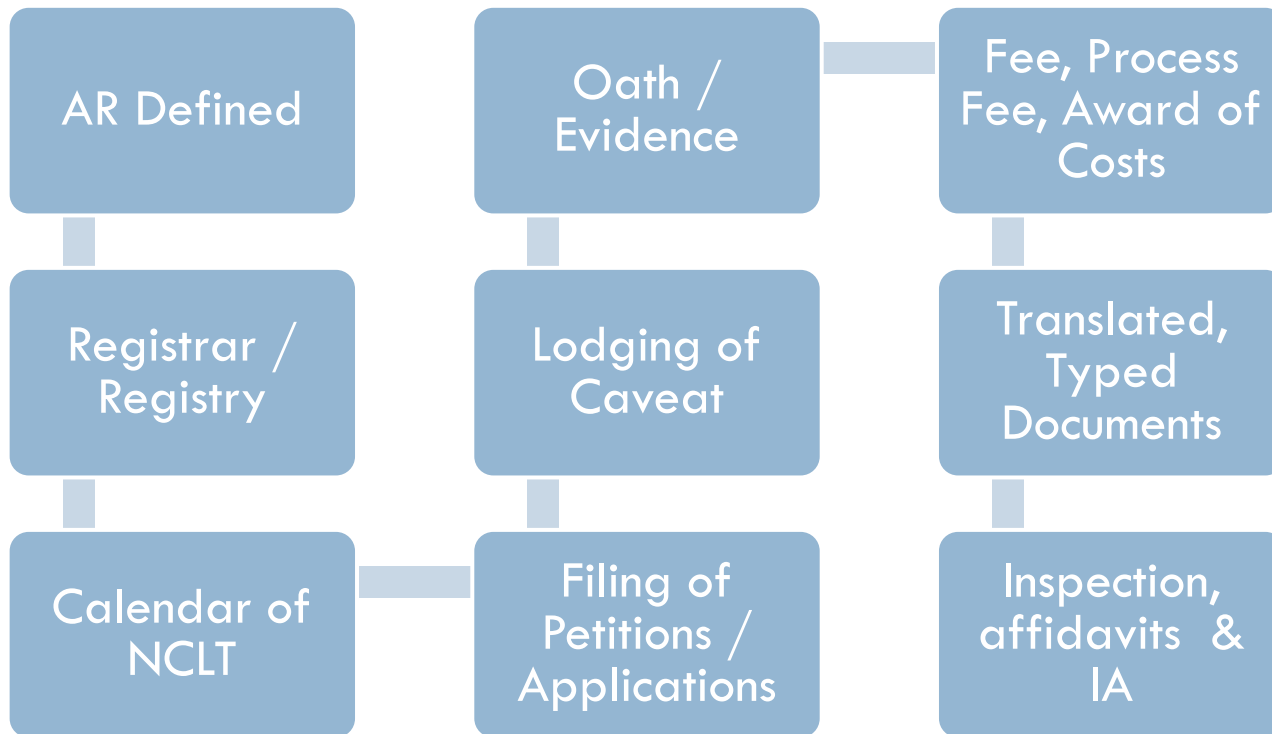
20 Parts

Schedule
of Fees -31

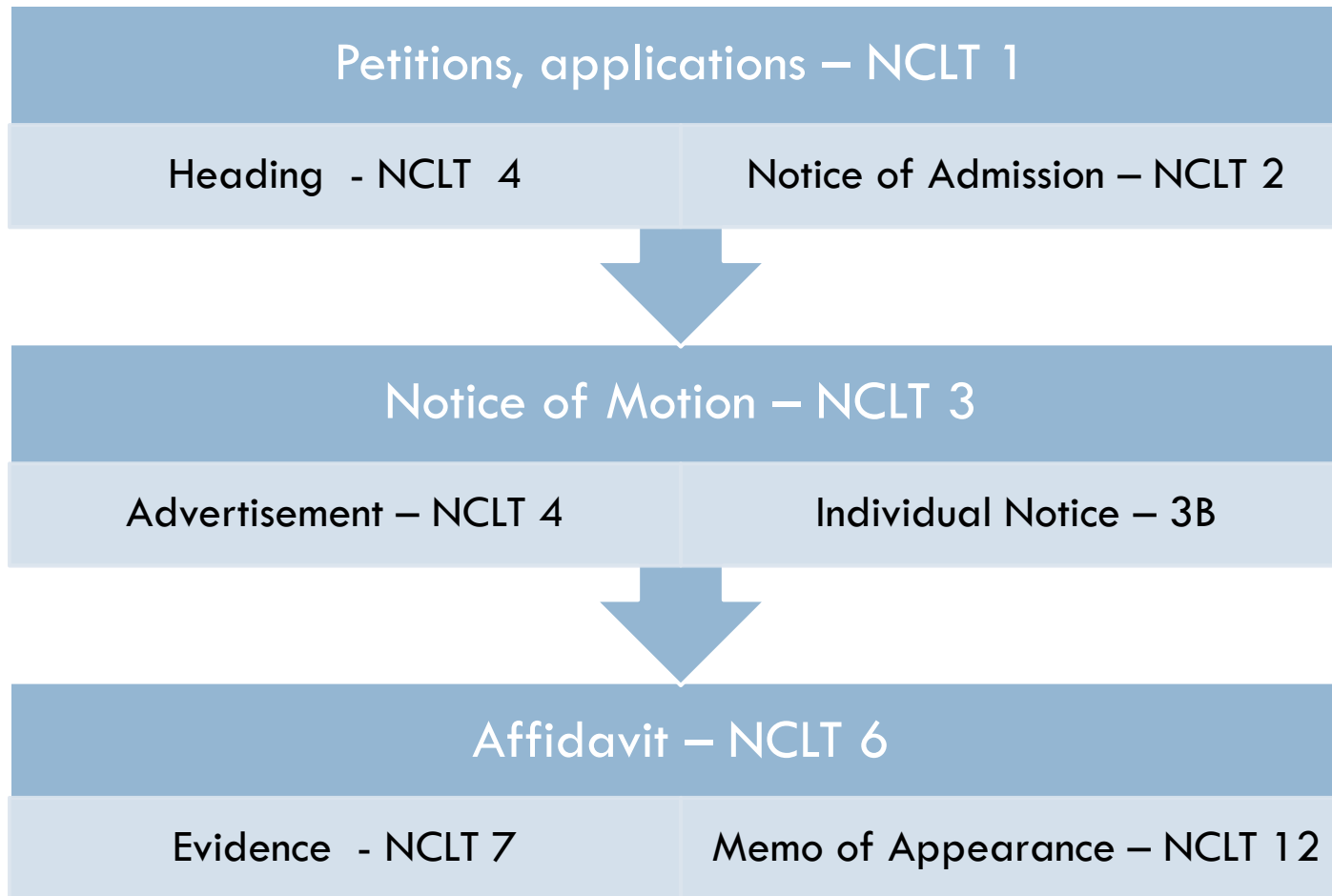
Forms - 20

List of
Enclosures

NCLT Rules : Highlights



NCLT Rules : Filing



Proceedings of CLB, BIFR, District Court or High Court

- CLB - All matters to be Transferred to respective territorial Bench
 - ▣ In case order was reserved, case to be re-heard
 - ▣ Bench can call for further pleadings
 - ▣ A fresh petition or application can also be filed with consent of parties
- BIFR - All reference or appeal to be Abated
 - ▣ However, company within 180 days can file such appeal, reference or enquiry
 - ▣ No Additional fee to be paid
- District Court or High Court – All matters transferred to NCLT except winding up matters where compliance of Rule 26 not made

Art of Appearance



A woman was found guilty in traffic court. When the judge asked for her occupation, she said she was a schoolteacher. The judge rose from the bench. “Madam, I have waited year

Nuances of Drafting



CAN YOU JUST LEAVE ME ENOUGH MONEY
SO I CAN FLEE THE COUNTRY?

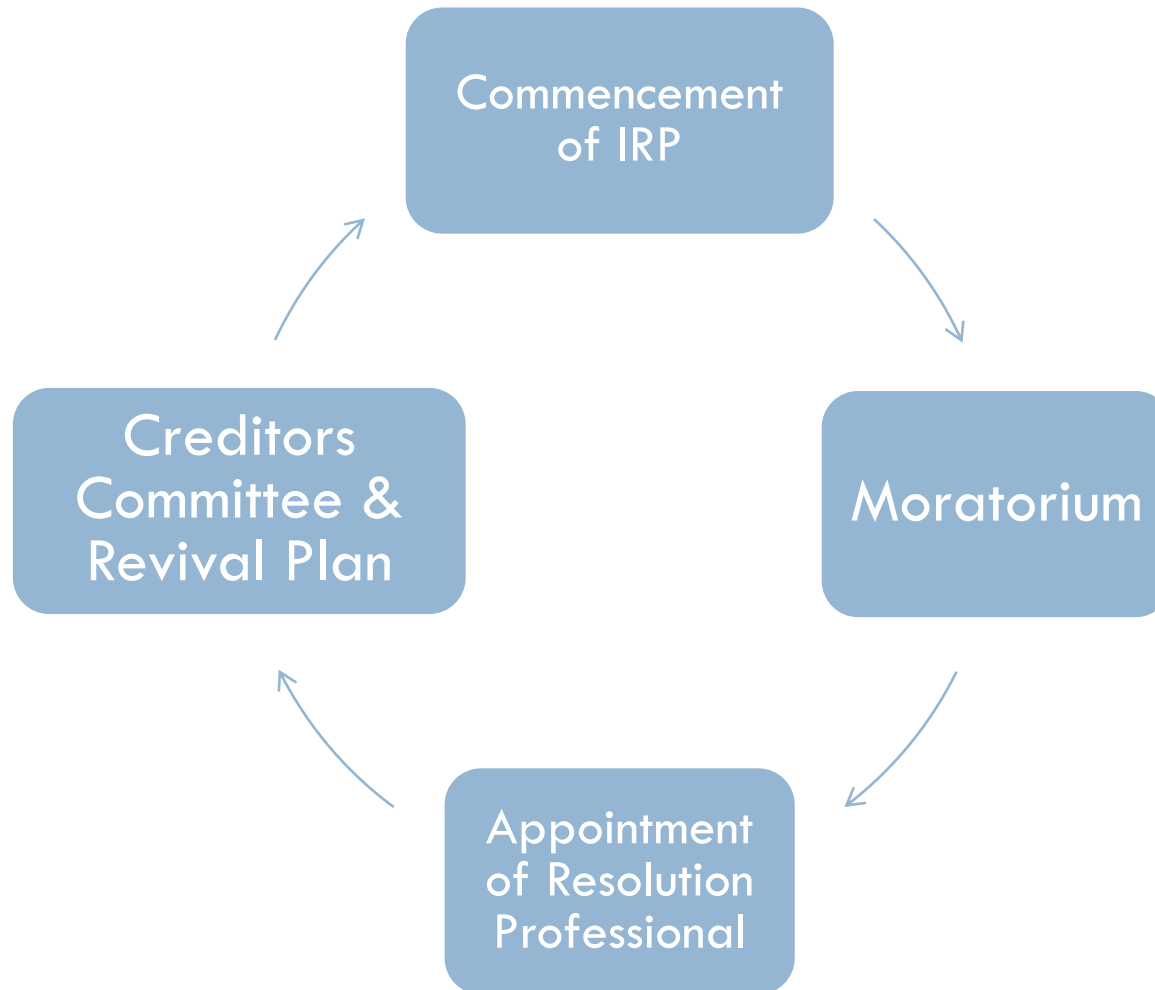
Nuances of Drafting

- NCLT Rules
- Contents of Applications / Petitions
- Forms thereunder
- Facts to be narrated clearly & unambiguous
- Relevancy of other laws :
 - ▣ Limitation Act
 - ▣ Evidence Act
 - ▣ CPC
 - ▣ Law of Contempt
 - ▣ Other relevant laws

INSOLVENCY & BANKRUPTCY CODE

- The **Insolvency and Bankruptcy Code, 2016 (IBC)** is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha in December 2015. It was passed by Lok Sabha on 5 May 2016. The Code was passed by parliament in May 2016 and became effective in December 2016. It aimed to repeal the Presidency Towns Insolvency Act, 1909 and Sick Industrial Companies (Special Provisions) Repeal Act, 2003, among others.

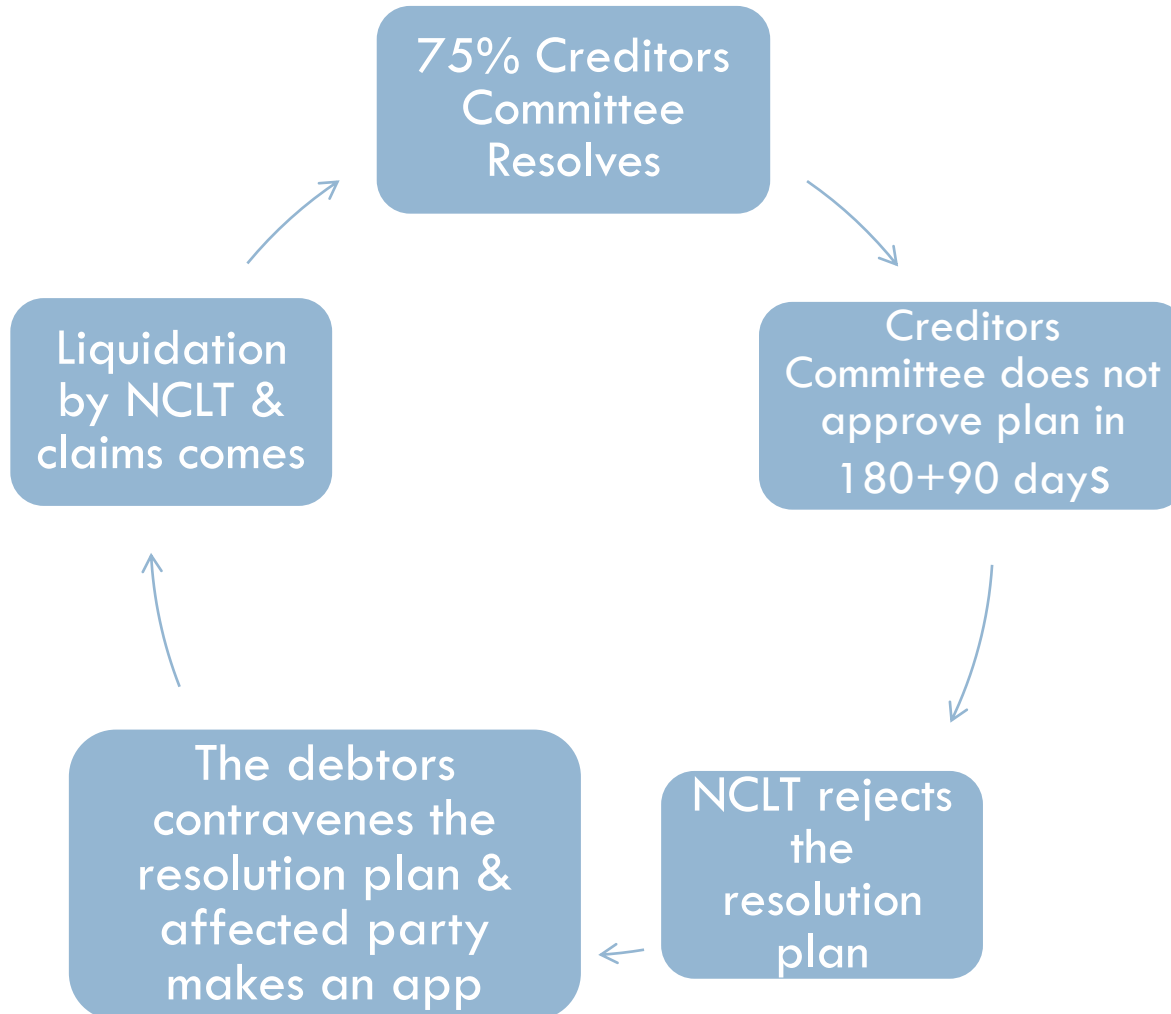
A. Insolvency Resolution Process



INSOLVENCY & BANKRUPTCY CODE

- The first insolvency resolution order under this code was passed by National Company Law Tribunal (NCLT) in the case of Synergies-Dooray Automotive Ltd on 14 August, 2017. The plea for insolvency was submitted by company on 23 January 2017. The resolution plan was submitted to NCLT within a period of 180-day period as required by the code, and the approval for the same was received on 2 August, 2017 from the tribunal

B . Liquidation



INSOLVENCY & BANKRUPTCY CODE

- **Bankruptcy and Insolvency Adjudicators:** The Code proposes two separate tribunals to adjudicate grievances related to insolvency, bankruptcy and liquidation of different entities under the law:
- **NCLT** - Jurisdiction over companies and limited liability partnerships, and (ii)
- **DRT** - Jurisdiction over individuals and partnership firms.
- Appeals against orders of these tribunals may be challenged before their respective Appellate Tribunals, and further before the Supreme Court.

Important Definitions of the Code

- "claim" means—

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

- ❑ "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;
- ❑ "corporate debtor" means a corporate person who owes a debt to any person;

Corporate Insolvency Resolution

- ❑ "insolvency professional agency" means any person registered with the Board under section 201 as an insolvency professional agency
- ❑ "information utility" means a person who is registered with the Board as an information utility under section 210
- ❑ "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

- ❑ "dispute" includes a suit or arbitration proceedings relating to—
 - (a) the existence of the amount of debt;
 - (b) the quality of goods or service; or
 - (c) the breach of a representation or warranty;
- ❑ "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;

- "corporate applicant" means—
 - (a) corporate debtor; or
 - (b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process 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;

❑ **Insolvency resolution by financial creditor(S.7)**

- The financial creditor shall make an application to the Adjudicating Authority along with requisite evidence of default by the company
- The Adjudicating Authority may within 14 days accept or reject the application
- Adjudicating Authority shall before rejecting the application , give a 7 days' notice to the applicant to rectify the defect in his application

- The corporate resolution process shall commence from the date of acceptance of the application by the Adjudicating Authority
- The Adjudicating Authority shall communicate the acceptance of the application to financial creditor as well as corporate debtor

- ❑ **Insolvency resolution by operational creditor(S.8&9)**
 - The operational creditor delivers a demand notice of unpaid operational debtor or copy of an invoice demanding payment of the amount due
 - The corporate debtor shall, within 10 days of the receipt of the demand notice, inform to the operational creditor about the dispute, if any
 - If no revert is made by the corporate debtor or there is non-existence of any dispute, the

- operational creditor may file an application before the Adjudicating Authority for initiating insolvency resolution process against the corporate debtor
- The Adjudicating Authority may within 14 days accept or reject the application
- Adjudicating Authority shall before rejecting the application , give a 7 days' notice to the applicant to rectify the defect in his application
- The corporate resolution process shall commence from the date of acceptance of the application by the Adjudicating Authority

- ❑ **Insolvency resolution by corporate applicant (S.10)**
 - Where a corporate debtor has committed a default, a corporate applicant may file an application for initiating insolvency resolution process with the Adjudicating Authority along with information relating to its books of accounts and such other documents and resolution professional proposed to be appointed as an interim resolution professional

- The Adjudicating Authority may within 14 days accept or reject the application
- Adjudicating Authority shall before rejecting the application , give a 7 days' notice to the applicant to rectify the defect in his application
- The corporate resolution process shall commence from the date of acceptance of the application by the Adjudicating Authority

❑ Persons not entitled to make application (S.11)

(a) a corporate debtor undergoing a corporate insolvency resolution process; or

(b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or

(d) a corporate debtor in respect of whom a liquidation order has been made *[For the purpose of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor]*

Real Estate Companies

- [IDBI Bank Vs. Jaypee Infratech Limited \(C.P. No. \(IB\) 77/Ald/2017\)](#) - The Allahabad bench of the National Company Law Tribunal (NCLT) on August 9 classified Jaypee Infratech as insolvent on the petition filed by IDBI Bank under Section 7 of Insolvency and Bankruptcy Code, 2016.

A writ petition was filed by a home buyer against the order of NCLT [[Chitra Sharma & Ors. Versus Union Of India & Ors. \(W.P. 744/2017\)](#)] - The Supreme Court on Monday stayed the insolvency proceedings undertaken against Jaypee Infratech by the National Company Law Tribunal (NCLT)

Real Estate Companies

- **Anil Mahindroo & Anr. Vs. Earth Iconic Infrastructure Pvt. Ltd. CA (AT) (Insolvency) No. 74 of 2017** - The appellants in this case have also successfully proved that the money disbursed by them is against the consideration for the time value of money and for all purpose, they come within the meaning of 'Financial Creditor' as defined in Section 5(7) of the 'I & B Code'.

- **International Road Dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Ltd. (CA (AT) (Insol.) No. 72/2017)**
- When there is a dispute of claim and some part of such claim is hit by limitation, it needs elaborate enquiry and not permitted under I&B Code, 2016
- **Lakshmi Steels Vs. Amrapali Sapphire Developers Pvt. Ltd. [C.P. No. (IB) 326(PB)/2017]** – Application was filed by Lakshmi Steels, a financial creditor against Amrapali Sapphire Developers Pvt. Ltd. The proceedings are ongoing in the NCLT Delhi, Principal Bench

- [Aruna Hotels Limited Vs. Mr. N. Krishnan \[CA \(AT\) 59/2017\]](#) - Only if the notice by operational creditor in Form-3 or Form-4 is served, the 'Corporate Debtor' will understand the serious consequences of non-payment of 'Operational Debt', otherwise like any normal pleader notice/Advocate notice or like notice under Section 80 of C.P.C. or notice for initiation of proceeding under Section 433 of the Companies Act 1956, the 'Corporate Debtor' may decide to contest the suit/case if filed, as distinct Corporate Resolution

Process, where such claim otherwise cannot be contested, except where there is an existence of dispute, prior to issuance of notice under Section 8.“

- [Neelkanth Township and Construction Pvt. Ltd. vs. Urban Infrastructures Trustees Ltd. \(C.P. No. 69/I&BP/NCLT/MAH/2017\)](#) - Limitation Act is not applicable to IBC, 2016

- JK Jute Mills Company Ltd. vs. Surendra Trading Company (C.P. No. 19/Ald/2017); PK Ores Private Limited vs. Tractors India Pvt. Ltd. - The Adjudicating Authority shall follow the principal of natural justice while entertaining the application under IBC, 2016. Serving notice on the corporate debtor for admitting the application filed by the operational creditor is must

- Bhash Software Labs Pvt. Ltd. Vs. Mobme Wireless Solutions Ltd.[CA(AT) (Insol.) No. 79 of 2017] ; Uttam Galva Steels Limited V. DF Deutsche Forfait AG & Ant. [CA(AT) (Insol.) No. 39 of 2017] – The appeal against the operational creditor was allowed as it was proved that there was an existence of dispute

IBC, 2016 & ARTICLE 142 OF CONSTITUTION OF INDIA - Settlement of Dispute

- ❑ **Sysco Industries Ltd. vs. Ecoplast Ltd. [Civil Appeal No. 10581 of 2017] (CA (AT) (Insol.) No. 130/2017)**
- Hon'ble Supreme Court of India accepted the settlement vide order dated 28th August, 2017 in Civil Appeal No. 10581 of 2017. The present order shall not debar other creditors if they intend to proceed against the appellant. The SC can exercise the power under Article 142 of the Constitution. Therefore, accept the settlement that has been entered into between the parties.

- **Mother Pride Dairy India Pvt. Ltd. Versus Portrait Advertising & Marketing Pvt. Ltd. (CA (AT) (Insolvency) No. 94 of 2017)** - In view of Rule 8 of Insolvency & Bankruptcy (Adjudicating Authority) Rules, 2016, it was open to the Operational Creditor to withdraw the application under Section 9 before its admission but once it was admitted, it cannot be withdrawn even by the Operational Creditor, as other creditors are entitled to raise claim pursuant to public announcement under Section 15 read with Section 18 of the I&B Code, 2016

- **Macquarie Bank Limited Vs. Uttam Galva Metallics Limited (CA (AT) (Insol) No. 96/2017)** - Any certificate given by a bank not covered under sub-section (14) of Section 3 of the 'I & B Code cannot be relied upon, to decide default of a debt. The notice under sub-section (1) of Section 8 of 'I & B Code shall be issued by the 'Operational Creditor' not by a Lawyer

Corporate Insolvency Resolution – Judgments

- Vasan Healthcare Pvt. Ltd. Vs M/s. Alcon Laboratories (India) Pvt. Ltd. (CA (AT) (Insolvency) No. 41 of 2017
- The application under section 9 of IBC, 2016 shall override the on going petition u/s 433(e) of Companies Act, 1956

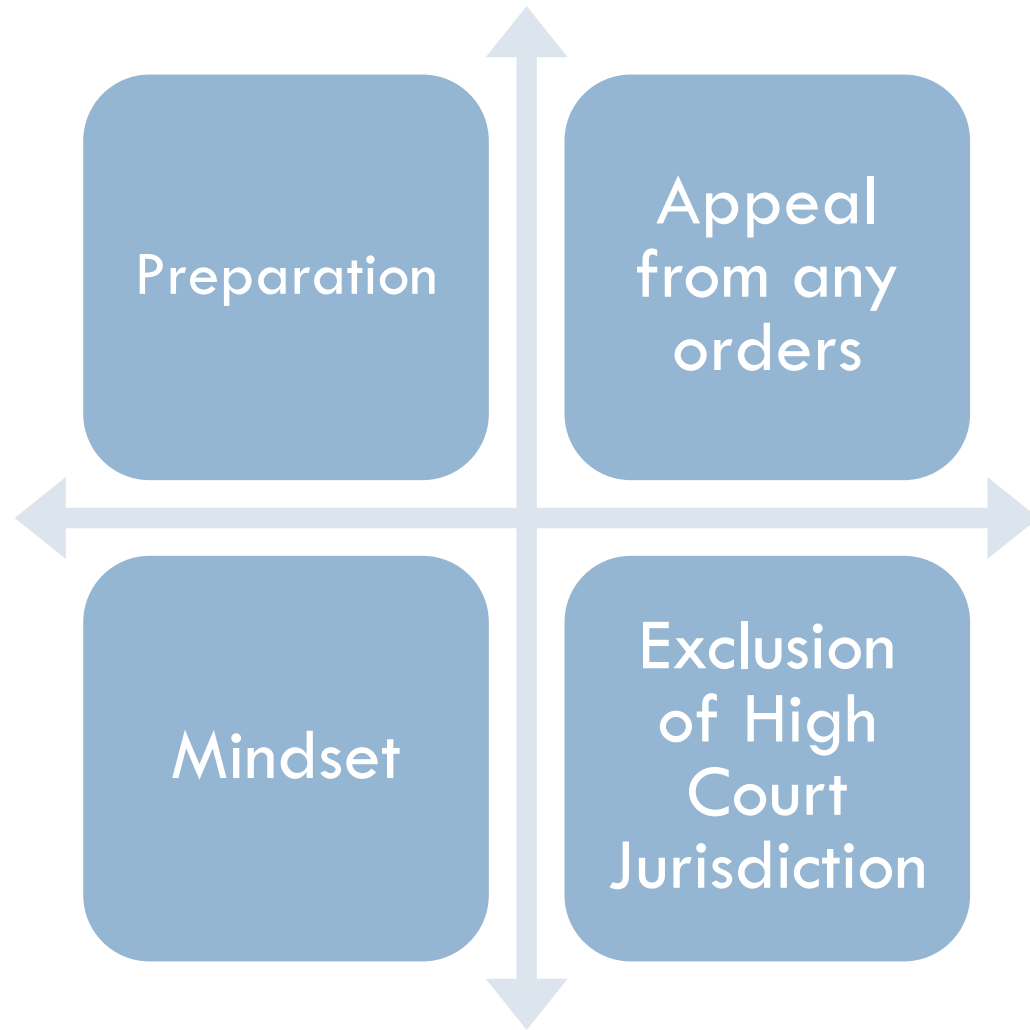
Client Handling



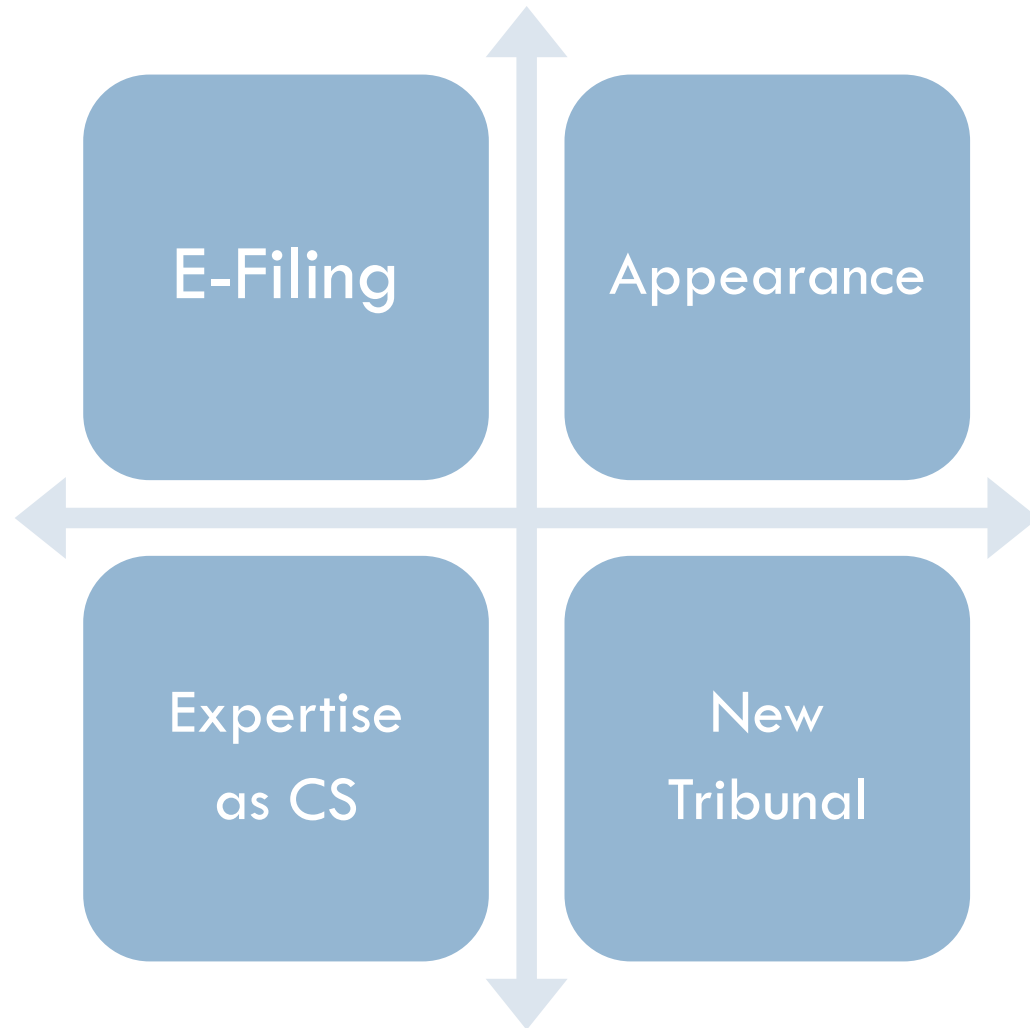
Client handling



Challenges ?



Opportunity ?





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