

**Bankruptcy for
Individuals
and partnership firms**

About Us

- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields. The firm has provided a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. The firm focuses on providing tailor-made solutions to challenging problems of our clients, and performs with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services. To serve better and to bring a bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms, pioneers in diversified fields.
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market, we are constantly looking forward for a team of associates comprising of highly skilled professionals to cater to the ever-increasing clientele.



Introduction

- **Part III** of IBC, 2016 - **sections 79 to 187**;
- Provisions of bankruptcy to be made **applicable to personal guarantors** of corporate debtors - Section 2 of Insolvency Code has been amended vide (Amendment) Act, 2018, w.r.e.f. 23-11-2017;

- For individuals and firms, there are two distinct processes - **fresh start and insolvency resolution**. These are followed by **bankruptcy order**;
- The '**fresh start**' will apply to **individuals** whose:
 - ❑ **income** is below Rs. 5,000 per month; and
 - ❑ **debt amount** does not exceed Rs. 35,000
- In case of **other individuals and firms**, the **process is similar to (CIRP)** that applicable to corporate persons.
- **DRT** will be **adjudicating authority** and **DRAT** will be **appellate authority**

- **Insolvency Resolution Process** will be initiated;
- Efforts will be made to finalise '**repayment plan**' with concurrence of debtor and committee of creditors;
- If the **efforts succeed** and **repayment plan is successfully implemented**, the individual or firm will get a **discharge order**;
- If **efforts fail**, the person will be **declared 'bankrupt'**.
- The **resolution professional will take over estate of the bankrupt**. He will sell or dispose it off and satisfy repayments of creditors to the extent possible;
- After that, the **bankrupt will get a 'discharge order'**.
- The **discharge order will be registered with Board** (IBBI) in a register maintained under section 196 of the IBC, 2016.

- **Jurisdiction:** DRT having territorial jurisdiction over the place where the **individual debtor actually and voluntarily resides or carries on business** or personally works for gain – section 179(2);
- **Civil court or any authority shall not have jurisdiction** to entertain any suit or proceedings in respect of any matter on which DRT or DRAT have jurisdiction – section 180(1);

- An **appeal from an order of DRAT can be filed before Supreme Court** within 45 days only on question of law – section 182



Fresh Start Process

- A debtor, who **is unable to pay his debt and fulfils the specified conditions** shall be entitled to make an **application for a fresh start for discharge of his “qualifying debt”** – section 80(1);
- **Qualifying Debt** means amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time – section 79(19);
- **Qualifying debt does not include:**
 - a) an **excluded debt**;
 - b) a debt to the extent it is secured; and
 - c) any debt which has been incurred three months prior to the date of the application for fresh start process

- **Excluded debt** means:

- a) liability to pay **fine** imposed by a **court or tribunal**;
- b) liability to pay **damages** for negligence, nuisance or breach of a statutory, contractual or other

legal obligation;
- c) liability to pay **maintenance** to any person under any law for the time being in force;
- d) liability in relation to a **student loan**; and
- e) any other **debt** as may be **prescribed**

- **Debtor entitled to apply for 'fresh start':** A debtor may apply for a fresh start in respect of his qualifying debts if following conditions are satisfied - Section 80(2):

- 1) gross **annual income** of the debtor \leq Rs. 60,000;
- 2) aggregate **value of the assets** of the debtor \leq Rs. 20,000;

- 3) aggregate **value of the qualifying debts** \leq Rs. 35,000;
- 4) he is not an **undischarged bankrupt**;
- 5) he **does not own a dwelling unit**, irrespective of whether it is encumbered or not;
- 6) a **fresh start process**, insolvency resolution process or bankruptcy process is **not subsisting** against him; and
- 7) **no previous fresh start order** under this Chapter has been **made in relation to him in the preceding twelve months** of the date of the application for fresh start

- A **debtor may apply, either personally or through a resolution professional**, for a fresh start under this Chapter in respect of his qualifying debts to the DRT – Section 80(1);
- **Interim-moratorium shall commence** on the date of filing of said application in relation to all the debts – Section 81(1);
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This interim moratorium shall cease to have effect on the date of admission or rejection of such application;
- **During the interim-moratorium period:**
 - 1) any **legal action or legal proceeding pending** in respect of any of his debts shall be deemed to have been **stayed**, and
 - 2) **no creditor shall initiate any legal action** or proceedings in respect of such debt.
- **Resolution Professional will be appointed** by DRT ~ IBBI;
- He shall **examine the application within 10 days of his appointment, and submit a report to the DRT** – recommending acceptance or rejection of the application - Section 83(1)

- The **order passed accepting the application shall state:**
 - a) the amount which has been accepted as **qualifying debts** by the resolution professional; and
 - b) other **amounts eligible for discharge** u/s 92 of IBC , 2016, for the purposes of the fresh start order – S. 84(2);
- **Copy of the order given to creditors** within 7 days – S. 84(3);
- The **moratorium ceases to have effect after 180 days** from date of admission **unless the order is revoked earlier** - Section 85(4);
- **Objections by creditor:** Any creditor mentioned in the order of the DRT can object only on the following grounds:
 - **inclusion** of a debt as a qualifying debt, or
 - **incorrectness** of the details of the qualifying debt – S. 86(1)
- The objection should be submitted to the resolution professional within 10 days with details – he shall examine the objections and either accept or reject the objections, within ten days – S. 86(5);
- **Application against decision of resolution professional:** debtor or the creditor if aggrieved - application to the DRT within 10 days



Discharge Order

- The resolution professional shall **prepare a final list of qualifying debts and submit such list to the DRT** at least 7 days before the moratorium period comes to an end - section 92(1);
- This means that the debtor is clear of all debts and he can start afresh with a clean slate;

- The discharge order shall not discharge the debtor from any debt and liability not included in discharge order - section 92(4);
- The discharge order shall be forwarded to the Board (IBBI) for the purpose of recording an entry in the register referred to in section 196 of Insolvency Code, 2016.



Insolvency Resolution of Individual and Firm

- **Application for insolvency resolution process by Debtor Individuals:** An individual debtor who commits default can apply for insolvency resolution process either himself or through resolution professional – S. 94(2);
- **Application for insolvency resolution process by Debtor Firm:** A debtor, which is a partnership firm, can apply only if all or majority of partners file the application jointly - Section 94(2);
- Following debtor cannot apply for insolvency process - Section 94(4):
 - a) an undischarged bankrupt,
 - b) undergoing a fresh start process,
 - c) undergoing an insolvency resolution process, or
 - d) undergoing a bankruptcy process.
- If application of debtor was admitted anytime during the period of 12 months preceding the date of submission of present application, the application will not be admitted

- **Application for insolvency resolution process by Creditors:** A creditor singly or jointly with other creditors can apply. They can apply through a resolution professional also to the Adjudicating Authority for initiating an insolvency resolution process against debtor – S. 95(1);
- **Important Note:** In relation to any partnership debt owed to creditor, he can initiate insolvency resolution process against— (a) any one or more partners of the firm, or (b) the firm - Section 95(2);

- Copy of application should be given to debtor - Section 95(7);
- **Interim moratorium:** an interim-moratorium shall commence on the date of the application in relation to all the debts. This interim-moratorium shall cease to have effect on the date of admission of such application;
- The resolution professional shall examine the application for insolvency resolution process within 10 days of his appointment. He will submit his report to DRT recommending for approval or rejection of the application - Section 99(1);
- **If the debt was registered with the information utility, the debtor is not entitled to dispute the validity of such debt** - section 99(3)

- **Admission or rejection of application by DRT** - within 14 days from the date of submission of the report by RP – section 100(1);
- DRT may on request of RP issue instructions for the purpose of conducting **negotiations between the debtor and creditors for arriving at a repayment plan** – Section 100(2);
- If the application is admitted by DRT, a moratorium shall commence and the **moratorium will continue for 180 days from the date of admission of the application**. However, if repayment plan is approved earlier under section 114, the moratorium will cease on that date. Maximum period is 180 days - section 101(1);
- **Public notice and claims from creditors after admission of application** – inviting claims from all creditors within 21 days from the date of public notice - section 102(1);
- **Preparation of list of creditors by insolvency professional** - within 30 days from the date of the notice – section 104;
- **Repayment plan by debtor in consultation with resolution professional** - contain a proposal to the creditors for restructuring of his debts or affairs - section 105(1)

- The resolution professional shall **submit the repayment plan along with his report** on such plan to the DRT within 21 days from the last date of submission of claims by creditors - section 106(1);
- The **report shall specify the date, time and place** at which, the **meeting of creditors** should be held. The proposed meeting should be after 14 days of submission of report but before 21 days;
- If resolution professional recommends that a meeting of the creditors is not required to be summoned, reasons for the same shall be provided – proviso to section 106(2);
- In the meeting of the creditors, the **creditors may decide to approve, modify or reject the repayment plan** - section 108(2);
- The **meeting can be adjourned** for a period of not more than seven days at a time - section 108(4);
- **No voting if creditor is associate:** A creditor shall not be entitled to vote in a meeting of the creditors if he is an associate of the debtor;
- **Secured creditor** can either remain outside the repayment plan or remains inside the plan **subject to forfeiture** - section 110(2);
- **Approval of repayment plan by creditors by more than 75% voting** - present in person or by proxy and voting – S. 111

- **Order of DRT on repayment plan:** approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional – S. 114;
- If a meeting of creditors was not summoned, DRT shall pass an order on the basis of the report prepared by the resolution professional;

- **Report of Completion of repayment plan:** forward prescribed documents to the persons who are bound by the repayment plan and to DRT, within 14 days - period can be extended by further seven days – S. 117;
- On the basis of the repayment plan, the resolution professional shall apply to DRT for a **discharge order** in relation to the debts mentioned in the repayment plan and the Adjudicating Authority may pass such discharge order - section 119(1)



Bankruptcy Order for Individuals and Firms

- **Applicants:** An application to DRT for bankruptcy of a debtor may be made, by:
 - a creditor individually or jointly with other creditors or
 - a debtor;
- **Circumstances** – S. 121(1):
 - a) rejection of application for insolvency resolution process as application was made to defraud creditors – S. 100(4);
 - b) rejection of application for insolvency resolution process as repayment plan not approved – S. 115(2);
 - c) rejection of application for insolvency resolution process as repayment plan was unsuccessful – S. 118(3)
- **Period:** An application for bankruptcy shall be filed within a period of 3 months of the date of the order passed by DRT;
- **Direct application for bankruptcy not possible;**
- **Withdrawal:** An application for bankruptcy by the debtor shall not be withdrawn without permission of DRT;
- **Deceased Debtor:** If debtor is dead, application for bankruptcy may be filed against his legal representatives - section 123(5)

- **Interim moratorium** as soon as application is filed;
 - An insolvency professional will be appointed as '**bankruptcy trustee**' with approval of Board (IBBI) as per procedure prescribed in section 125 of Insolvency Code, 2016;
 - DRT shall pass a bankruptcy order within 14 days of receiving the confirmation or nomination of the bankruptcy trustee - section 126(1);
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- **Effect of bankruptcy order:**
 - a) estate of the bankrupt shall vest in the bankruptcy trustee;
 - b) estate of the bankrupt shall be divided among his creditors;
 - c) creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt shall not initiate any action against the property of the bankrupt in respect of such debt
 - **Rights of secured creditor not affected by the Bankruptcy Order:** bankruptcy order shall not affect the right of any secured creditor to realize or otherwise deal with his security interest – S. 128;
 - **Bankrupt shall submit his statement of financial position** to the bankruptcy trustee within seven days from the bankruptcy commencement date – S. 129(1)

- **Notice inviting claims** to creditors and also public notice - within ten days of the bankruptcy commencement date;
- **Registration of claims by creditors with bankruptcy trustee** - within seven days of the publication of the public notice;

- **Preparation of list of creditors** - within fourteen days from the bankruptcy commencement date;
- **Summoning of meeting of creditors** - within 21 days from the bankruptcy commencement date;
- The **bankruptcy trustee shall decide the quorum for the meeting of the creditors**, and conduct the meeting only if the quorum is present;
- On completion of the **administration and distribution of the estate of the bankrupt, the bankruptcy trustee shall apply to DRT for a discharge order within maximum one year from the bankruptcy commencement date**;

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