

**Recent Changes in the Insolvency and Bankruptcy Code :**

<b>Particulars</b>	<b>Earlier</b>	<b>Now</b>
<b>dissenting financial creditors</b>	means the financial creditors who voted against the resolution plan approved by the committee.	means a financial creditor who voted against the resolution plan <i>or abstained from voting for the resolution plan</i> , approved by the committee
Reg 9A. <b>Claims by other creditors.</b>	Earlier was limited to claims by operational & financial creditors and workmen and employees	(1) A person claiming to be a creditor, <b>other than those covered under regulations 7, 8, or 9</b> , shall submit proof of its claim to the interim resolution professional or resolution professional in person, by post or by electronic means in Form F of the Schedule. (2) The existence of the claim of the creditor referred to in sub-section (1) may be proved on the basis of – (a) the records available in an information utility, if any, or (b) other relevant documents sufficient to establish the claim, including any or all of the following:- (i) documentary evidence demanding satisfaction of the claim; (ii) bank statements of the creditor showing non-satisfaction of claim; (iii) an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any.
Resolution Plan Reg 35 <b>Liquidation Value</b>	(3) The resolution professional shall provide the liquidation value to the committee in electronic form	(3) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the liquidation value to every member of the committee in electronic form, <b>on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the liquidation value and shall not use such value to cause an undue gain</b> or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29  (4) Subject to sub-regulation (3), the <b>interim resolution professional or the resolution professional</b> , as the case may be, <b>shall maintain confidentiality of the liquidation value</b>
Reg 36 <b>Information memorandum.</b>	Omission	The information memorandum shall contain the following details of the corporate debtor-  (a) assets and liabilities, as on the insolvency commencement date, classified into appropriate categories for easy identification, with estimated values assigned to each category;  ...Deleted following – <del>“(j) the liquidation value</del> <del>“(k) the liquidation value due to operational creditors</del>

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Reg 38 <b>Mandatory contents of the resolution plan</b>	New Insertion	A resolution plan shall <b>include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor</b>
Reg 38 <b>Mandatory contents of the resolution plan</b>		<p>A resolution plan shall <b>contain details of the resolution applicant and other connected persons</b> to enable the committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval.</p> <p><i>Explanation</i> : For the purposes of this sub-regulation,-</p> <p><b>(i) ‘details’ shall include the following in respect of the resolution applicant and other connected person, namely:-</b></p> <p>(a) identity;</p> <p>(b) conviction for any offence , if any, during the preceding five years;</p> <p>(c) criminal proceedings pending, if any;</p> <p>(d) disqualification, if any, under Companies Act, 2013, to act as a director;</p> <p>(e) identification as a willful defaulter, if any, by any bank or financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India;</p> <p>(f) debarment, if any, from accessing to, or trading in, securities markets under any order or directions of the Securities and Exchange Board of India,; and</p> <p>(g) transactions, if any, with the corporate debtor in the preceding two years.</p> <p><b>(ii) the expression ‘connected persons’ means-</b></p> <p>(a) persons who are promoters or in the management or control of the resolution applicant;</p> <p>(b) persons who will be promoters or in management or control of the business the corporate debtor during the implementation of the resolution plan;</p> <p>(c) holding company, subsidiary company, associate company and related party of the persons referred to in items (a) and (b) .</p>
Reg 39 <b>Approval of plan</b>	A resolution applicant shall endeavour to submit a resolution plan prepared in accordance with the Code and these Regulations to the resolution professional, thirty days before expiry of the maximum period permitted under section 12 for the completion of the	<p>A resolution applicant shall submit resolution plan(s) prepared in accordance with the Code and these regulations to the resolution professional within the time given in the <b>invitation made under clause (h) of sub-section (2) of section 25.</b></p> <p>The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-</p>

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	<p>corporate insolvency resolution process. The resolution professional shall present all resolution plans that meet the requirements of the Code and these Regulations to the committee for its consideration”</p>	<p>(a) preferential transactions under section 43;                      (b) undervalued transactions under section 45;                      (c) extortionate credit transactions under section 50; and                      (d) fraudulent transactions under section 66,                      and the orders, if any, of the adjudicating authority in respect of such transactions..</p>

**Key highlight of Amendment Act 2018:**

<p>The provisions of this Code shall apply to—                      (a) any company incorporated under the Companies Act, 2013 or under any previous company law; (b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; (c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008; (d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and (e) partnership firms and individuals,</p>	<p>(e) personal guarantors to corporate debtors;                      (f) partnership firms and proprietorship firms; and                      (g) individuals, other than persons referred to in clause (e)</p>
<p>Sec 5 –                      (25) "resolution applicant" means any person who submits a resolution plan to the resolution professional;</p>	<p><b>"resolution applicant"</b> means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional <b>pursuant to the invitation made under clause (h) of sub-section (2) of section 25;</b></p>
	<p><b>The Act inserts a provision prohibiting</b> certain persons from submitting a resolution plan.                      A person will be ineligible to submit a plan if: (i) he is an undischarged insolvent (individual unable to repay his debt), (ii) he is a wilful defaulter, (iii) his account has been identified as a non-performing asset for more than a year, (iv) he has been convicted of an offence punishable with two or more years of imprisonment, (v) he has been disqualified as a director under the Companies Act, 2013, (vi) he has been prohibited from trading in securities by SEBI, (vii) he has indulged in undervalued, preferential, or fraudulent transactions, (viii) he has given guarantee on a liability of the defaulting company undergoing resolution or liquidation, (ix) he is connected to any person mentioned above (including promoters, management, or any person related to them), or (x) he has indulged in these activities abroad.</p>

<p><b>Approval of plan by CoC</b></p>	<p>(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board: Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it: Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A: Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.</p> <p><i>The Act prohibits the committee of creditors from approving a resolution plan submitted before the Act was promulgated, if the plan was submitted by a person ineligible to be a resolution applicant as per the Act.</i></p>
<p>Section 35- subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;</p>	<p>It now prohibits the sale of this property to any person ineligible to be a resolution applicant.</p>