

**Bankruptcy Order for Individuals and Partnership  
Firms,  
Administration and Distribution  
of the Estate of the Bankrupt,  
Adjudicating Authority,  
Offences and Penalties**

**Madhusudan Sharma**

# Part III - Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms

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# Rules and Regulations

∅ Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

∅ Notified on 15.11.2019, effective from 01.12.2019

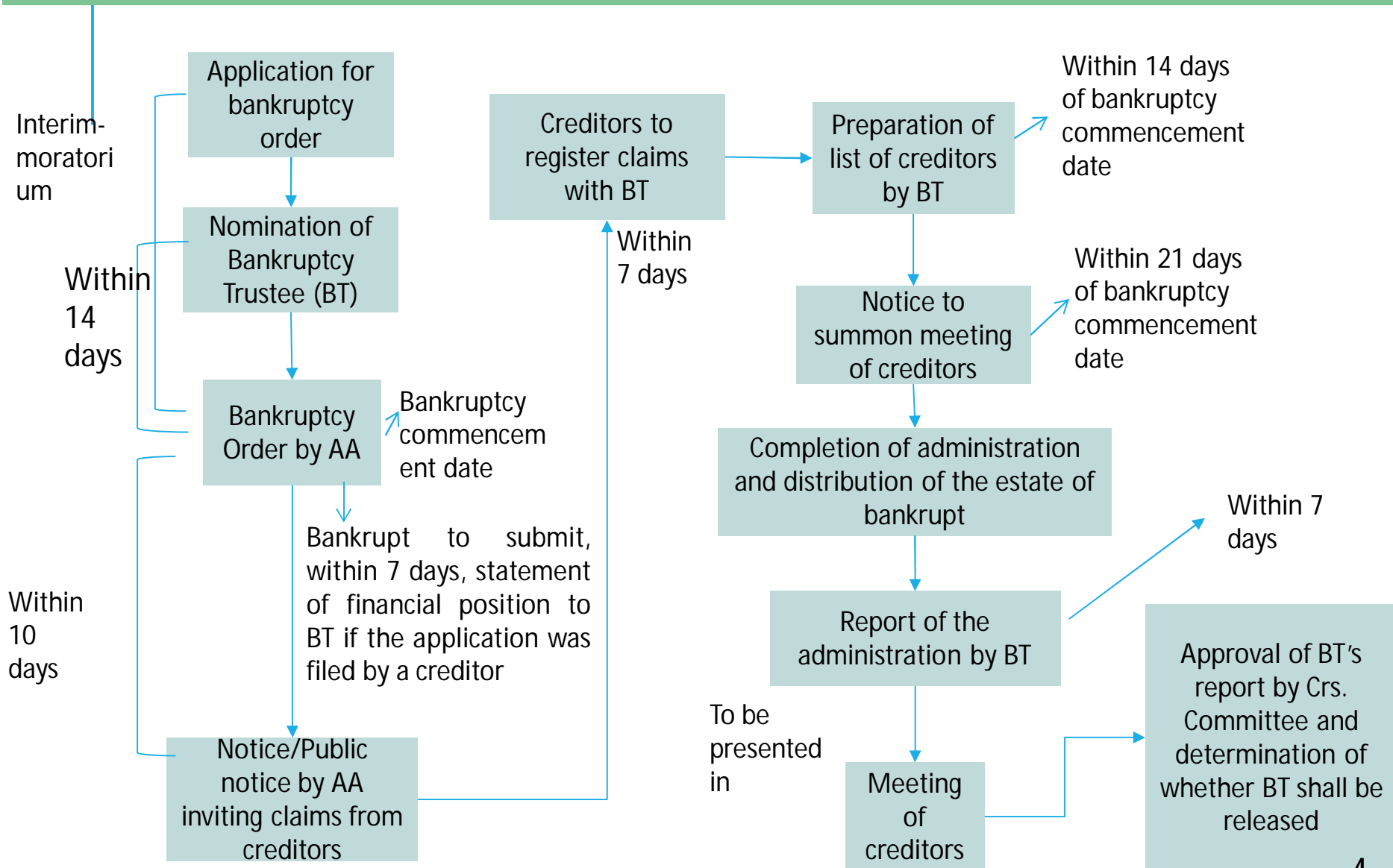
*{I&B(AAA for IRP for PG to CD)Rules}*

∅ Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

∅ Notified on 20.11.2019, effective from 01.12.2019

*{IBBI (IRP for PG to CD) Regulations}*

# Bankruptcy Process



# Meaning

## **Sec 79(3) “bankrupt” means—**

(a) a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126;

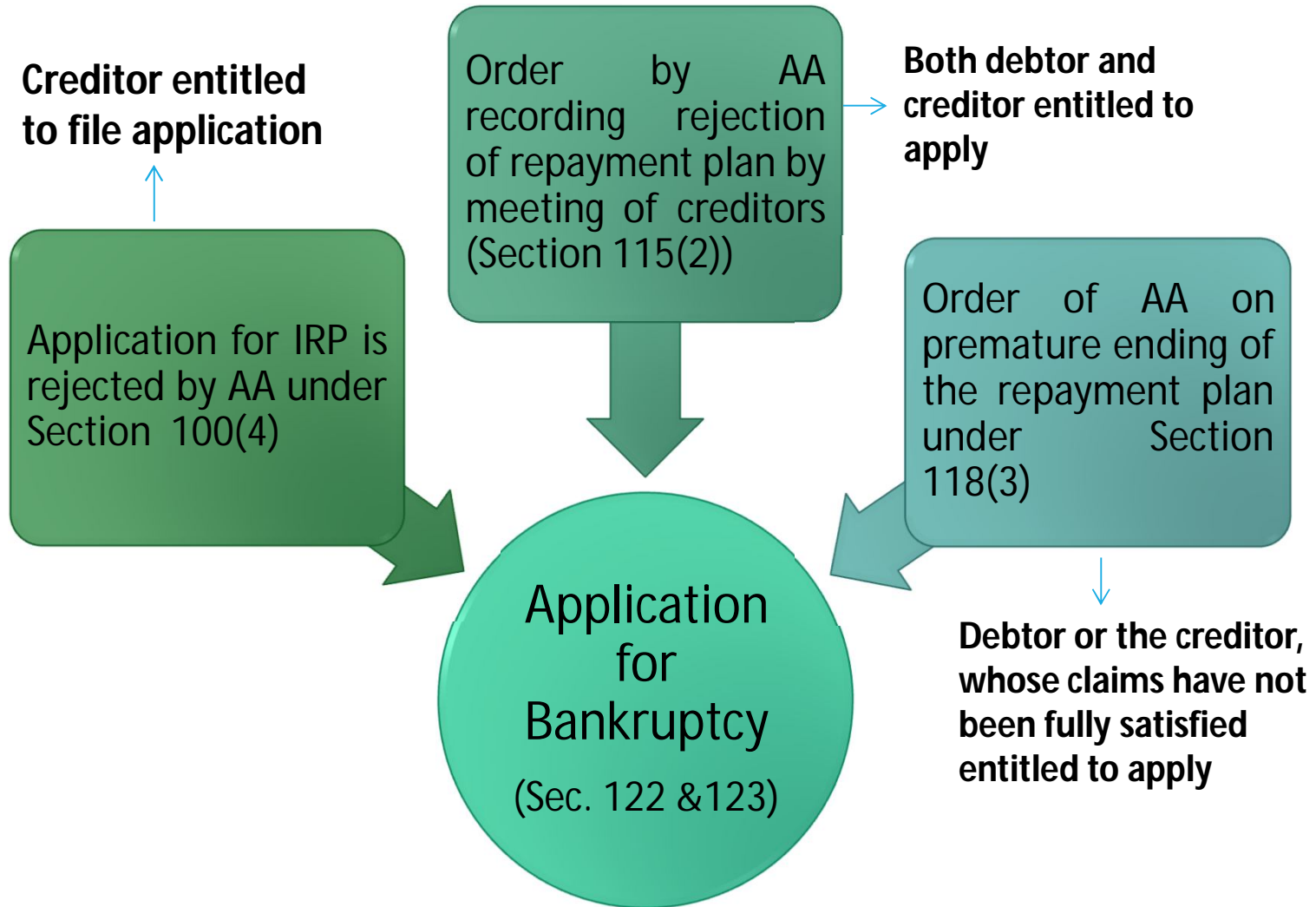
(b) each of the partners of a firm, where a bankruptcy order under section 126 has been made against a firm;  
or

(c) any person adjudged as an undischarged insolvent



# **Application for Bankruptcy**

# When is Application Filed



# Application for Bankruptcy

- ∅ Insolvency Resolution Process is a pre-condition
- ∅ Direct application for bankruptcy not allowed.
- ∅ Application by debtor or creditor
  
- ∅ Application by:
  - ∅ Debtor - if a firm, by any of its partners
  - ∅ Creditors - individually or jointly (Sec. 121)
  
- ∅ Within 3 months of the order passed by AA under
- ∅ Sec.:100(4) or 115(2) or 118(3)



## Application for Bankruptcy

- ∅ Sec. 100(4) Rejection of application on the basis of report by the Resolution Professional (RP) that the application u/s 94 or 95 was made with the intention to defraud the creditors or the RP.
- ∅ Order to record that the creditor is entitled to file for a bankruptcy order
- ∅ Sec. 115(2) Adjudicating Authority (AA) rejects repayment plan u/s 114 on the basis of the report of the meeting of creditors submitted by RP
- ∅ Debtor and Creditors entitled to file for bankruptcy order
- ∅ Sec. 118(3) AA order based on RP's report that the repayment plan has not been completely implemented

## Application by Debtor (Sec. 122)

- ∅ The application to be accompanied by:-
  - ∅ the records of insolvency resolution process undertaken
  - ∅ the statement of affairs of the debtor on the date of the application for bankruptcy
  - ∅ copy of the order passed by the AA permitting the debtor to apply for bankruptcy.
- ∅ May propose name of an insolvency professional (IP) as Bankruptcy Trustee (BT)
- ∅ Application shall not be withdrawn without the leave of the Adjudicating Authority (AA)

## Rule 6

- ∅ Application in Form A, along with fee of Rs. 2000.
- ∅ Copy of application to be served to every creditor and the corporate debtor (CD) for whom the guarantor is a personal guarantor.

## Application by creditor (Sec. 123)

- ∅ Application to be accompanied by:-
  - ∅ (a) the records of insolvency resolution process undertaken;
  - ∅ (b) copy of the order passed by the AA permitting the creditor to apply for bankruptcy;
  - ∅ (c) details of the debts owed by the debtor to the creditor as on the date of the application ;
  - ∅ (d) such other information as may be prescribed.
- ∅ Creditor may propose name of an IP as the BT in the application
- ∅ Application may be filed against legal representatives of a deceased debtor,
- ∅ Application shall not be withdrawn without the leave of the AA

## Rule 7

- Ø Application in Form B, along with a fee of Rs. 2000.
- Ø Copy of the application to be served to the guarantor and the CD for whom the guarantor is a personal guarantor.
- Ø In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.

## Application in respect of Secured debt

- ∅ Application shall be accompanied with a statement by the creditor that:
  - ∅ he shall, in the event of a bankruptcy order being made, give up his security for the benefit of all the creditors of the bankrupt;
  - ∅ **or**
  - ∅ a statement:–
    - ∅ (i) that the application for bankruptcy is only in respect of the unsecured part of the debt; and
    - ∅ (ii) an estimated value of the unsecured part of the debt.
- ∅ Secured and unsecured parts of the debt shall be treated as separate debts.

# Effect of Application for Bankruptcy

## Ø Sec. 124 (1)(a)

Ø Interim moratorium commences once application is filed

Ø Terminates on bankruptcy commencement date (BCD)

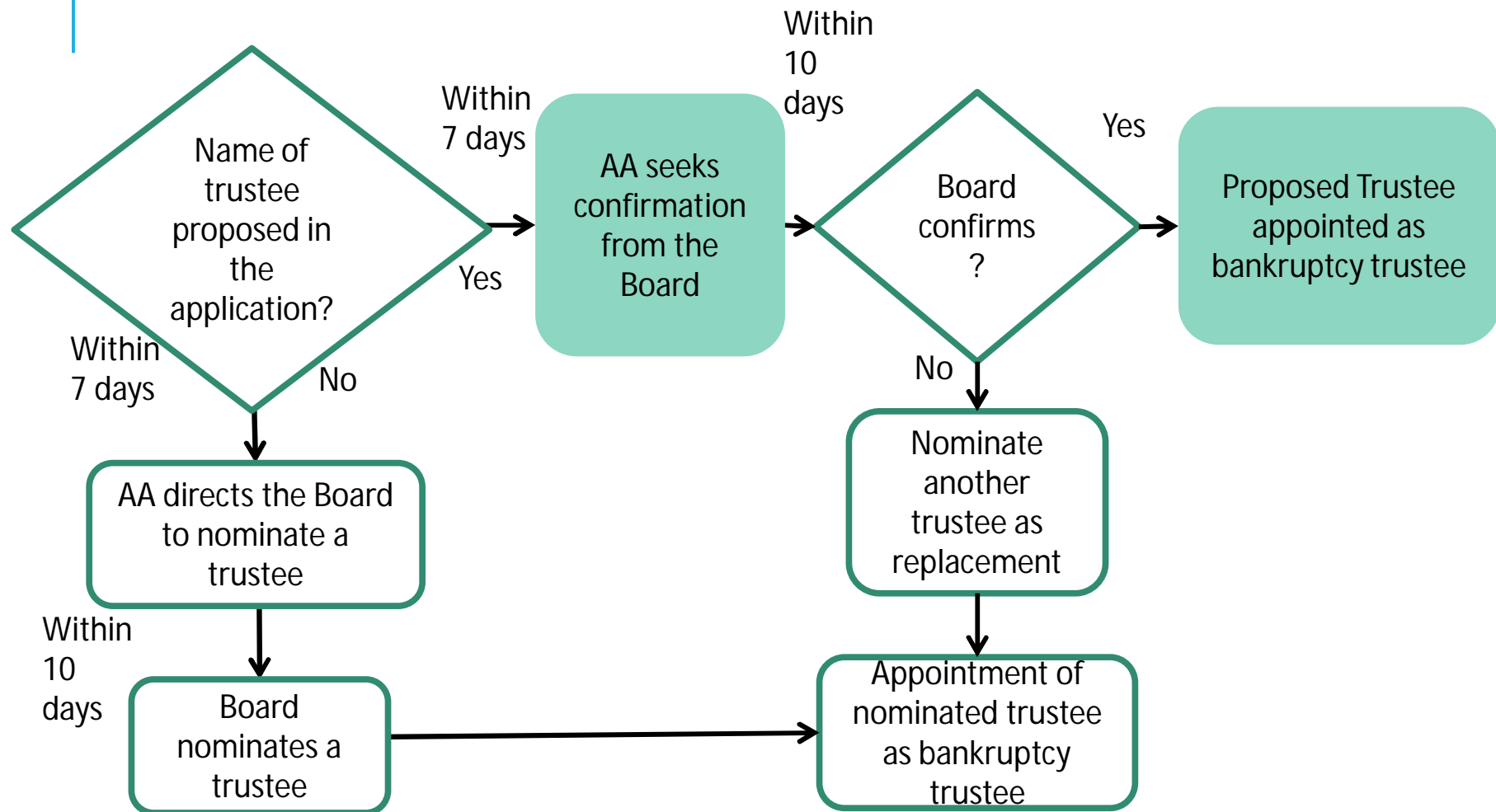
Ø Debars all actions against properties of the debtor in respect of his debts

Ø Creditors not entitled to initiate legal action against properties in respect of *any property of the debtor in respect of any of his debts.*

Ø All pending legal action or proceeding against *any property of the debtor in respect of any of his debts shall be deemed to have been stayed*

Ø Shall not to apply to transactions notified by the Central Government in consultation with any financial sector regulator

# Appointment of Bankruptcy Trustee - Sec.125





# Eligibility of IP for Appointment

## as Bankruptcy Trustee

IP, IPE of which he is partner or director & all partners & directors of that IPE-  
Independent\* of the guarantor

*Regulation 3 of  
Bankruptcy Regulations*

Eligibility of  
Insolvency  
Professional

- q Not an associate of the guarantor;
- q Not a related party of the corporate debtor;
- q Has not acted as the IRP; RP or liquidator of the CD

IP, IPE of which he is partner or director & all partners & directors does not represent any party in bankruptcy process

IP not subject to ongoing disciplinary proceedings

## Disclosure

- ∅ A BT, who has been an auditor of the guarantor at any time during the preceding three years, shall make a disclosure of remuneration received, year-wise for such audit, to the committee.
- ∅ An IP, other than who has filed an application under section 122 or 123 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the AA before his appointment as BT in a bankruptcy process.

# BANKRUPTCY ORDER

## Sec-126

(1) The AA shall pass a bankruptcy order within 14 days of receiving the confirmation or nomination of the bankruptcy trustee u/s 125.

(2) The AA shall provide the following documents to bankrupt, creditors and the bankruptcy trustee within seven days of the passing of the bankruptcy order, namely: -

(a) a copy of the application for bankruptcy; and

(b) a copy of the bankruptcy order.



∅ | Validity of bankruptcy order Sec. 127

∅ The bankruptcy order passed by the AA shall continue to have effect till the debtor is discharged u/s 138.

# Effect of Bankruptcy Order

**Sec 128:** Upon passing of the bankruptcy order, the immediate effect is as follows

## Bankruptcy Estate

- Bankruptcy estate shall vest with the bankruptcy trustee

## Moratorium

- Bankrupt shall be immune from any action by the creditors w.r.t. (a) Property of the bankrupt; (b) any legal proceedings without permission of AA

## Division of Estate

- The estate shall be divided amongst the creditors

# Effect of Bankruptcy Order

## Secured Creditor

- Shall not affect the right of any secured creditor to realize or otherwise deal with his Security Interest. Subject to Sec.123

- Provided that no secured creditor shall be entitled to any interest in respect of his debt after the BCD if he does not take any action to realise his security within 30 days

## Firm

- Bankruptcy order passed against a firm shall operate as if it were against each individual partner in the firm.

# Bankruptcy Moratorium

- ∅ Sec.128 (1 ) (c) A creditor shall not:
  - ∅ initiate any action against property of the bankrupt in respect of such debt
  - ∅ commence any suit or other legal proceeding except with the leave of the AA
  - ∅ the bar is only on a creditor
  - ∅ Does not block enforcement action by secured creditor – sec 128 (2)
  - ∅ No bar on recovery of excluded debts by any action such as Fines, damages, maintenance obligation, Punitive action for personal misconduct

# Modification or Recall of Bankruptcy Order

## ∅ Section 142

∅ By AA – on application or *suo moto*

∅ If it appears to AA that –

∅ **there exists an error apparent on the face of such order**

∅ both the bankruptcy debts and the expenses of the bankruptcy have, after the making of the bankruptcy order, either been paid for or secured to the satisfaction of the AA.

## ∅ **Effect of modification/recall**

∅ Sale, payments, etc. by bankruptcy trustee remain valid

∅ Property of the bankrupt shall vest in such person as AA may appoint or may revert to the bankrupt on terms as directed by AA

∅ Order binding on all creditors so far it relates to bankruptcy debts

∅ Copy to Board for entry in Register u/s 191



# STATEMENT OF FINANCIAL POSITION

## Sec 129

In case of application a creditor, the bankrupt to submit his statement of financial position to BT within 7 days from BCD


If bankrupt is a firm, its partners shall submit a joint statement of the firm, and each partner of the firm shall submit a statement of his financial position.

BT may require the bankrupt or any other person to submit further information

To be submitted in the Format prescribed u/s 129 (2) - Rule 11 - Form E,

# FORM E: Statement of Financial Position Rule 11

- (1) The statement of Financial Position—
  - (a) identification details of the bankrupt;
  - (b) List of assets of the bankrupt and immediate family as on application date for previous three years, also of excluded assets
  - (c) Details of guarantee given by the Guarantor
  - (d) Financial Information
    - (i) Statement of assets and liabilities for previous 3 years
    - (ii) Secured and unsecured debts, with complete details of the creditors including name and postal address, the total amount due, amount in default and details of the security, for the previous three Years

- 
- (iii) Debts owed to Associates
  - (iv) Details of guarantees given
  - (v) Details of business owned
  - (vi) Details of wealth tax statements filed- 5 years
  - (vii) Details of Trusts held
  - (viii) Any other relevant information

Ø FS being a succinct yet comprehensive record of assets and obligations, it is a tool to track the past financial history of the debtor, particularly for vulnerable transactions

## Disqualifications of a Bankrupt

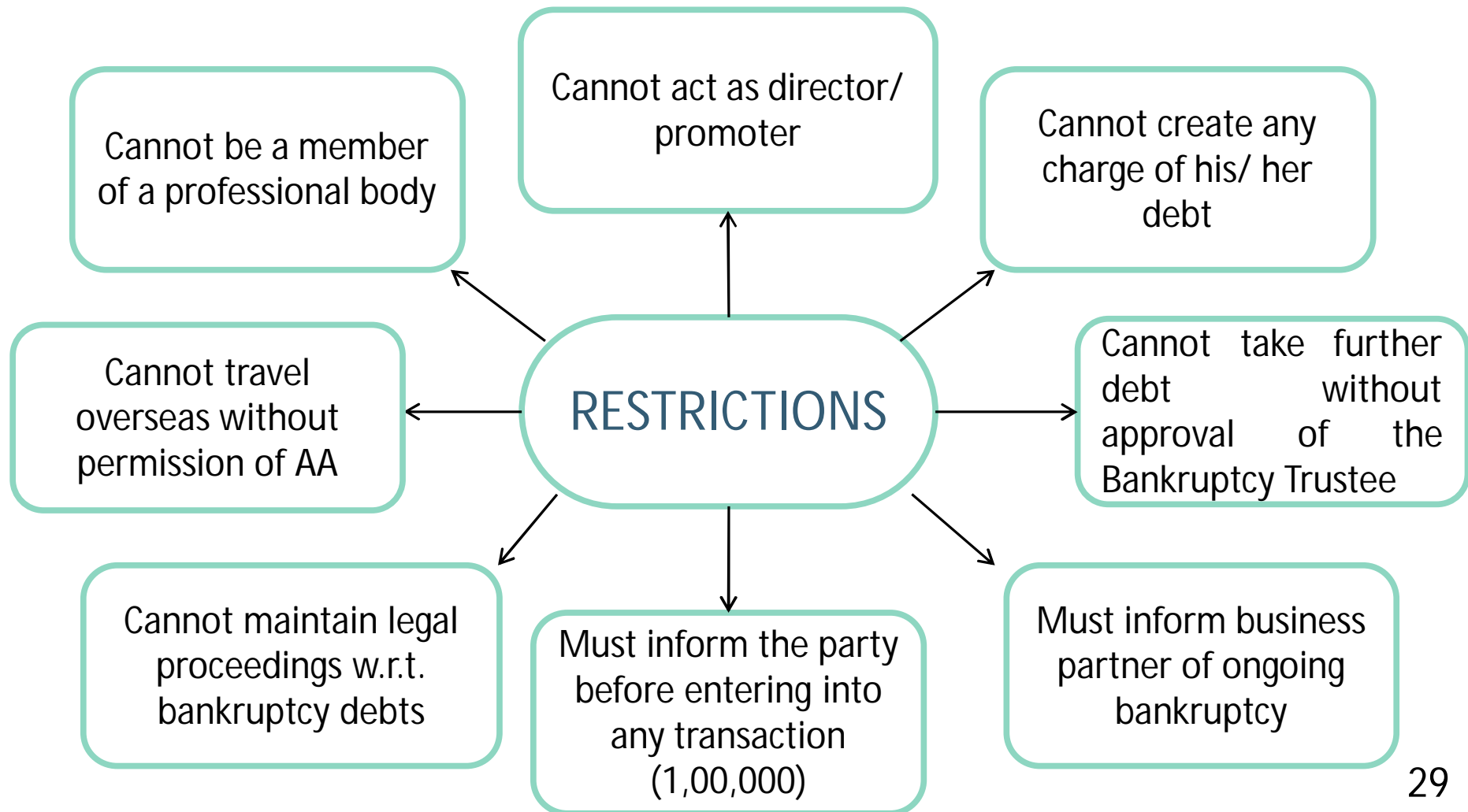
**Sec 140:** Upon Bankruptcy Order shall, the bankrupt shall be disqualified from acting as:

- a) being appointed or acting as a trustee or representative in respect of any trust, estate or settlement;
- b) being appointed or acting as a public servant;
- c) being elected to any public office where the appointment to such office is by election; and
- d) being elected or sitting or voting as a member of any local authority.

These are in addition to any disqualification under any other law for the time being in force.

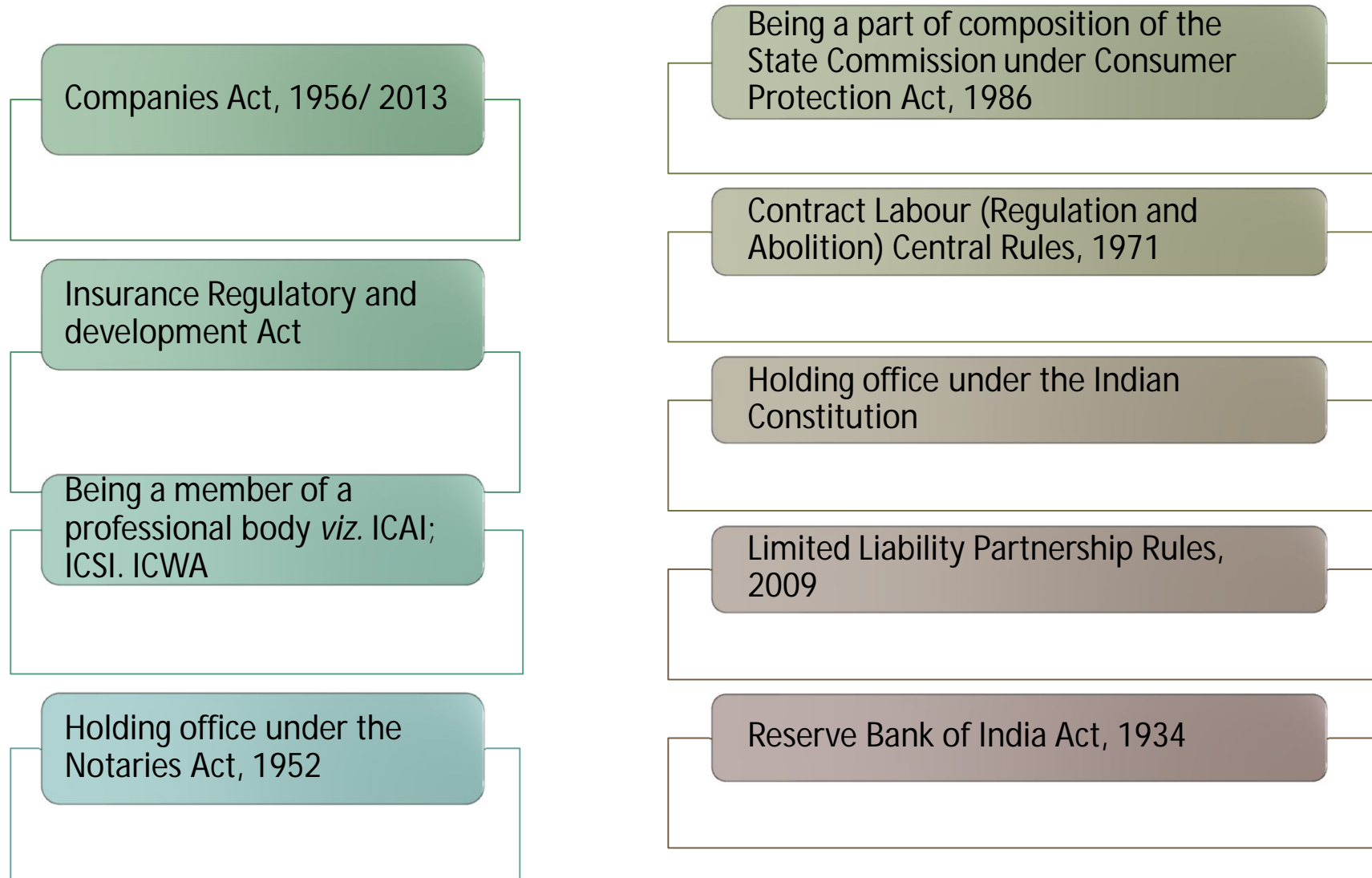
# Restrictions on a Bankrupt

**Sec. 141:** Restrictions on the bankrupt, apart from disqualifications u/s 140



# Additional Disqualifications under other Laws

Additionally, the bankrupt also attracts disqualification from/ under various other laws. Illustrative list is below:



## Disqualifications to Cease

- ∅ Any disqualification to which a bankrupt may be subject under section 140 and 141 shall cease to have effect, if –
  - (a) the bankruptcy order against him is modified or recalled under section 142; or
  - (b) he is discharged under section 138.

# Secured Creditors

- ∅ The bankruptcy order shall not affect the right of any secured creditor to realize or otherwise deal with his security interest in the same manner as he would have been entitled if the bankruptcy order had not been passed Sec 128(3):

## Who is a secured creditor?

**Secured creditor** is a lender that provides collateralized debt.

Rights of a secured creditor only upto the amount of security not relinquished and only to the extent of value of security interest – Sec. 123 (3)

## Three options for a secured creditor

1. Relinquish security interest, claim against bankruptcy estate, and get priority u/s 178 next to bankruptcy cost
2. Enforce security interest outside of bankruptcy process:
  - a. He would have first filed a claim separately for the secured and unsecured portions
  - b. Trustee has the right to pit an alternative buyer




# Role of Creditors

General meeting of creditors	Committee meeting of creditors
<p>First meeting of creditors will mandatorily have to be called, within 21 days of BCD – sec. 133 (1)</p>	<p>The Committee is constituted by the BT. Composition of the Committee is not laid down in the Code or Regulations</p>
<p>Primary business of the first meeting is to constitute the Committee of Creditors</p>	<p>Given the fact that Creditors' Committee has substantial powers to drive the bankruptcy process, including power to replace the trustee, the Committee's composition must reflect the voting share of the general body</p>
<p>Voting percentage for the general meeting is not given in the Code or Regulations Sec 134 (3) provides for passing of a resolution. This should be ordinary majority resolution</p>	<p>BT to intimate to the AA the constitution of the Committee within 3 days – Regu. 20(2)</p>

## Role of Creditors

- Ø Mandatory to call meeting of creditors – section 133 (associates not entitled to vote) –
- Ø BT to decide the quorum for the meeting Sec. 134(2)
- Ø Committee of creditors is to be established – section 134(3)
- Ø Creditor approval is mandatory for certain acts by bankruptcy trustee – section 153
- Ø CoC approves the report of bankruptcy trustee on administration of the estate, and determines whether the bankrupt be released



Ø Creditors not in the list of creditors or associates of the bankrupt not entitled to vote Sec 135 (4)

## Voting Share for Creditors

- ∅ Secured creditor's voting rights – only in respect of surrendered security interest, or unsecured part of his claim Sec. 110, 123 (3)
- ∅ Every creditor in the list of Creditors or his proxy entitled to vote as per voting share assigned to him Sec 135(1)
- ∅ RP to determine voting share to be assigned as specified by the Board Sec. 135(2)
- ∅ Voting share of Creditor shall be in proportion to the debt owed to him. Voting share of secured creditor – in proportion of unsecured part if opted to enforce security, or debt relinquished Regu. 24
- ∅ A creditor shall not be entitled to vote for an unliquidated amount Sec. 135 (3)

# Voting Share for Guarantee Creditors

- ∅ Voting shares will be based on claims filed by the guarantee creditors
- ∅ Guarantor's Claim amount:
  - ∅ If resolution plan for CD approved – the amount of haircut
  - ∅ If resolution plan for CD is not yet approved – the whole of the amount payable by the CD
  - ∅ If CD in liquidation, and the creditor has relinquished security interest – the amount claimed, less any distribution
  - ∅ If CD neither in resolution, nor liquidation – the amount due from CD, as demanded from guarantor

## Proof of Debt

- ∅ Bankruptcy trustee to give notice to every creditor within 14 days from date of preparing list of creditors Sec 171
- ∅ Interest on debt - provable as part of the debt till bankruptcy commencement date Sec 171(4)
- ∅ If a creditor does not file a proof of security within 30 days after the date of service of the notice, the BT with leave of AA, may sell or dispose of any property that was subject to the security, free of that security.

# Discharge Order

## *Sec 138*

Application by Bankruptcy Trustee to AA;

Earlier of –

- ∅ Expiry of 1 year from the bankruptcy commencement date
- ∅ Within 7 days of the approval of the committee of creditors of the completion of administration of estate of the bankrupt, if the said approval is accorded before the expiry of 1 year from the bankruptcy commencement date

;

# Effect of Discharge Order

- ∅ Bankrupt is released from **all bankruptcy debts**
- ∅ In case the application for discharge is filed within 7 days of the creditors' approval, the discharge does not affect
  - ∅ functions of the bankruptcy trustee
  - ∅ the operation of the provisions of Chapters IV and V of Part III
- ∅ These remain unaffected
  - ∅ Right of the secured creditor to enforce his security for the payment of a debt from which the bankrupt is discharged
  - ∅ Bankrupt is not released in respect of debts incurred by means of fraud or breach of trust to which he was a party
  - ∅ Bankrupt is **not released from any excluded debt**
- ∅ **Undischarged bankrupt – means a bankrupt who has not received a discharge order u/s 138**





# Bankruptcy Estate

# Estate of the Bankrupt

- ∅ Estate of the bankrupt vests in the Bankruptcy Trustee  
Sec.154
- ∅ Sec. 155 provides the scope of inclusions and exclusions:
- ∅ **Estate shall include:**
  - ∅ All property belonging to or vested in the bankrupt on the BCD
  - ∅ Powers to take proceedings, as the bankrupt would have done
  - ∅ All property which by virtue of any of the provisions, is comprised in the estate

The estate shall not include :-

(a) excluded assets;

(b) property held by the bankrupt on trust for any other person;

(c) all sums due to any workman or employee from the provident, pension and gratuity fund; and

(d) such assets as may be notified by the Central Government in consultation with any financial sector regulator.

Wide definition of “property” in sec 3 (27)

“property” includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property;

# Estate of the Bankrupt

## Sec 155- Estate of the Bankrupt shall -

### **Include:**

- all property belonging to or vested in the bankrupt at BCD;
- the capacity to exercise and to initiate proceedings for exercising all such powers in or over or in respect of property;
- all property which by virtue of any of the provision of the Code

### **not include:**

- excluded assets; (defined)
- property held by the bankrupt on trust for any other person;
- all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
- such assets as may be notified by the CG in consultation with any financial sector regulator.

# Excluded Assets

Sec 79 (14) read with Rule 5



Unencumbered tools, vehicles and other equipments, necessary for employment, business or vocation.



Unencumbered furniture, equipment, necessary for basic domestic needs



Unencumbered personal ornaments, that cannot be parted with in accordance with religious usage

Upto Rs.  
1,00,000/-



Unencumbered life insurance policy/  
pension plan

Upto Rs. 20,00,000/- in Urban area;  
Rs. 10,00,000/- in rural area



Unencumbered single dwelling unit

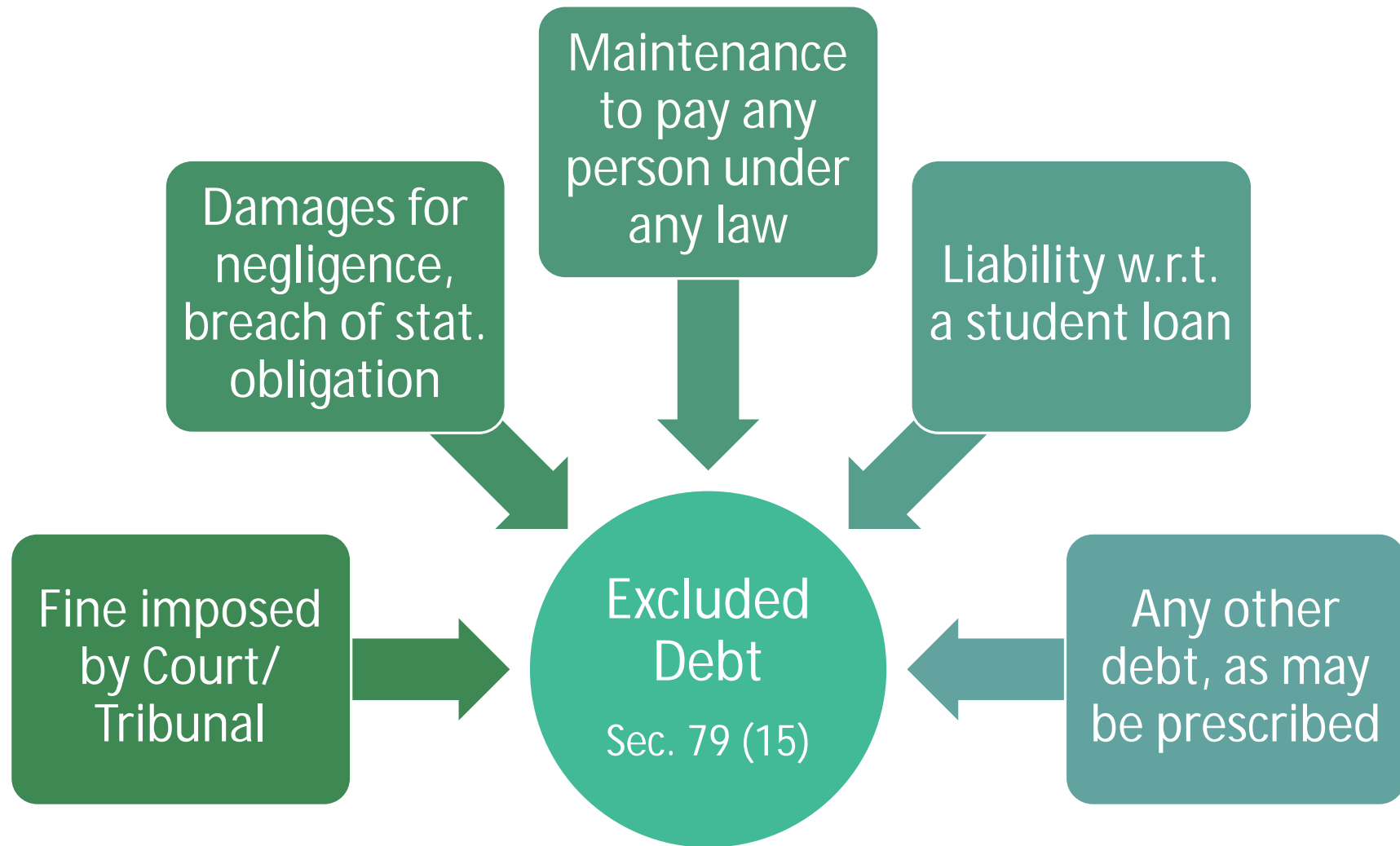
# Excluded Assets

- ∅ Unencumbered:
- ∅ Tools, books, vehicle or other equipment
  - ∅ Necessary for personal use or
  - ∅ the employment or vocation of the bankrupt
- ∅ Furniture, household equipment or provisions
  - ∅ necessary for basic domestic needs of
  - ∅ Bankrupt and immediate family
- ∅ Personal ornament
  - ∅ Limited in value to Rs 1 lakh
- ∅ LIP or pension plan

## Excluded Assets – Dwelling Unit

- ∅ Single dwelling unit owned by debtor:
- ∅ upto Rs 20 lakh in urban areas
- ∅ Upto Rs 10 lakh in rural areas
- ∅ Rural area defined in line with NAREGA law – any area outside the area under a local body or cantonment board

# Excluded Debt





# Functions & Duties Towards the Estate

## ∅ **Functions of the Bankruptcy Trustee (Sec. 149)**


The BT shall perform the following functions in accordance with the provisions of this Chapter –

- a) Investigate the affairs of the bankrupt;
- b) Realise the estate of the bankrupt; and
- c) Distribute the estate of the bankrupt.

## ∅ **Duties of the Bankrupt (Sec. 150)**

The Bankrupt shall perform the following duties-

- give to the bankruptcy trustee the information of his affairs;
- attend on the bankruptcy trustee at such times as may be required;

- 
- giving notice to the bankruptcy trustee of any significant events which have occurred after the Bankruptcy Commencement Date (BCD):
    - acquisition or devolution of property,
    - increase in income of the Bankrupt

# General Powers of the Bankruptcy Trustee

*Ref: Sec 152*

Sell any part of the estate

Give receipts for any money received by him

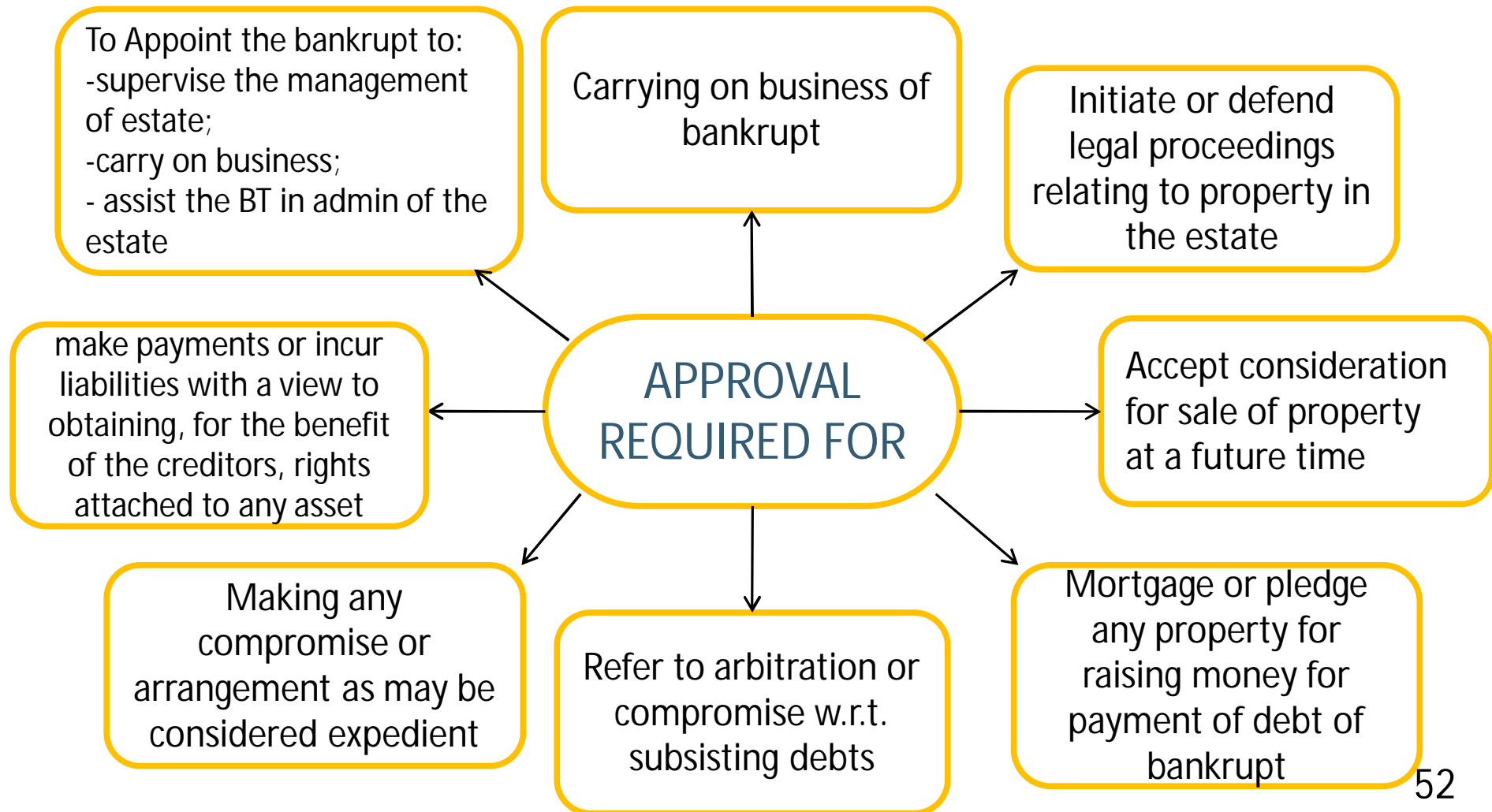
Prove, rank, claim and draw any dividend in respect of such debts due to the bankrupt as are comprised in the estate

Exercise right of redemption w.r.t. any property held in pledge or hypothecation

Deal with any property in the bankruptcy estate

# Approval of Creditors for Certain Acts

(Sec 153)



# Valuation of Assets

*Ref: Regulation 30*

## Valuation Not mandatory

Valuation may be done only if:

- (a) Bankruptcy trustee is of the opinion that valuation is necessary; or
- (b) Resolution in this regard is passed by the committee

## Assets to be valued

Valuation may be done of assets which may or may not form part of estate of the bankrupt;

Valuation after physical verification in accordance with the internationally accepted valuation standards

May appoint additional valuer, if required

Average of the two estimates to be taken as value of assets

# Mode of Sale

## Auction

All assets shall ordinarily be sold by auction as specified Part A, Schedule II, except in under conditions for private sale mentioned in Regu 27(2).

## Private Sale

In the following conditions:

- q the asset is perishable in nature;
- q Likely deterioration in value of asset;
- q the selling price of the asset is higher than the reserve price of a failed auction
- q Regu 27(2)


# Parties Disqualified from Purchase of Assets

*(Reg. 27 (3))*

## Purchase of assets by certain persons- (Restrictive, not prohibitory)

The following persons **shall not purchase or acquire any interest** in the property of guarantor, **directly or indirectly, without permission of the Adjudicating Authority**

- (a) the Bankruptcy Trustee or any partner or director of the IPE of which the Bankruptcy Trustee is a partner or director;
- (b) any professional appointed by the Bankruptcy Trustee for the bankruptcy process;
- (c) any creditor or associate of the bankrupt;
- (d) any company where the bankrupt or a creditor is a promoter or director.



(d) any company where the bankrupt or a creditor is a promoter or director;

*The Adjudication Authority may set aside purchase or acquisition made contrary to the provisions of this regulation and may make such order as it may deem fit.*



# Order of Priority For Distribution

Similar to priority set out u/s 53 of the Code for liquidation of a corporate debtor, during bankruptcy, the distribution of the final dividend, the following debts shall be paid in priority to all other debt as per **section 178**.

## Costs

- Costs and expenses incurred by the bankruptcy trustee for the bankruptcy process- in full.

## Workmen & Secured creditors

- Workmen dues for a period of 24 months prior to BCD;
- Debts to secured creditors

## Employee dues

- Wages and any unpaid dues to employees, other than workmen, for a period of 12 months prior to BCD

## Government Dues

- Amount due to CG or SG, for 2 years preceding the BCD

## Other debts

- All other debts and dues including unsecured debts

# Unclaimed Proceeds

*Ref: Regulation 36*

## Deposit to the Insolvency and Bankruptcy Fund

Within 3 days of submission of Final Report, Bankruptcy Trustee shall apply to the AA **for an order for such deposit to IB Fund**, any unclaimed dividends of bankruptcy process or undistributed asset or any other balance amount payable to the creditors, left with him.

## Statement for deposit-

BT shall submit a statement containing-

- (a) the names and last known address of the creditors entitled to the unclaimed dividend or undistributed asset or any other balance;
- (b) the amount of the unclaimed dividend or any other balance for each creditor under (a);
- (c) the value of the undistributed assets

# Onerous Property

*Sec 160-161*

The term “onerous property” means –

- (i) any unprofitable contract; and
- (ii) any other property comprised in the estate of the bankrupt which is unsaleable or not readily saleable, or is such that it may give rise to a claim.

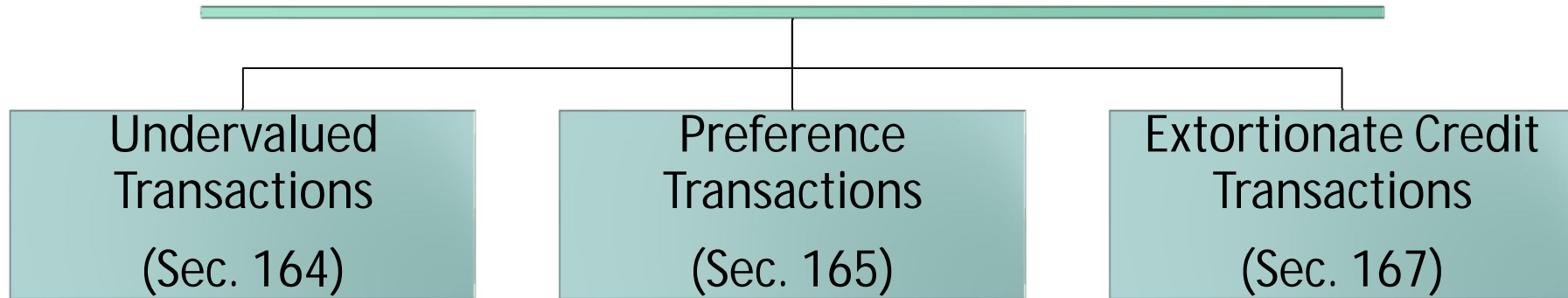
*The bankruptcy trustee may, by giving notice to the bankrupt or any person interested in the onerous property, disclaim any onerous property which forms a part of the estate of the bankrupt.*

# Challenge against disclaimed Onerous Property

## Person interested in Onerous Property

- (a) Any person who claims an interest in the disclaimed property;
- (b) Any person who is under any liability in respect of the onerous property; or
- (c) where the disclaimed property is a dwelling house, any person who is in occupation of or entitled to occupy the dwelling house, on the date of filing of application.

# Vulnerable Transactions



an undervalued transaction between a bankrupt and any person

∅ entered into during the period of two years ending on the filing of the application for bankruptcy; **and**

∅ **caused bankruptcy process to be triggered**

The transaction giving preference to an associate of the bankrupt

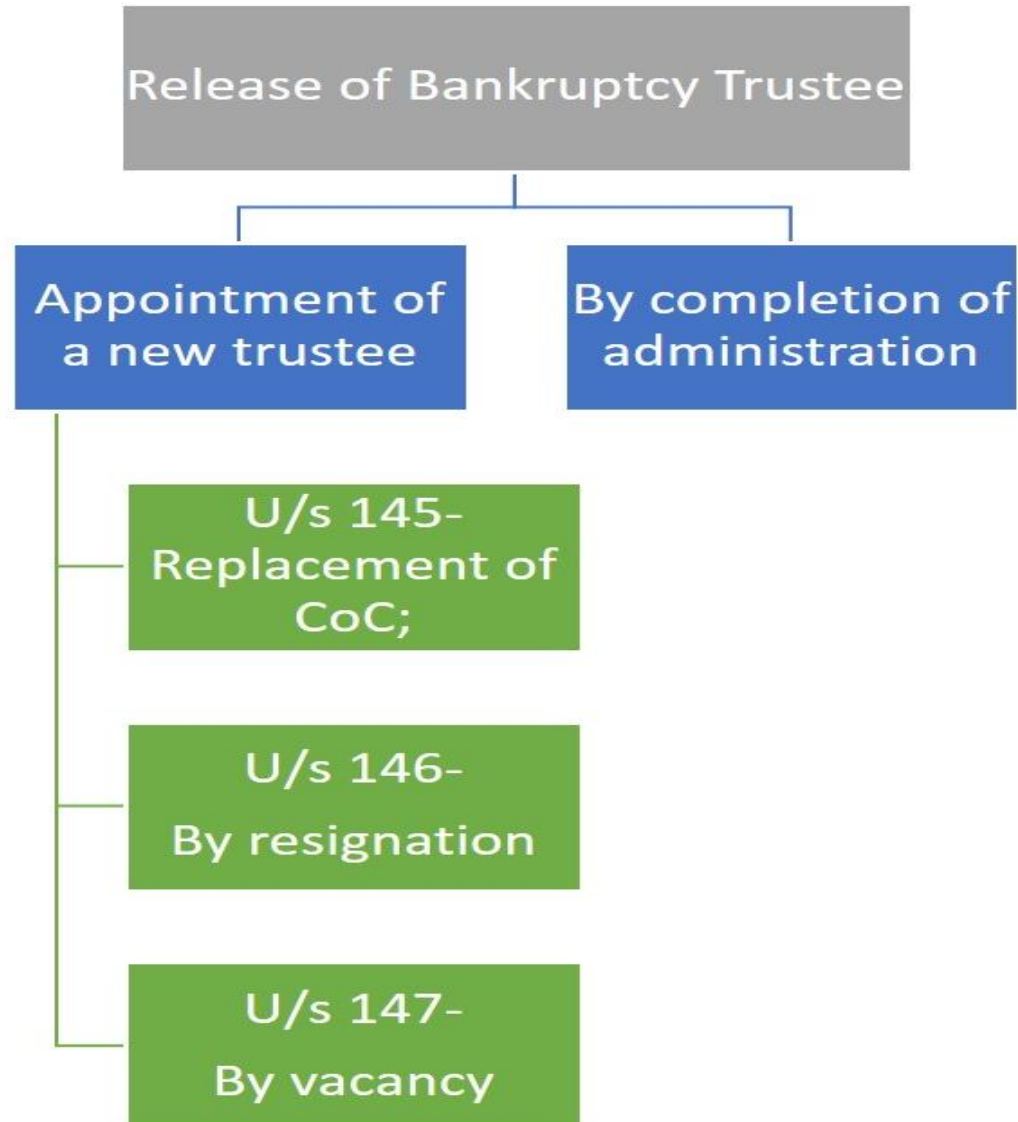
∅ entered into during the period of two years ending on the filing of the application for bankruptcy; and

In respect of extortionate credit transactions to which the bankrupt is or has been a party

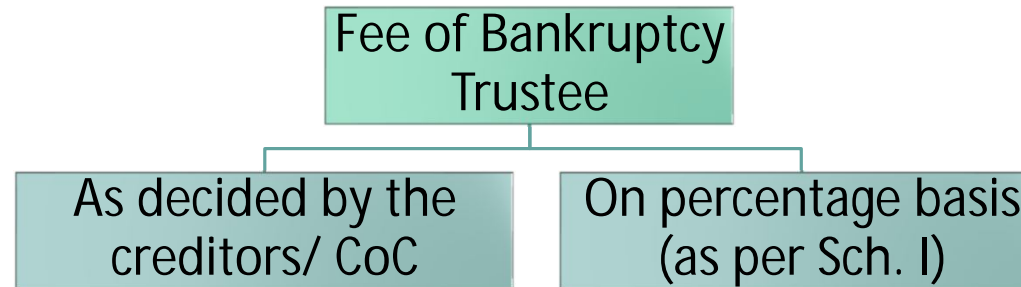
∅ entered into during the period of two years ending on the filing of the application for bankruptcy; and

# Release of Bankruptcy Trustee- Sec.148

*Sec 148*



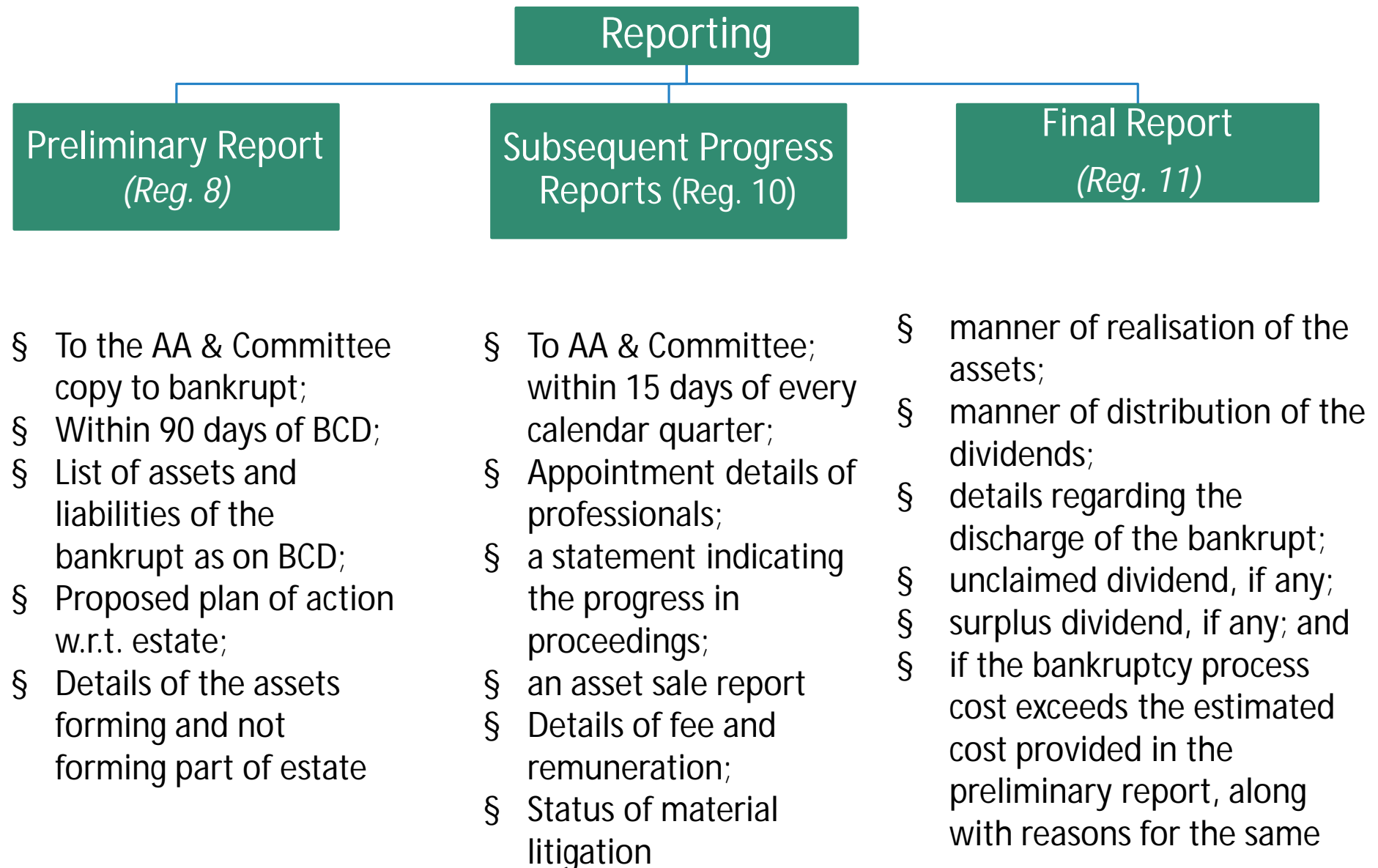
# Fee of the Bankruptcy Trustee



**SCHEDULE I**  
**FEES OF BANKRUPTCY TRUSTEE**  
 [Under regulation 4(2)]

Amount of realisation in rupees (less bankruptcy process cost)	Percentage of fee on the amount realised			
	in the first six months	in the next three months	in the next three months	thereafter
On the first 25 lakh	10.00	7.50	5.00	3.75
On the next 50 lakh	7.50	5.00	3.75	2.80
On the next 1 crore	5.00	3.75	2.50	1.88
On the next 9 crore	3.75	2.80	1.88	1.41
On the next 40 crore	2.50	1.88	1.25	0.94
On the next 50 crore	1.25	0.94	0.68	0.51
On further sums realised	0.25	0.19	0.13	0.10
Amount of distribution in rupees	Percentage of fee on the amount distributed			
On the first 50 lakh	5.00	3.75	3.00	1.88
On the next 75 lakh	3.75	3.00	1.88	1.41
On the next 1 crore	2.50	1.88	1.25	0.94
On the next 9 crore	1.88	1.40	0.94	0.71
On the next 40 crore	1.25	0.94	0.63	0.47
On the next 50 crore	0.63	0.48	0.34	0.25
On further sums distributed	0.13	0.10	0.06	0.05

# Reports by Bankruptcy Trustee





# JUDICIAL FRAMEWORK

## **Adjudicating Authority (AA)**

- National Company Law Tribunal (NCLT)
- Debt Recovery Tribunal (DRT)

## **Appellate Authority**

- National Company Law Appellate Tribunal (NCLAT)
- Debt Recovery Appellate Tribunal (DRAT)

**Special Courts** under Companies Act for trial of offences under IBC {Sec 236(1)}

**Supreme Court**

**Civil Courts not to have jurisdiction Sec 180**



# **Corporate Liquidation and Personal Bankruptcy**



## Corporate Liquidation Vs. Personal Bankruptcy(1/3)

Point of difference	Liquidation	Bankruptcy
Manner of initiation	Automatically triggered u/s 33	Creditor/debtor become entitled to file for bankruptcy – Section 100 – Rejection of insolvency resolution application by AA. Section 115 – Rejection of repayment plan by AA. Section 118 – Premature closing of repayment plan.
Reversibility/modification or recall	No specific provision – right to appeal against AA's order – section 61.	Possible – by AA, on application or suo-motu – section 142 (either erroneous initiation or full repayment).
Interim-moratorium	No	Yes – sec. 124 (1)- on application – lasts till bankruptcy order is passed

## Corporate Bankruptcy Vs. Personal Bankruptcy(2/3)

Point of difference	Liquidation	Bankruptcy
Moratorium	Sec. 33 - On liquidation order being passed	Sec. 128 - On bankruptcy order being passed
Role of Insolvency Professional	As liquidator	As bankruptcy trustee
Estate of debtor	Liquidation estate held by liquidator as fiduciary for benefit of all creditors – section 36	Estate of the bankrupt vests in the bankruptcy trustee – section 154
Manner of vesting of estate	No conveyance, assignment – the estate is constructive	Section 154(2) provides that there is no need for conveyance, assignment or transfer for vesting of property in the trustee.

## Corporate Bankruptcy Vs. Personal Bankruptcy(3/3)

Point of difference	Liquidation	Bankruptcy
Involvement of creditors	Liquidator has to constitute Stakeholder's Consultation Committee (including creditors). No provision for a committee of creditors.	Considerable - meeting of creditors is summoned, a committee of creditors is established for approval of the report on administration of the estate; the bankruptcy requires approval of the committee for several acts (section 153), and the committee of creditors decides on the release of the bankruptcy trustee.
Priority of pay-out from estate	Sec. 53 – financial debts take priority over operational debts	Sec. 178 – distinction of financial creditor and operational creditor does not exist [even if the individual is carrying on business]
Final Stage	Dissolution – the entity loses its existence.	Discharge – releases the bankrupt from all bankruptcy debts.

जय हिन्द

Jai Hind

धन्यवाद

Thanks

## Madhusudan Sharma

Advocate, Insolvency Professional, FCS, FCMA  
[madhusudan.ip@outlook.com](mailto:madhusudan.ip@outlook.com); 9868872918

Website: [www.madhusudansharma.in](http://www.madhusudansharma.in)  
[www.linkedin.com/in/madhusudans](http://www.linkedin.com/in/madhusudans)