Section 5: Definitions.

5. In this Part, unless the context otherwise requires,—

(1) "Adjudicating Authority", for the purposes of this Part, means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013;

(2) "auditor" means a chartered accountant certified to practice as such by the Institute of Chartered Accountants of India under section 6 of the Chartered Accountants Act, 1949;

1[(2A) "base resolution plan" means a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A;]

(3) "Chapter" means a Chapter under this Part;

(4) "constitutional document", in relation to a corporate person, includes articles of association, memorandum of association of a company and incorporation document of a Limited Liability Partnership;

(5) "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 1[or the pre-packaged insolvency resolution process, as the case may be,] 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;

2[(5A) “corporate guarantor” means a corporate person who is the surety in a contract of guarantee to a corporate debtor;]

(6) "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;
(7) "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;

(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

2[Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

(9) "financial position", in relation to any person, means the financial information of a person as on a certain date;

(10) "information memorandum" means a memorandum prepared by resolution professional under sub-section (1) of section 29;

(11) "initiation date" means the date on which a financial creditor, corporate applicant or operational
creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process or pre-packaged insolvency resolution process, as the case may be;

(12) "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be;

(13) "insolvency resolution process costs" means—

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs as may be specified by the Board;

(14) "insolvency resolution process period" means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day;

(15) "interim finance" means any financial debt raised by the resolution professional during the insolvency resolution process period or by the corporate debtor during the pre-packaged insolvency resolution process period, as the case may be, and such other debt as may be notified;

(16) "liquidation cost" means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board;

(17) "liquidation commencement date" means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be;

(18) "liquidator" means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be;

(19) "officer" for the purposes of Chapter VI and Chapter VII of this Part, means an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 or a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, as the case may be;

(20) "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;
(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

(22) "personal guarantor" means an individual who is the surety in a contract of guarantee to a corporate debtor;

(23) "personnel" includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor;

1[(23A) “preliminary information memorandum” means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G;

(23B) “pre-packaged insolvency commencement date” means the date of admission of an application for initiating the pre-packaged insolvency resolution process by the Adjudicating Authority under clause (a) of sub-section (4) of section 54C;

(23C) “pre-packaged insolvency resolution process costs” means—

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the pre-packaged insolvency resolution process period, subject to sub-section (6) of section 54F;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order under sub-section (2) of section 54J;

(d) any costs incurred at the expense of the Government to facilitate the pre-packaged insolvency resolution process; and

(e) any other costs as may be specified;

(23D) “pre-packaged insolvency resolution process period” means the period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order under sub-section (1) of section 54L, or sub-section (1) of section 54N, or sub-section (2) of section 54-O, as the case may be, is passed by the Adjudicating Authority;]

(24) "related party", in relation to a corporate debtor, means—

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;
(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of—

   (i) participation in policy making processes of the corporate debtor; or
   (ii) having more than two directors in common between the corporate debtor and such person; or
   (iii) interchange of managerial personnel between the corporate debtor and such person; or
   (iv) provision of essential technical information to, or from, the corporate debtor;

2[(24A) "related party", in relation to an individual, means—

   (a) a person who is a relative of the individual or a relative of the spouse of the individual;
   (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;
   (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;]
(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

(i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—

   (i) members of a Hindu Undivided Family,
   (ii) husband,
   (iii) wife,
   (iv) father,
   (v) mother,
   (vi) son,
   (vii) daughter,
   (viii) son's daughter and son,
   (ix) daughter's daughter and son,
   (x) grandson's daughter and son,
   (xi) granddaughter's daughter and son,
   (xii) brother,
   (xiii) sister,
   (xiv) brother's son and daughter,
   (xv) sister's son and daughter,
(vi) father's father and mother,
(vii) mother's father and mother,
(viii) father's brother and sister,
(ix) mother's brother and sister, and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;

6[(25) "resolution applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25 or pursuant to section 54K, as the case may be;]

(26) "resolution plan" means a plan proposed by the resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;

8[Explanation.- For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;]

(27) "resolution professional", for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process or the pre-packaged insolvency resolution process, as the case may be, and includes an interim resolution professional; and

(28) "voting share" means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.

Reference

*Effective From* 01.12.2016.

1. Ins. by the IBC (Amendment) Act, 2021, w.e.f. 04.04.2021.

2. Ins. by the IBC (Second Amendment) Act, 2018, w.e.f. 06.06.2018.

3. Omitted by the IBC (Amendment) Act, 2020, w.e.f. 28.12.2019, which was inserted by the IBC (Second Amendment) Act, 2018, w.e.f. 06.06.2018:

   “Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority”.

3A. Circulars on Cost and Fee:
A corporate person suffers any loss, including penalty, if any, on account of non-compliance of any provision of the applicable laws, such loss shall not form part of insolvency resolution process cost or liquidation process cost under the Code—No. IP/002/2018 dt. 03.01.2018.

Fees payable to an IP and to other professionals appointed by an IP—No. IP/004/2018, 16th January, 2018.


4A. A debt raised from the Special Window for Affordable and Middle-Income Housing Investment Fund included as Interim Finance in the definition u/s 5(15). See Notification S.O. 1145(E) dated 18.03.2020.

5. Subs. by the IBC (Second Amendment) Act, 2018, w.e.f. 06.06.2018, for the word "repayment".

6. Subs. by the IBC (Amendment) Act, 2018, w.e.f. 23.11.2017, for the clause:

"(25) "resolution applicant" means any person who submits a resolution plan to the resolution professional;"

7. Subs. by the IBC (Amendment) Act, 2018, w.e.f. 23.11.2017, for the words "any person".

8. Ins. by the IBC (Amendment) Act, 2019, w.e.f. 16.08.2019[S.O. 2953(E)].

9. A person, who is not a member of the CoC, does not have voting right in the CoC. A person, who is not a member of the CoC, cannot be regarded as one who has voted against a resolution plan or abstained from voting—IBBI/CIRP/018/2018, 14th September, 2018.