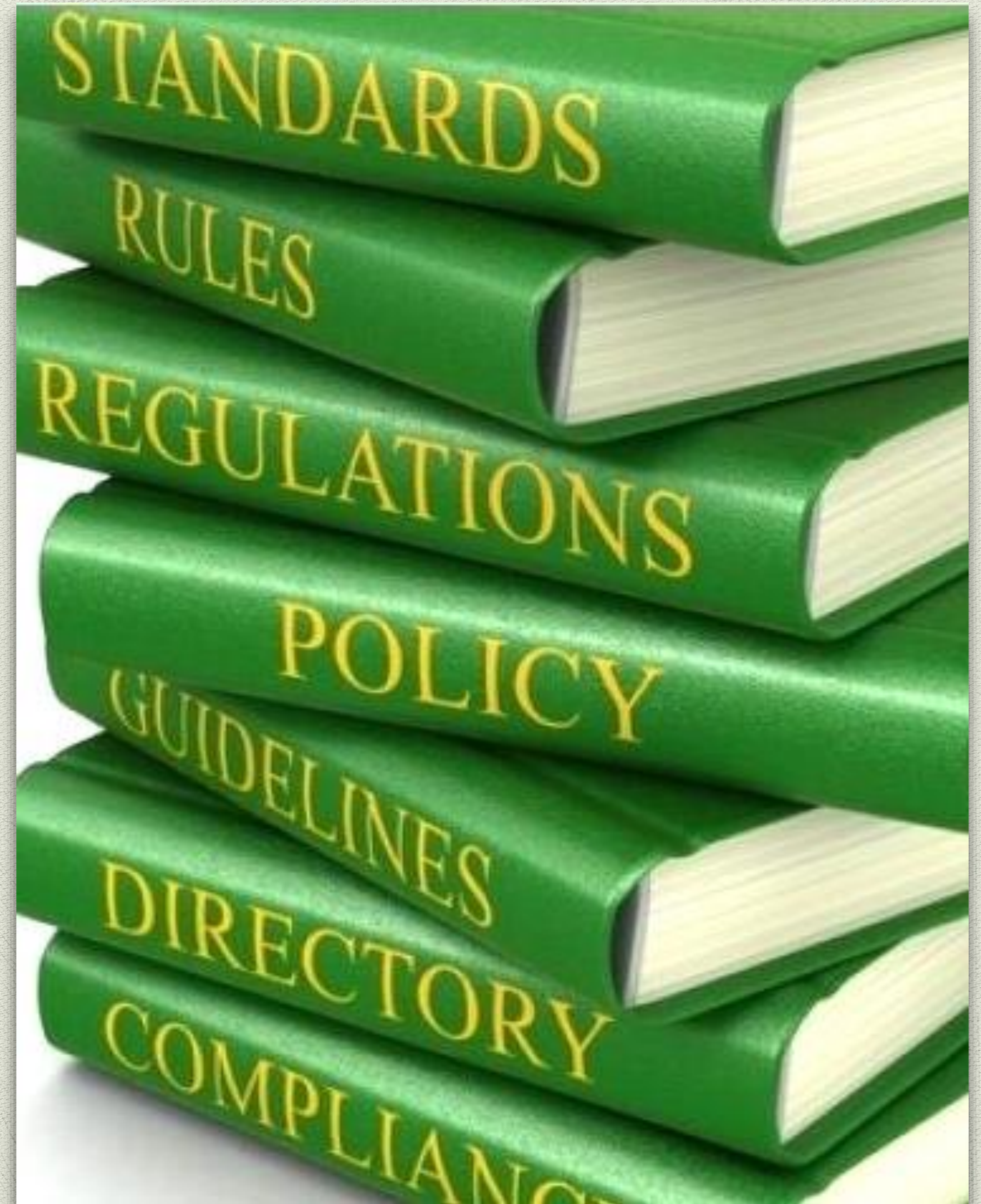


RECENT CHANGES  
IN  
COMPANIES ACT  
&  
INSOLVENCY &  
BANKRUPTCY CODE

*FOR AIFTP WEBINAR - 16.04.2020*

— BY

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# COMPANY LAW





# PRESS RELEASE DATED 30.03.2020 FOR CFSS 2020 & REVISED LLP SETTLEMENT SCHEME 2020

- ◆ MCA in pursuance to GOI efforts to provide relief to Companies and LLPs in wake of COVID-19, has introduced two schemes- CFSS-2020 and Modified LLP Settlement Scheme. For LLPs the scheme which was already in vogue is now revised to a modified scheme.
- ◆ It provides first of its kind opportunity to both Companies and LLPs to take corrective measures for any filing related defaults irrespective of duration of defaults.
- ◆ Companies and LLPs after removing such defaults can make a fresh start as fully compliant entity.
- ◆ Aim is to incentivise and reduce compliance burden during COVID-19.



- ♦ It provides a one time waiver of additional fees for delayed filing by Companies and LLPs with ROC during the period 01.04.2020 to 30.09.2020.
- ♦ Both schemes provide immunity from penal proceedings for late submissions and also provide time for filing appeals before RD's against imposition of penalty already imposed.
- ♦ Immunity is only against delayed filing in MCA 21 & not against any substantive violation of law.





# COMPANY FRESH START SCHEME, 2020

- ◆ Notified by MCA on 30.03.2020 by GC No.12/2020.
- ◆ Aim is to facilitate companies incorporated in India to make a fresh start on a clean state.
- ◆ Provides alleviative measures for benefit of all companies.
- ◆ It grants one time opportunity to stakeholders to enable them to complete pending compliances of filing necessary documents in MCA registry including annual filing without being subject to additional fee on account of delays.



- ◆ CFSS condones delay in filing of annual return and financial statements, other statements, documents, returns etc., required to be filed on the MCA 21 electronic registry within prescribed time limits.
- ◆ Only normal filing fee is payable during currency of CFSS, 2020. It does not require payment of additional fee and grants immunity from launching of prosecution or penalty proceedings on account of delay relating to filing.
- ◆ The scheme also provides opportunity to inactive companies to get themselves declared as dormant companies u/s 455 of the Act. Such companies can opt for it by filing a simple application with payment of normal fee.



# BROAD DETAILS OF CFSS SCHEME, 2020

- ◆ Scheme has come into course on 01.04.2020 and shall remain till 30.09.2020. Designated authority shall be ROC having jurisdiction over the registered office of the company.
- ◆ It is applicable to any defaulting company permitting it to file belated documents which were due to filing on any given date.
- ◆ Defaulting company is required to pay only normal fee on the date of filing of each belated documents. Immunity from penalty and prosecution is available to the extent of filing of belated documents. Any other consequential proceedings including any proceeding involving interest of shareholder or other person qua Company/ KMP/ Director is not covered under the scheme.



- ♦ If defaulting company/ officer in default, with respect to any statutory filing, has filed an appeal against any notice/ complaint/ order passed by Court or AA before a competent Court/ authority for violation of provision of Act in respect to which the application is made under the scheme, the applicant shall before filing the application for issue of immunity certificate, withdraw the appeal and furnish such proof.

## OTHER BENEFICIAL MEASURES

- ♦ In case where due to delay in filing of documents, returns, etc., penalty was imposed by AA and appeal was not preferred by the concerned company before RD u/s 454(6) as on the date of commencement of scheme, then following would apply: -
  - a) Where last date of filing appeal falls between 01.03.2020 to 31.05.2020 (both days includes), a period of 120 additional days shall be allowed from due date for filing of appeal before the concerned RD's.
  - b) During such additional period as stated above, prosecution u/s 454(8) will not be initiated against such company/ officer in respect to such delay.



# PROCEDURE FOR OBTAINING IMMUNITY

- ◆ Application for issue of immunity certificate in respect of documents filed under the scheme is to be made electronically in the form CFSS, 2020, after closure of the scheme and after the documents are taken on file/ record/ approved by ROC.
- ◆ Last date for making such application is 6 months from date of closure of scheme.
- ◆ No fee is payable on this form.
- ◆ However, immunity is not available in the matter of any appeal pending before the court of law and in case of management disputes pending before any courts of law or tribunal.



- ◆ Immunity is also not available in case any court has ordered conviction in any matter or penalty order has been passed by AA and no appeal has been preferred against such orders of the court or of the AA, before this scheme came into force.
- ◆ Immunity certificate based on declaration made in Form CFSS, 2020, shall be issued by the ROC.
- ◆ After granting immunity the DA shall withdraw the prosecution pending if any, before the the court and proceedings for adjudication of penalties u/s 454 except as stated in second proviso of clause vii of para 6.



# NON APPLICABILITY OF THE SCHEME

- ◆ **This scheme shall not apply: -**
  - to companies to which final notice for strike-off of name has been initiated by the DA
  - to company who has already filed application for strike-off of name
  - to companies which have amalgamated under a scheme of arrangement or compromise under the Act
  - where application has been already filed for dormant status of the company
  - to vanishing companies
  - where increase in authorised capital is involved (SH-7) and charge related documents.



# OPTIONS FOR INACTIVE COMPANIES

- ◆ Defaulting companies while filing due documents under the scheme can simultaneously either: -
  - apply to be declared as dormant company by filing e-form MSC-1 with normal fee; or
  - apply for striking-off the name of company by filing e-form STK-2 and paying due fee

## WORD OF CAUTION

- ◆ The DA after closure of scheme shall take necessary action under the Act against the companies who have not availed the scheme and are in default in filing these documents in timely manner.



The background image shows a professional setting, likely a law firm. In the center, two hands are shaking in a firm grip, symbolizing an agreement or settlement. The hands are positioned over a desk cluttered with various items: a stack of books, a smartphone, a pen, and some papers. To the left, a pair of golden scales of justice is visible, and to the right, a small model of a house sits on the desk. The overall lighting is warm and slightly dim, creating a serious and professional atmosphere. A white rectangular text box with a thin border is superimposed over the handshake, containing the text 'LLP Settlement' and 'OLD Scheme' in a bold, white, serif font.

# LLP Settlement

## OLD Scheme



# LLP SETTLEMENT SCHEME, 2020 - OLD

- ♦ LLP settlement scheme 2020 was originally announced vide GC No. 6/2020 dated 04.03.2020.
- ♦ It was observed that records in electronic registry were incomplete and therefore not available for inspection as well as for initiation of action against defaulting LLPs.
- ♦ Aim was to allow defaulting LLPs to file various forms i.e. Form 3, Form 4, Form, 8 & Form 11 with minimum additional fee.
- ♦ Accordingly to allow LLPs to make good this default, a one time condonation of delay in form of LLP Settlement Scheme, 2020 was introduced.



# BROAD DETAILS OF THE SCHEME

- ◆ The scheme came into force on 16.03.2020 and was to remain in force till 13.06.2020.
- ◆ It was applicable for filing documents which were due for filing till 31.10.2019.
- ◆ Defaulting LLPs were allowed to avail the scheme by payment of additional fee of Rs. 10/- per day (in place of Rs. 100/- per day) in addition to normal fee. The overall cap on additional fee was Rs. 5000/- per document.
- ◆ Immunity from prosecution was given to those LLPs who have filed pending documents by 13.06.2020.



# NON APPLICABILITY OF THE SCHEME

A) It was not applicable for filing documents other than the following documents:

-

- Form 3 - LLP Agreement and changes if any
- Form 4 - Notice of appointment of partner/ designated partner, consent, change in name, etc.
- Form 8 - Statement of Account and Solvency
- Form 11 - Annual Return of LLP

B) Not applicable to such LLP's who have applied for strike-off of name



# MODIFIED LLP SETTLEMENT SCHEME, 2020

- ◆ Earlier scheme which was introduced on 04.03.2020 has now been modified vide GC No. 13/2020 dated 30.03.2020 due to COVID-19 problems.
- ◆ After introduction of modified scheme, old scheme has been made operative till 31.03.2020 only in place of 13.06.2020





- ◆ Important changes made in the modified scheme are enumerated below: -

PARTICULARS	OLD SCHEME	NEW SCHEME
<i>EFFECTIVE PERIOD</i>	16.03.2020 to 13.06.2020 (Para 8)	01.04.2020 to 30.09.2020 (Para 8A)
<i>DEFINITION</i>	Had 3 definitions - Act, Meaning of LLP & Defaulting LLP	One more definition added Belated documents - all documents or forms required to be filed under the Act and Rules
<i>APPLICABILITY</i>	Documents due to be filed till 31.10.2019	Documents due till 31.08.2020



PARTICULARS	OLD SCHEME	NEW SCHEME
<i>PAYMENT OF FEE</i>	Normal fee and additional fee of Rs. 10/- per day subject to cap of Rs. 5000/- per document	Normal fee only. No additional fee payable.
<i>IMMUNITY</i>	For documents filed upto 13.06.2020	For documents filed till 30.09.2020
<i>NON APPLICABILITY</i>	Filing of forms except Form Nos. 3, 4, 8 & 11, and LLPs who have applied for strike-off	Only for LLPs who have applied for strike-off of their name as per Rule 37(1)s



The background is a dark chalkboard filled with various white hand-drawn icons and sketches. These include: line graphs with upward arrows, a pie chart with 30% and 70% segments, a clock, a 'BUSINESS PLAN' document, a triangle with vertices labeled 'time', 'money', and 'quality', a cloud with 'USER' and 'CLOUD' labels, a handshake, a lightbulb, a bar chart, a person pushing a large letter 'C' into a square, a Venn diagram with circles labeled 'cost', 'quality', and 'price', a globe, and several other abstract shapes and symbols.

# C SR

**CORPORATE SOCIAL RESPONSIBILITY**



# FAQS



- MCA has come out with GC No. 15/2020 dated 10.04.2020 providing clarifications on allowability of CSR expenditures during COVID-19.
- The allowability of various contributions and expenditures for CSR are summarised below: -

## **A. Contribution to PM Cares Fund?**

☐ Yes, qualifies as CSR expenditure under item number (viii) of schedule VII of the Act

## **B. Contribution to CM Relief Fund or State Relief Fund for COVID-19?**

☐ No, these are not included in schedule VII, hence not allowed as CSR expense

## **C. Contribution made to State Disaster Management Authority?**

☐ Yes, covered under item number (xii) of schedule VII and qualifies as CSR expenses



### **D. Spending of CSR funds for COVID-19 related activities?**

☞ Spending of such funds qualifies as CSR expenditure. (GC No. 10/2020 dated 23.03.2020) Further clarified that funds maybe spent for various activities under item number (i) and (xii) of Schedule VII. These cover promotion of healthcare, sanitation and disaster management. It has been also clarified earlier that items in Schedule VII are broad based and maybe liberally interpreted (GC No. 21/2014 dated 18.06.2014).

### **E. Payment of salary/ wages to employees including contract labour during lockdown period; and payment of wages to casual/ daily worker during lockdown period?**

☞ No, as it is a contractual or statutory obligation. Payment during lockdown period is a moral obligation.

### **F. Payment of Ex-gratia to temporary/ casual/ daily wage workers?**

☞ Any ex-gratia payment over and above regular payment to such workers during COVID-19 shall be allowable as CSR expenditure by way of one time exception. BOD shall make an explicit declaration to the effect which is duly certified by the statutory auditor.



# CLARIFICATION ON PASSING OF ORDINARY/ SPECIAL RESOLUTIONS

- ◆ Provided by MCA as per GC No. 14/2020 dated 08.04.2020 to pass ordinary and special resolutions during COVID-19.
- ◆ Companies Act does not contain any provision for allowing meeting of members through VC or OAVM. However, section 108 provides for e-voting to relevant companies and section 110 allows companies to pass resolutions (except items of ordinary business, etc.) through postal ballots.
- ◆ In view of the present COVID-19 situation which requires to maintain social distancing, companies are requested to take all urgent decisions requiring approval of members, other than items of ordinary business, via e-voting/ postal ballot without holding a general meeting.



- ◆ MCA has provided guidelines in case holding of EGM is unavoidable and has prescribed procedures to be followed during holding of meetings on or before 30.06.2020.
- ◆ Such procedures are separately stated for companies which are required or have opted for e-voting and for companies which are not required to provide facility of e-voting. However, most of the suggested procedures are common for both such companies. Major suggestive procedures are summarised below: -
  - ~ EGM maybe held through VC/ OAVM and recorded transcripts to be kept in safe custody by the company. In case of public company it also needs to be made available on website, if any.
  - ~ Conveniences of time zone to be kept in mind.



- ~ It shall have two-way tele-conferencing or webex for at least 1000 members on first come first served basis. Large share-holders, KMP, Chairman of committee, etc. will not have this restriction of first come first served.
- ~ Facility for joining meeting shall start 15 minutes before time of meeting and continue after 15 minutes of closure.
- ~ Facility for remote e-voting shall be provided.
- ~ For purpose of quorum, attendance through VC/ OAVM shall be counted
- ~ *Appointment of Chairman: -*
  - If less than 50 members, in accordance with section 104
  - In other case by poll through e-voting



- ~ Proxy is generally not available for such meeting.
- ~ At least one independent Director and the Auditor shall attend such meeting.
- ~ Resolution passed in meeting shall be filed with ROC within 60 days of the meeting.





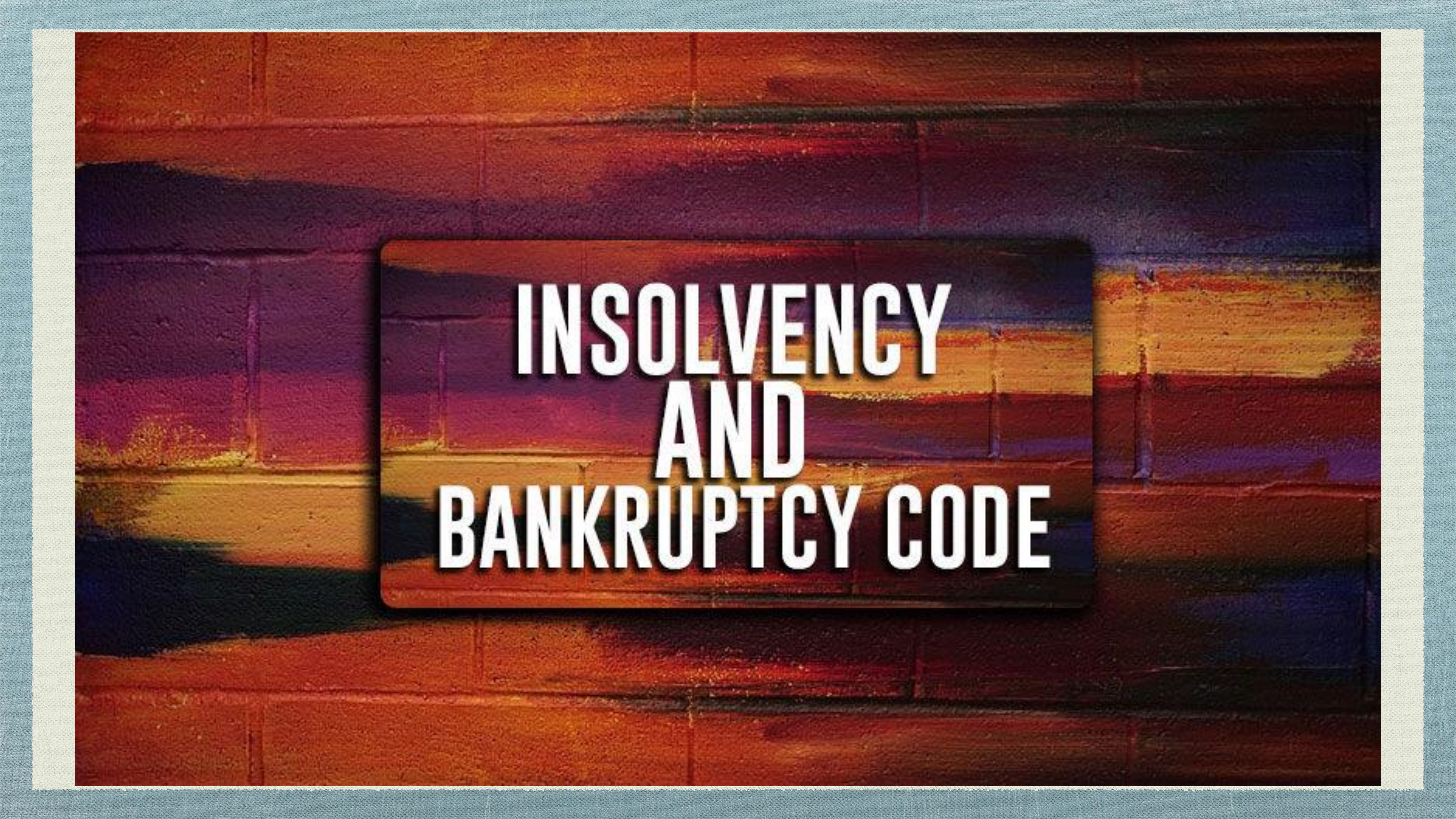
# OTHER IMPORTANT CHANGES DURING COVID-19

PARTICULARS	PRESENT DUE DATE	EXTENDED DUE DATE	REMARKS
<i>BOD Meeting</i>	Every 120 days	Relaxation of 60 days for next 2 quarters till 30.09.2020	-
<i>CARO-2020</i>	w.e.f. 01.04.2019	w.e.f. 01.04.2020	Applicability extended by 1 year.
<i>Meeting of Independent Director</i>	-	-	Non attendance- Not a default



PARTICULARS	PRESENT DUE DATE	EXTENDED DUE DATE	REMARKS
<i>Stay of Director for less than 182 days in India</i>	-	-	Not a default
<i>Newly Incorporated Company - Commencement of Business</i>	6 Months from the date of Incorporation	Relaxation of 6 more months	-
<i>MCA 21 Registry - Filing of forms, returns, statements, etc.</i>	Between April - September 2020	-	No additional fee payable, also applicable to non-compliant LLP and Companies





# **INSOLVENCY AND BANKRUPTCY CODE**



# RECENT CHANGES IN IBC - 2016

## BACKGROUND

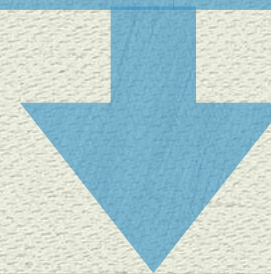
- ◆ The IBC 2016 commenced on 01.12.2016 and aims to consolidate laws relating to insolvency resolutions in a time bound manner.
- ◆ It is presently applicable on corporate entity only. Provision of code relating to individual and firms are yet to be notified.
- ◆ Earlier different forums like High Courts, CLB, BIFR, DRT dealt with similar issues resulting into overlapping and delays.
- ◆ Now litigation for corporate and LLPs insolvency will be dealt by NCLT and that of individual and partnership firms by DRT.
- ◆ Code not applicable to financial service providers like banks, insurance companies, financial institutions, mutual funds, etc.



# WHO CAN INVOKE?

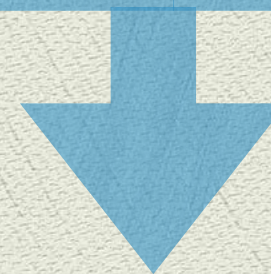
## FINANCIAL CREDITOR (Sec.7)

- ~ Any person to whom a financial debt is owed &
- ~ Includes a person to whom such debt is legally assigned or transferred



## OPERATIONAL CREDITOR (Sec.9)

- ~ A person to whom an operational debt is owed &
- ~ Includes a person to whom such debt is legally assigned or transferred

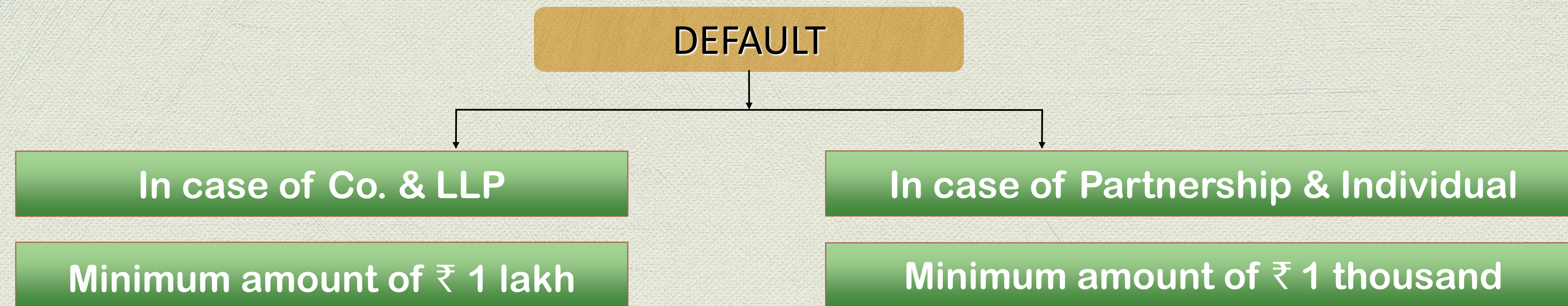


## CORPORATE DEBTOR (Sec.10)

- A corporate person who owes a debt to any person

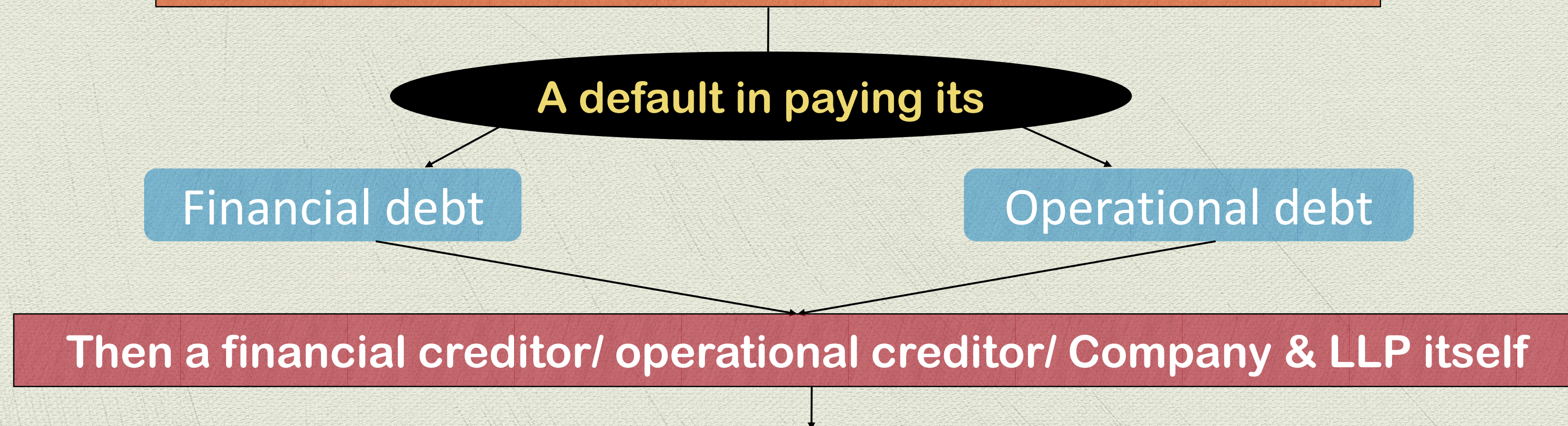


# INVOKING PROVISIONS



Minimum amount of ₹ 1 lakh & ₹ 1 thousand can be increased upto ₹ 1 Cr & ₹ 1 lakh respectively by CG

## WHERE ANY COMPANY OR LLP COMMITS-



May file an application, for initiating corporate insolvency resolution process with the Adjudicating Authority.



# RECENT CHANGES UNDER IBC DURING COVID-19

- ◆ As per press release of 24.03.2020, FM announced many reliefs under various Acts including in IBC- 2016.
- ◆ The threshold limit of default u/s 4 has been increased to Rs. 1 crore from Rs. 1 lac. The aim is not to trigger insolvency proceedings against MSMEs [notification no. S.O.1250(E)] ,dated 24.03.2020 by MCA.
- ◆ The FM has also announced that in case the present COVID-19 situation continues beyond 30.04.2020, then the government may consider suspending section 7, 9 and 10 of the IBC 2016 for a period of 6 months. The aim is to stop companies from being forced into insolvency proceedings in such force majeure causes.



- ◆ IBBI vide its press release dated 29.03.2020 has amended the CIRP Regulations to provide that the period of lockdown imposed by Central Government shall not be counted for the purpose of the timeline for any activity that could not be completed during the lockdown. This is however subject to the overall time limit provided in the Code.
- ◆ Part III of the IBC-2016 relating to applicability of the Code to individual and partnership firms was earlier not applicable to Jammu & Kashmir.
- ◆ Ministry of Home Affairs vide its order dated 18.03.2020 and published in the Gazette of India has issued an order called “Jammu & Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020”. This order has made many of the Central Acts applicable to Jammu & Kashmir including Part III of the IBC- 2016.



# Thank You..!

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## MATHUR & CO.

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