

# Insolvency



**By CS Vaibhav Chitlangia**

## Ch14 Insolvency

### Insolvent

'In' - not  
'Solventum'  
means paying

### Bankrupt

Banca means  
Bench  
Rotta means  
Broken

### Insolvency

↓  
situation in which person is  
not able to pay back debts.

↓  
person's assets become  
insufficient in paying  
back the liabilities

↓  
can be used for individuals,  
firms, cos & LLPs

### Bankruptcy

↓  
legal status given by  
court of law.

↓  
when insolvency of individual  
or firm remains unsolved, the  
court formally declares them  
bankrupt

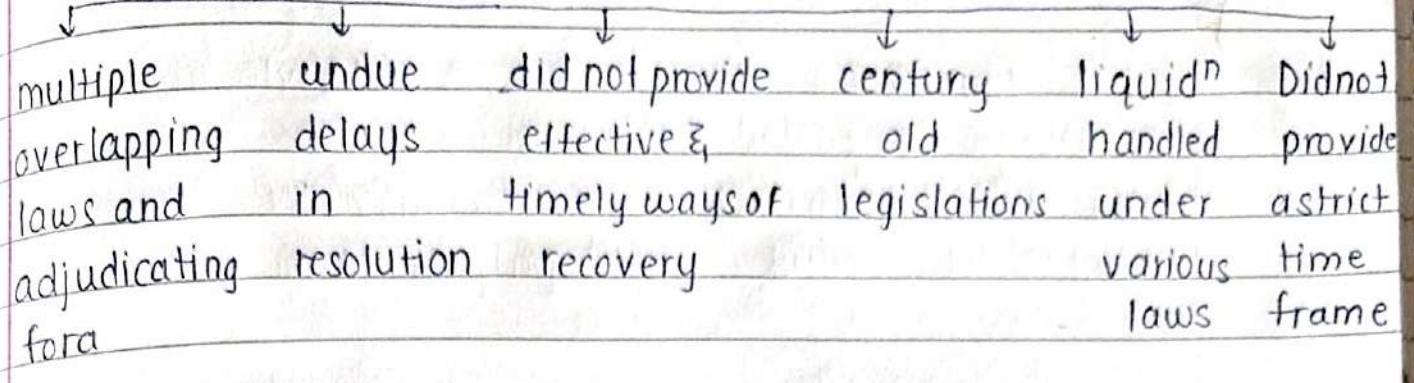
↓  
used only for individuals & firms

### • Important Committees:

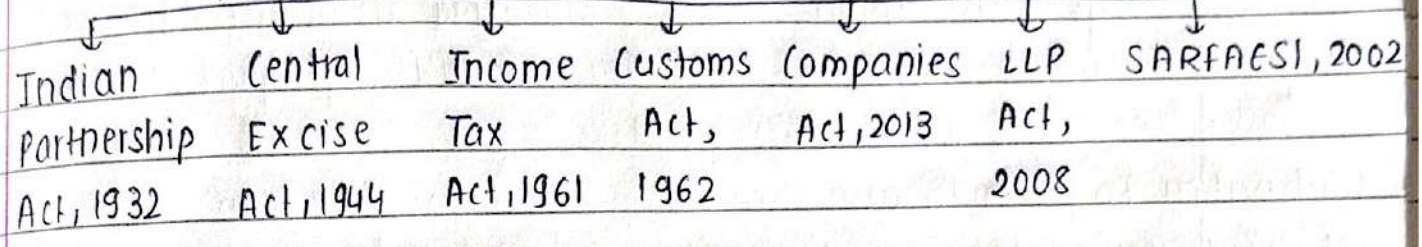
1. Twari Committee : Enactment of SICA, 1985
2. Narsimham Committee I : RDDBFI Act, 1993
3. Narsimham Committee II : SARFAESI, 2002
4. Justice Tradi Committee : Recommended setting up NCLT
5. J.J. Irani Committee : Companies Act, 2013
6. Bankruptcy law Reform Committee : TBC, 2016

T.K. Vishwanathan

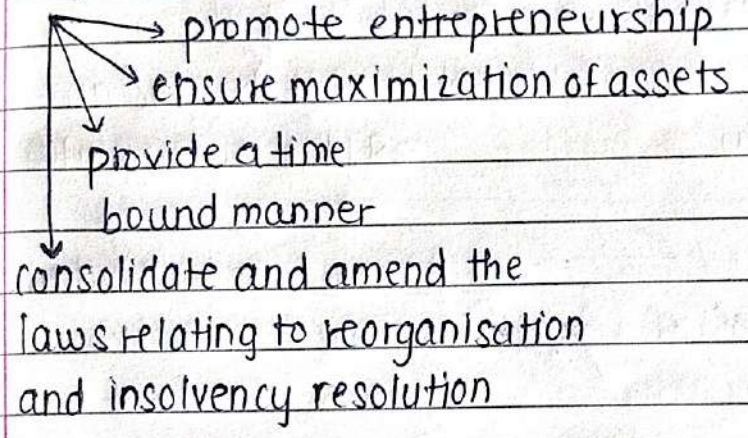
• Why new law?



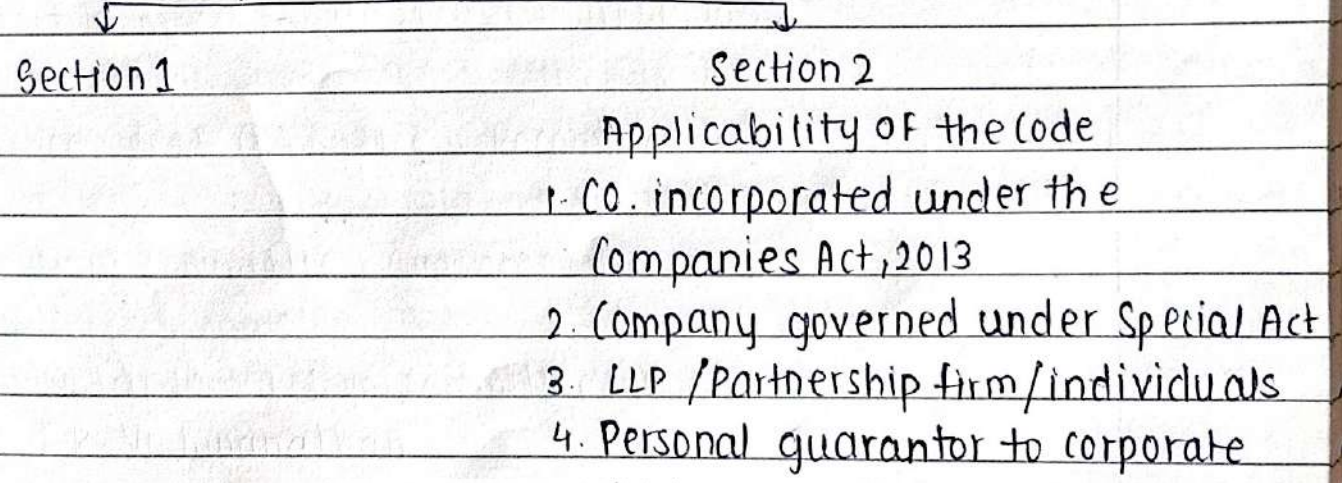
• Laws amended by the IBC, 2016



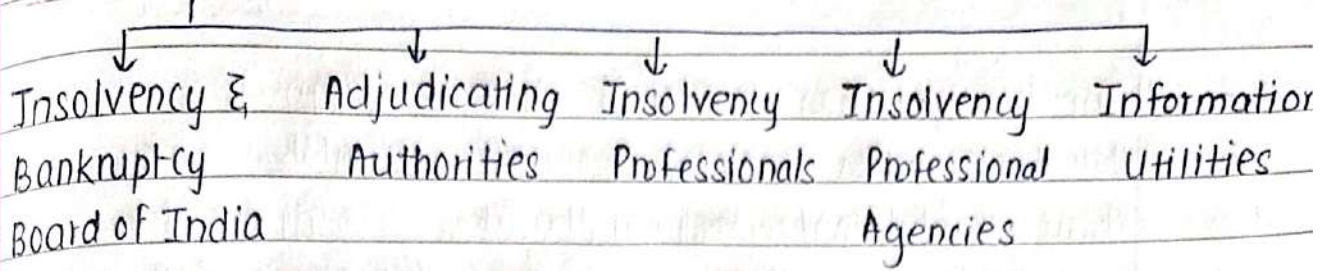
• Key objectives of IBC, 2016



• Part I - Preliminary

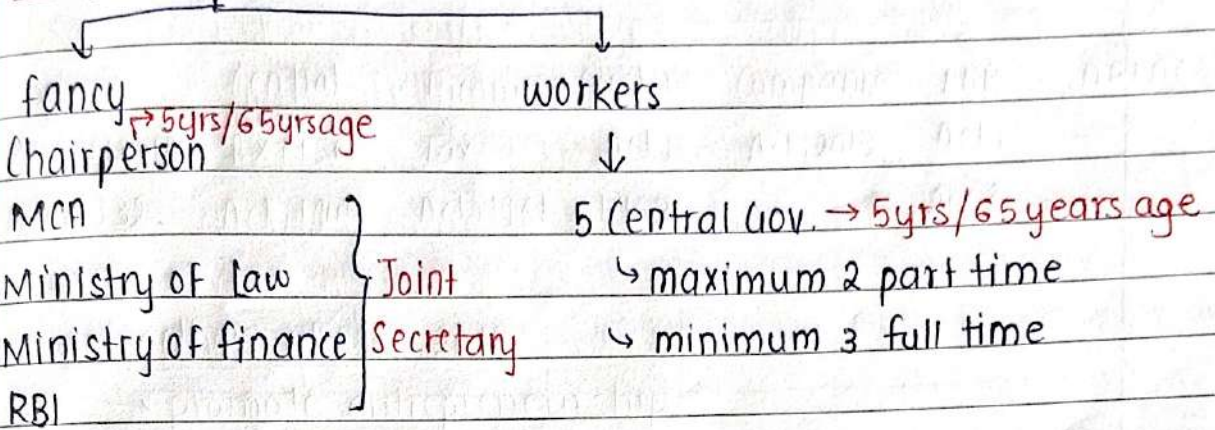


Part IV : Pillars of IBC

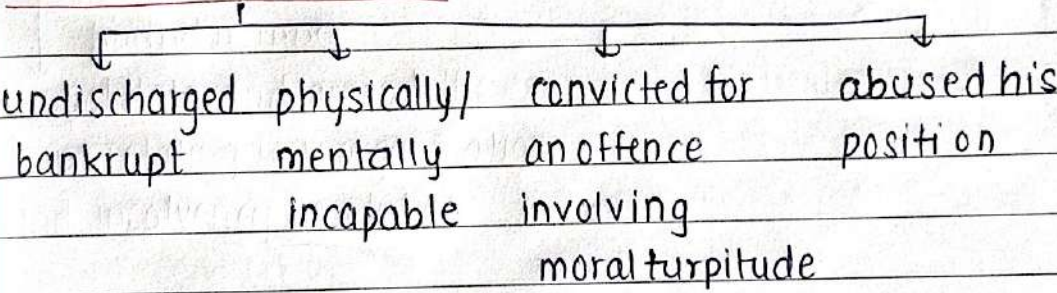


IBBI

composition Section 189



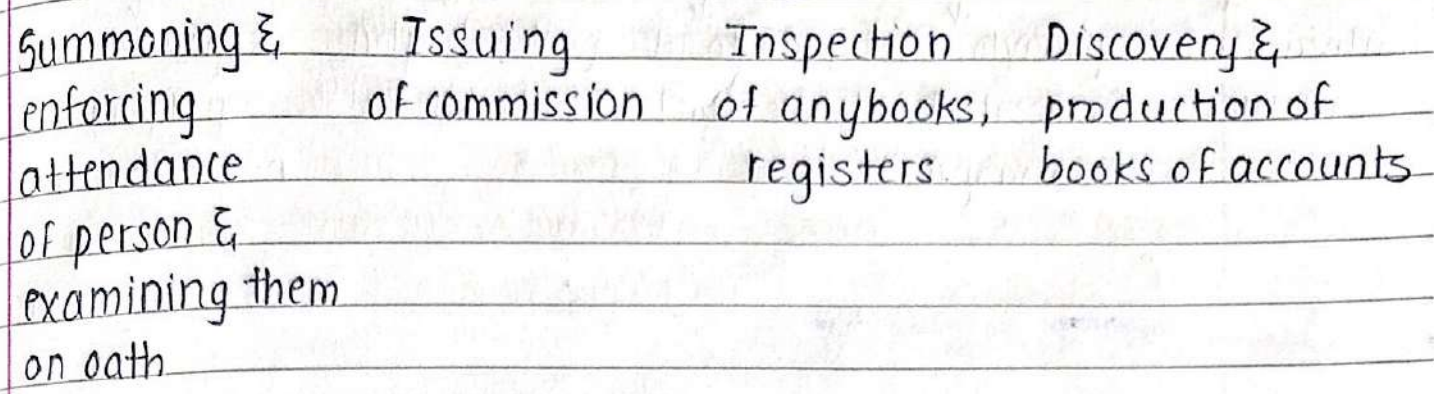
Removal of Members Section 190



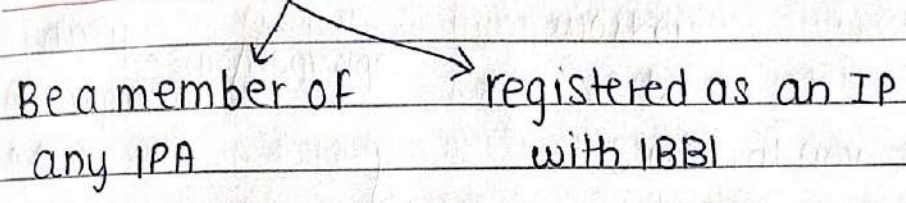
Powers and functions of IBBI Section 196

1. Regulation of Information Utilities
2. Regulation of IPA & IPs.
3. Regulating all matters related to insolvency and bankruptcy process
4. Setting out eligibility requirements
5. Making bye laws for IPAs.
6. Carry out investigation and inspection, etc

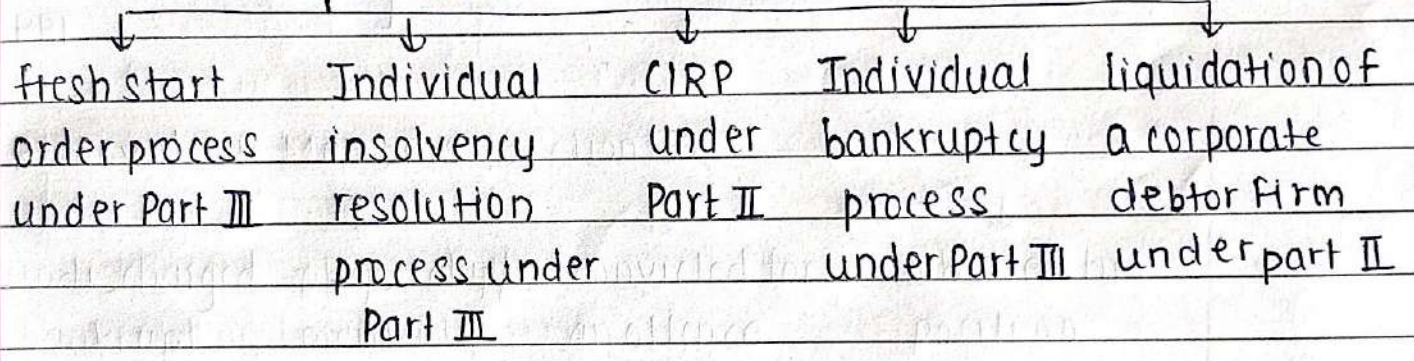
• powers of IBBI Section 196(3)



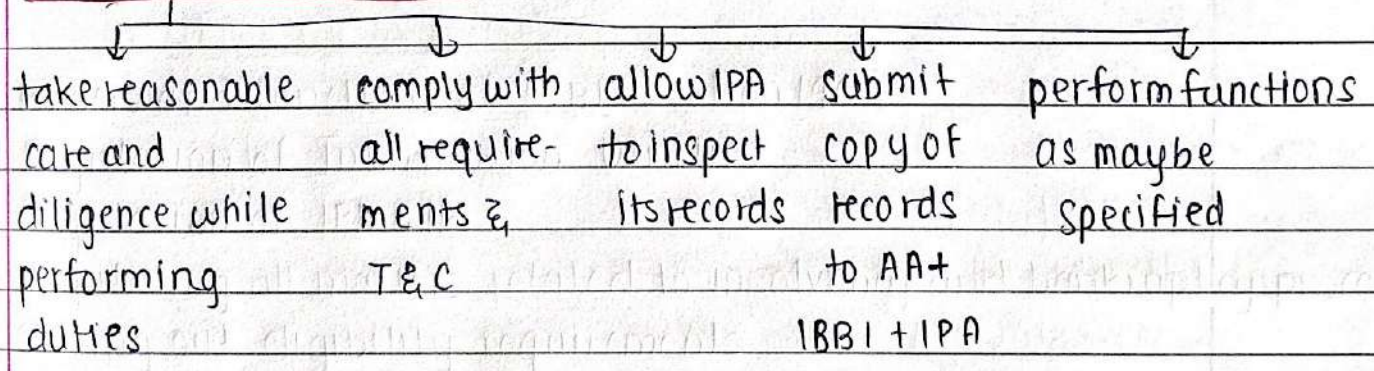
• Insolvency Professionals (IP)



• functions and Obligations of IP

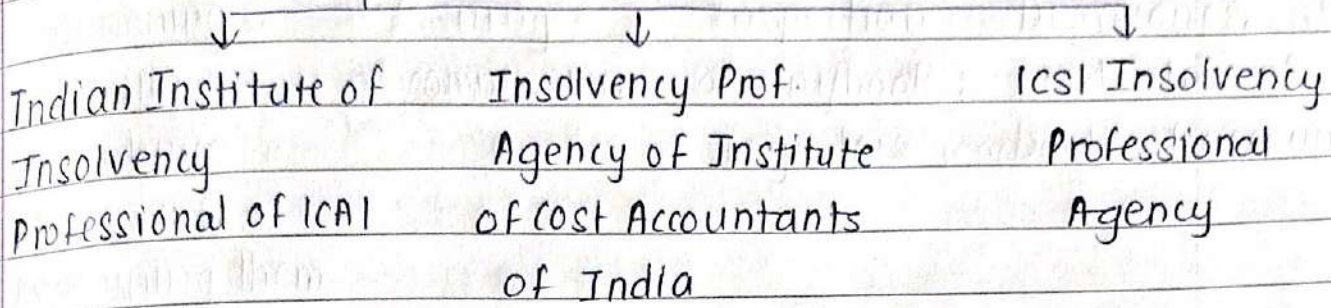


• Code of Conduct of IPs

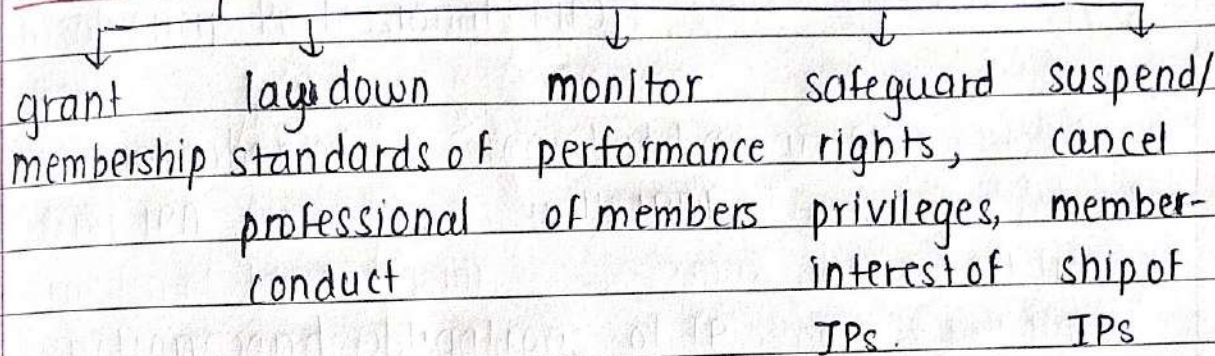


Insolvency Professional Agency

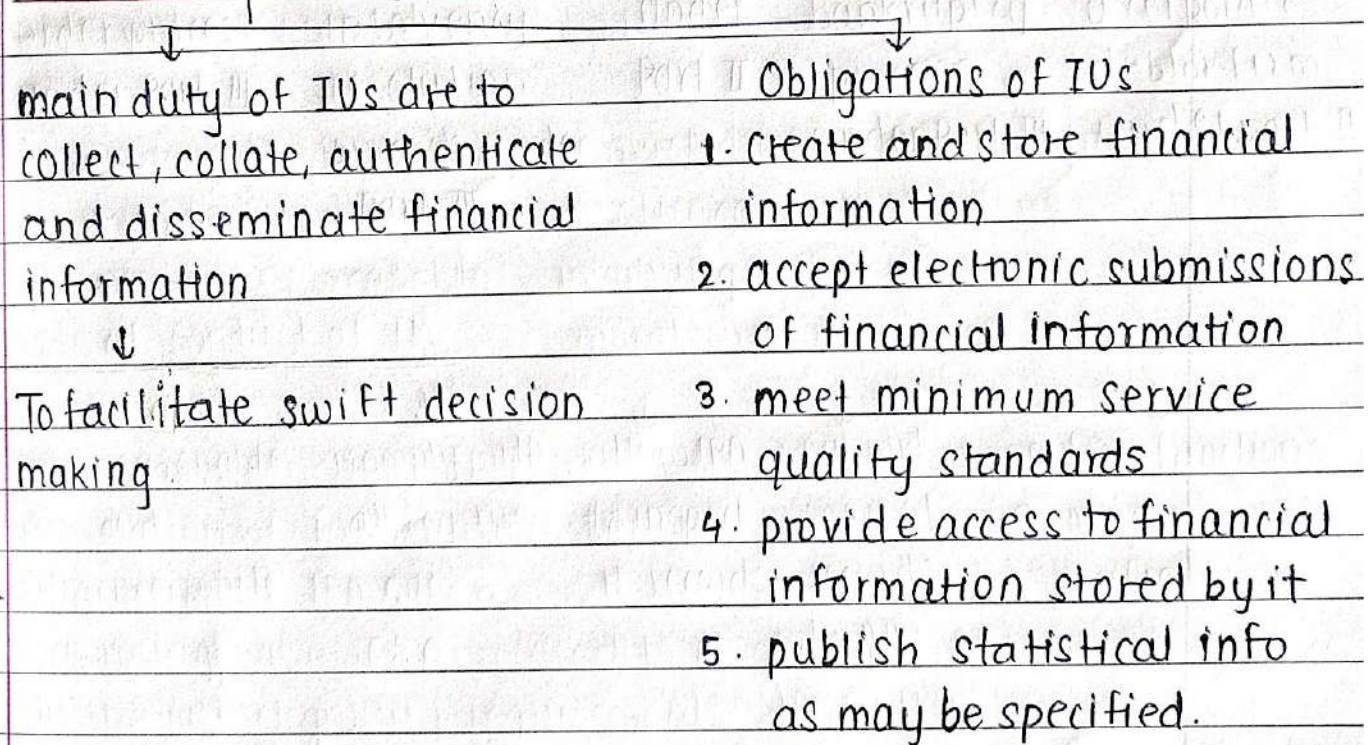
currently 3 IPAs



functions of IPAs



Information Utility (IU)



Adjudicating Authority

NCLT

DRT

shall have jurisdiction to entertain or dispose of:

shall have jurisdiction to entertain or dispose of:

- a) any appl<sup>n</sup> by or against the corporate debtor
- b) claim made by or against the (C)
- c) Question of priorities / question of law or facts

- a) any suit / proceeding by or against individual debtor
- b) claim made by or against individual debtor.
- c) Question of priority / any question about facts or law.

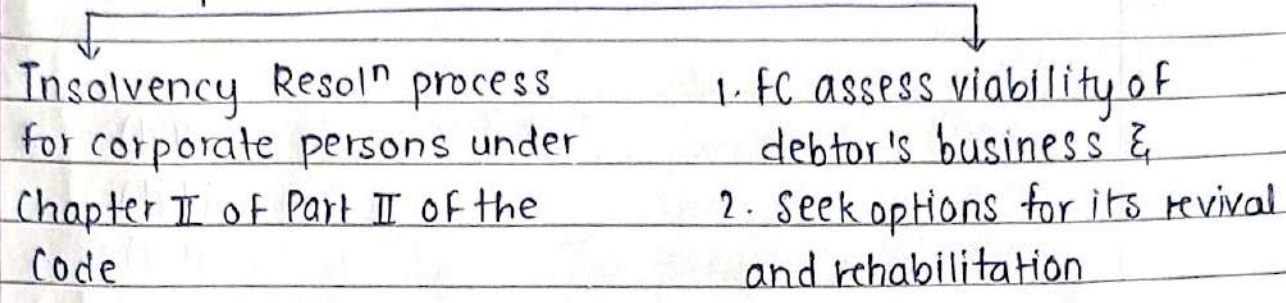
Insolvency and Bankruptcy fund

following shall be credited to the fund:

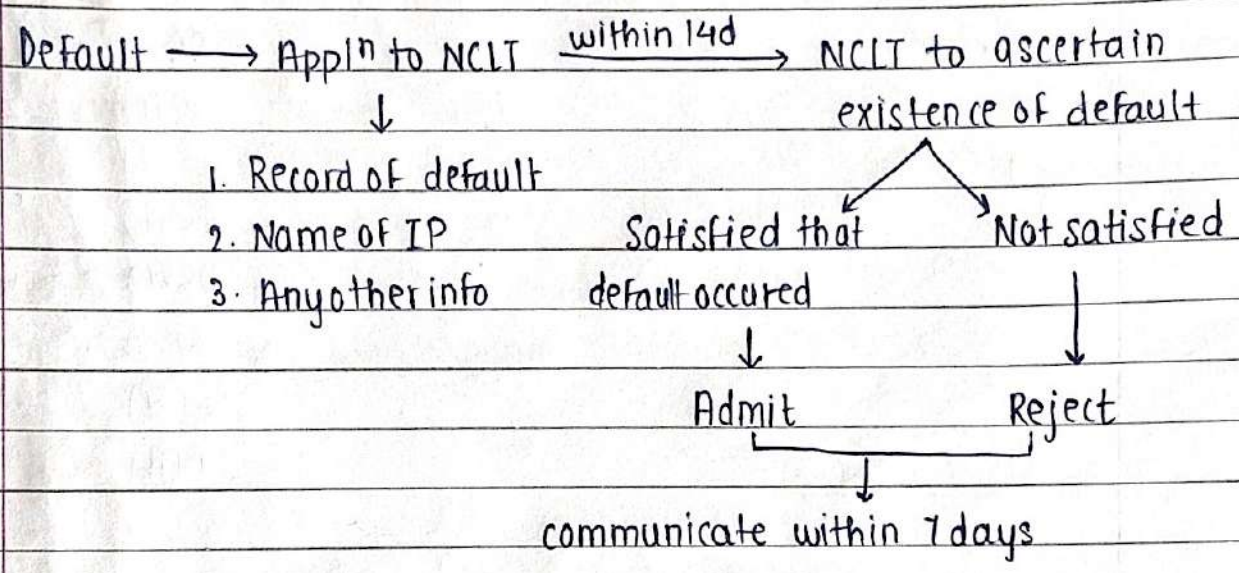
- a) Grants made by the (C)
- b) Amount deposited by persons as contribution to the fund
- c) Amount recd in Fund from any other source
- d) Interest or other income recd.

## ch15: Petition for CIRP

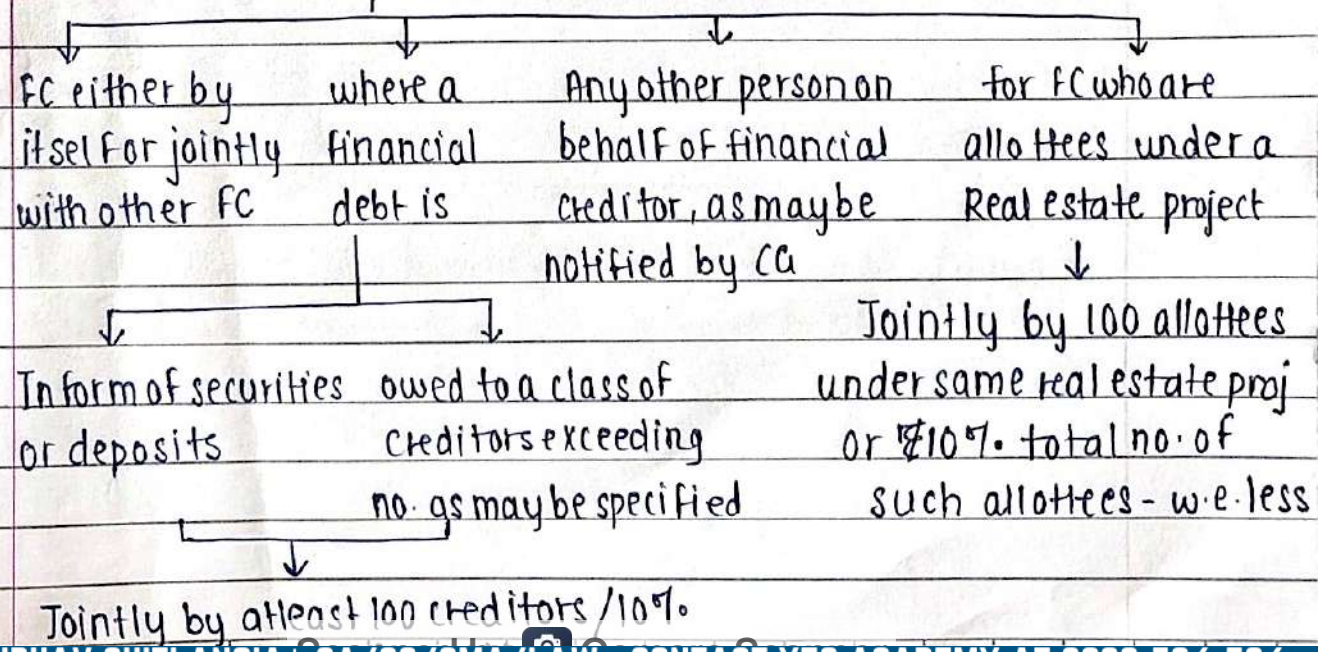
### • What is CIRP?



### • Section 7: CIRP by Financial Creditors (Form 1)

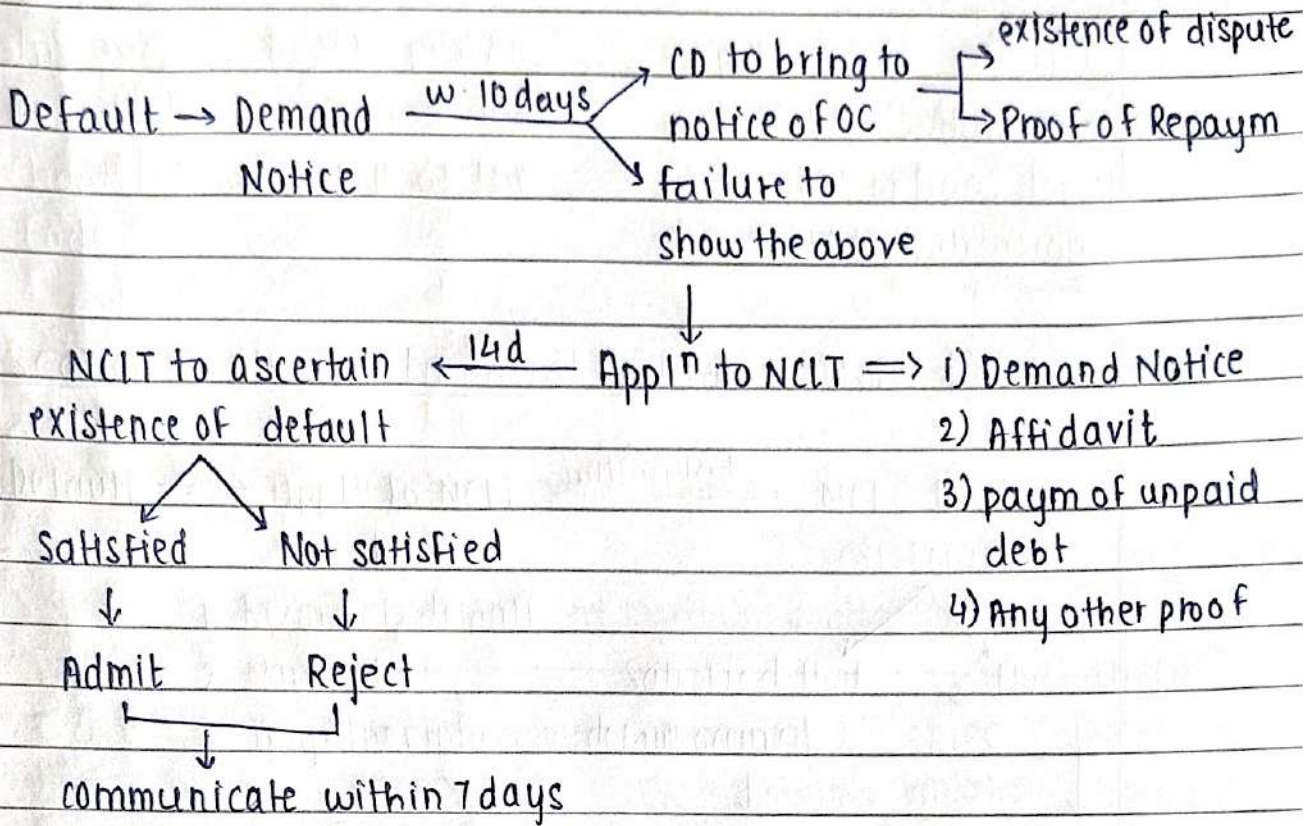


### • who can file appl'n v/s 7?



• Section 8 and 9 - CIRP by Operational Creditor (Form 3, form 4, form 5, GSTR-1)

↓ Demand notice      ↓ Procedure to be followed



• financial creditors

operational creditors

- ↓
1. Appl<sup>n</sup> incomplete
  2. IP is ineligible
  3. Default not occurred

- ↓
1. Appl<sup>n</sup> incomplete
  2. Paym of unpaid oper<sup>n</sup> debt
  3. Not delivered invoice or notice for payment
  4. Disciplinary proceeding

↓

App<sup>n</sup> returned to applicant - he has duration of 7 days to rectify mistakes and resubmit appl<sup>n</sup> to NCLT



• Section 12 - Timelimit

↓

180 days from date of admission of application (complete CIRP)

↓

extension of time - only once for maximum 90 days  
(with 66% approval of coc)

↓

CIRP shall mandatorily be completed within 330 days from insolvency commencement date

• Section 14 - Moratorium Period

↓

Prohibited acts

Purpose

Following

1. Institution of suits or continuation of pending suits

1. Ensure multiple proceedings not taking place.

should not be affected by moratorium.

↓

2. Transferring, encumbering, alienating or disposing of by CD any of its assets or legal right.

2. Keep CD's assets together  
3. Company as a going concern

1. Supply of essential goods or service

2. Surety in contract of guarantee

3. Any action to foreclose, recover, enforce any security interest created by CD

4. Prohibition on disposal of CD's assets

3. Transn. as may be notified by Central Govt

4. Recovery of prop. by owner or lessor

5. Material contract

• Section 15 - Public announcement

↳ within 3 days of appt of IRP

- ↳ Content :
- i) name and address of co.
  - ii) Details of ROC with whom the co.'s registered.
  - iii) Details of IRP
  - iv) last day of submission of claims
  - v) Tentative last date
  - vi) Penalty for false/ misleading claims

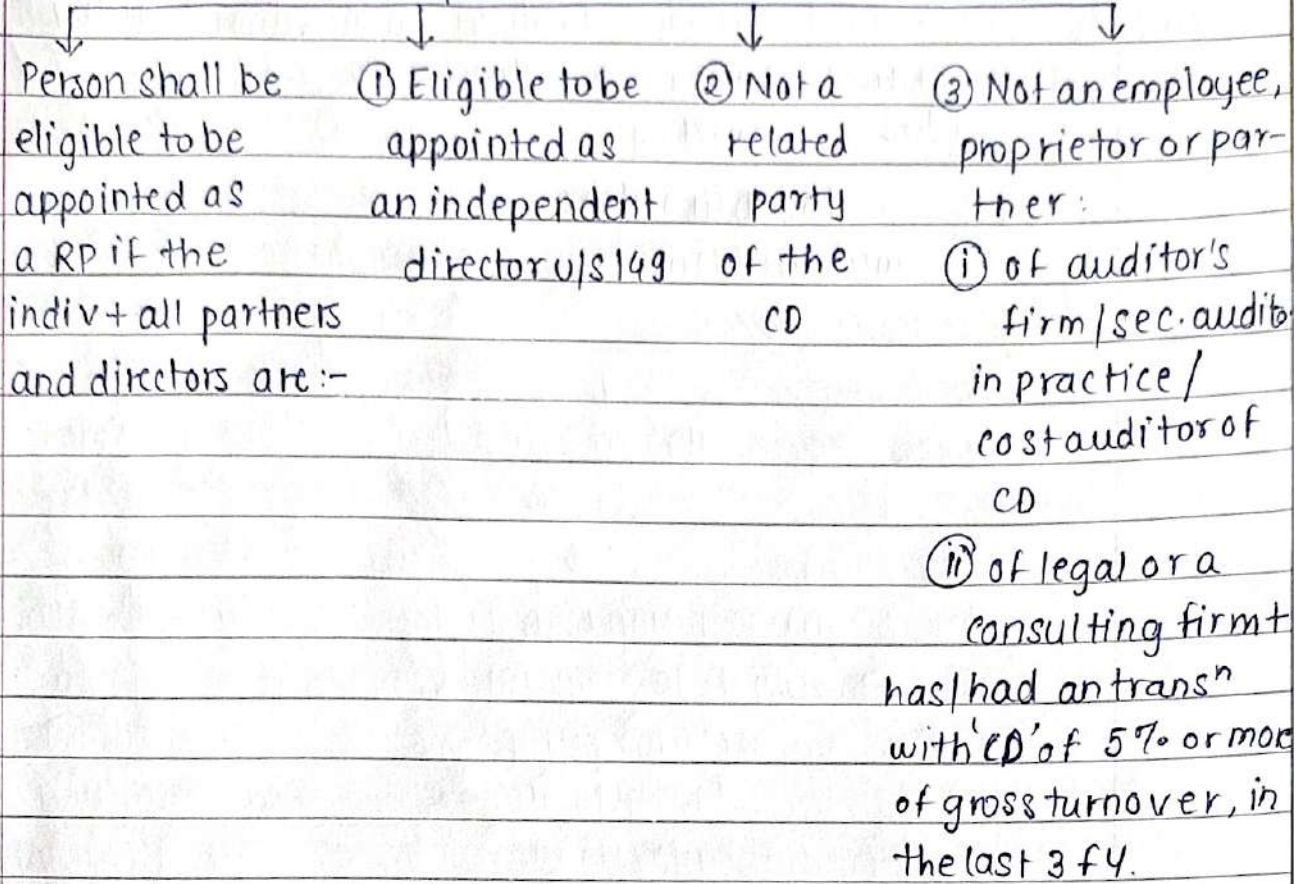
↳ To be done by IRP

↳ 1 English, 1 vernacular, CD website, JBBI website

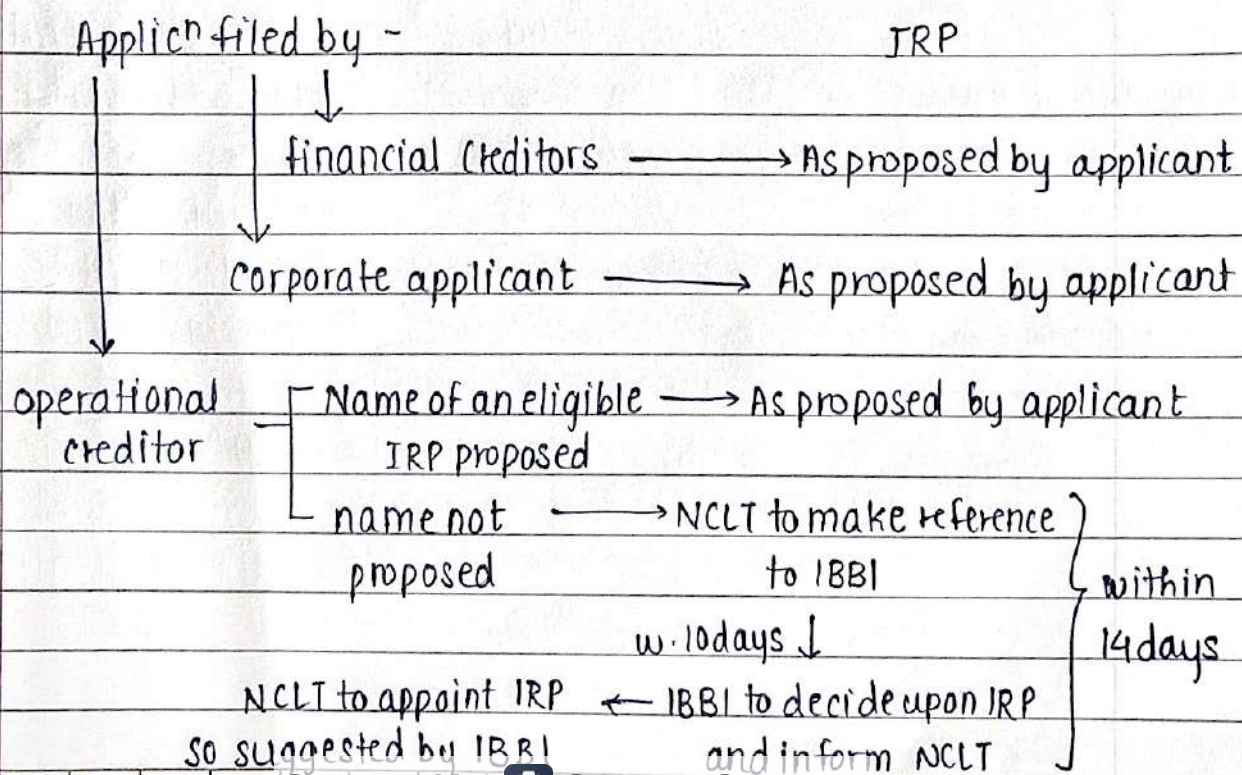
①

Ch 16: Roles, functions, Duties of IP/IRP/RP

• Eligibility for appointment as Resol<sup>n</sup> Professional (Reg 3)



• Appointment of IRP (Section 16)



• Section 17 - Management of affairs of CD by IRP

↓  
Effects of appointm. of IRP

↓  
Rights of IRP

- ↓
1. Mgt of affairs of CD shall vest in IRP
  2. powers of BOD or the partners exercised by the IRP
  3. officers and mgrs shall report to IRP
  4. provide access to all records and docs to IRP
  5. financial institutions shall act on instructions of IRP

- ↓
1. sign and execute in name of corporate debtor
  2. take such actions specified by Board
  3. have authority to access th. electronic records of CD
  4. access books of accounts, records and other relev. docs of CD
  5. comply with requirements under laws appl. to CD

• Section 18 - Duties of IRP

↓  
Duties to be performed

↓  
IRP cannot takeover the foll<sup>n</sup> assets:

- ↓
- a) collect all info relating to assets, finances and operations of CD.
  - b) Receive and collate all the claims
  - c) constitute a COC
  - d) monitor assets of CD and manage its operations
  - e) file information
  - f) take control and custody of any assets

- ↓
- a) assets owned by a third party in possession of a CD
  - b) assets of Indian or foreign subsidiary
  - c) assets notified by CA

• Section 19 - Personnel to extend co-operation to the IRP

↓  
obligation on → to extend all assistance & cooperation  
a) personnel reqd by IRP  
b) promoters of CD  
↓  
on failure to do so - IRP may apply to NCLT for an order.

• Section 20 - Management of Operations of CD as Going concern

↓ ↓ ↓ ↓ ↓  
protect & preserve manage appoint enter into Raise  
value of property oper<sup>ns</sup> of accountants, contracts interim  
of CD CD legal or finance  
other profess.

• Appointment of RP (Sec 22)

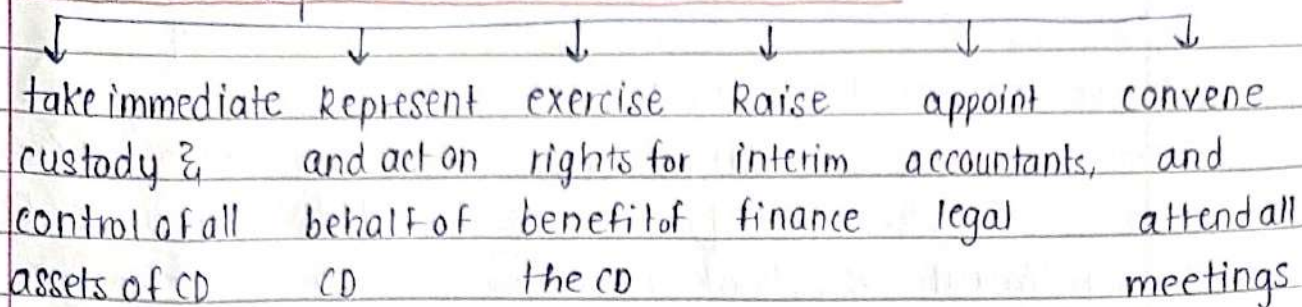
↓ ↓ ↓ ↓  
By COC with minimum in their first conducted within  
66% votes meeting 7 days of constit<sup>n</sup> of  
committee.

• Meaning of COC (Sec 24)

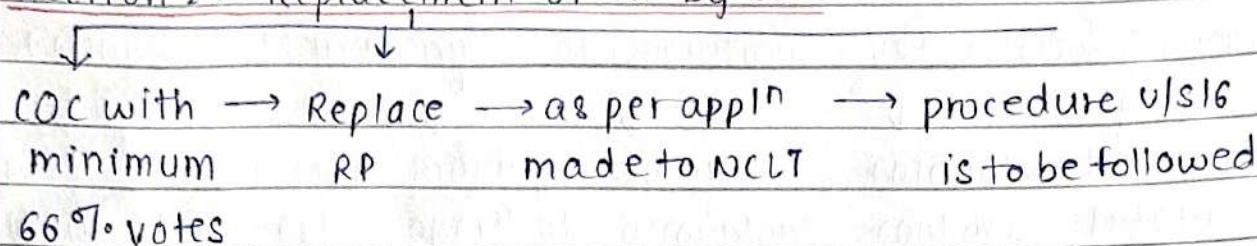
Notice of meeting shall be given by: to:

↓ ↓ ↓  
① members of COC including authorised representative  
② members of suspended BOD or partners of CD  
③ oper<sup>n</sup> creditors or their representative

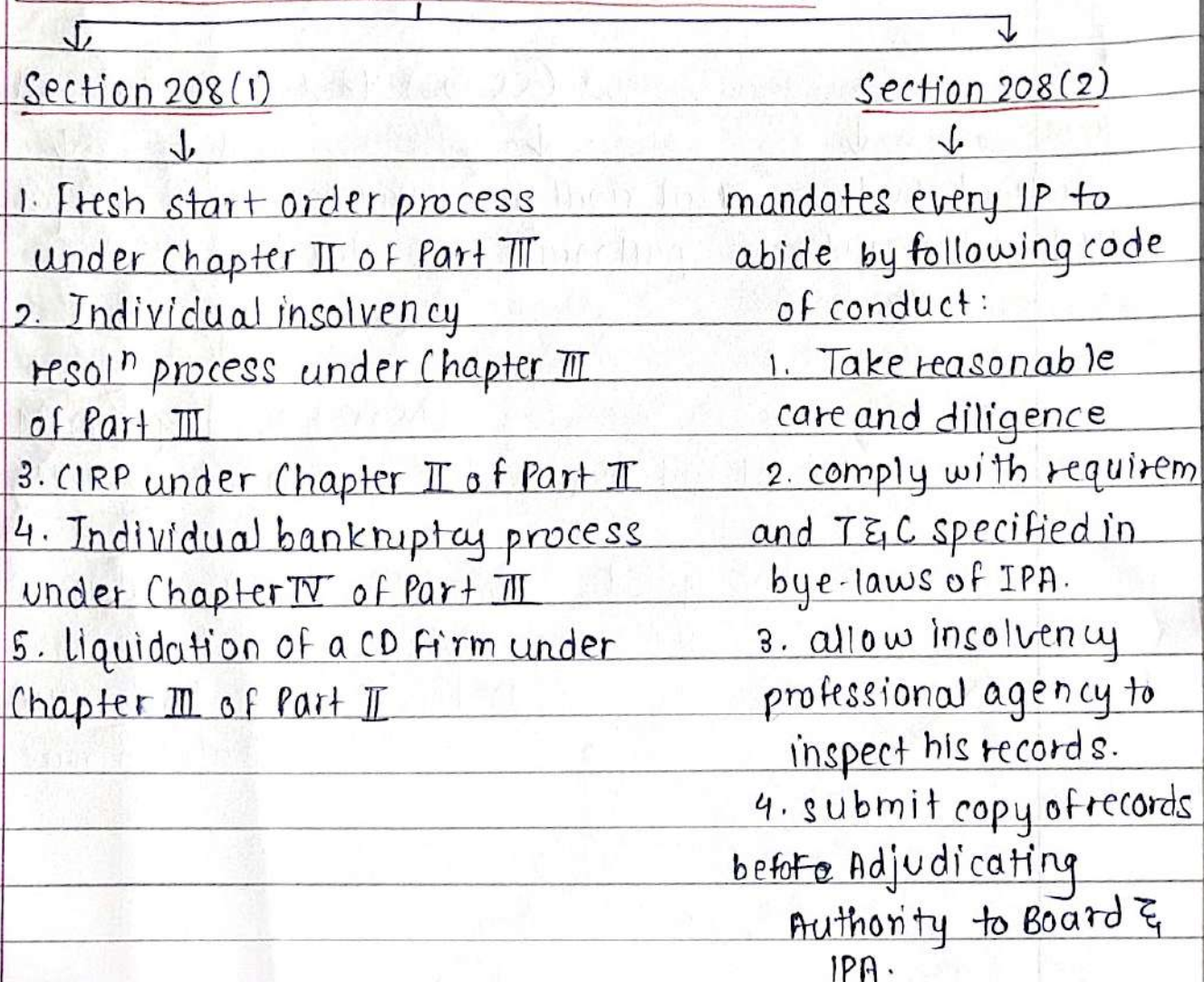
• Section 25 - Duties of Resolution Professional



• Section 27: Replacement of RP by COC

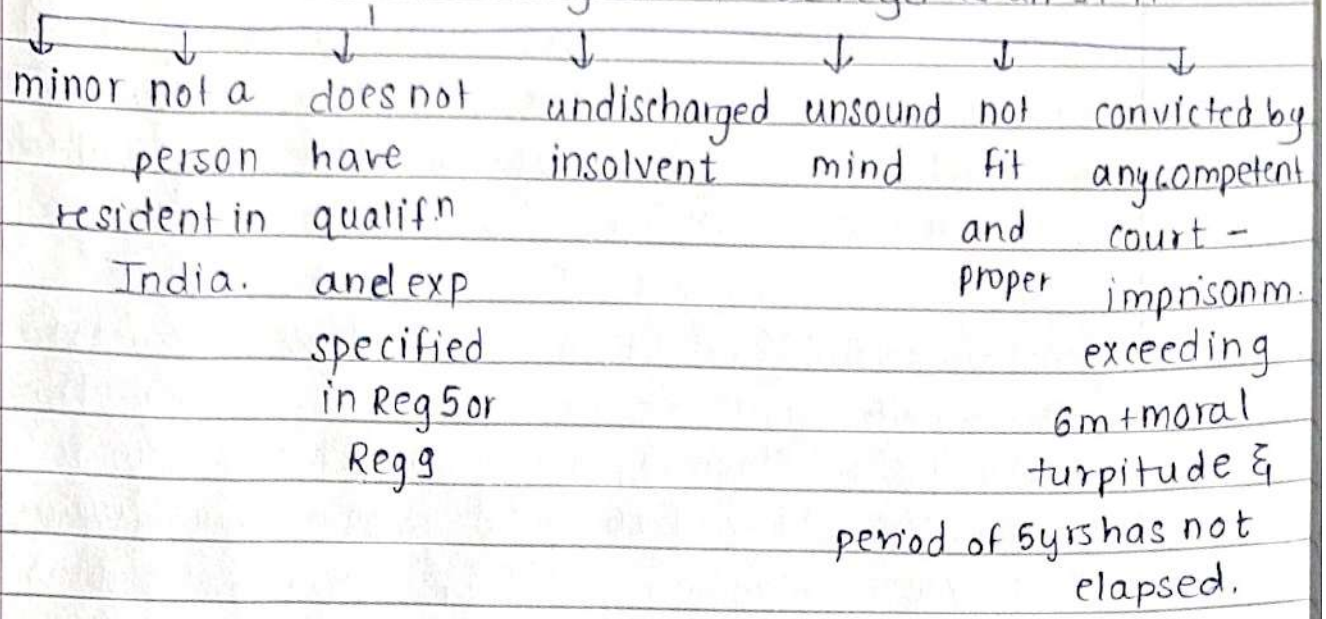


• functions and Duties of IP (Section 208)

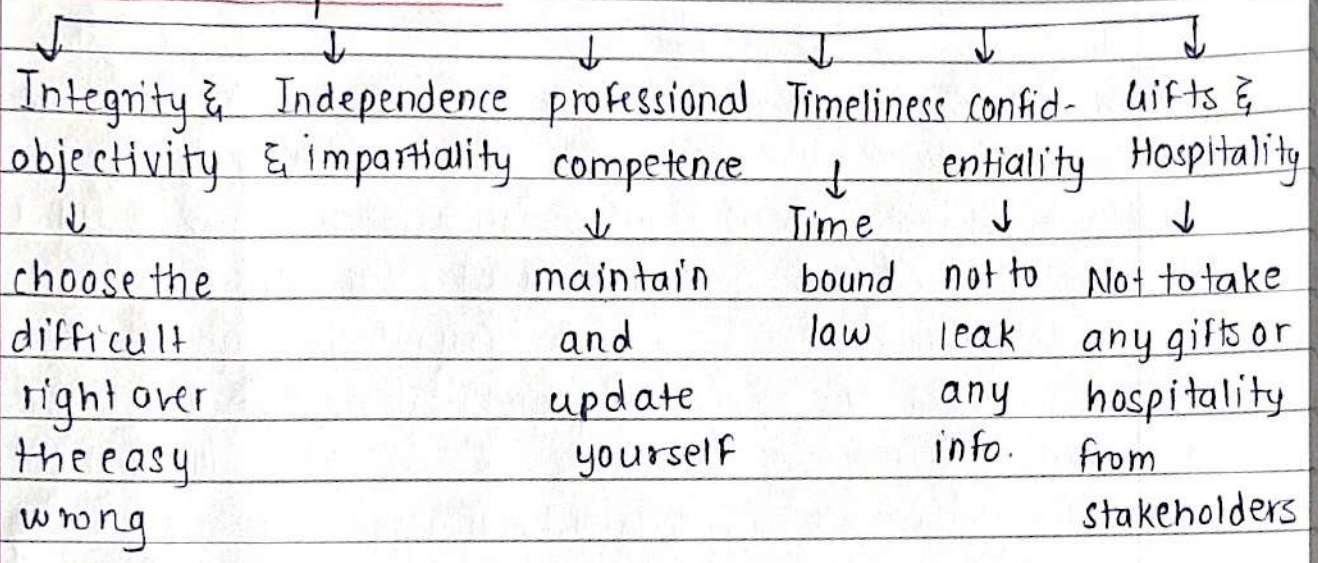


• Regulation 4 - Eligibility for Registration of IPs.

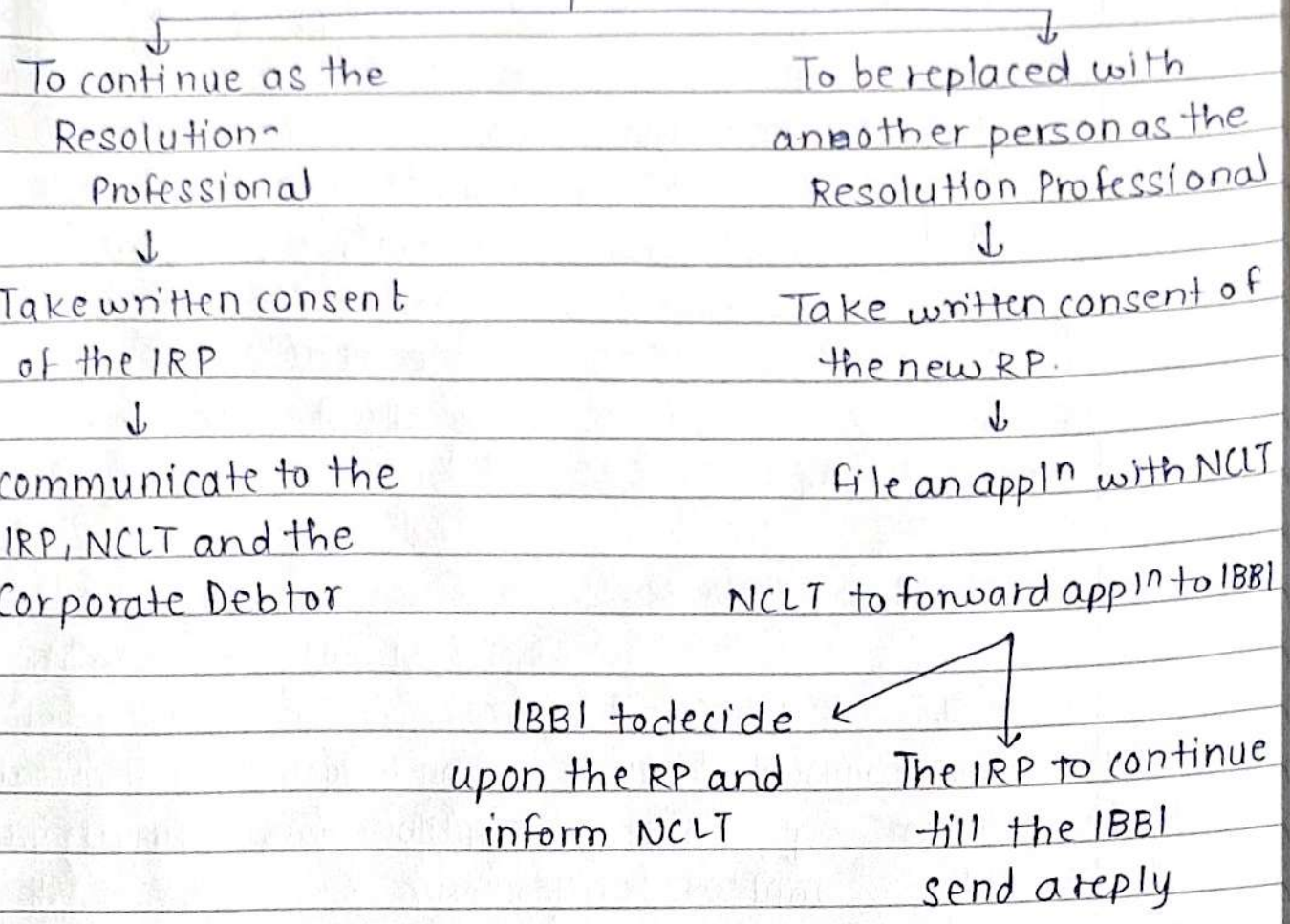
No individual shall be eligible to be regd as an IP if:



• Code of conduct for IPs.

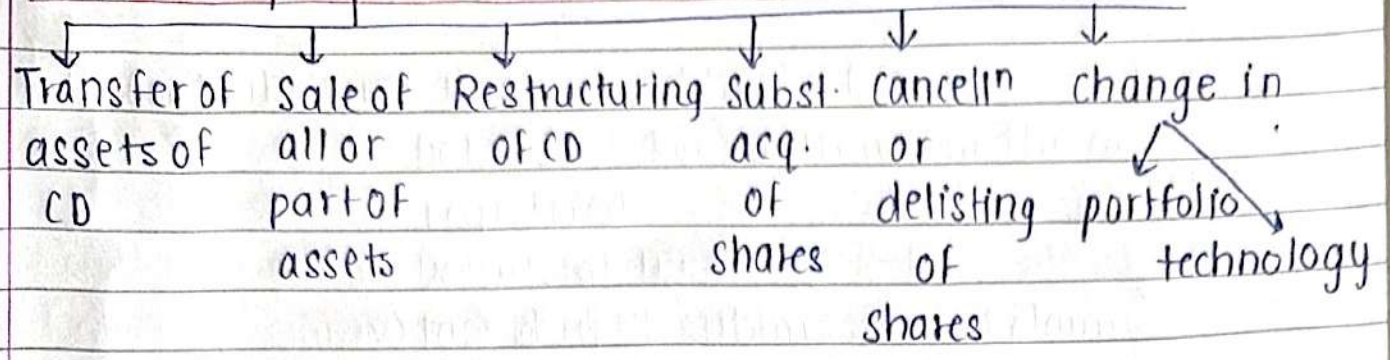


Interim Resolution Professional.

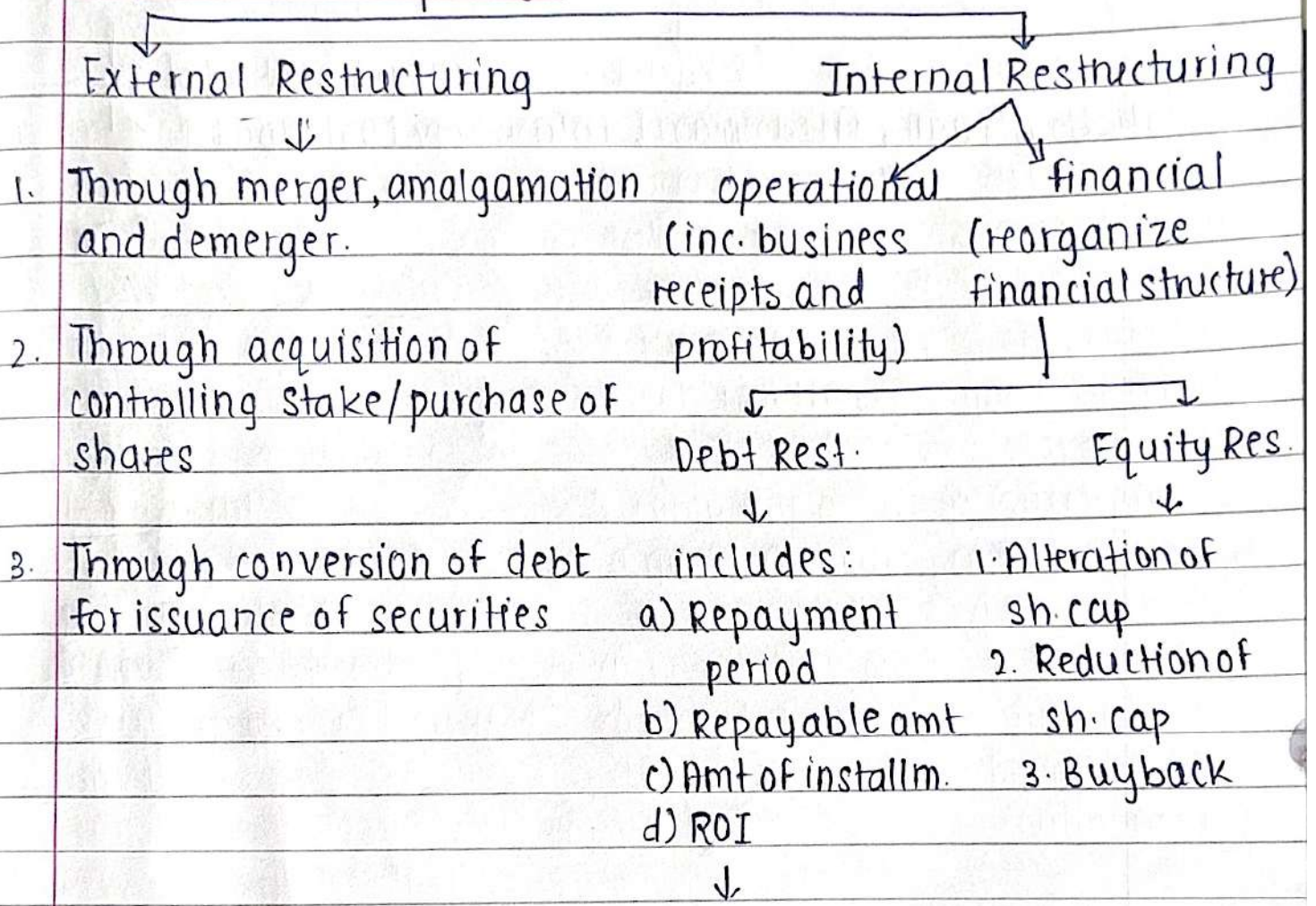


## Ch 17: Resolution Strategies

### Measures provided in a Resolution Plan.



### Corporate Restructuring

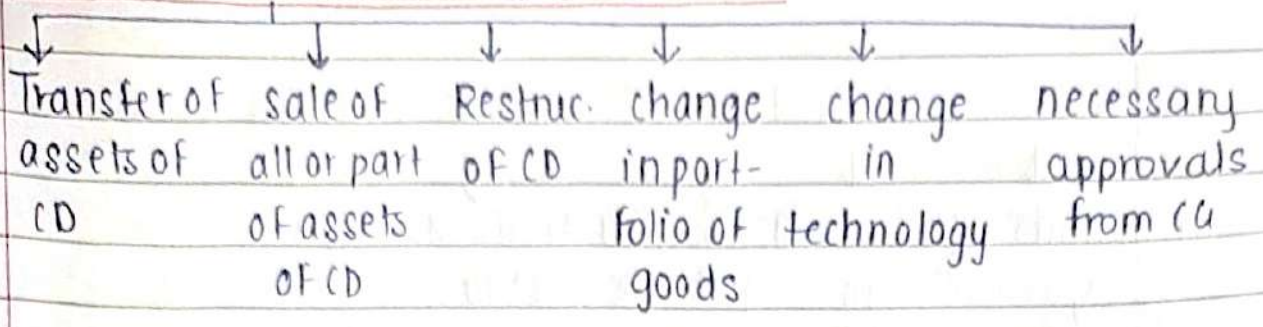


#### common ways to undertake debt restructuring

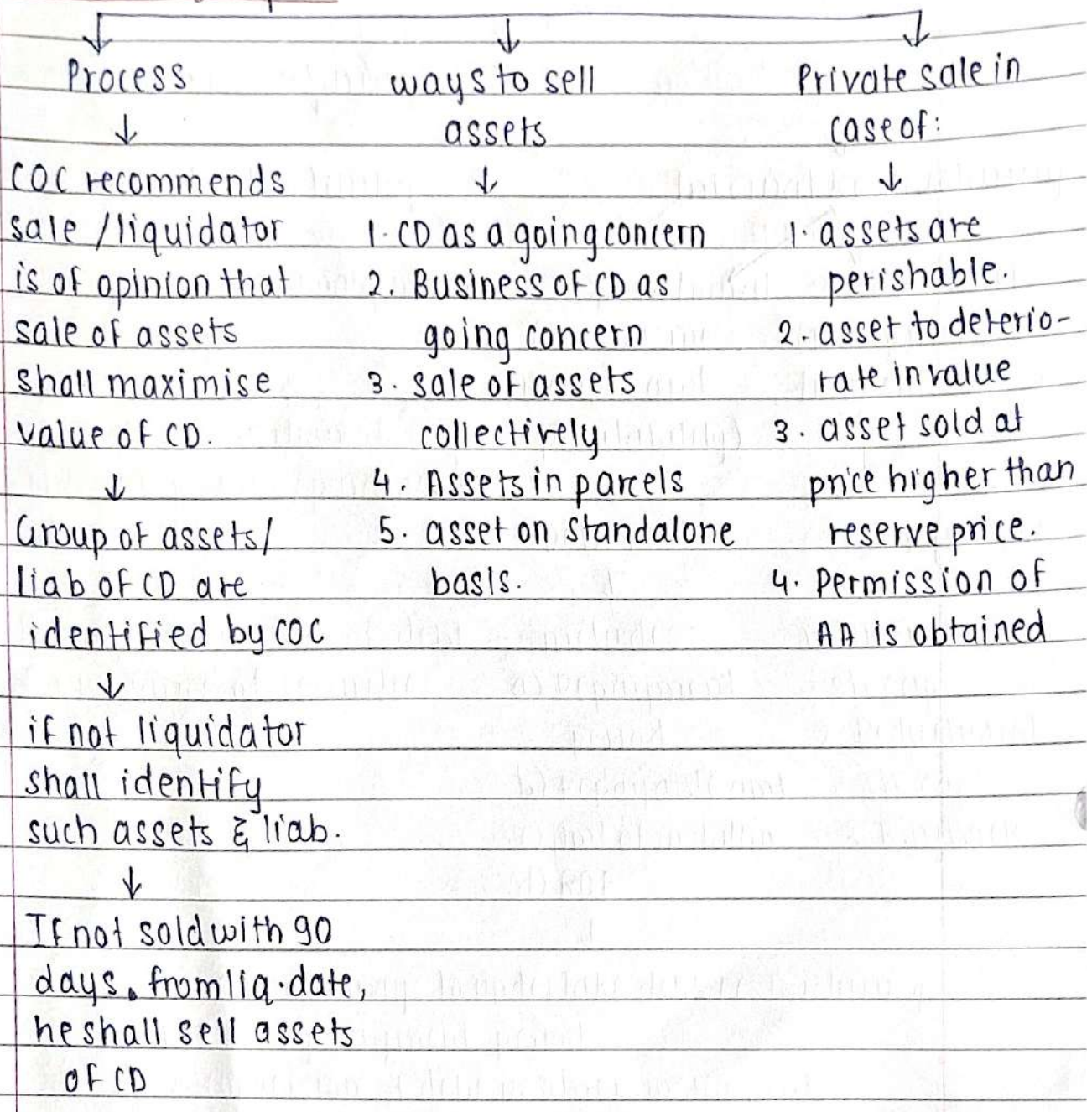
1. Modify payment period.
2. conversion of debt in other instrument
3. waiver of part of principal, interest.

9

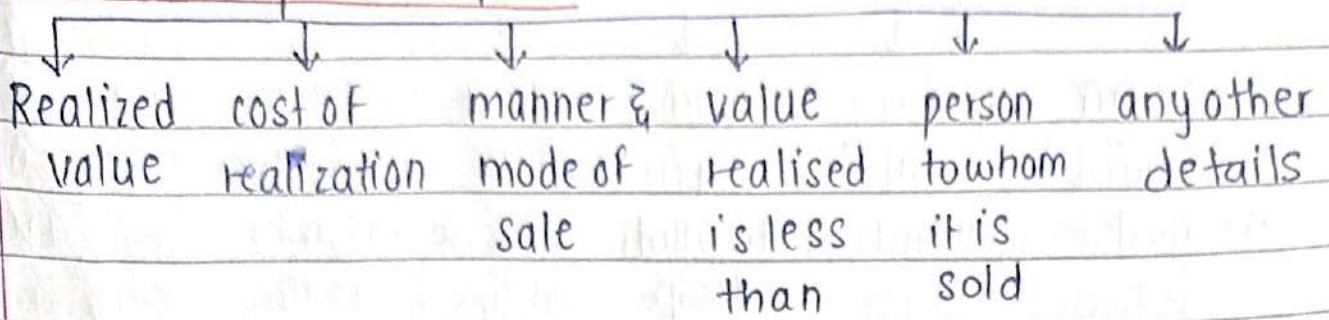
• Resolution measures under IBC, 2016



• Acquisition of CD under liquidation through sale of asset as a Going concern



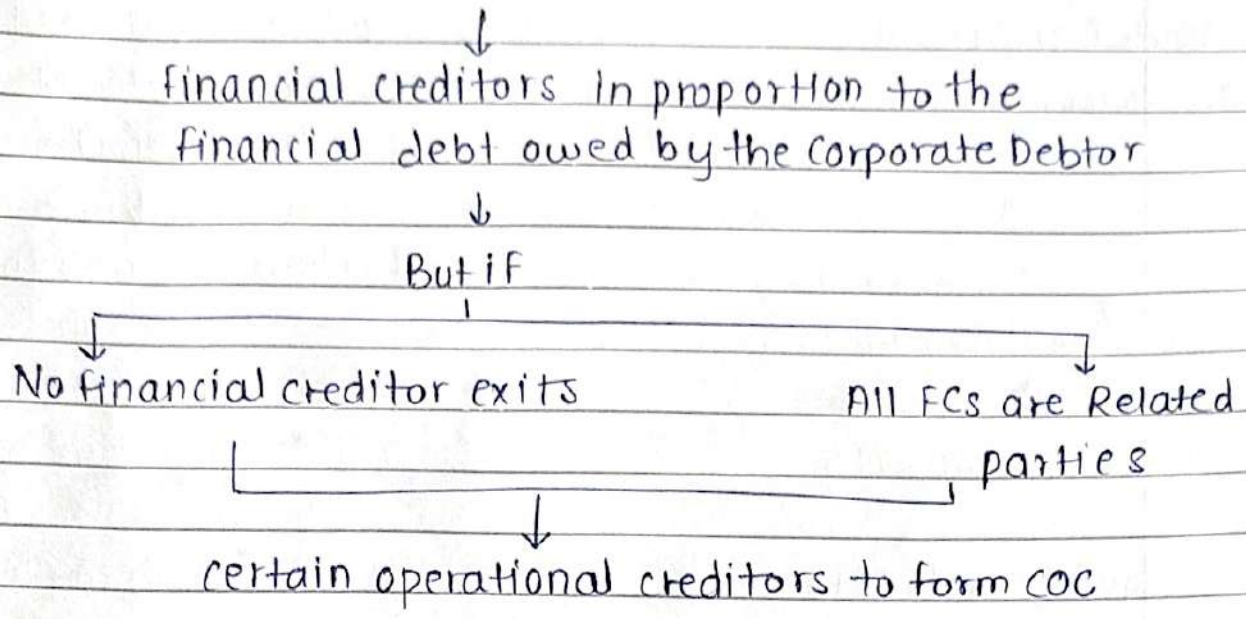
◦ Content of Asset Report



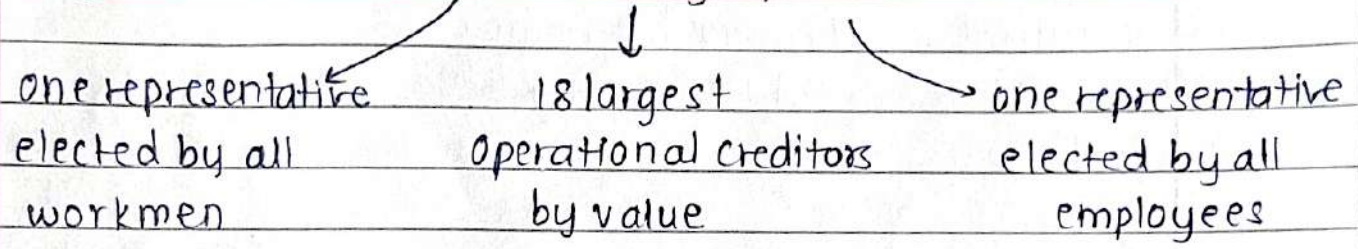
value in asset  
memorandum

Ch 18: Committee of Creditors

• Constitution of Committee of Creditors

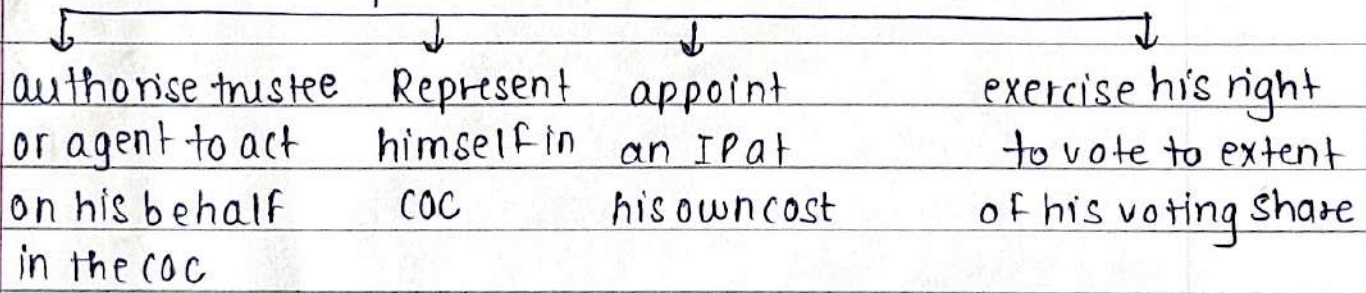


• Regulation 16: COC formed by Operational Creditors



• Representation of Financial Creditors.

① In case FCs are in form of consortium



② In the cases of class of creditors

[where a financial debt:]

(Act on behalf of FC)

- i) In form of securities or deposit & terms of debt provide for appointment of trustee or agent to act as authorised representative such trustee on behalf of such financial creditors
- ii) owed to class of creditors exceeding specified number. such authorised representative appointed by NCLT
- iii) Represented by guardian, executor or administrator such guardian, executor or administrator

③ Appointment of Authorised Representative by Individual creditor.

creditor who is member of COC → permitted to appoint an IP other than RP → to represent creditors in meeting of COC → along with fees.

• Rights and Duties of Authorised Representative of FCs.

- |   |  |
|---|--|
| ↓   | ↓  |
| Section 25A   | Regulation 16 A  |
| 1) <del>is</del> right to participate & vote in meetings of COC | 1) IRP shall select IP - choice of highest no. of FC as author. repres                         |
| 2) Duty to circulate agenda and minutes of meeting              | 2) IRP apply to NCLT within 2 days of verification of claim                                    |
| 3) act in interest of FC  | 3) Delay in appointment of authorised representative shall not affect validity of any decision |
| 4) file with COC any instructions recd.                         |  |

• Fees for Authorised Representative

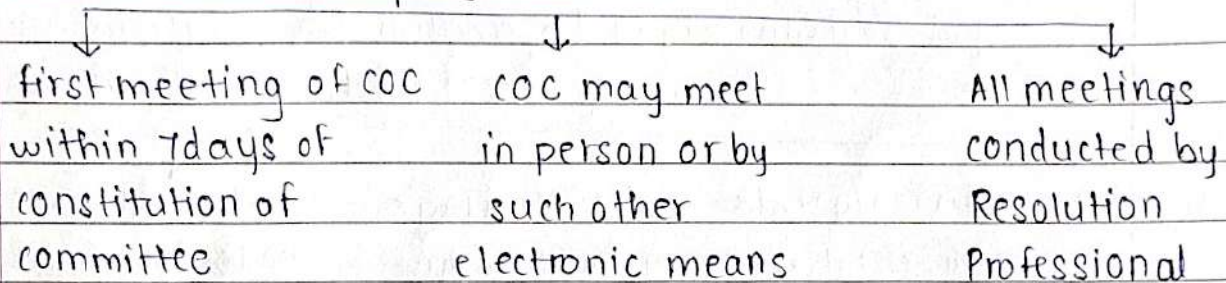
No. of creditors in class	fees per meeting of comm.
10 - 100	30,000
101 - 1000	40,000
More than 1000	50,000

• Fees for Meetings of CoC Creditors in class

No. of creditors in class	fees per meeting
10 - 100	10,000
101 - 1000	12,000
More than 1000	15,000

Payment of fees to authorised representative shall be part of insolvency resolution process cost in respect of two meetings.

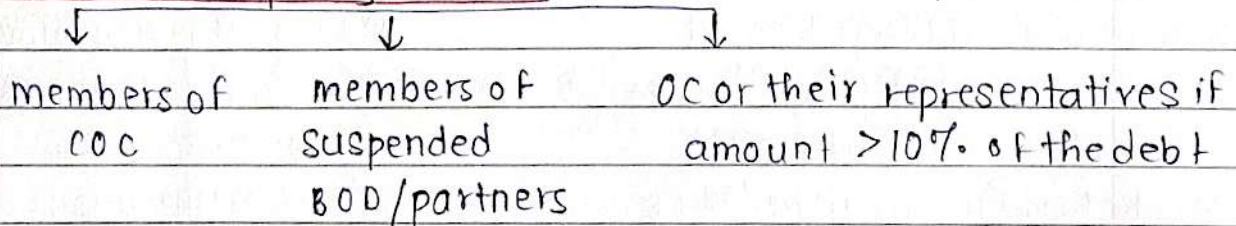
• Modalities of meeting of CoC (Section 24)



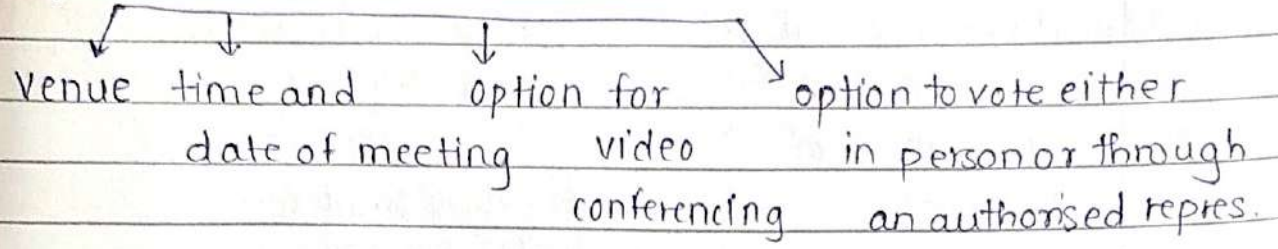
• When to conduct meetings of CoC

RP considers necessary  
Request made by members representing 33% voting rights

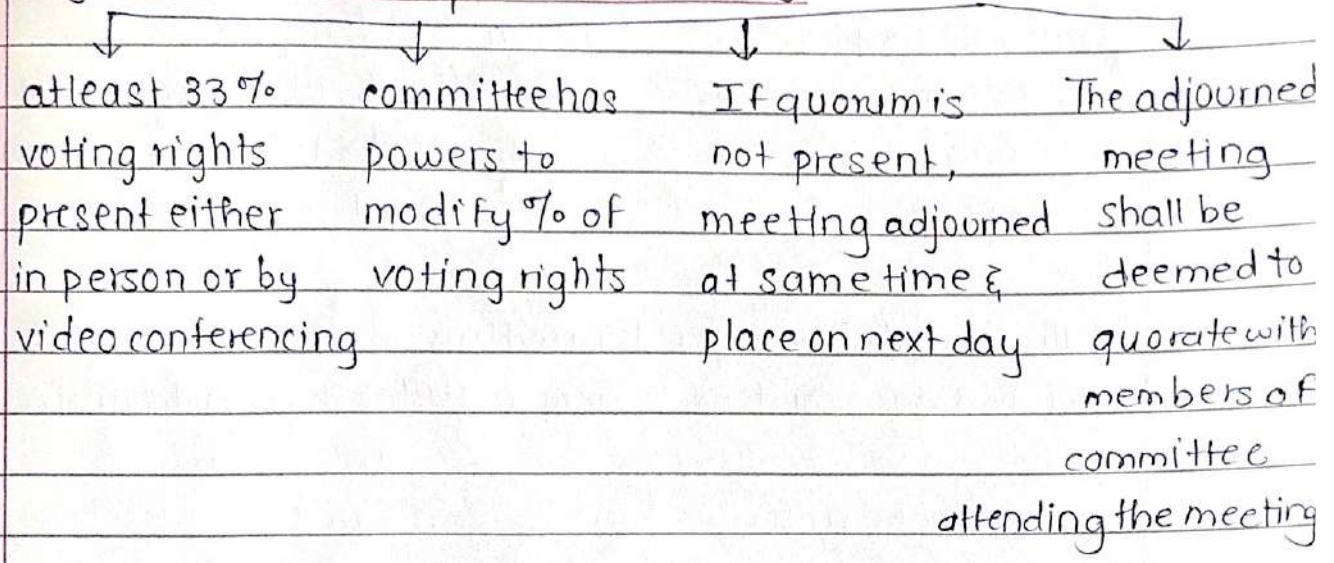
• Notice of meeting of CoC (not less than 5 days' notice)



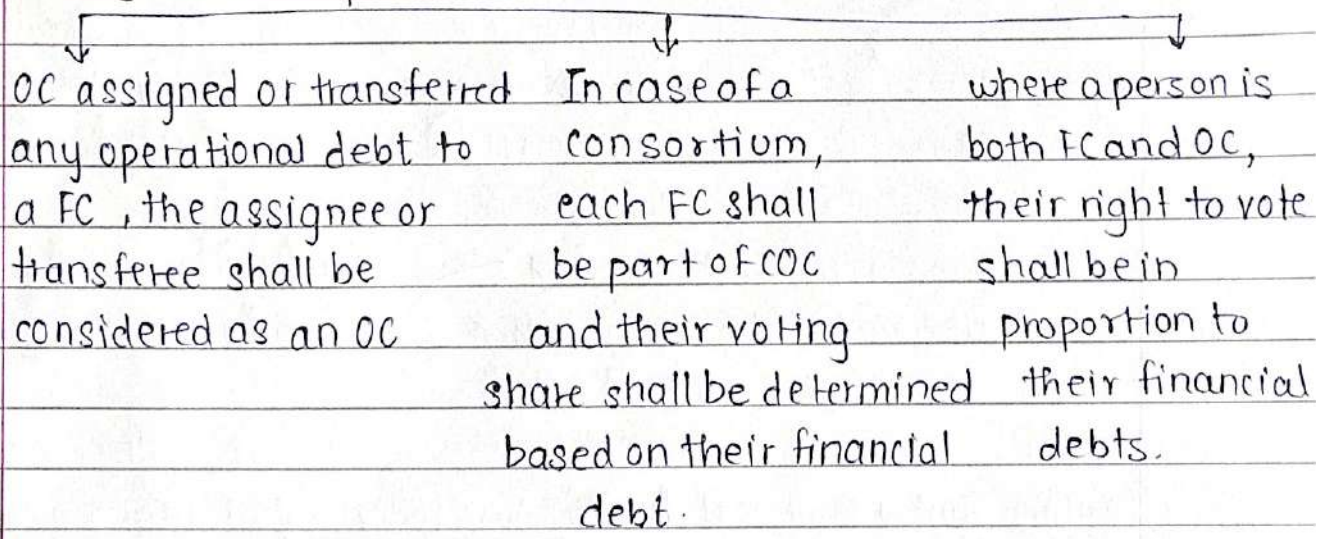
• Regulation 21 - Content of Notice



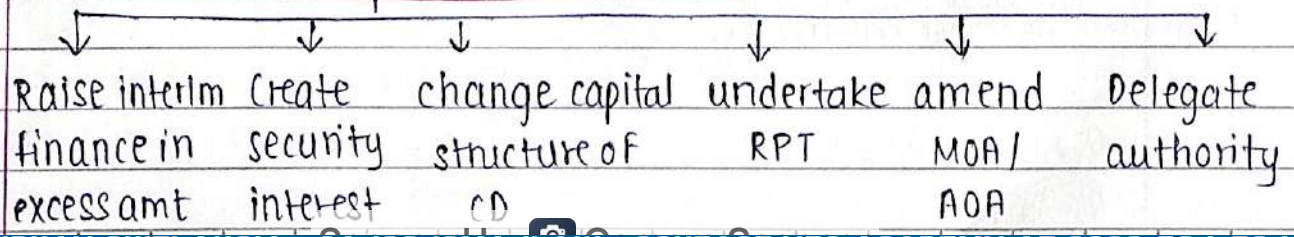
• Regulation 22 - Quorum of meeting



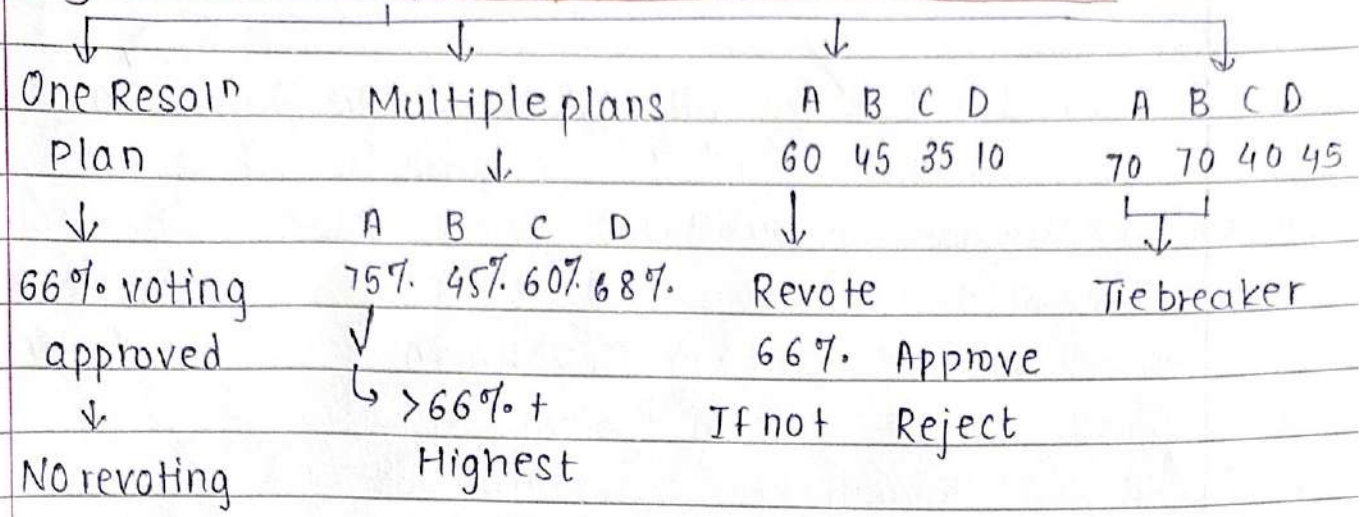
• Voting by the committee.



• Approval of COC for certain actions (Section 28)



Regulation 39 - Approval of Resolution Plan by CoC



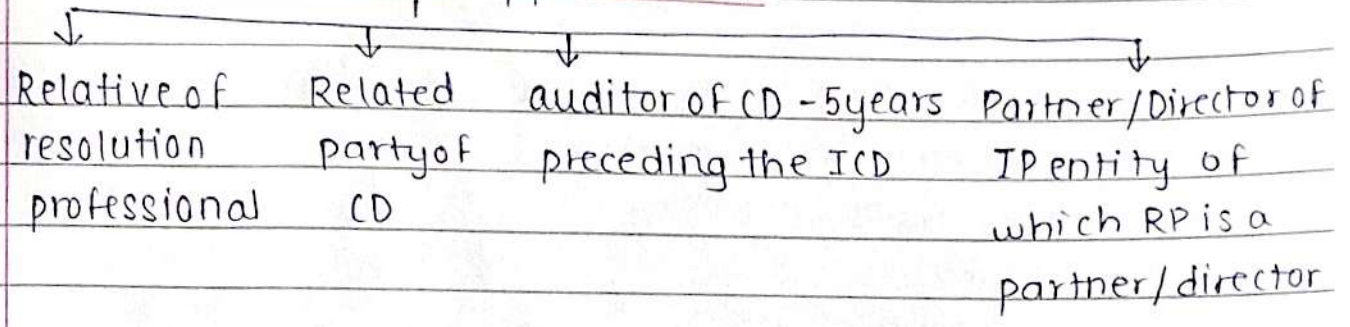
## Ch 19: Preparation and Approval of Resolution

- Regulation 27: Appointment of Regd Valuer

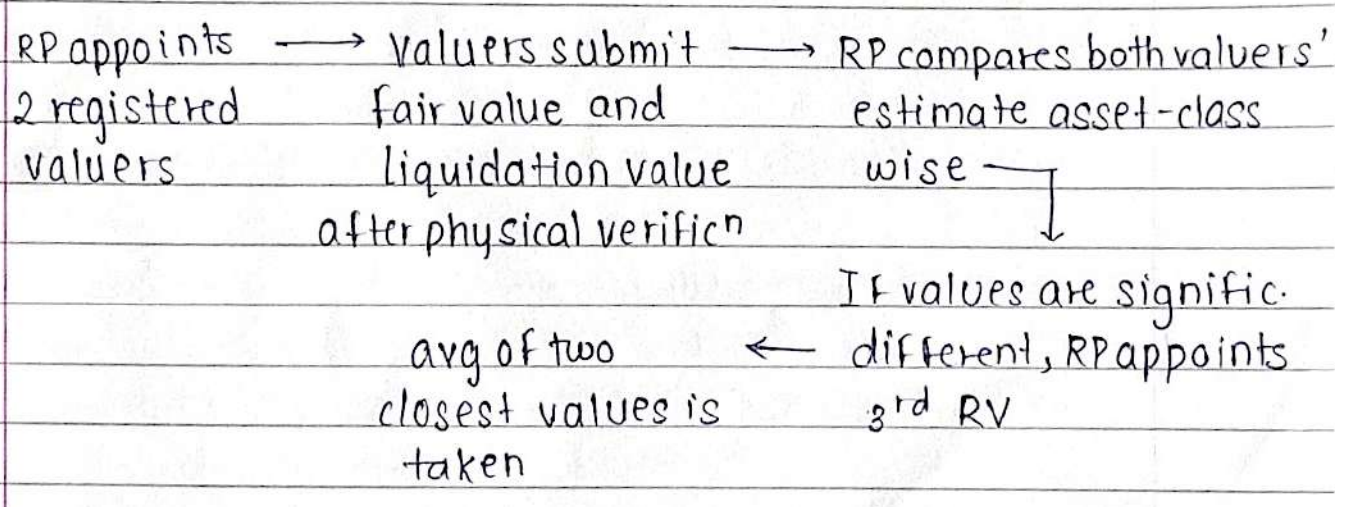
↓

RP shall within 7 days of his appointm. + not later than 47 days from the ICD → appoint two regd valuers to determine fair value & liquidation value of CD

- Regulation 27(3) - Disqualif<sup>n</sup> of Registered valuers  
(shall not be appointed if)



- Regulation 35: Process of Determination of fair value and liquidation value.

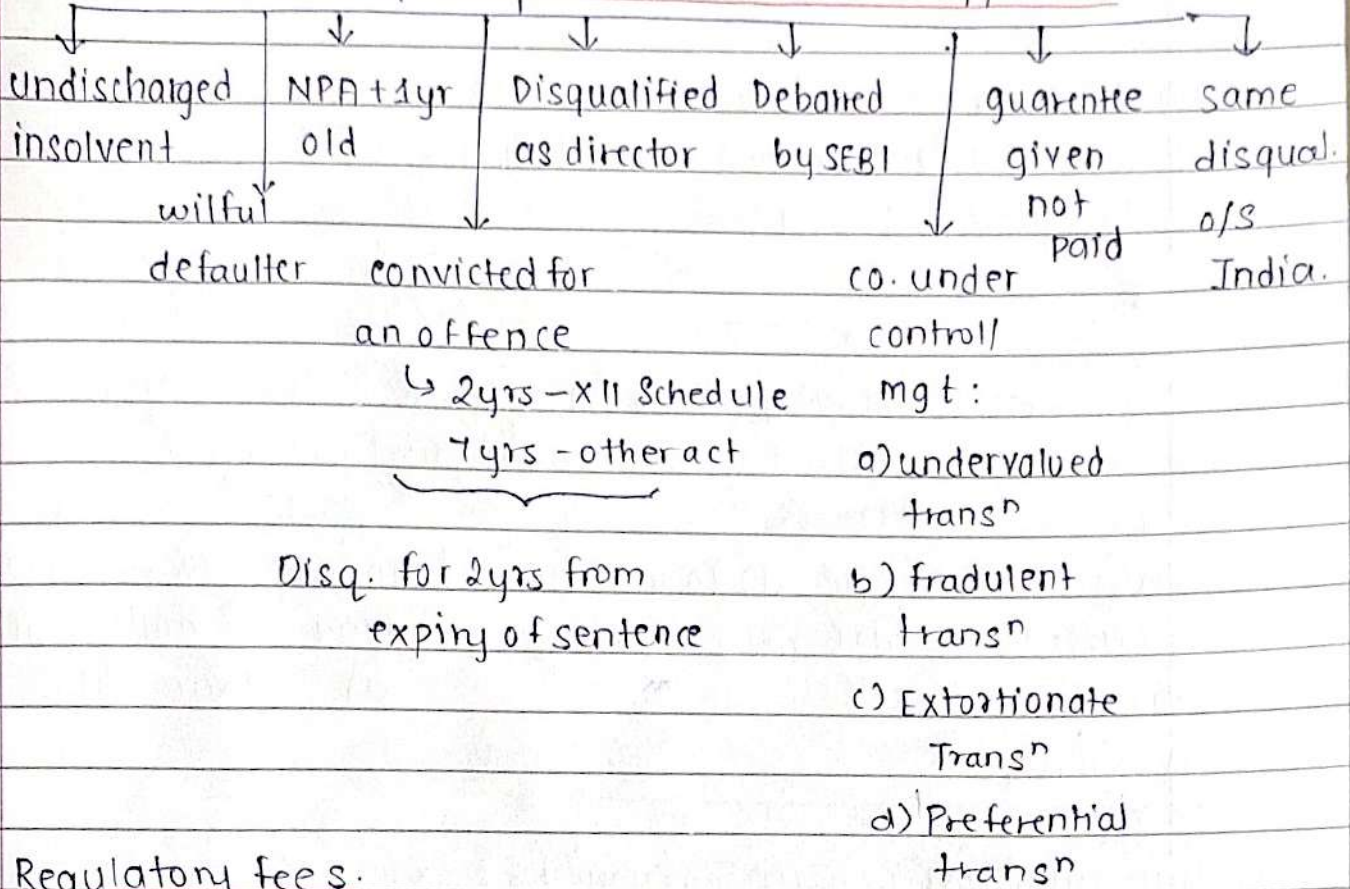


- Significantly Different: Diff. of 25% or more in liq. value  

$$\frac{L1 - L2}{L1} \geq 25\%$$

• Regulation

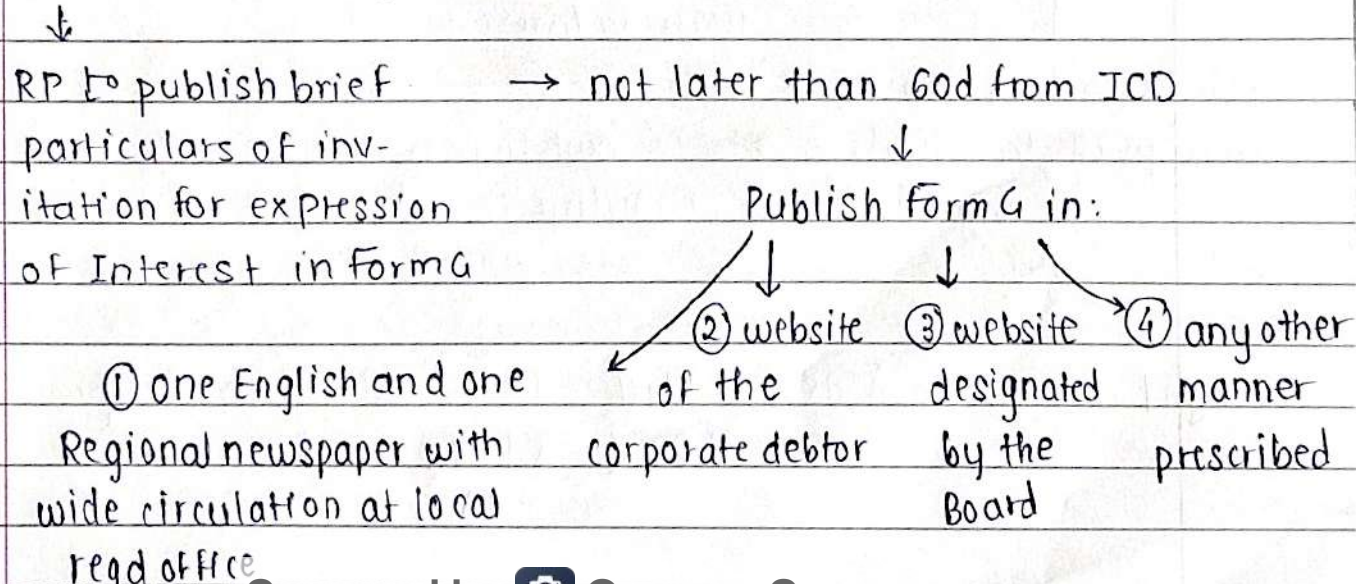
• Section 29A : Disqualification of Resolution Applicant



• Regulatory fees.

↳ 0.25% of amt given to creditors under the resolution plan + 1% amt booked under CIRP cost as fees given to professional hired during CIRP

• Invitation to Expression of Interest (EOI)



9

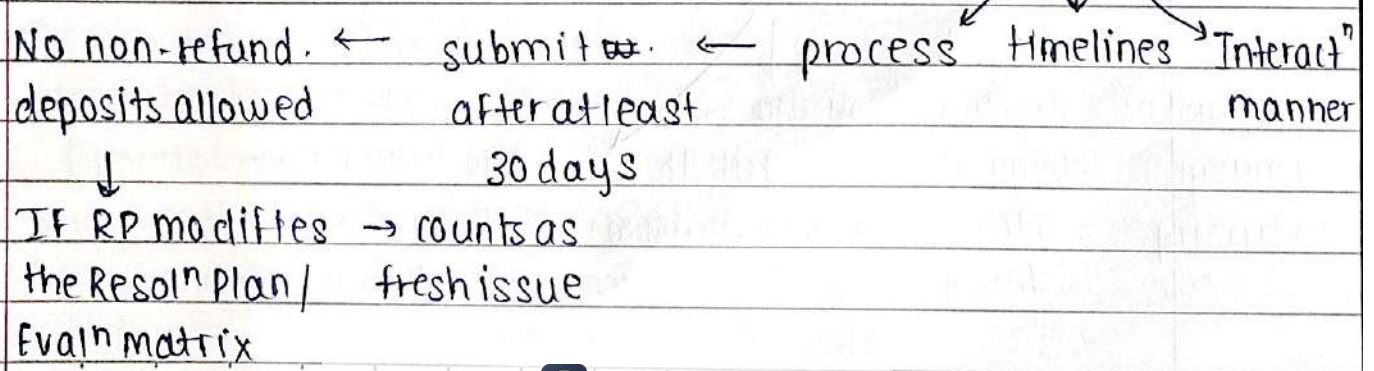
- Form A shall
  - state where detailed invitation for EOI can be downloaded.
  - provide last date for submission of EOI (not less than 15 days from date of issue of detailed invitation)

- Detailed invitation shall
  - state disqualif<sup>n</sup> as per sec 29A
  - provide basic details
  - not require paym of any fees or any non-refundable deposit

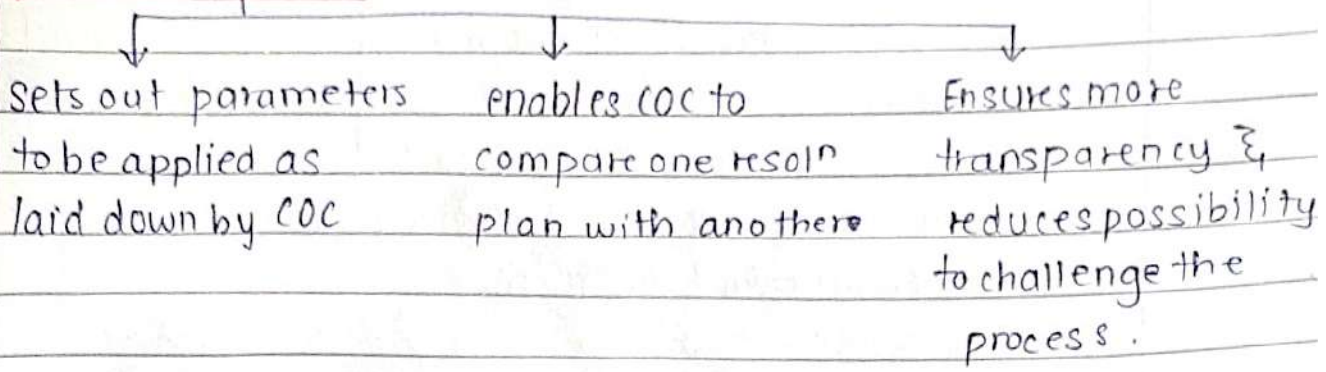
- EOI shall be accompanied with
  - relevant records in evidence of meeting
  - eligible u/s 29A + docum-ents
  - Relevant info & records
  - True & fair information
  - Disclosure of change in position
  - nondisclosure/ maintain confidentiality

Request for Resolution Plans

RP issues 5 days from issue of final list Info-memo, → The Req. for Resol<sup>n</sup> eval. matrix Plan must include

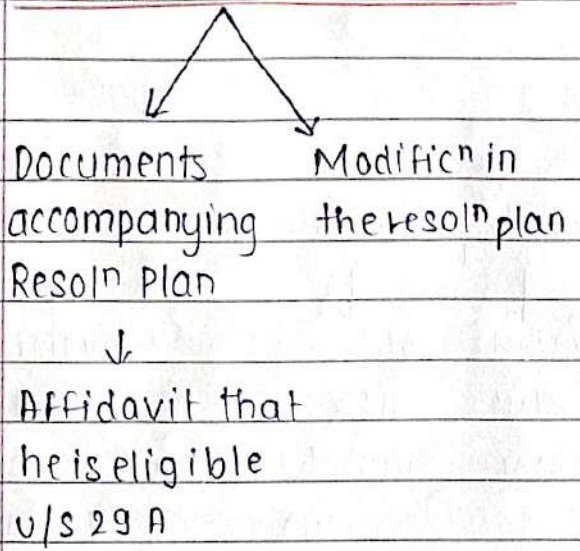


Evaluation Matrix



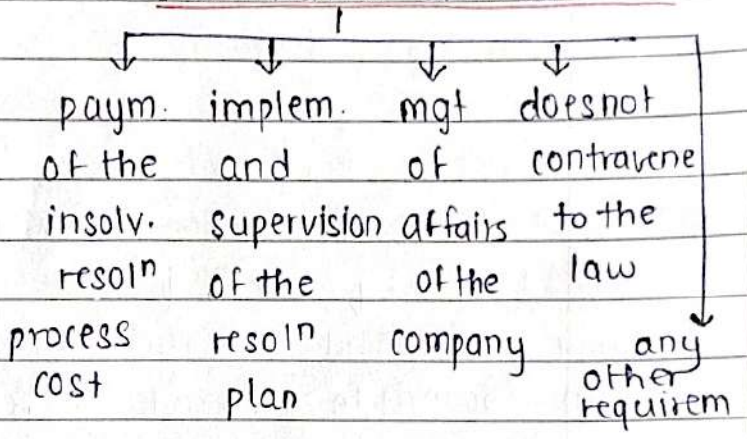
Section 30

Submission of Resoln Plan

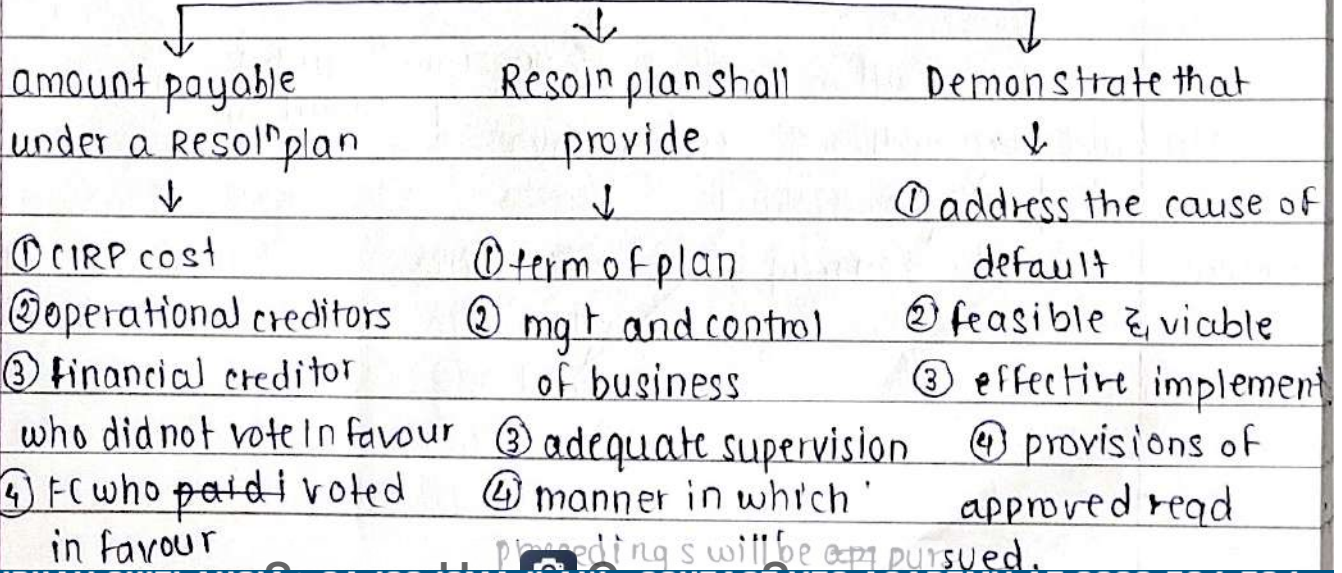


Sec 30(2)

Examination of Resoln Plan



Mandatory Contents of the Resolution Plan (Regulation 38)



• Approval of Resolution Plan by COC

Regulation 39(3)

Regulation 39(1B)

1. Evaluate the Resol<sup>n</sup> plans
2. feasibility and viability of each resolution plan
3. vote on resol<sup>n</sup> plans

- COC to not consider any resol<sup>n</sup> plan if:
- a) Recd after time specified
  - b) Recd <sup>from</sup> by person who does not appear in final list of prospective resol<sup>n</sup> applicants
  - c) Not in compliance with Section 30(2)

- Section 31(3) → Moratorium comes to an end  
 → RP forwards all records to conduct of CIRP and resol<sup>n</sup> plan to Board

• Regulation 39

NCLT issue order approving/rejecting Resolution Plan

→ RP sends copy of NCLT to

- Participants of meeting
- COC
- Resolution applicant

No proceedings against IRP/RP

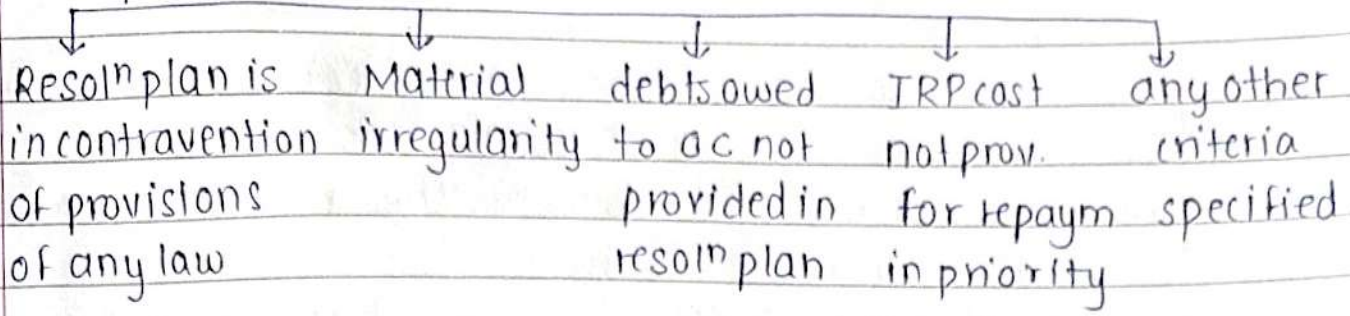
Resol<sup>n</sup> plan takes effect with consent of

RP to inform claimant within 15d. of NCLT order about formulae used for paym. of their debt

↓  
aggrieved creditor, apply to NCLT

- ↓
1. members/partn. of CD
  2. Parties to constit. docum.

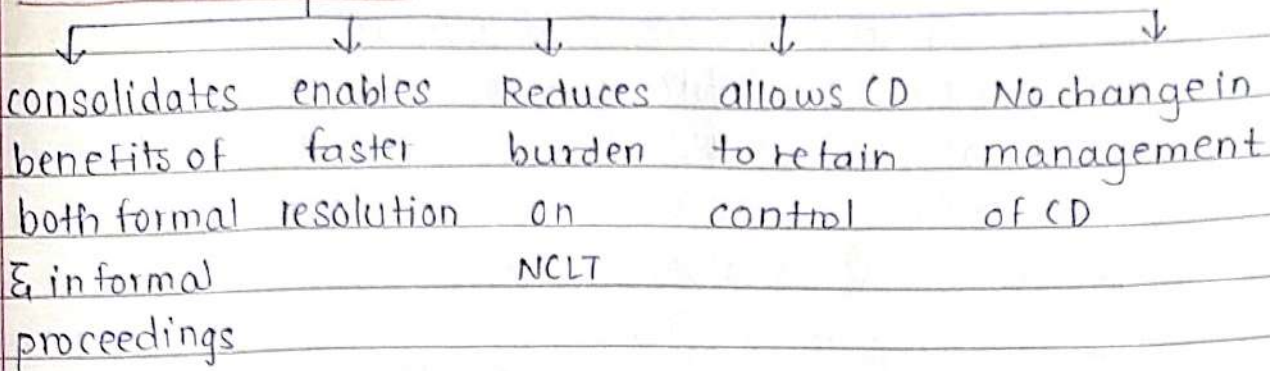
### Appeal Section 32



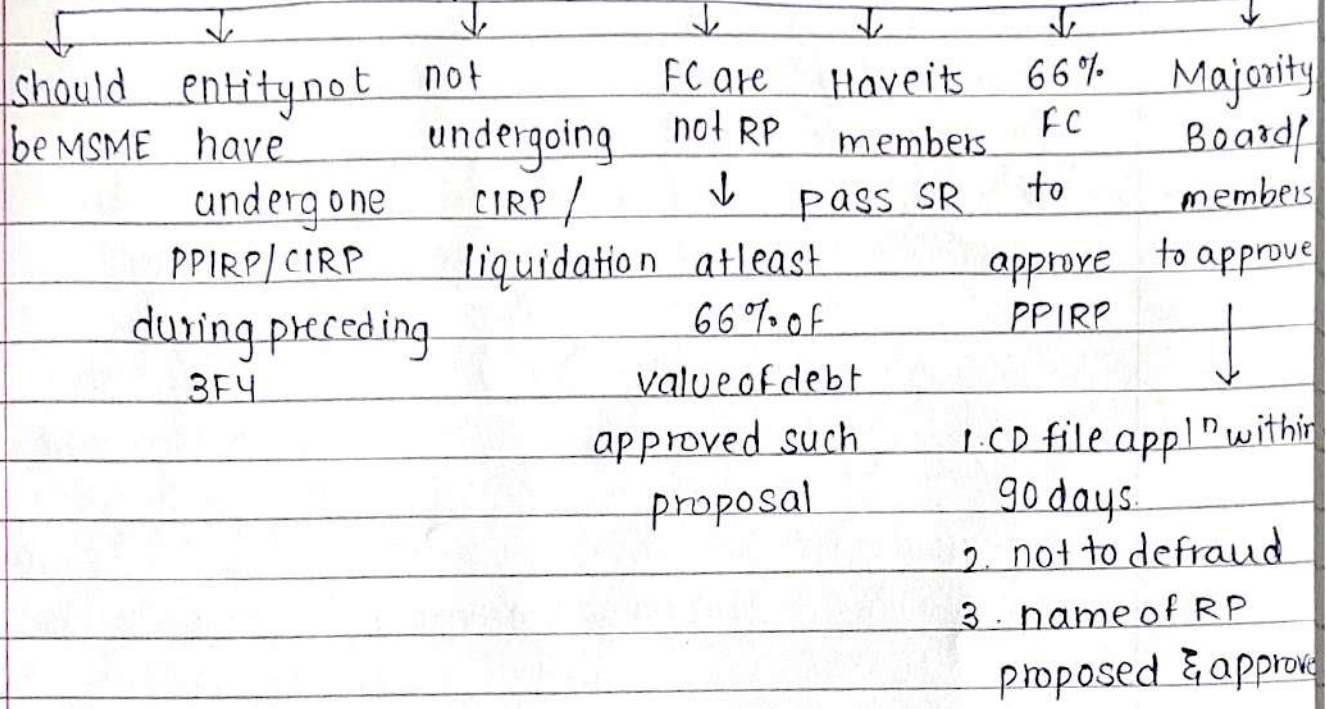
①

Ch 20: Pre-Packaged Insolvency Resolution Process

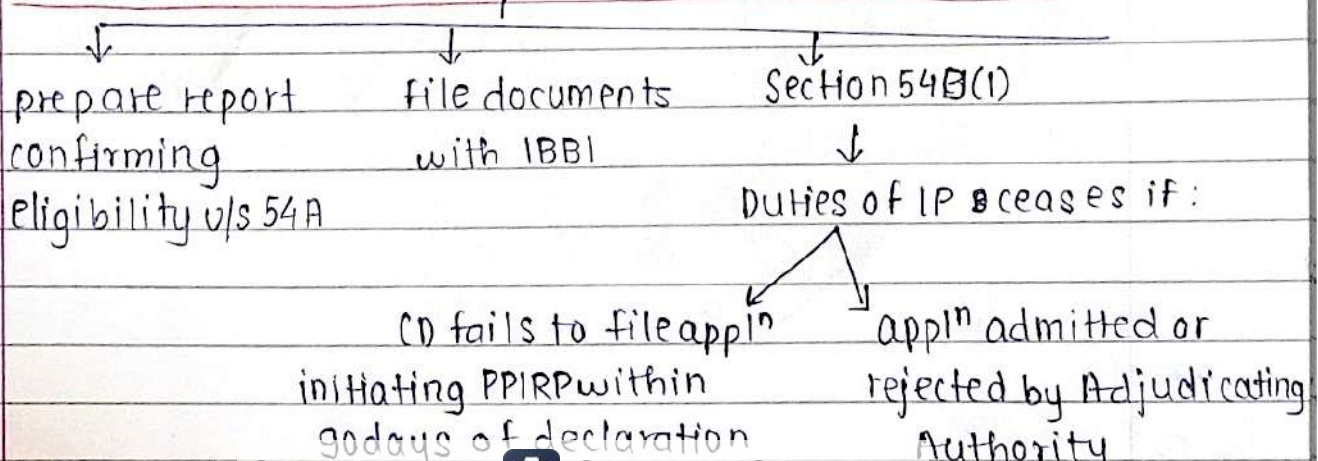
• Benefits of PPIRP



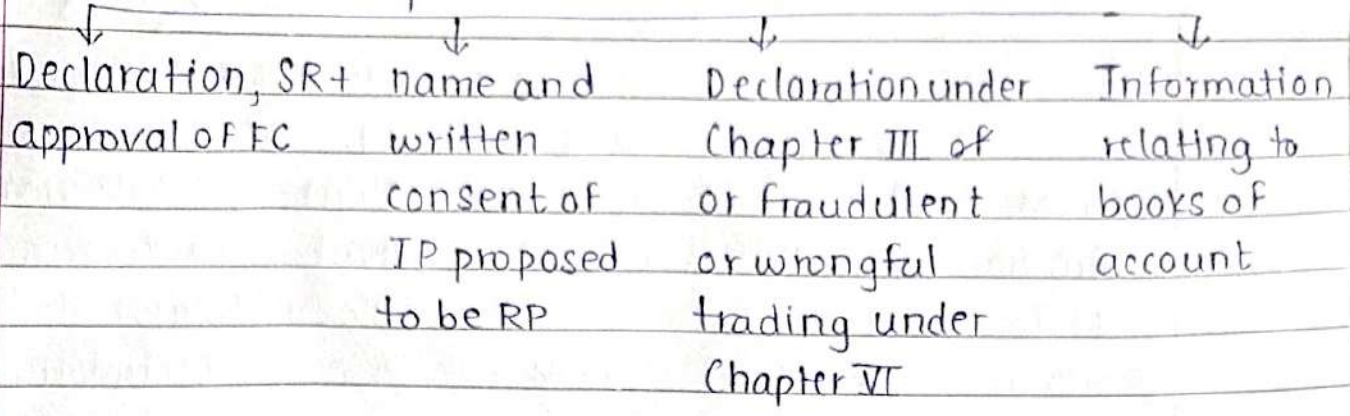
• Section 54A - Eligibility of CD to undergo PPIRP



• Section 54B - Duties of RP before initiation of PPIRP

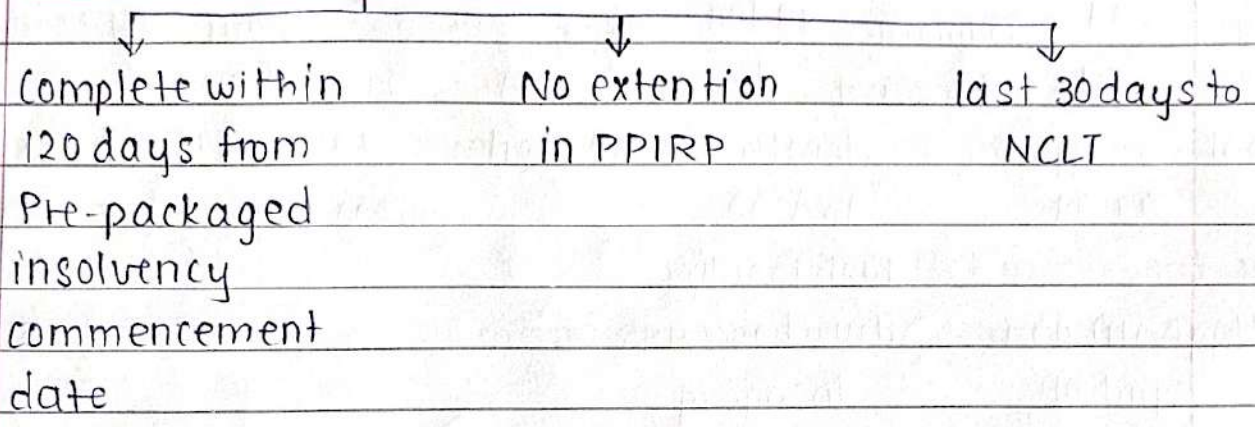


• Appl<sup>n</sup> to initiate PPIRP - Section 54C

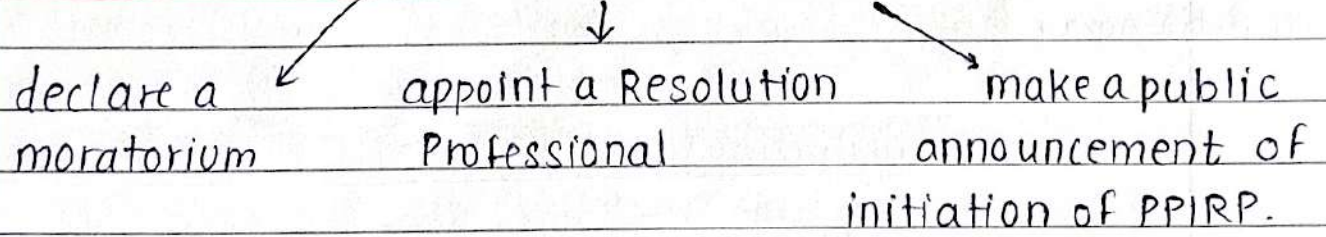


NCLT w. 14 days  
├─ Accept  
└─ Reject

• Section 54D - Timelimit



• Section 54E - Declaration of Moratorium and Public Annoucem



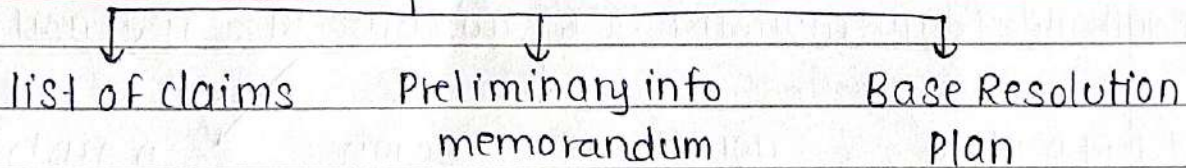
• Section 54F - Duties and Powers of RP

Duties of RP

Powers of RP

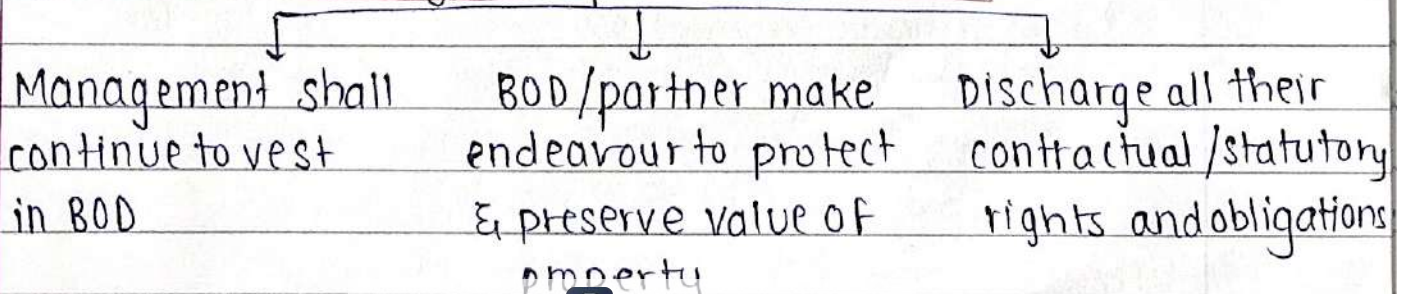
- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. confirm list of claims submitted by RP</li> <li>2. inform creditors about their claims confirmed.</li> <li>3. maintain updated list of claims</li> <li>4. monitor mgmt of affairs of CD</li> <li>5. constitute COC, convene &amp; attend all meetings.</li> <li>6. Prepare information memorandum, etc.</li> </ol> | <ol style="list-style-type: none"> <li>1. Access all books of accounts, records and information.</li> <li>2. Access the electronic records of CD.</li> <li>3. Access books of accounts available with the govt authorities.</li> <li>4. appoint accountants, legal or other professional</li> <li>5. collect info about assets, finances of CD</li> </ol> |
|--|---|

• Section 54G - list of claims and Preliminary Info Memorandum

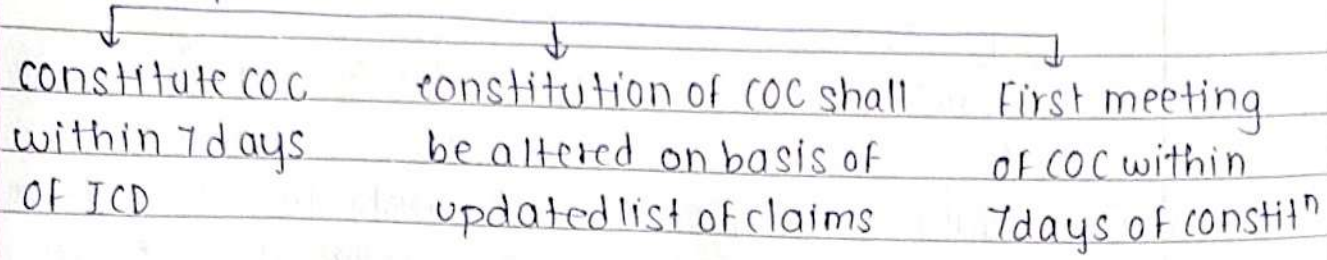


submit with RP within 2 days of ICD

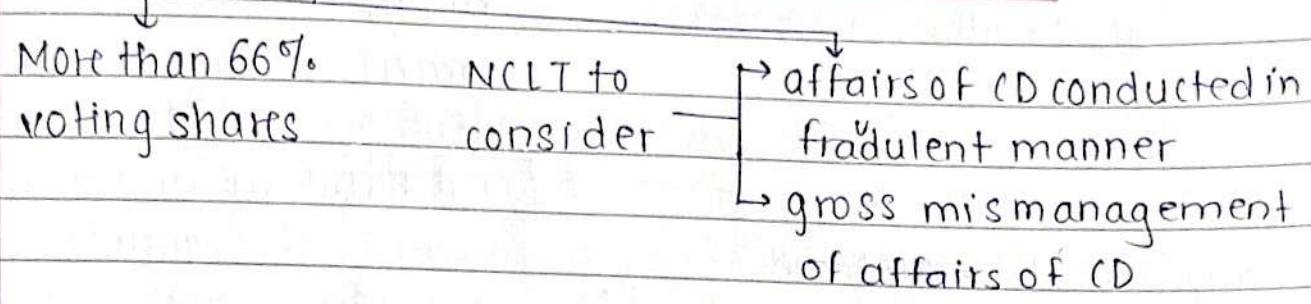
• Section 54H - Management of Affairs of CD



• Section 54J : COC

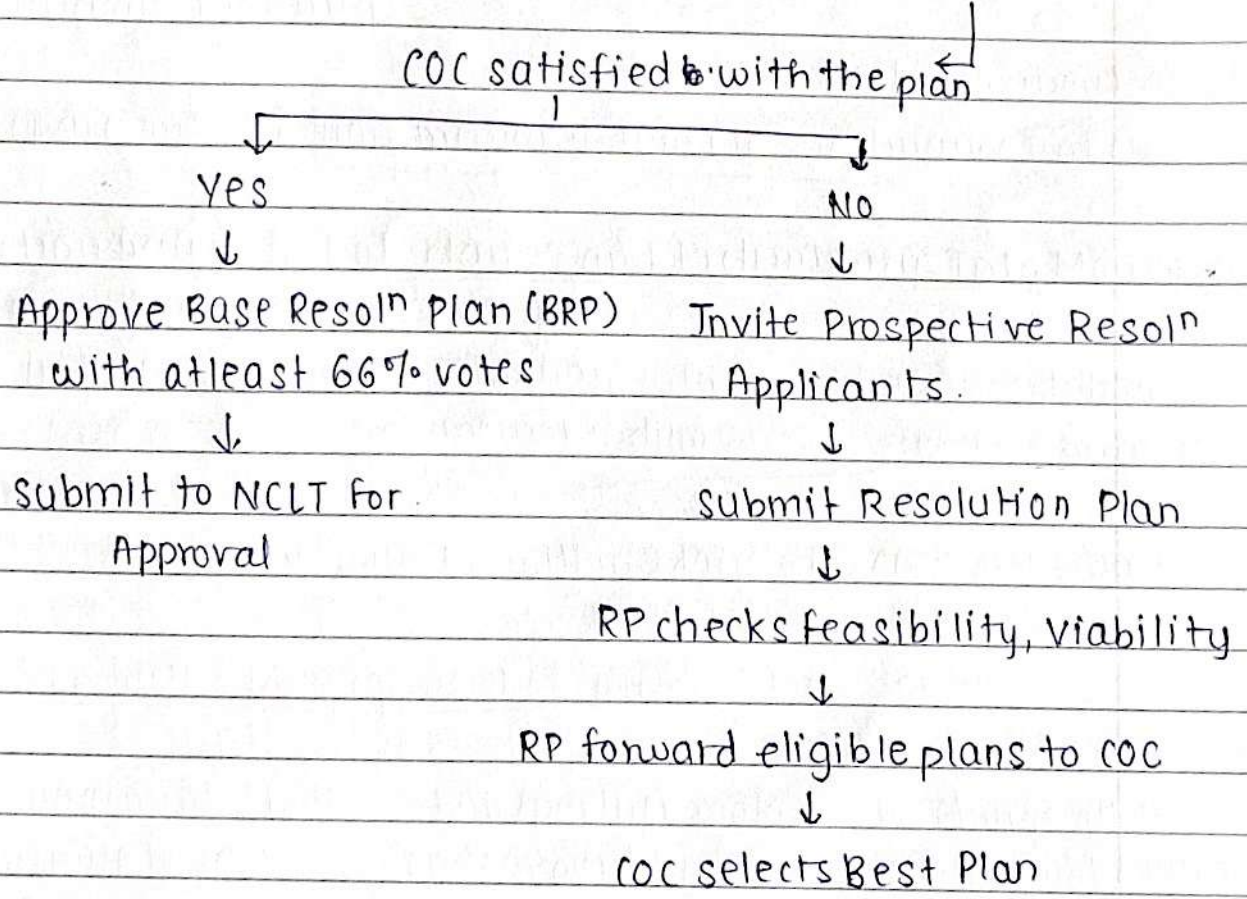


• Section 54J : Vesting management of CD with RP

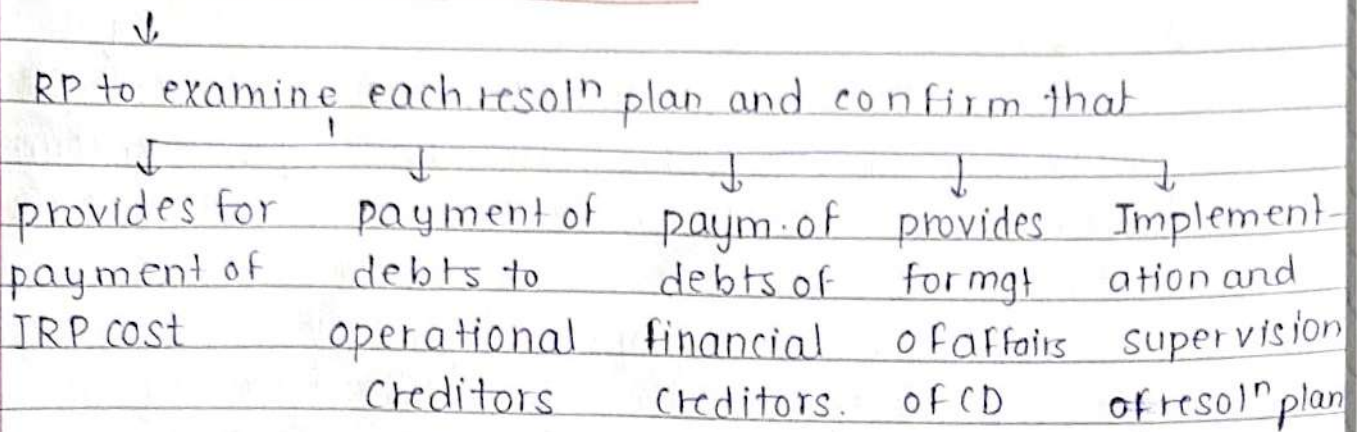


• Section 54K - Consideration and Approval of Resol^n Plan

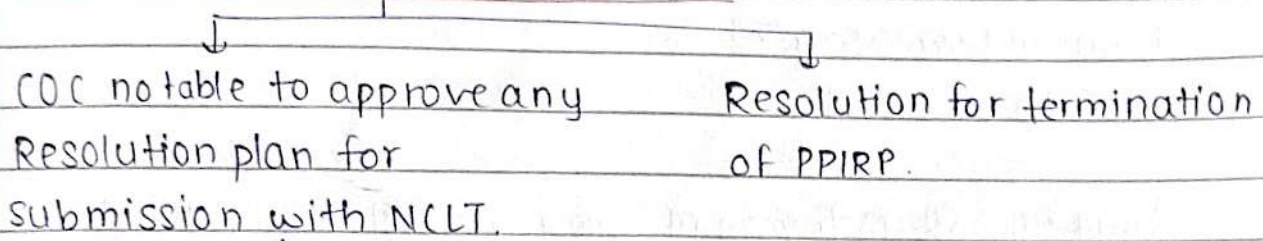
CD submits Base Resol^n Plan to RP → places before COC



• Requirements of Resolution Plan

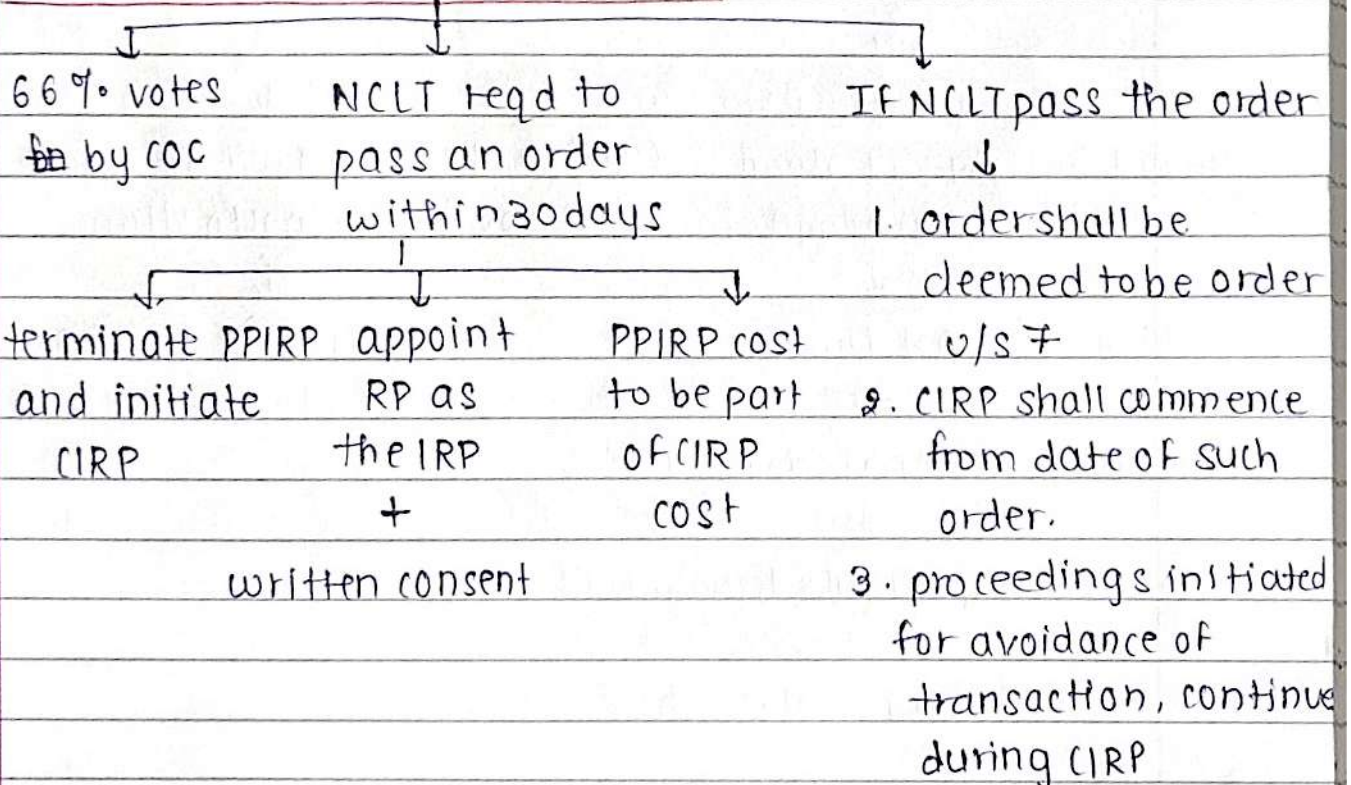


• Section 54N: Termination of PPIRP

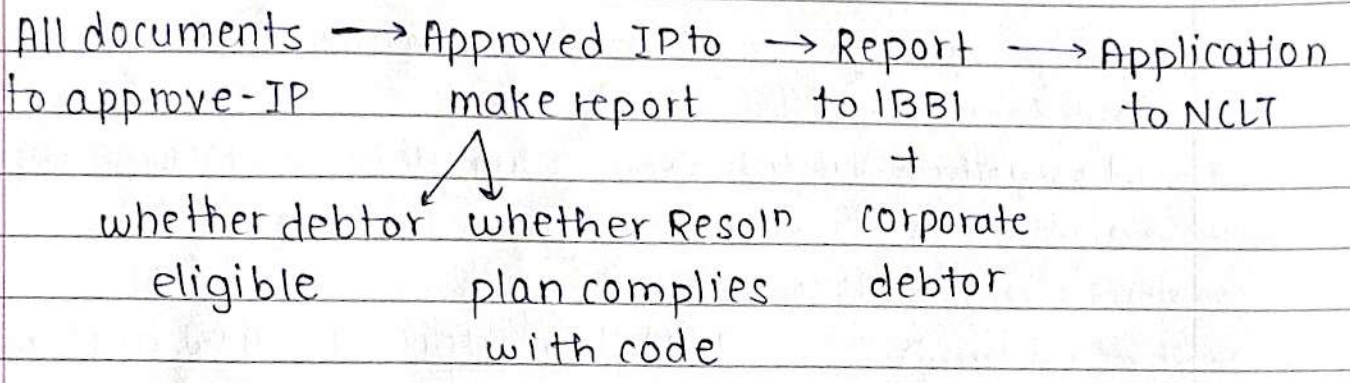
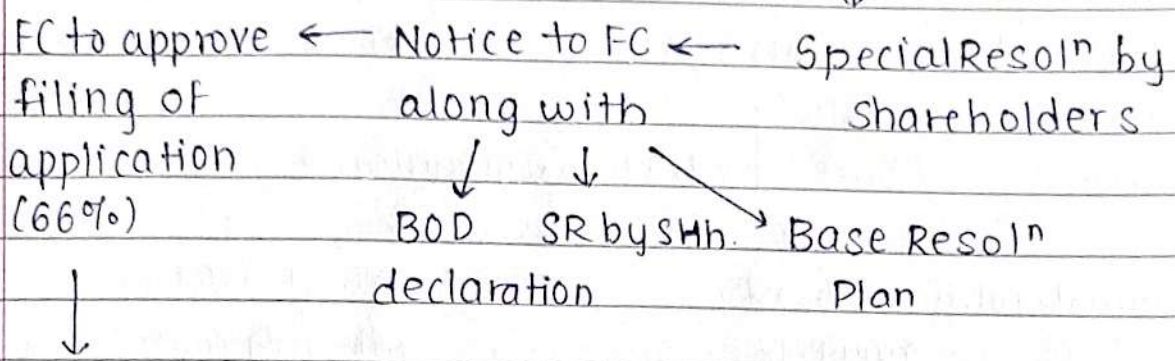
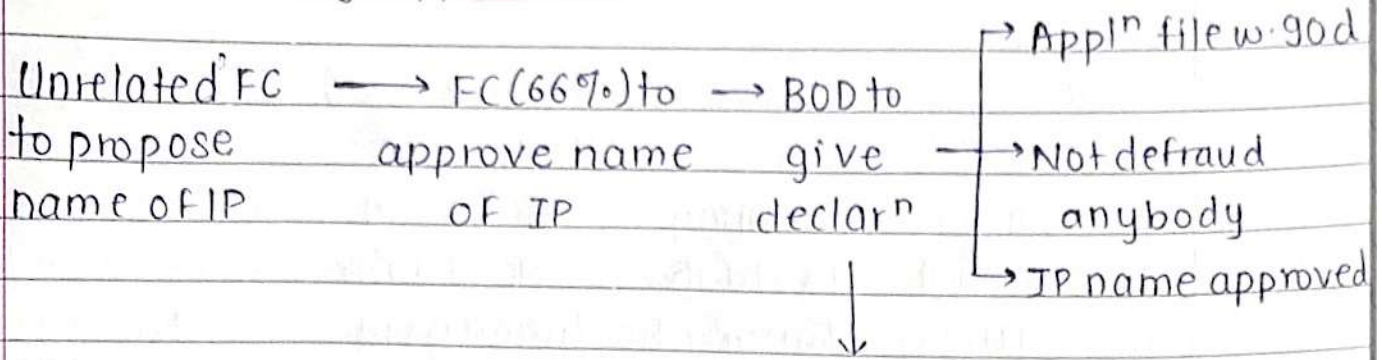


NCLT reqd to pass order within 30 days of receipt of application.

• Section 54O: Initiation of CIRP

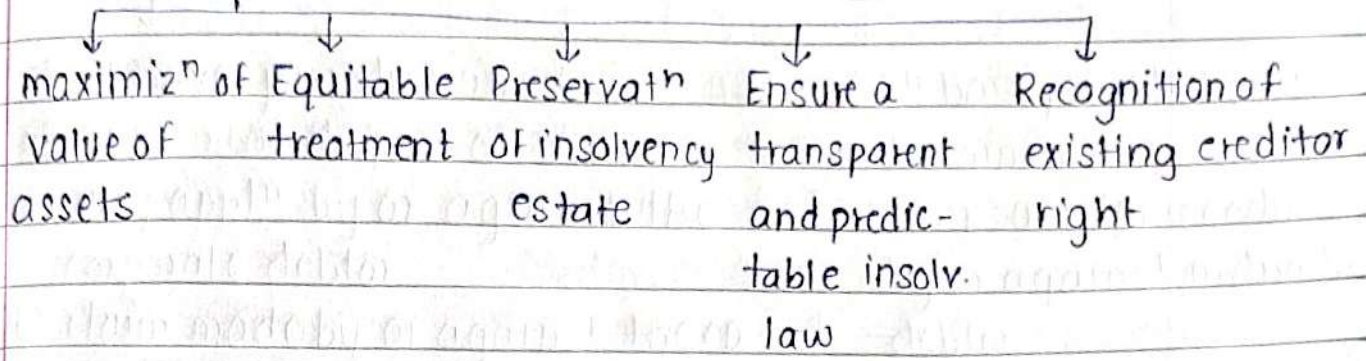


• Steps for filing Application

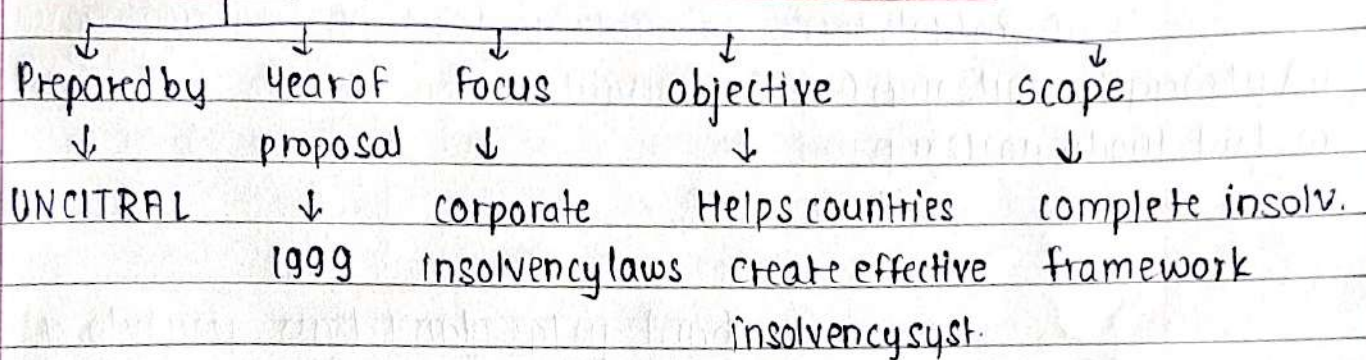


## Ch21: Cross Border Insolvency

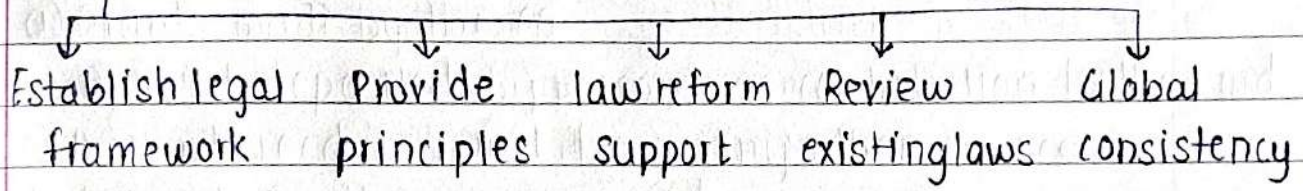
### Objectives of Cross Border Insolvency laws



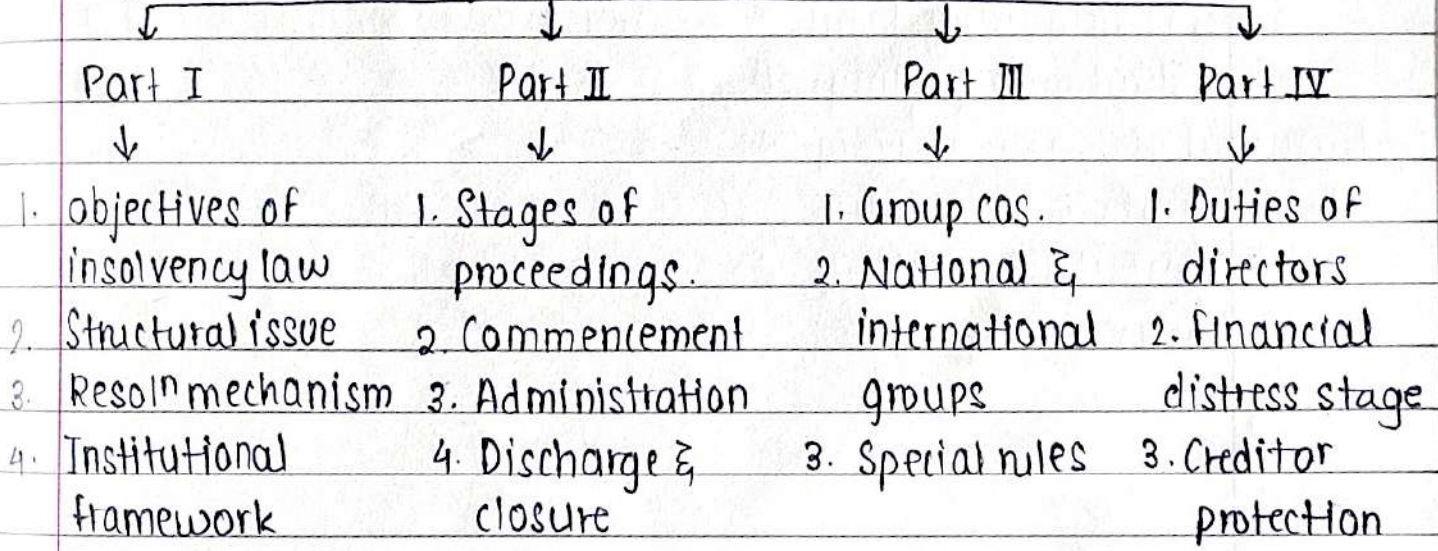
### UNCITRAL Legislative Guide on Insolvency Laws



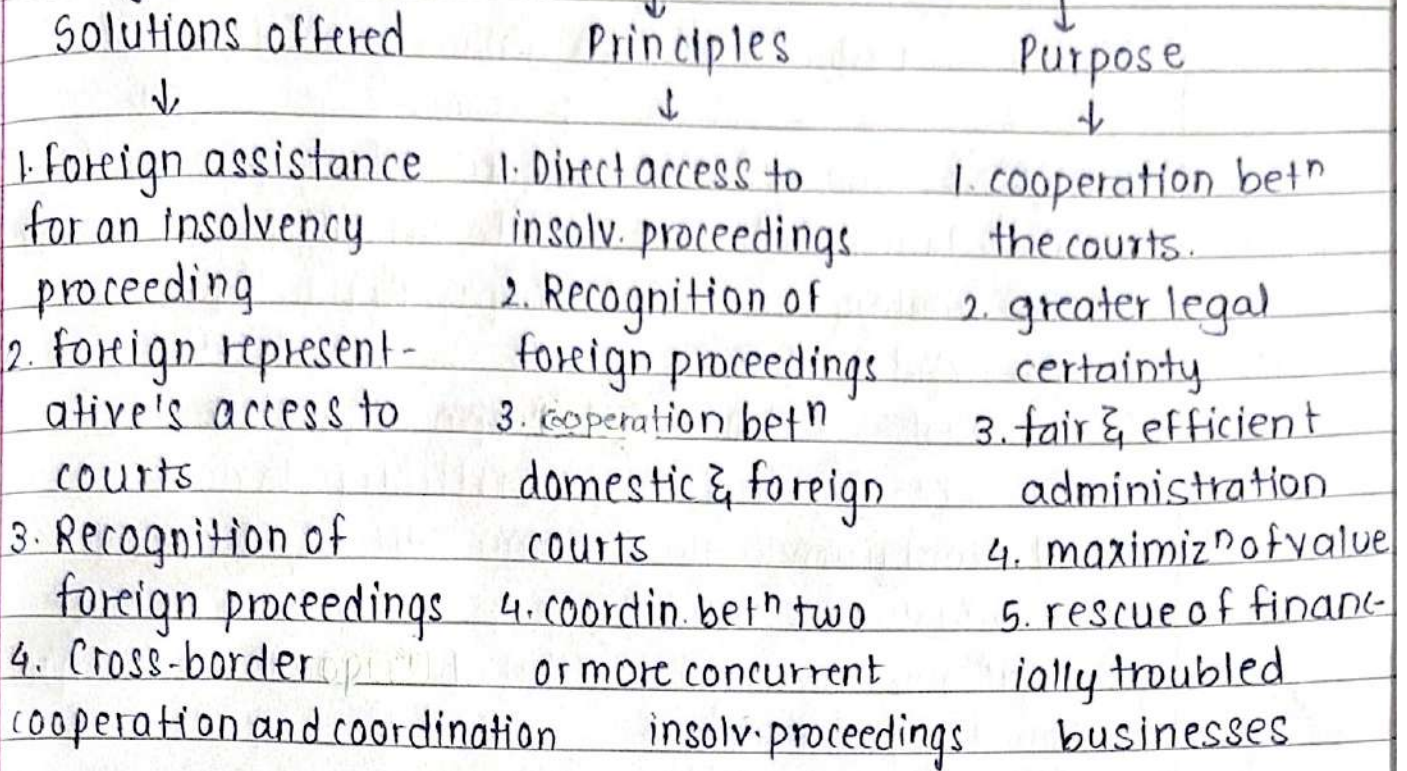
### Purpose



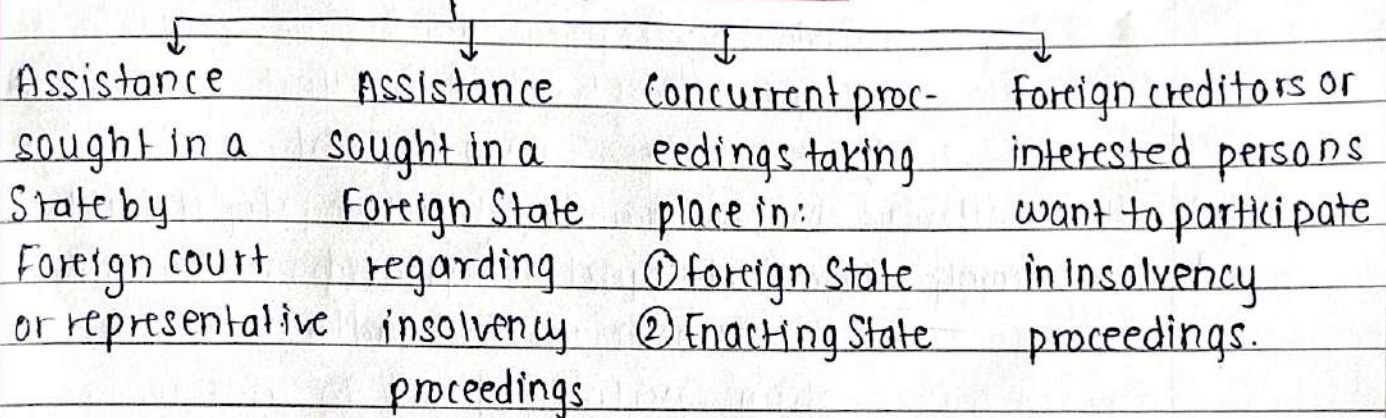
### Key provisions of the Legislative Guide



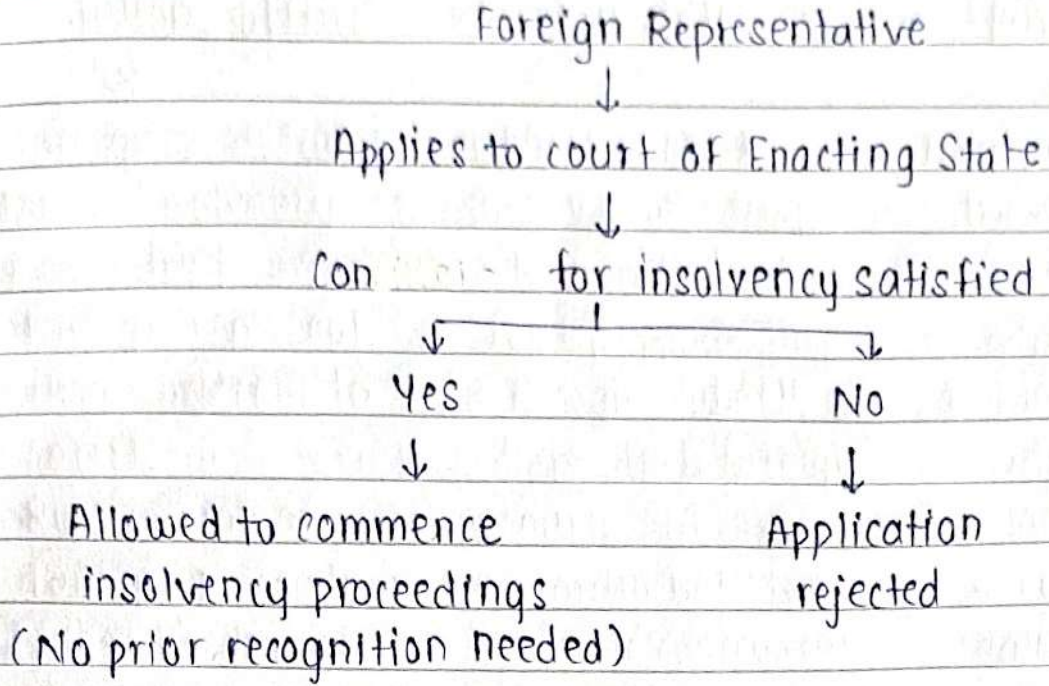
UNCITRAL Model Law



Article 1 - Scope / Applicability of Model law



Application by a Foreign Representative to Commence a Proceeding  
Article II



Direct access to courts granted

Procedural standing given Article II § 12

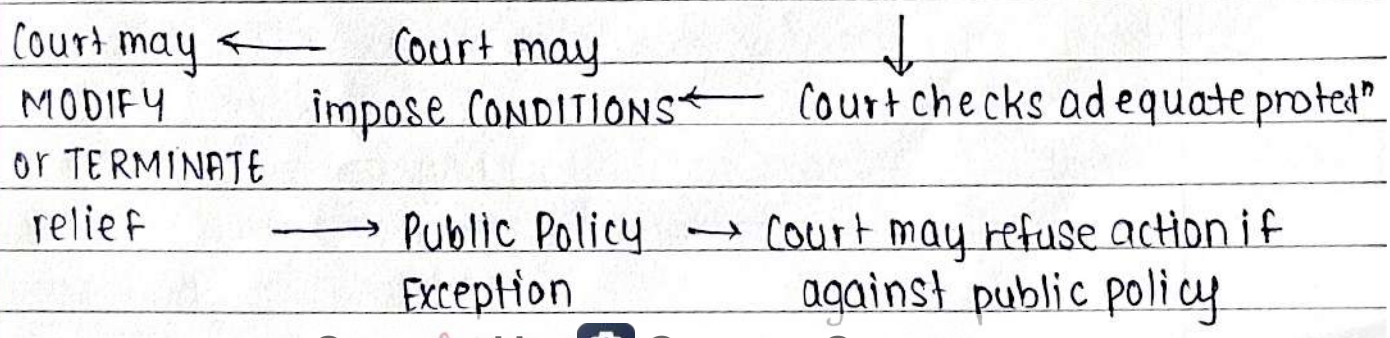
can file petitions / requests / submissions

After recognition → may participate in insolvency proceedings

Protection of Creditors and Other interested Persons.

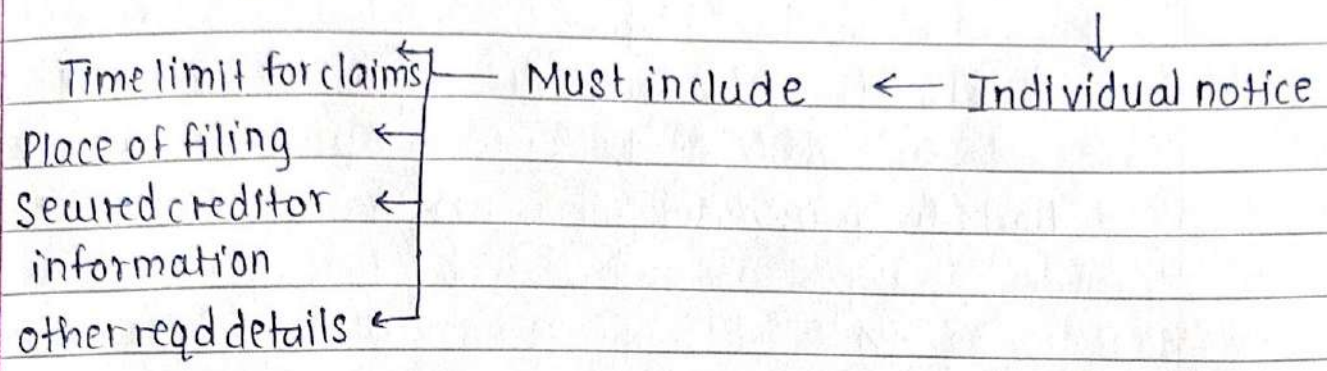
Court grants relief → Must protect interest of

- Creditors
- Debtor
- other affected persons



• Notification to foreign Creditors of a Proceedings **Article 14**

Insolvency proceeding begins → Notification reqd to creditors → ALSO sent to foreign creditors

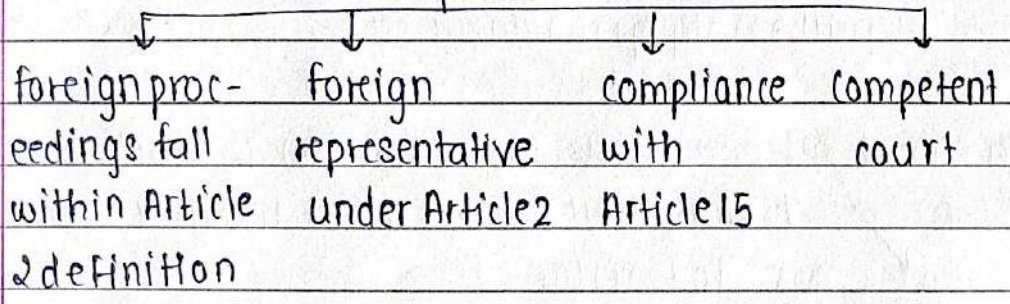


• App<sup>n</sup> for Recognition of a Foreign Proceedings **Article 15**



• Article 16 → court presumption  
 → Legalization not necessary  
 → Purpose

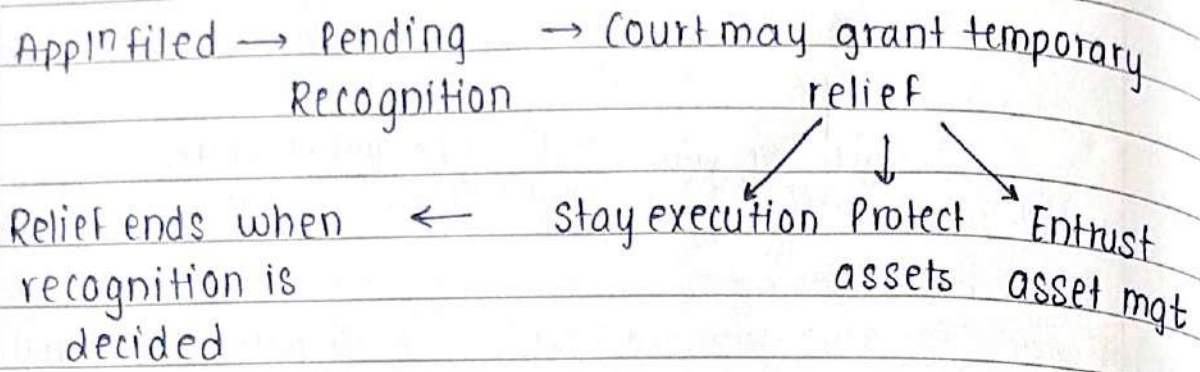
**Article 17** Decision to Recognize a Foreign Proceeding



**Article 18** Subsequent information

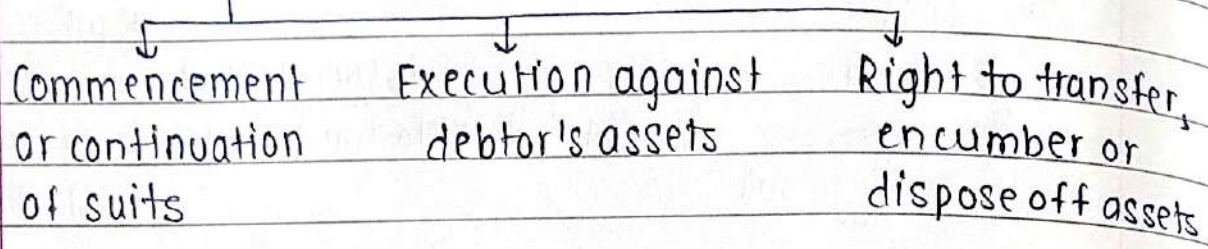
Inform court immediately → ① change in proceeding      ② change in appointment      ③ other proceedings

Article 19 Relief that may be granted upon appl<sup>n</sup> for Recognition of a foreign proceeding

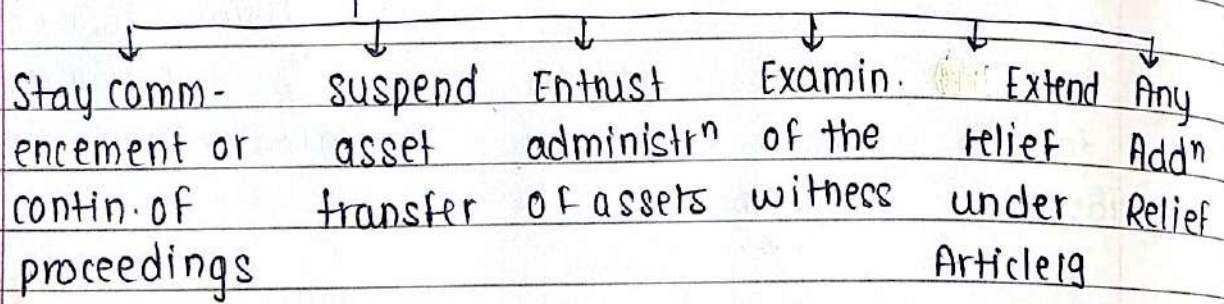


Article 20 Effects of Recognition

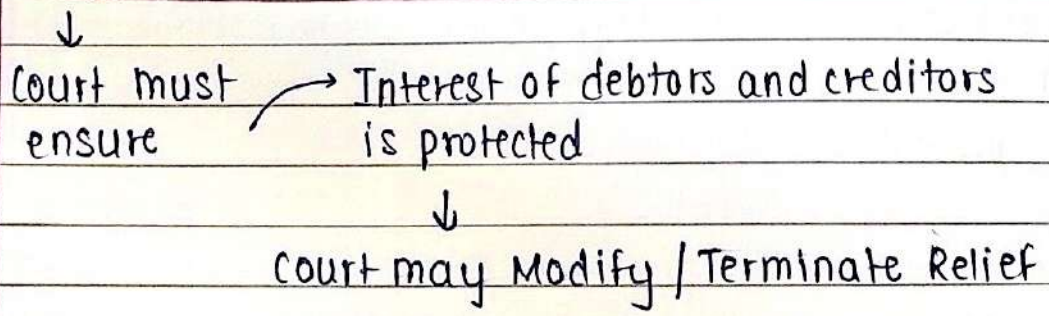
Automatic stay applies to



Article 21 Relief Granted upon Recognition



Article 22 Protection of Creditors and interested persons



Article 24 Intervention by a foreign Representative

Foreign Proceeding → foreign Representative may intervene  
 Recognized in local proceedings  
 ↓  
 Right to participate.

Article 25 - Cooperation and Direct Communication

Local court handling case → may communicate → Share information/assistance  
 "directly" with foreign court

Article 26

Insolvency Profession cooperate with [ foreign court, foreign Representative

Article 27:

Cooperation may include

- ↓
- Appointm. of a person
- ↓
- Communic<sup>n</sup> of inform<sup>n</sup>
- ↓
- Coordinating asset vision
- ↓
- Approving super-coordination agreements
- ↓
- Coordinating current proceeding

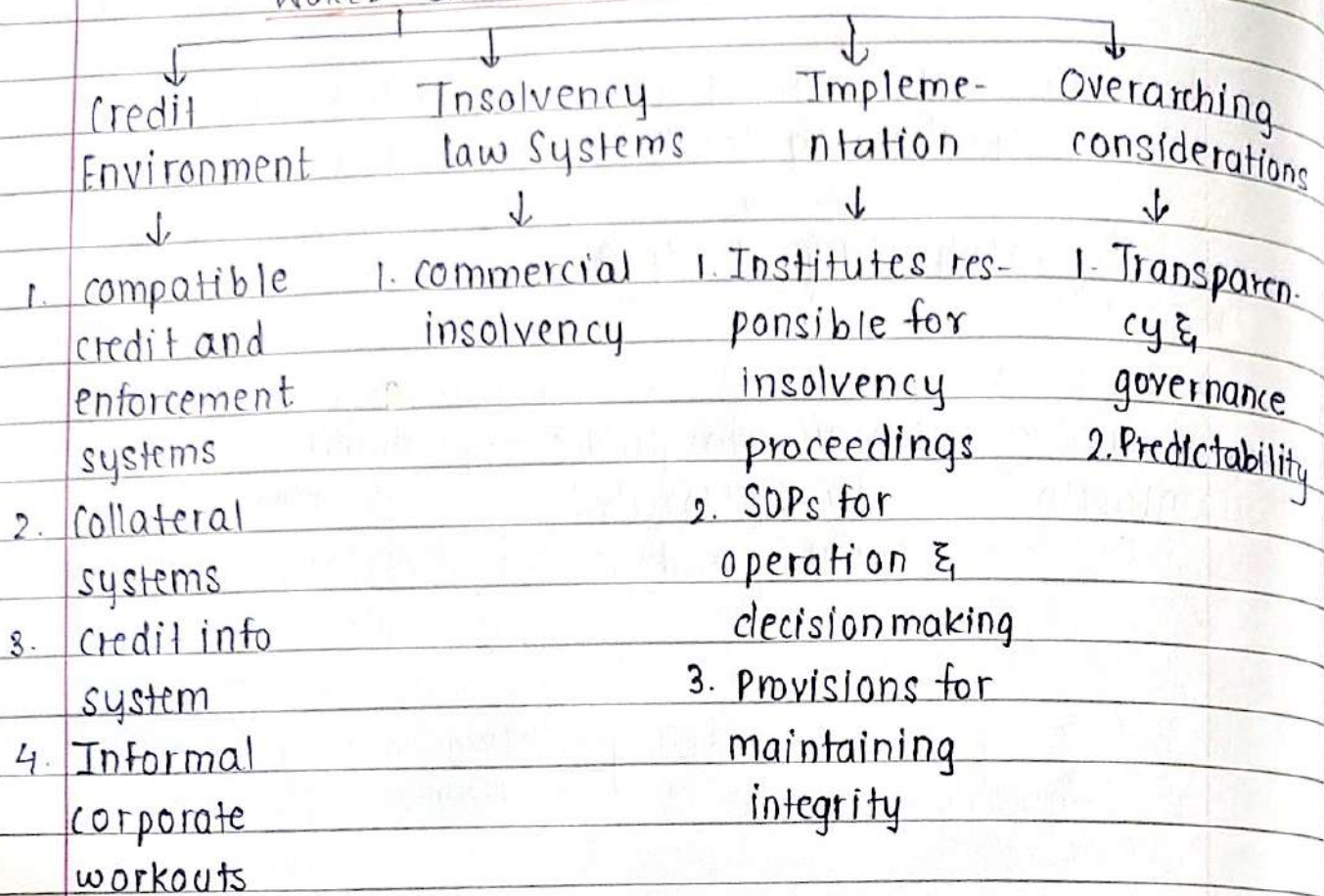
Article 29

↓  
 If local and foreign Proceedings both exist → The court must [ ensure relief is consistent, modify relief if conflicting

Article 30

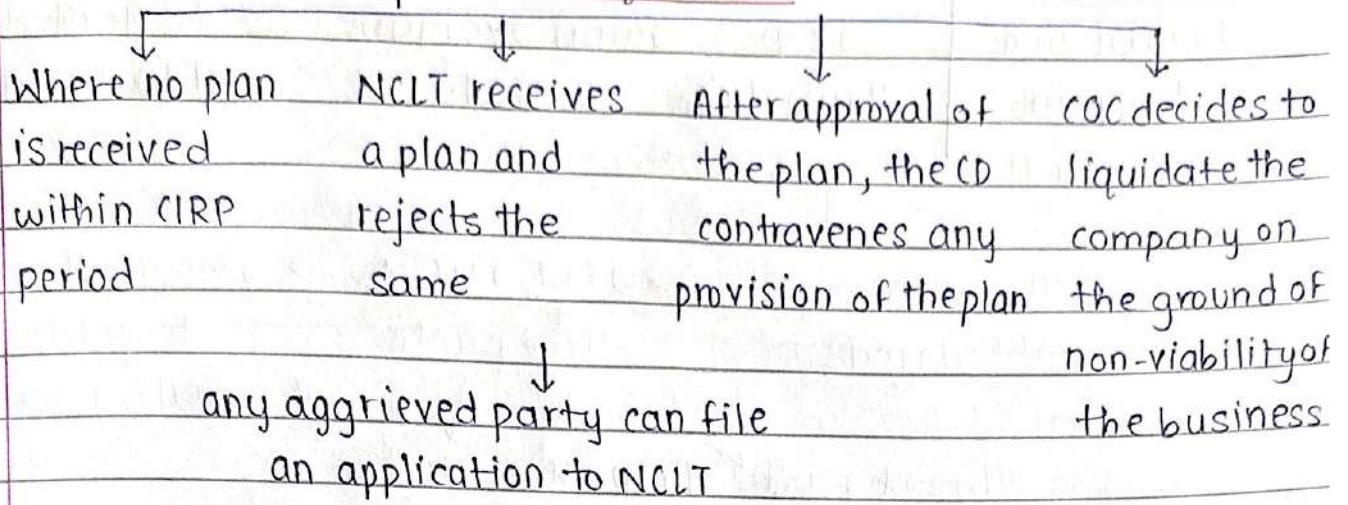
If more than one foreign proceeding → Court must coordinate proceeding → foreign main gets priority → Non-main Relief must be consistent

WORLD BANK PRINCIPLES

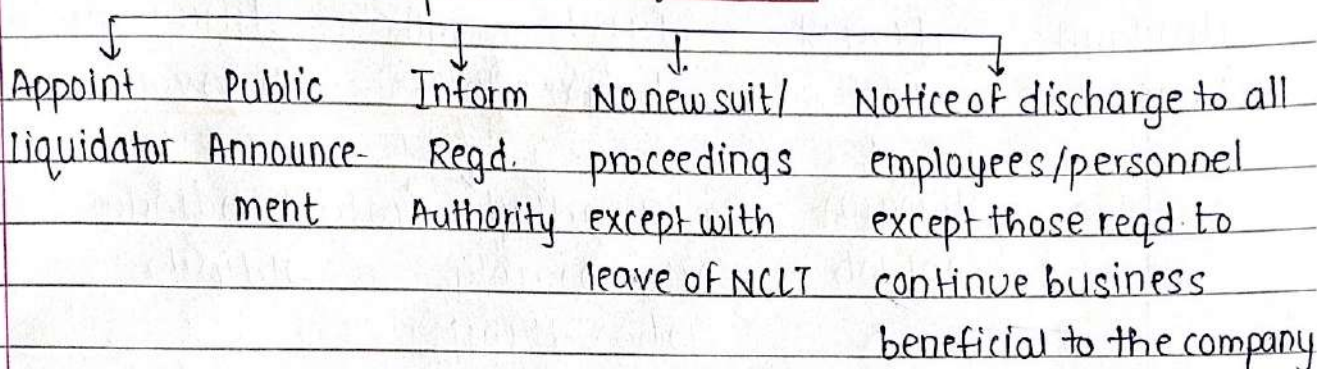


## Ch 22: Liquidation on Failure of CIRP

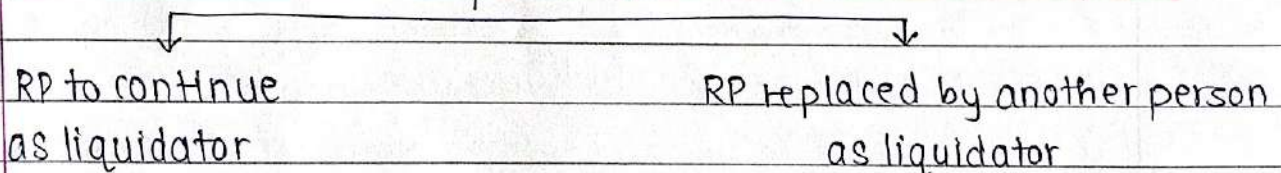
### ◦ Section 33 - Initiation of liquidation



### Effect of Order of liquidation



### ◦ Section 34: Appointment of liquidator and fees to be paid.



IF:

- No written consent submitted by RP
- Board recommends replacement
- Resolution Plan rejected u/s ~~sec~~ 30(2)

Appointment to be made only after approval of Board within 10 days of

• Effects of appointing a liquidator

↓  
powers of BOD, KMP, partners shall vest in liquidator

↓  
Personnel of CD to extend all assistance and cooperation to the liquidator

↓  
fees of liquidator shall be charged as may be specified.

• Section 35 - Powers and Duties of liquidator

↓  
Verify claims of all creditors

↓  
Take into custody all assets, property, etc

↓  
evaluate assets & property of CD

↓  
carry on business of the CD

↓  
sell property of the CD

↓  
invite & settle claims of creditors

↓  
institute or defend any suit

• Section 36 - Liquidation Estate

↓  
Assets which can be sold by liquidator

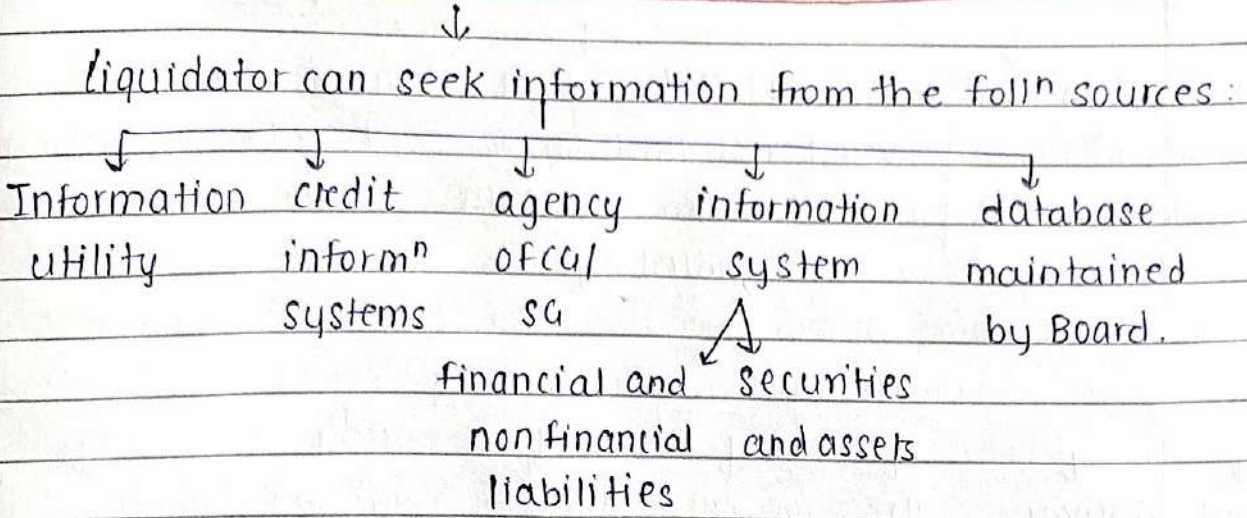
↓  
Assets excluded from liquidation Estate.

- ↓
1. Assets owned by co. as evidenced by records (whether or not in possession of the company)
  2. Tangible / Intangible assets
  3. Movable / immovable assets
  4. Assets - security relinquished
  5. Disputed assets
  6. Assets recovered on avoidance of transaction
  7. Proceeds of liquidation

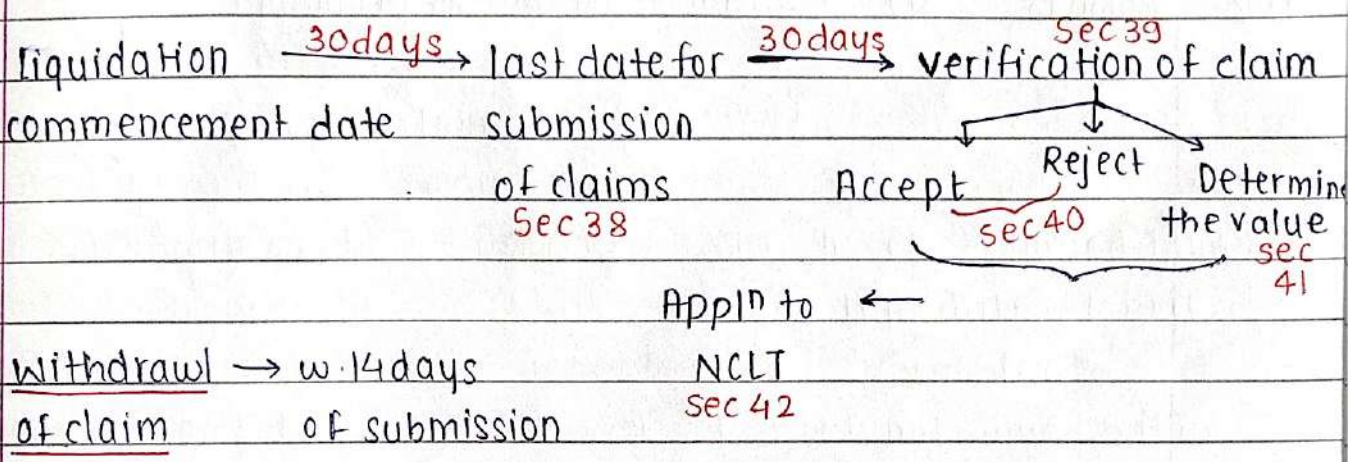
- ↓
1. Assets not owned but in possession of co. like assets held in:
    - a) Bailment
    - b) Trust
    - c) other contracts
  2. Amount of employer for PF / pension / gratuity.
  3. Assets over which security is created.
  4. Personal assets of shareholders or partners.
  5. Assets of subsidiaries.

3

◦ Section 37- Powers of Liquidator to Access information.

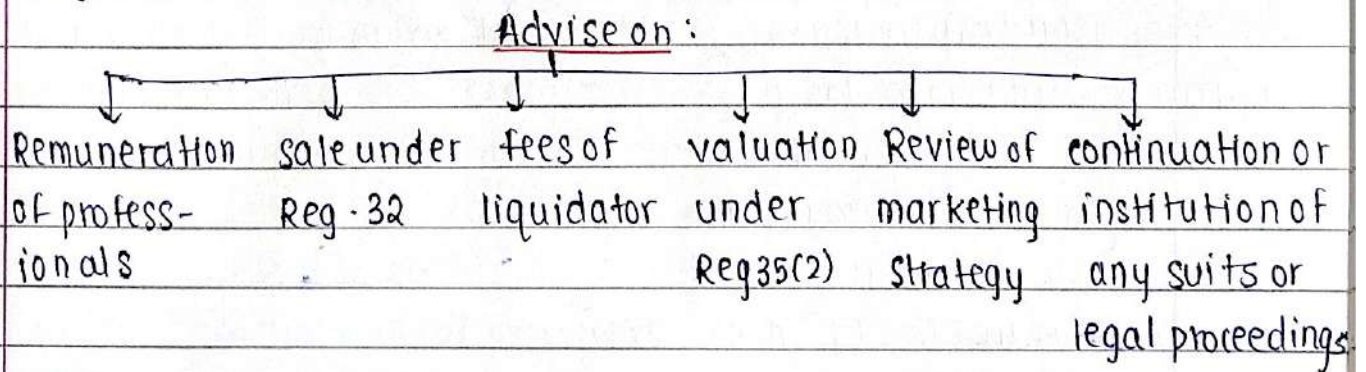


◦ Process of Liquidation

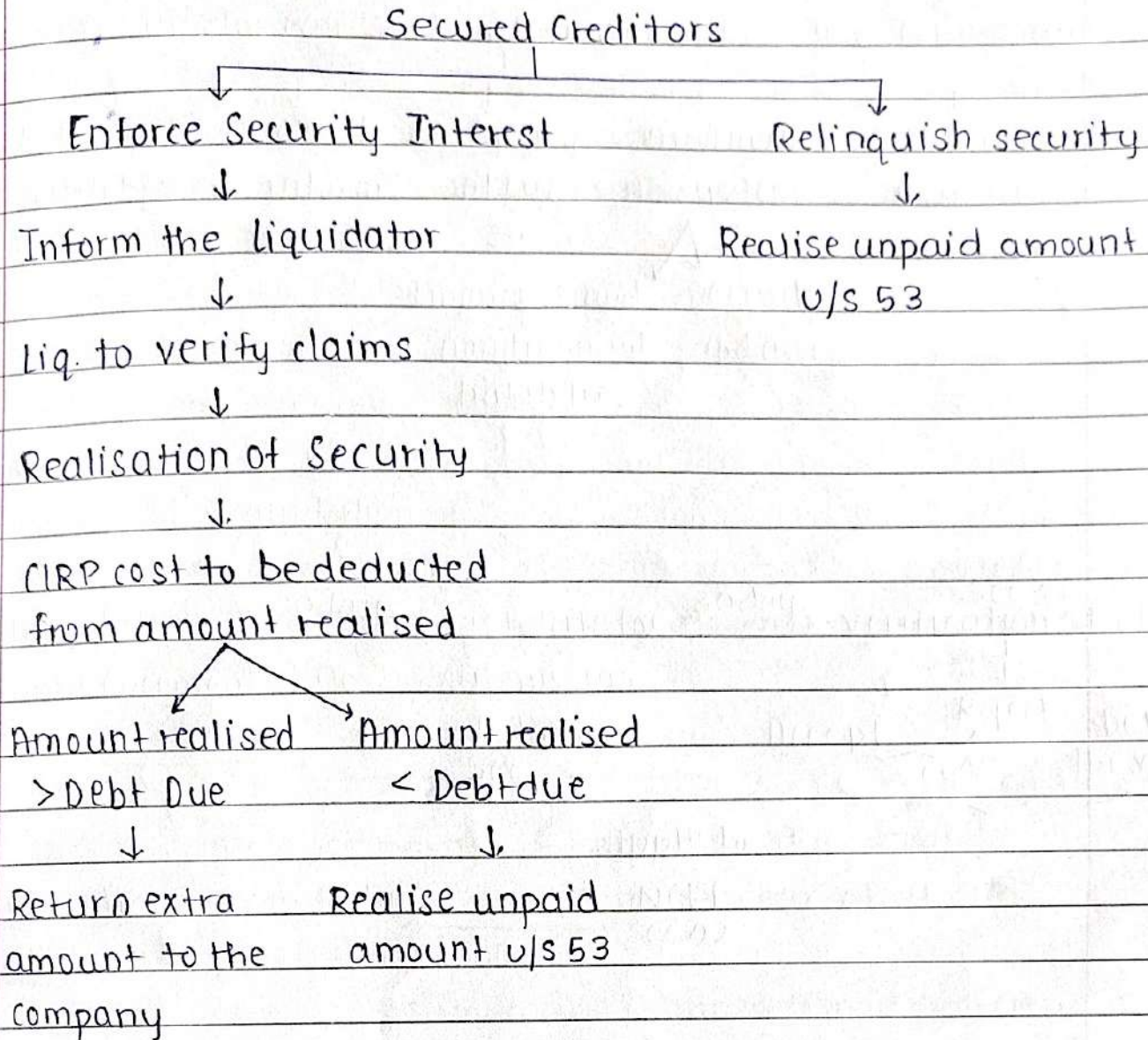


◦ Time for completion of Compromise or Arrangement → completed within 90 days of order of liquidation u/s 33

◦ Regulation 31A - Stakeholders' Consultation Committee



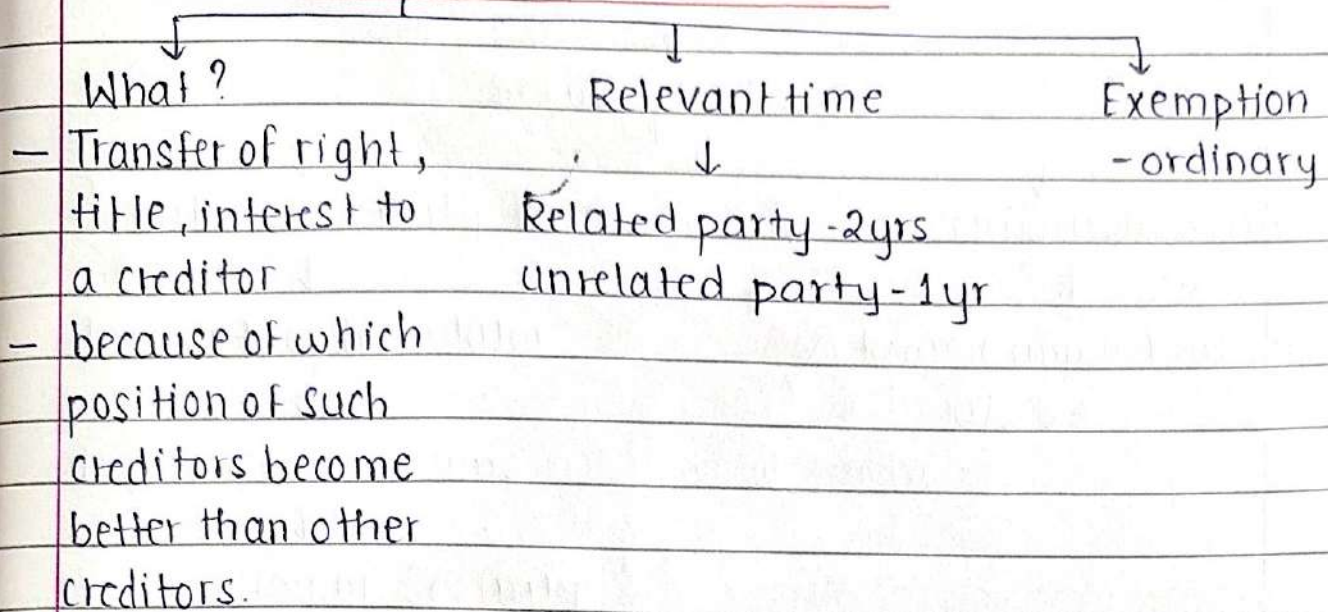
• Position of Secured Creditors (Section 52)



• Section 53 - Distribution of Assets

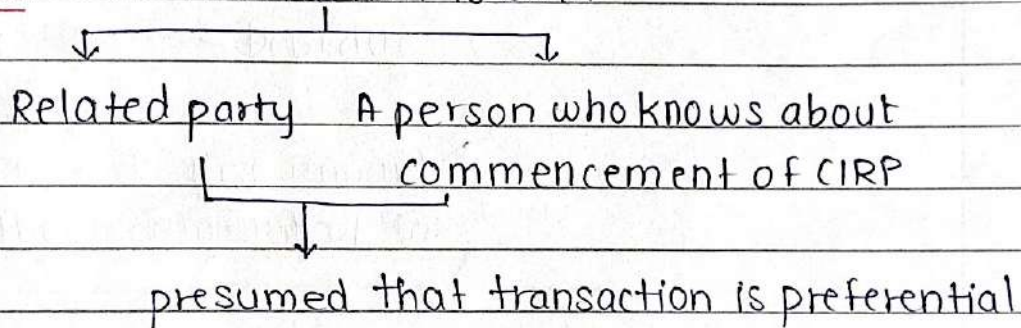
- ↓
1. Insolvency resolution process cost + liquidation cost (in full)
  2. workmen's due - 24 months before LCD + secured creditors
  3. Employees - 12 months before LCD (relinquished sec)
  4. unsecured financial creditors
  5. Gov. dues - 2 years before LCD + secured ~~un~~ enforced sec
  6. Remaining debts & dues - employees, workmen, gov. dues, etc
  7. Preference shareholders
  8. Equity shareholders of partners.

• Preferential Transactions (Section 43)



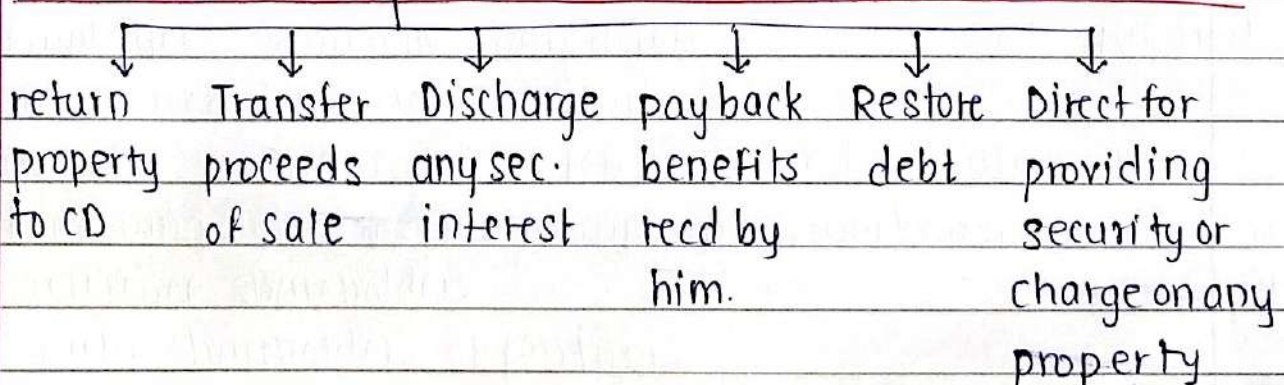
NOTE: Even if preference given pursuant to a court order, it will be considered as preferential transaction.

• Presumption - If transaction is with

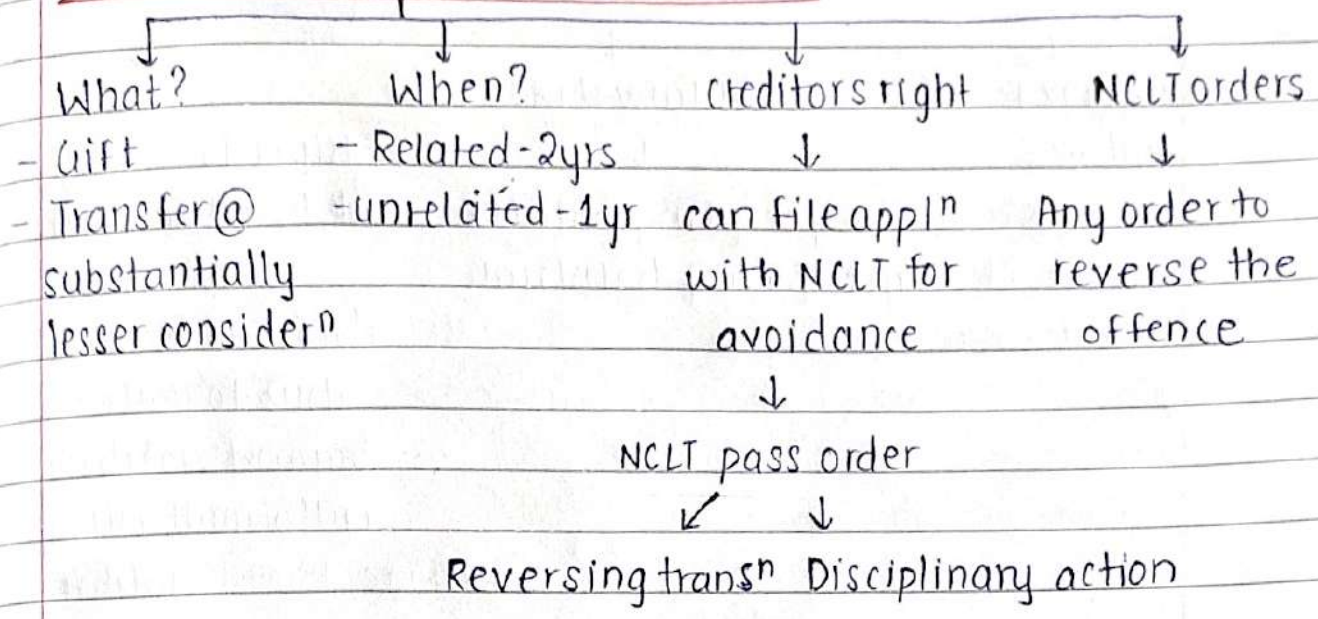


• After public announcement it is assumed that everybody knows about commencement of CIRP.

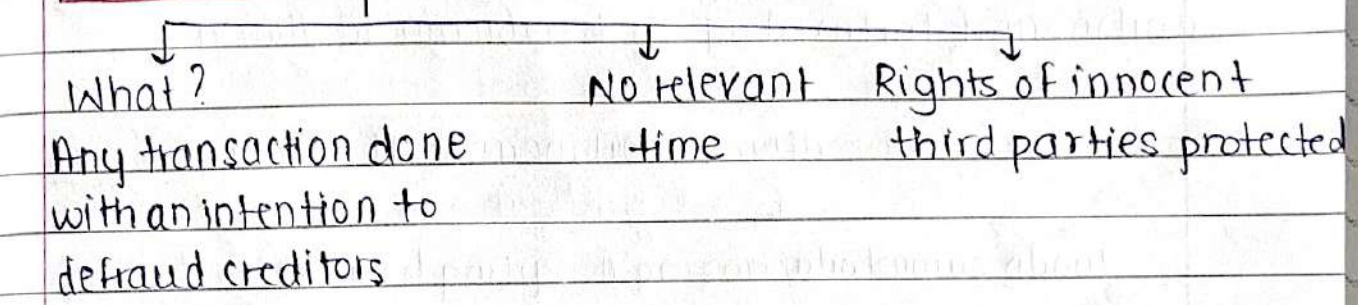
• Orders in case of Preferential Transaction (Section 44)



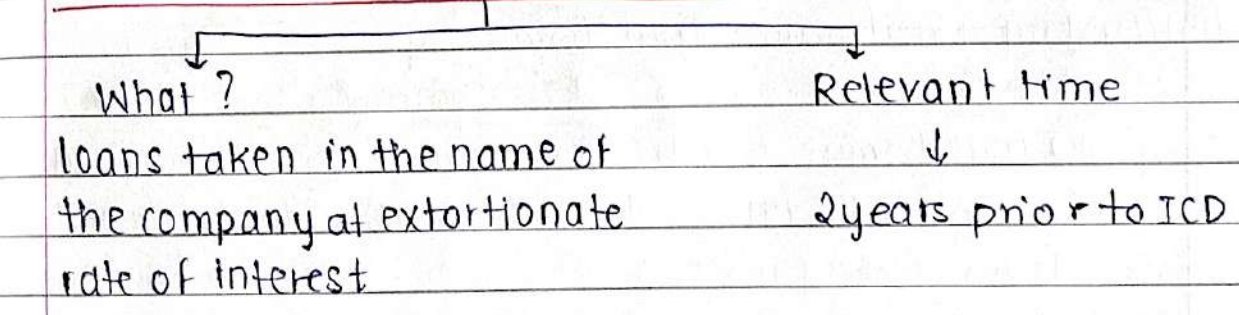
Section 45 - Undervalued Transaction



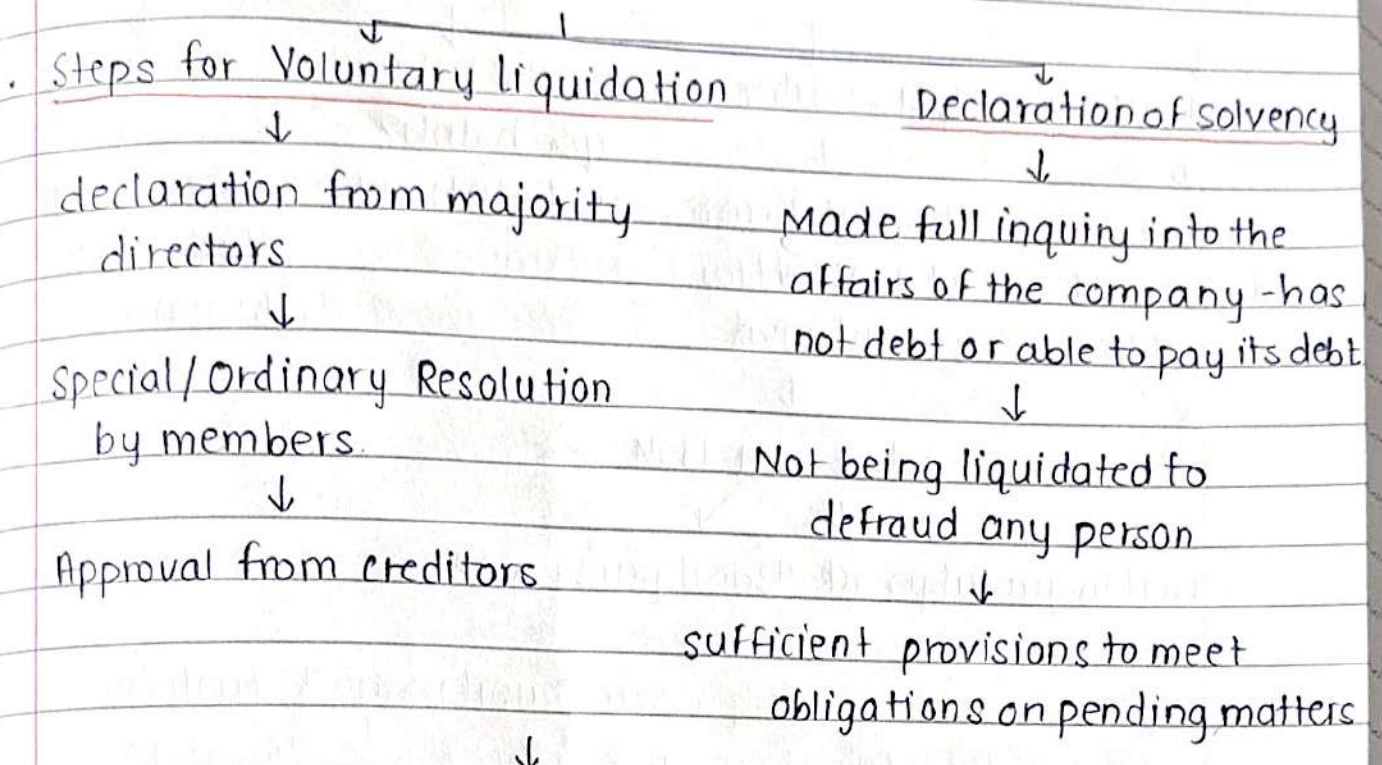
Fraudulent Transactions :



Extortionate Credit Transaction



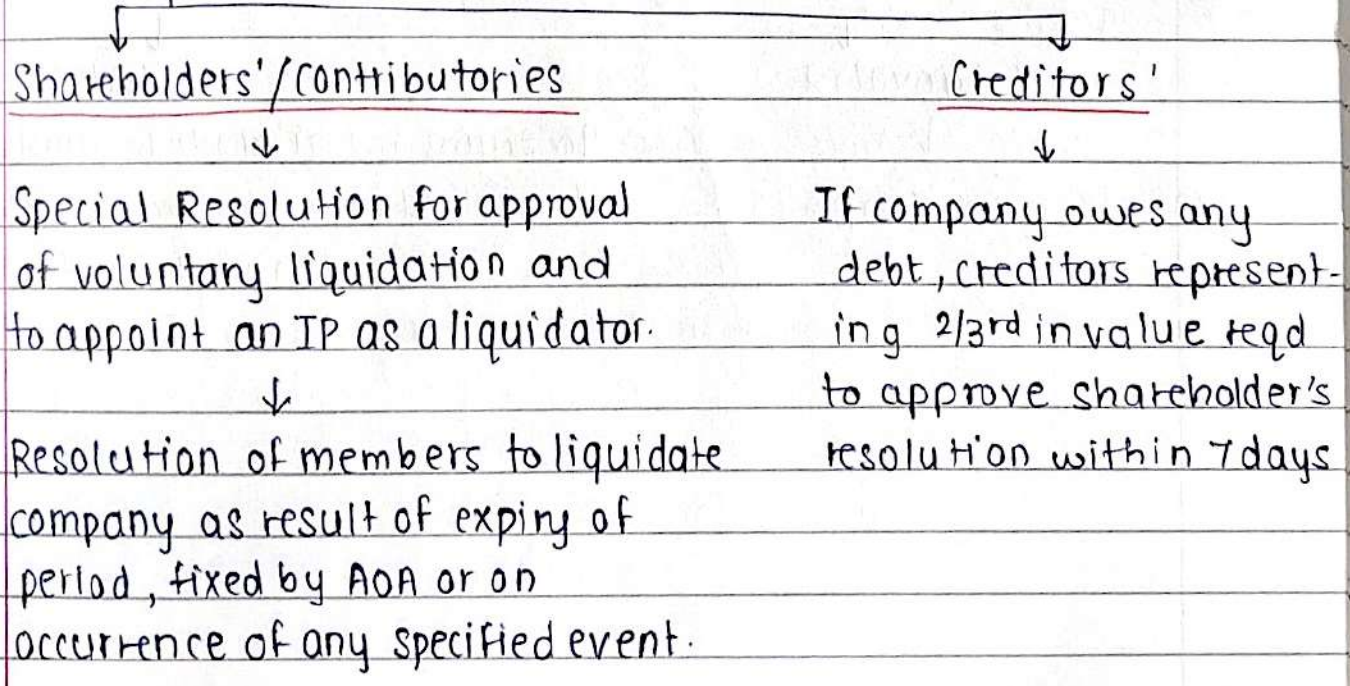
## Ch 23 - Voluntary Liquidation



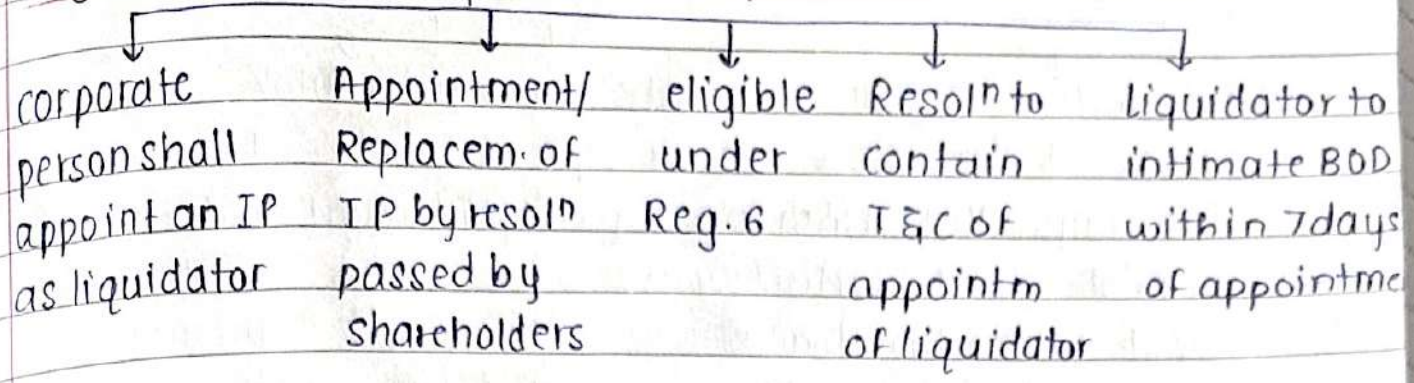
### shall be accompanied with.

- 1) Audited financial statements of previous two years.
- 2) Report on valuation of assets
- 3) Disclosure about pending proceedings

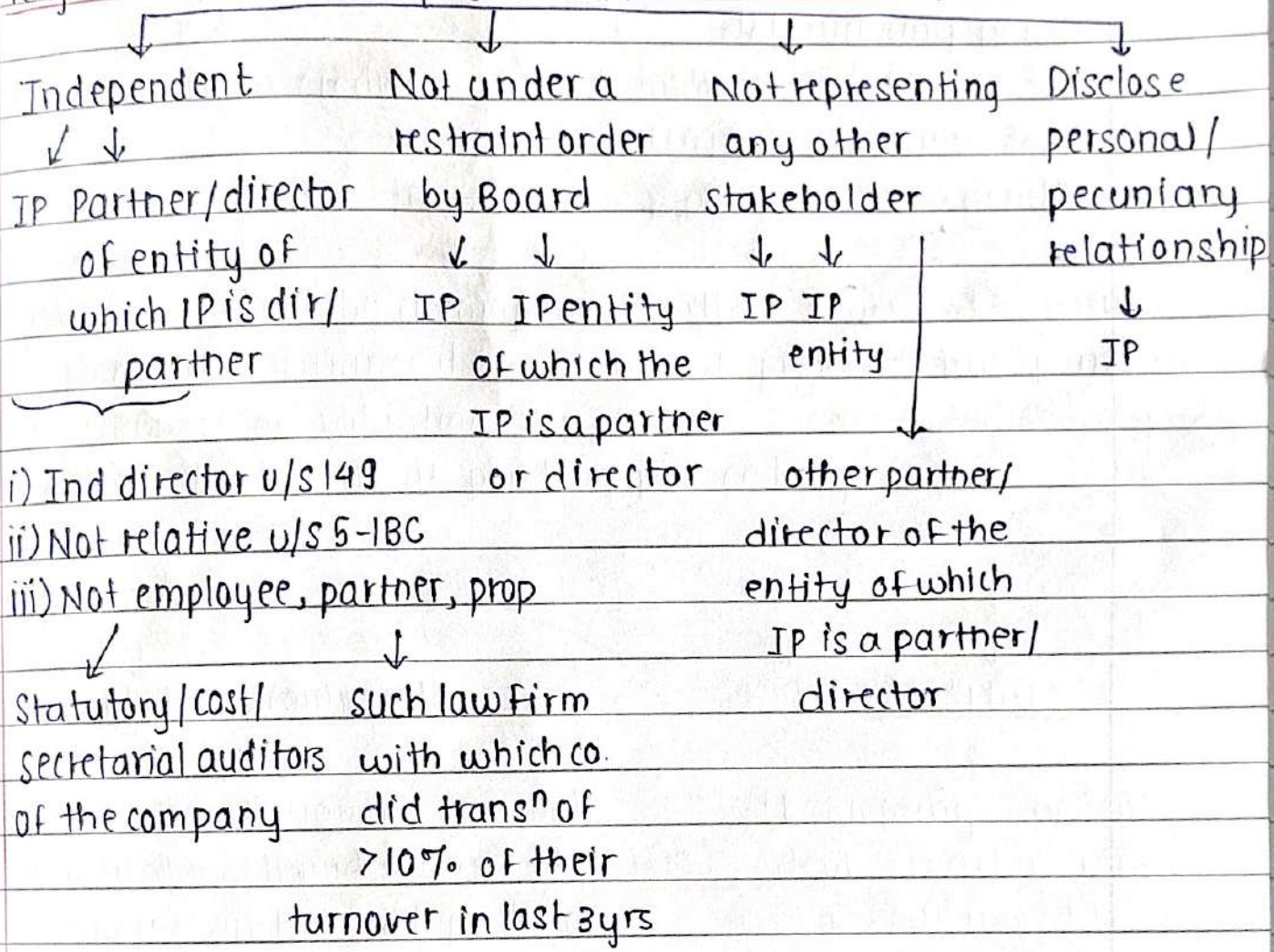
### • Approvals



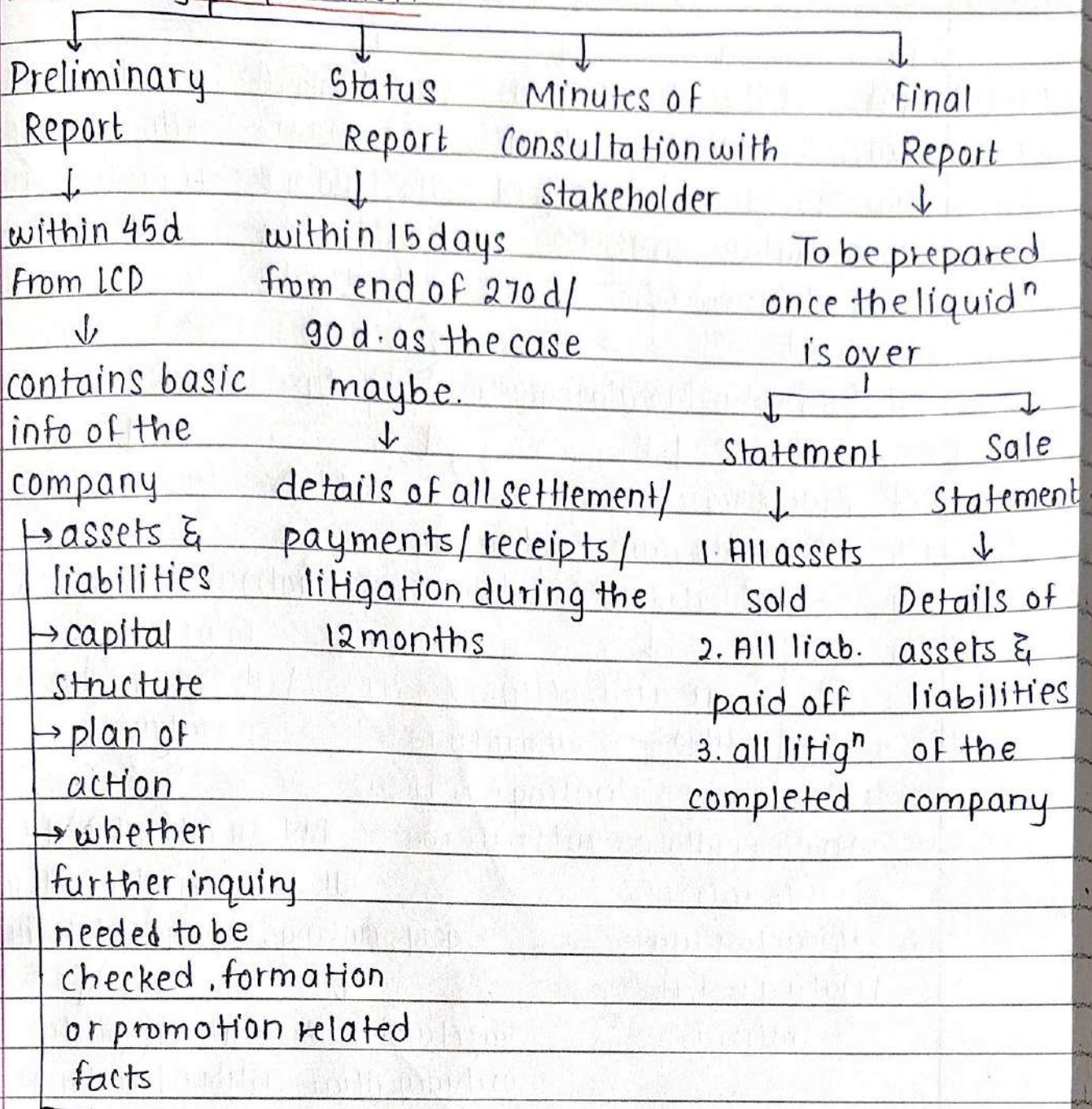
Regulation 5 - Appointment of liquidator



Regulation 6 - Eligibility for Appointment as liquidator



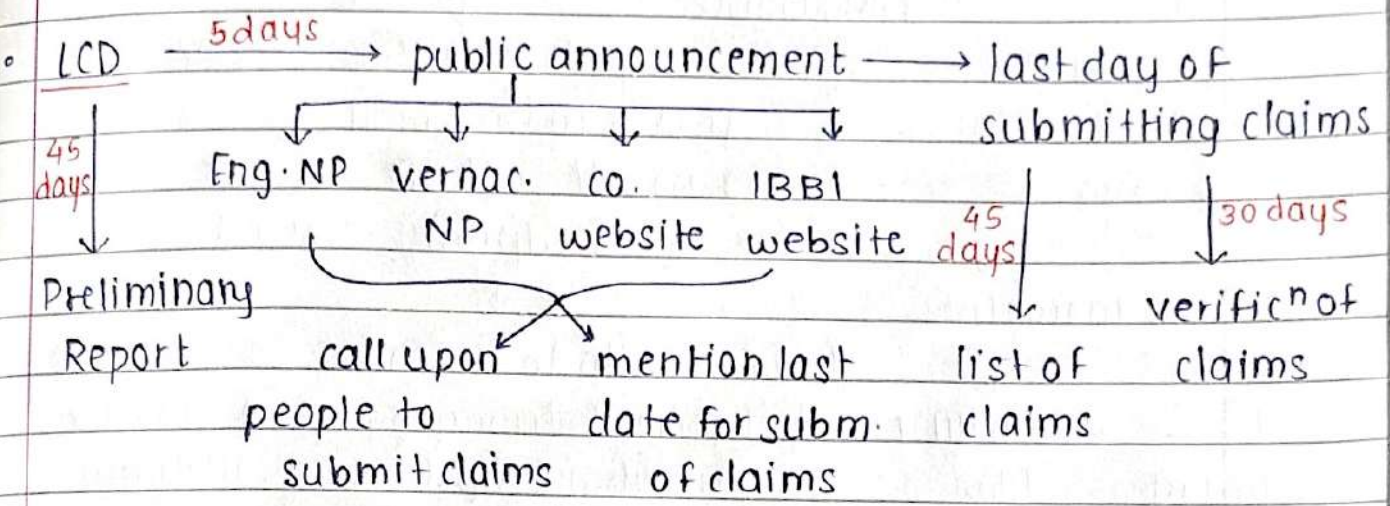
• Reports by Liquidator.



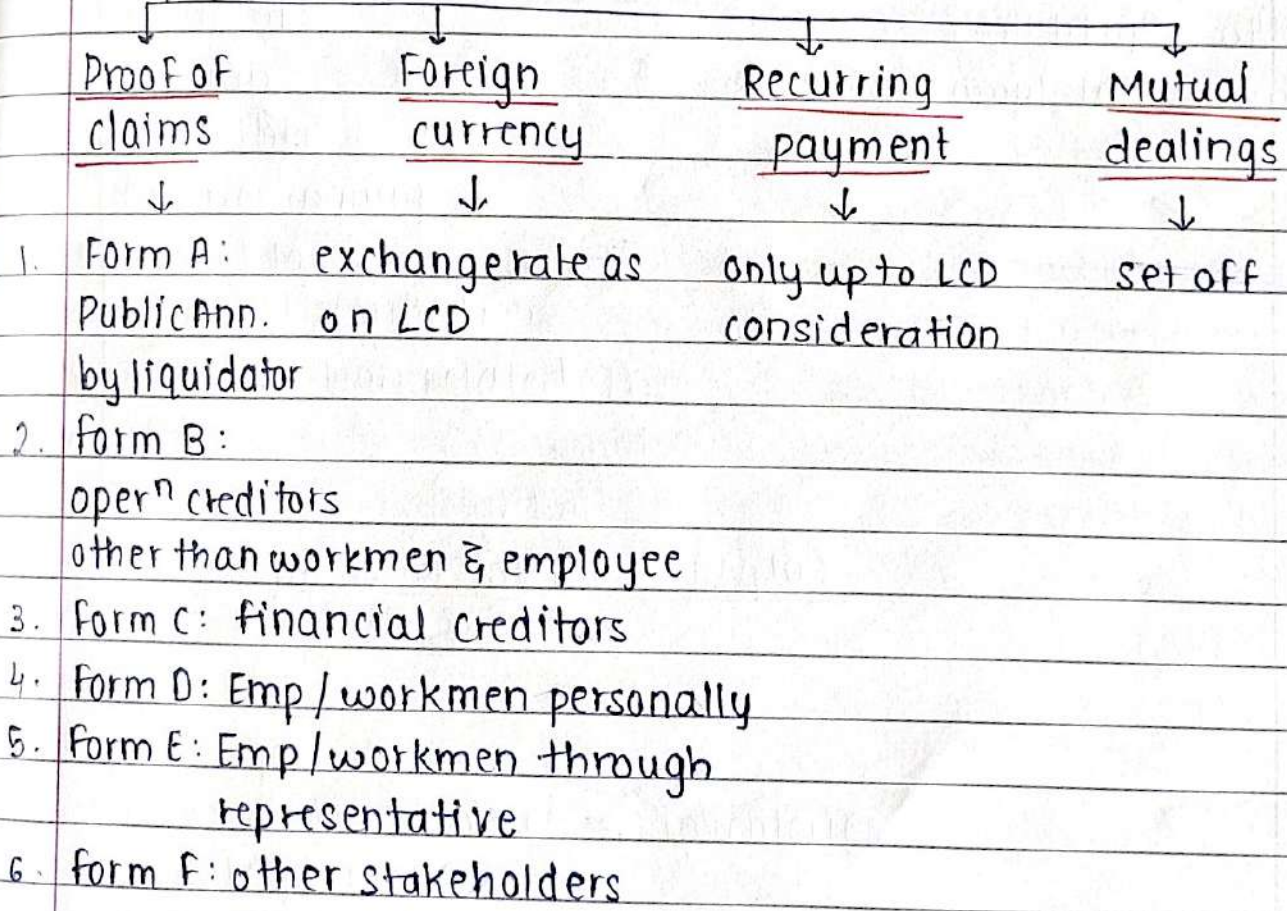
• Register and books of Accs (Reg 10)

1. Cashbook
2. Ledger
3. Bank Ledger
4. Register of Fixed Assets & Inventories
5. Tenants Ledger
6. Suits Register
7. Fee Register
8. Documents Register, etc

- who cannot be appointed as a professional in volunt. liquid<sup>n</sup>
  - Relatives of liquidators
  - RPF of corporate persons
  - Any person who has been an auditor in last 5yrs



Claims



Time limit

If company has creditors

If co. does not have creditors

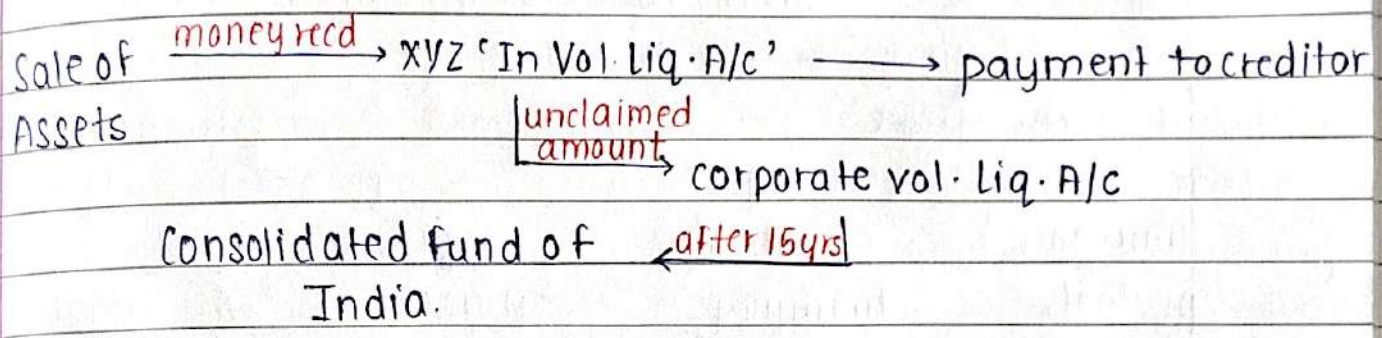
↓  
270 days from LCD

↓  
90 days from LCD

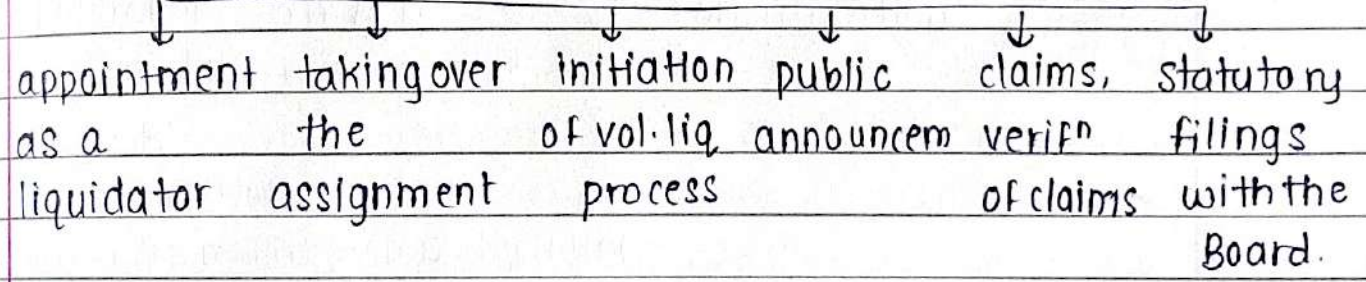
↓  
If liquidation goes beyond specified time

↓  
Status Report

Flow of money in Voluntary Liquidation



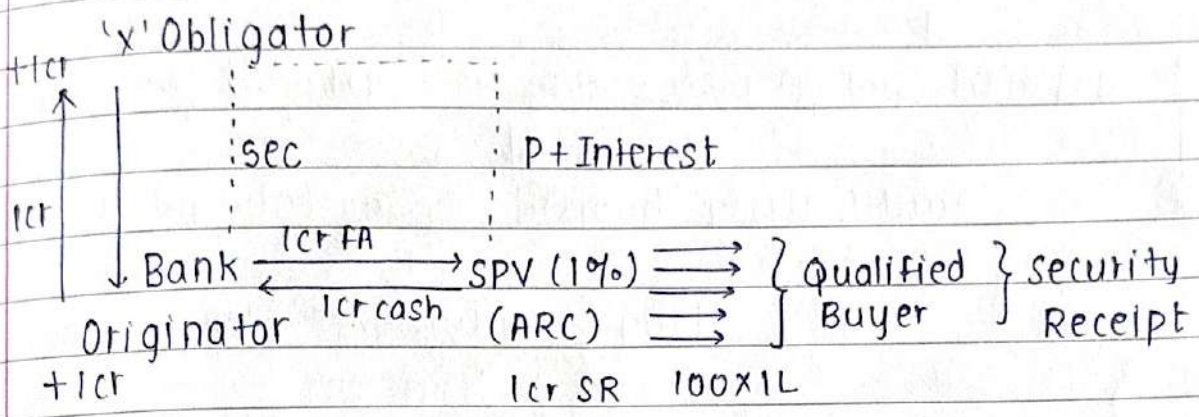
Preservation of Records (Reg 41) at least 8 years



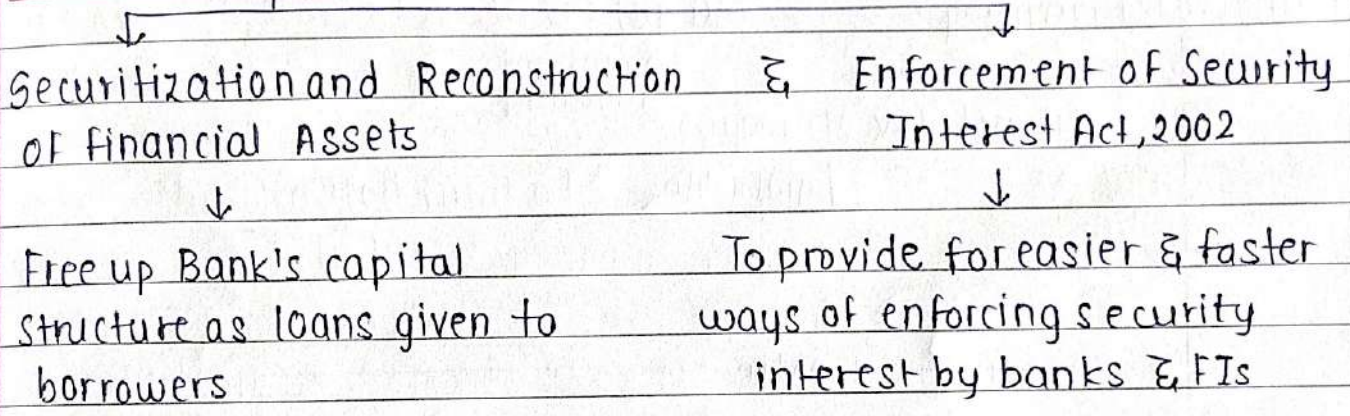
①

Ch 24: Debt Recovery and SARFAESI

• Process of Securitization



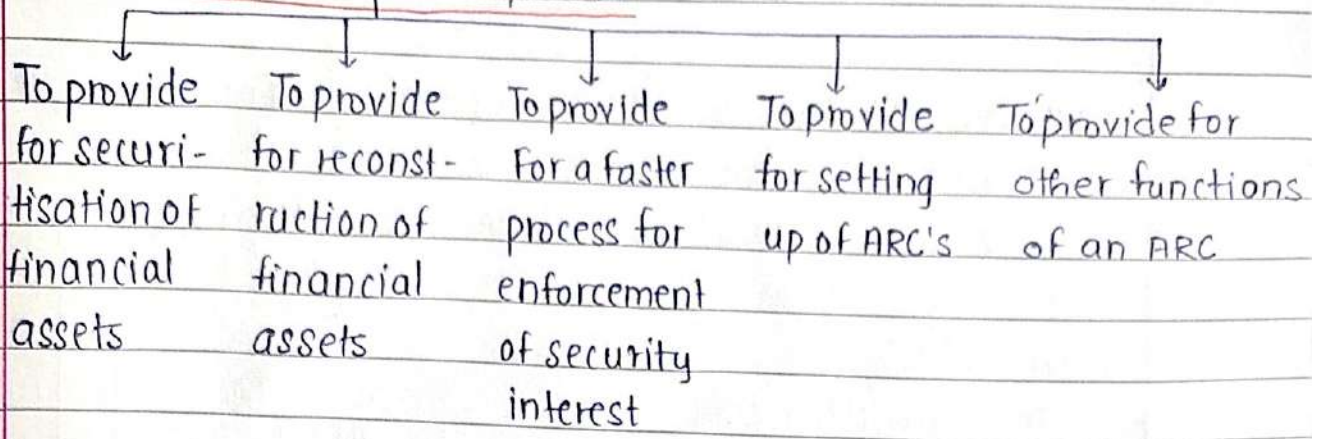
• SARFAESI Act, 2002



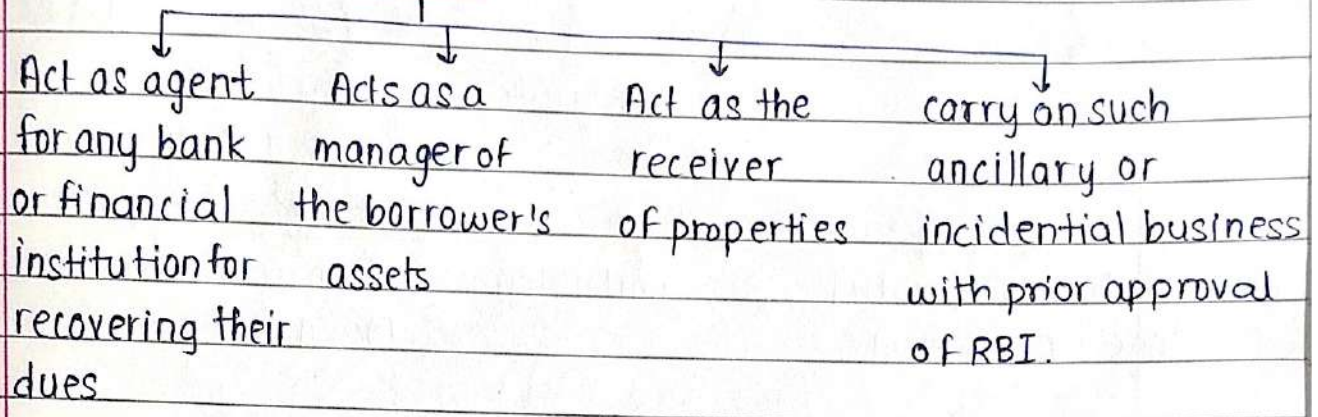
• Mardia Chemical v. Union of India.

- No need to create a law on matters for which RDBFI Act already exists → both laws talk about complete different aspects.
- No provision for lender liability → other laws talk about lender liability.
- No right given to debtor to approach the DRT after receipt of demand notice → Right has not been taken away but merely postponed in order to prevent misuse.
- 75% of deposit for appeal by debtors → arbitrary → Yes  
↳ the provision will not make the entire law constitutional

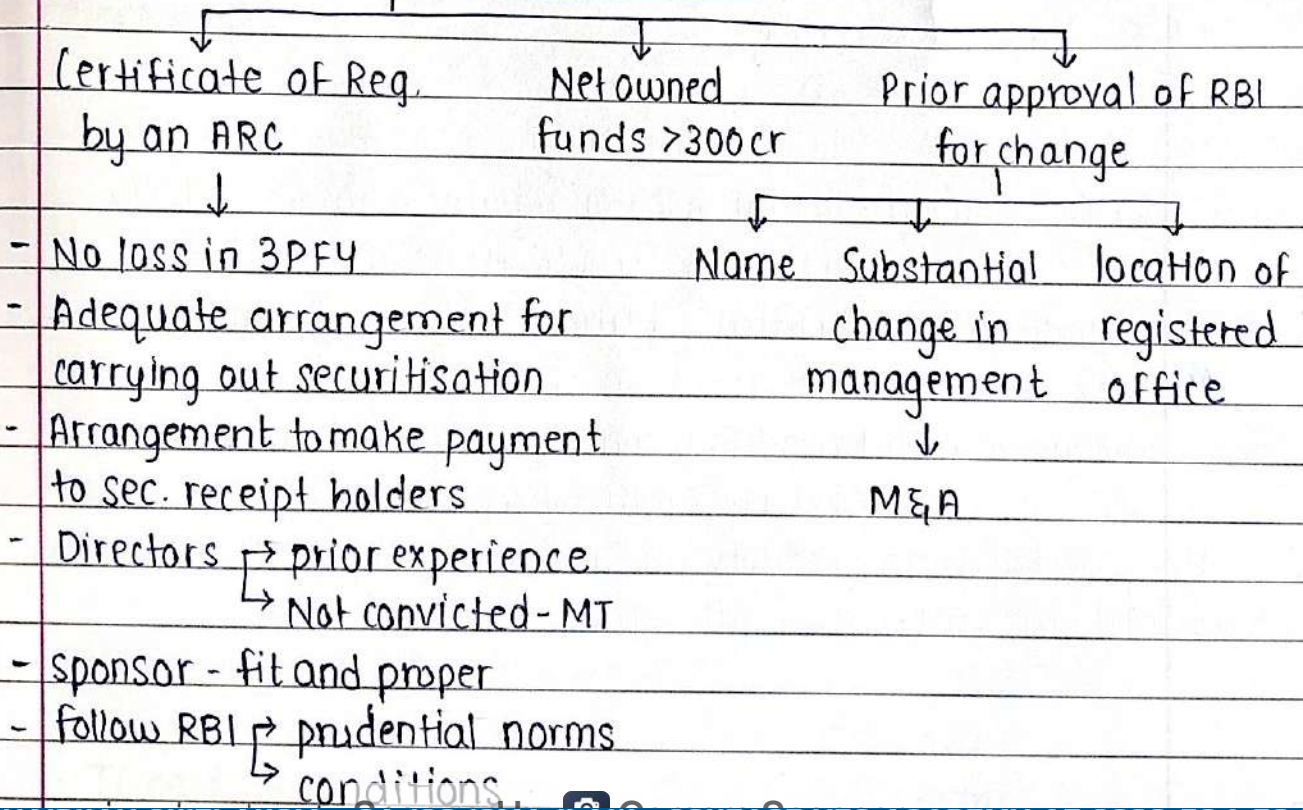
• Objectives of SARFAESI, 2002



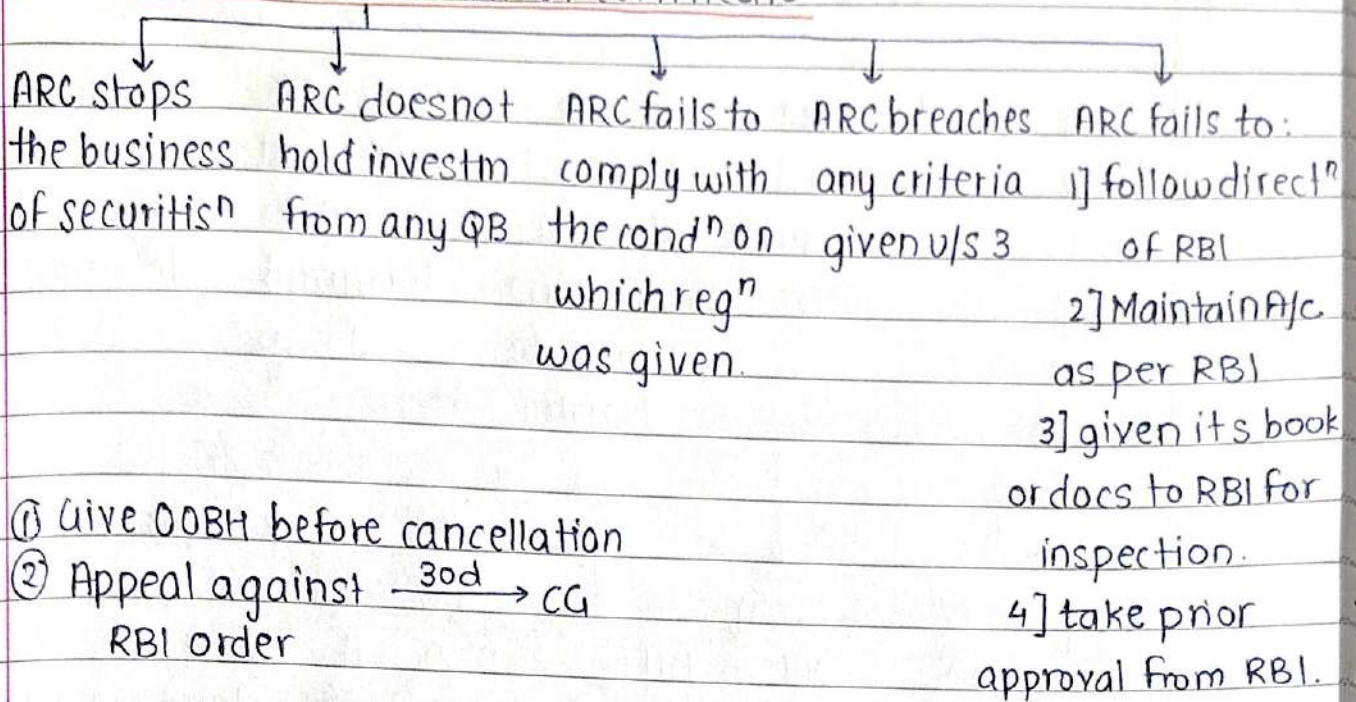
• Main objectives of ARC



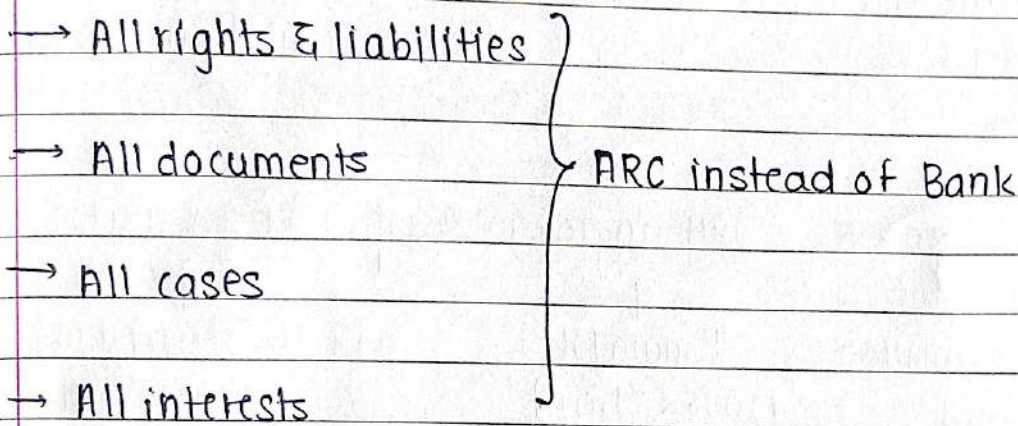
• Section 3 - Registration of an ARC



• Section 4: Cancellation of Certificate



• Section 5: Acquisition of Interest in Financial Assets



• Section 5A: Transfer of Pending Applications to any one of DRT

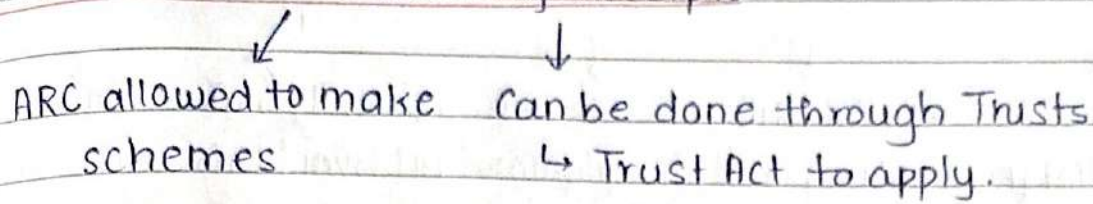
↓

If application or suit regarding FA is pending before 2 or more DRT, the ARC may apply to DRAT to transfer the case in any one DRT order of DRAT shall be binding on all DRAT.

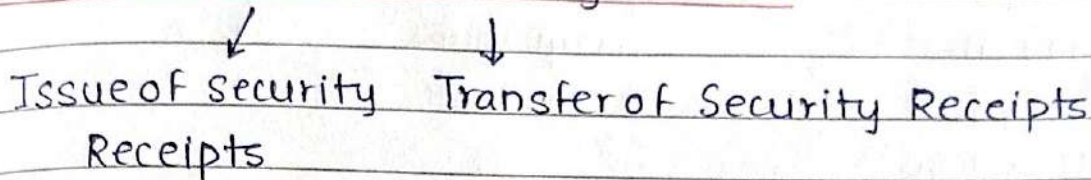
• Section 6: Notice to Obligor

- Obligor required to pay subsequent EMIs to ARC
- If paid to Bank, the bank will hold money in trust on behalf of ARC

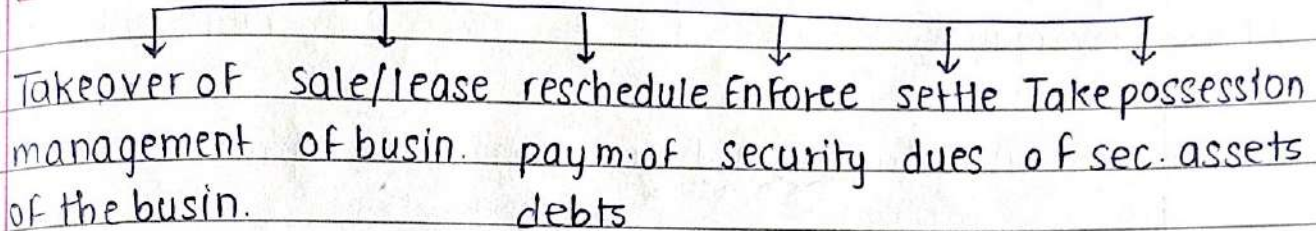
• Section 7: Issue of Security Receipts



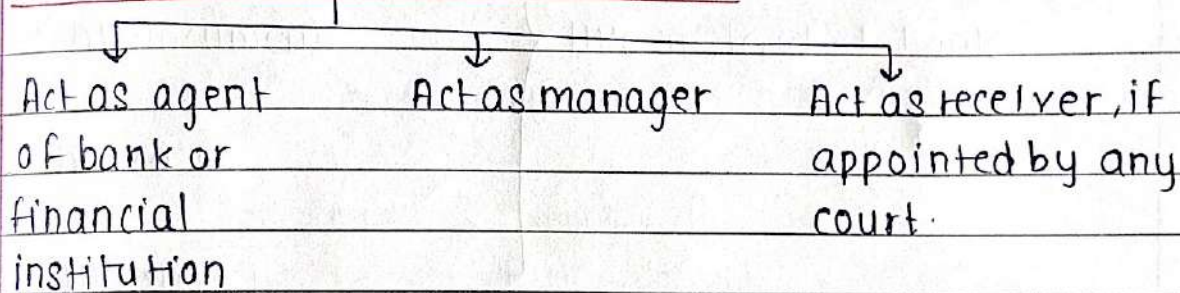
• Section 8: Exemption from Registration



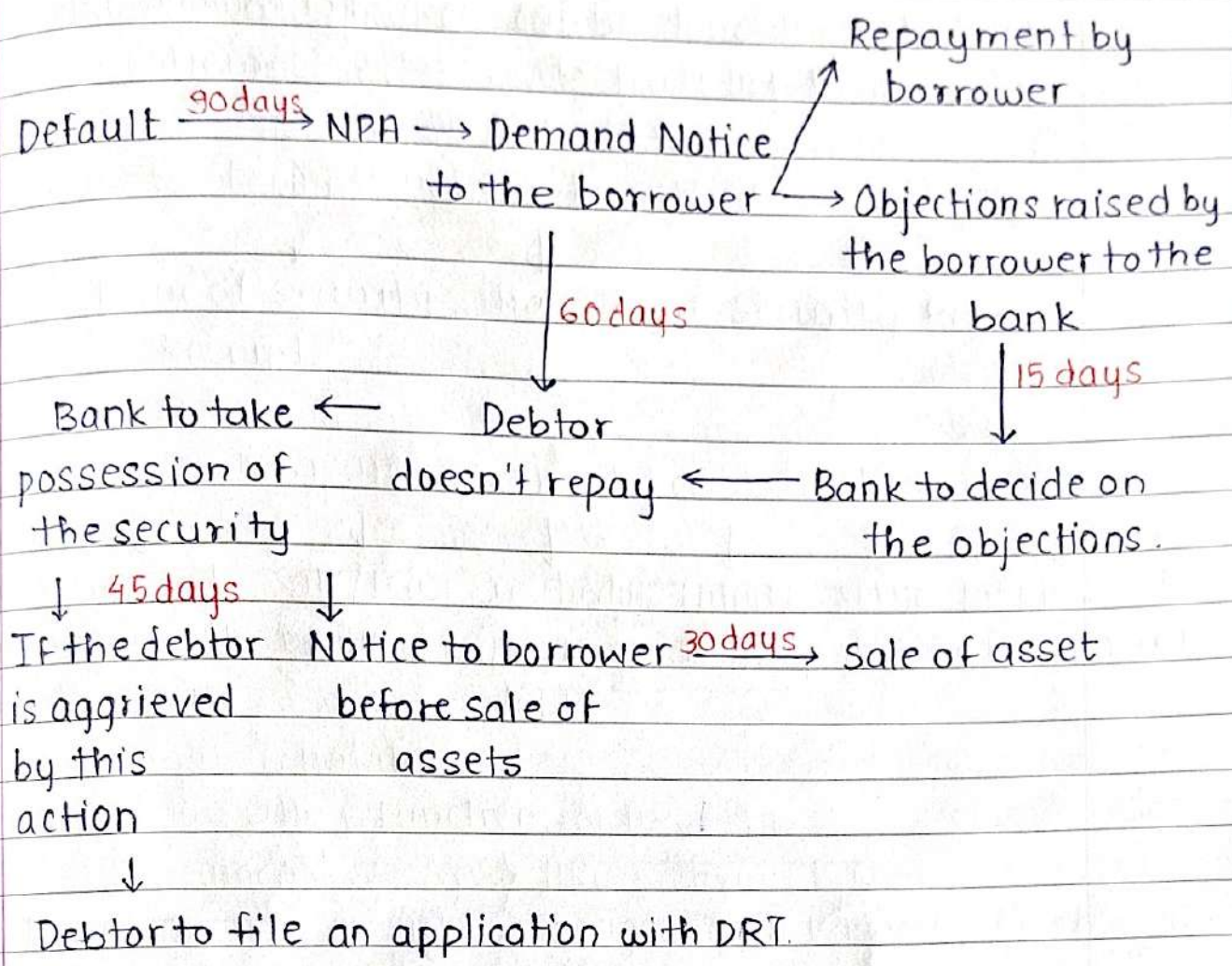
• Section 9: Measures for Asset Reconstruction



• Section 10: Other functions of ARC

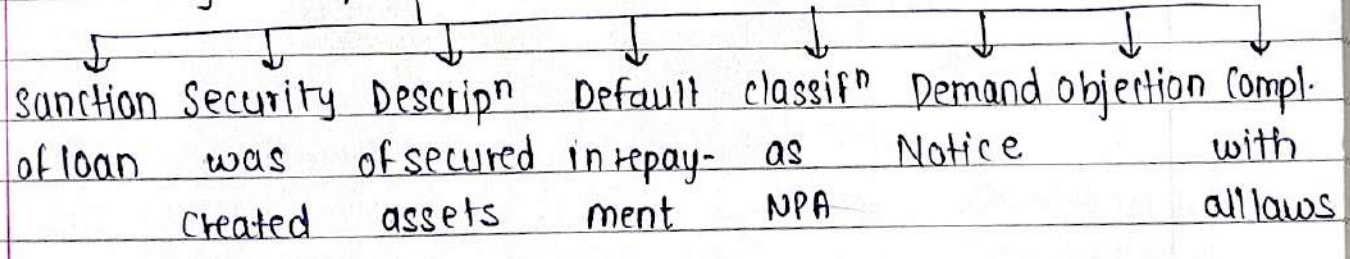


Section 13 - Enforcement of Security Interest

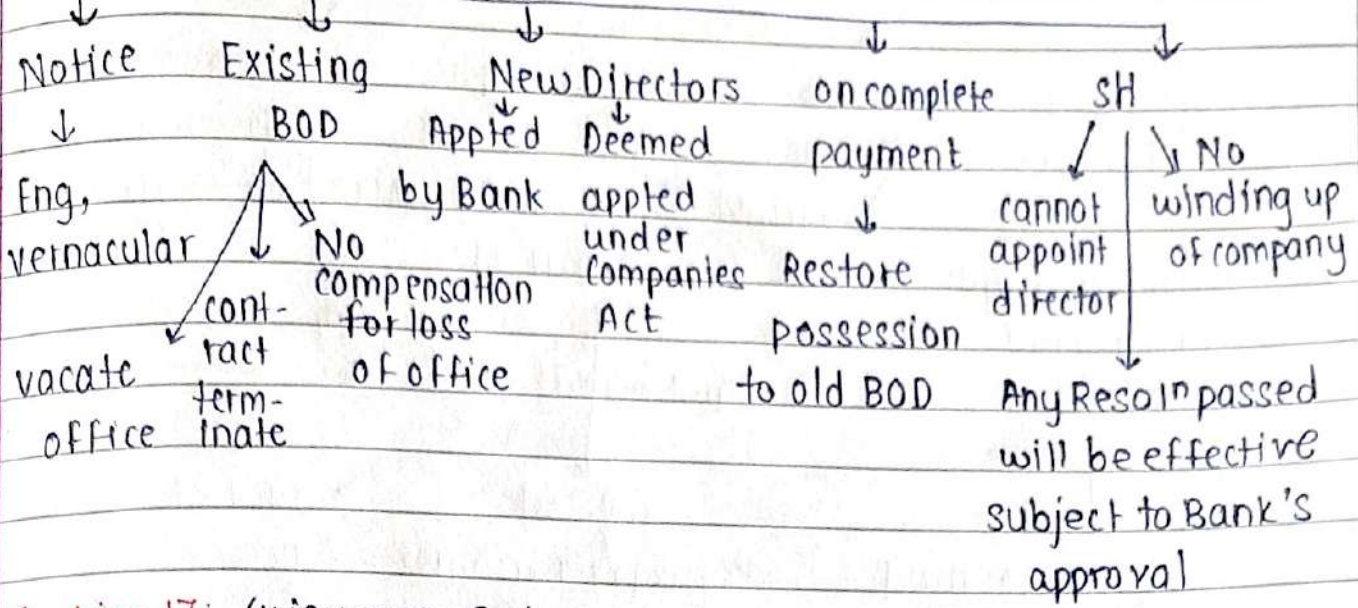


Section 14 Assistance by CMM & DM

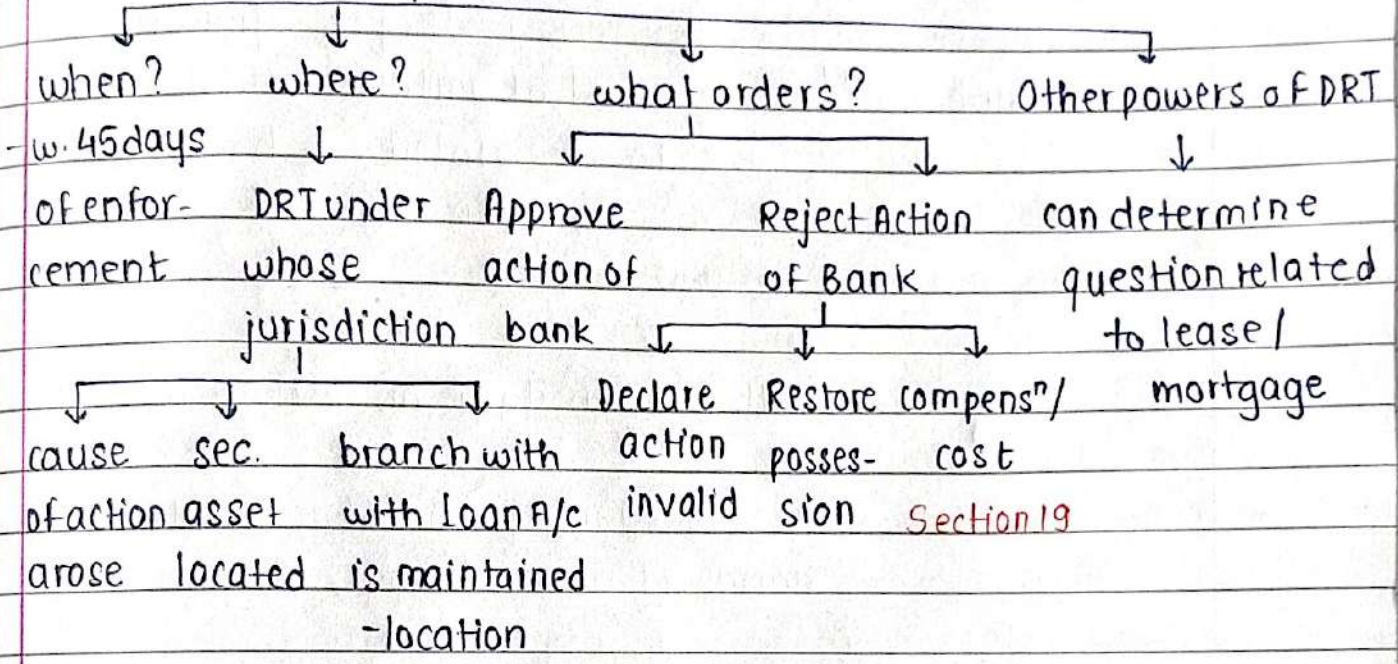
following docs / evidence to be shown



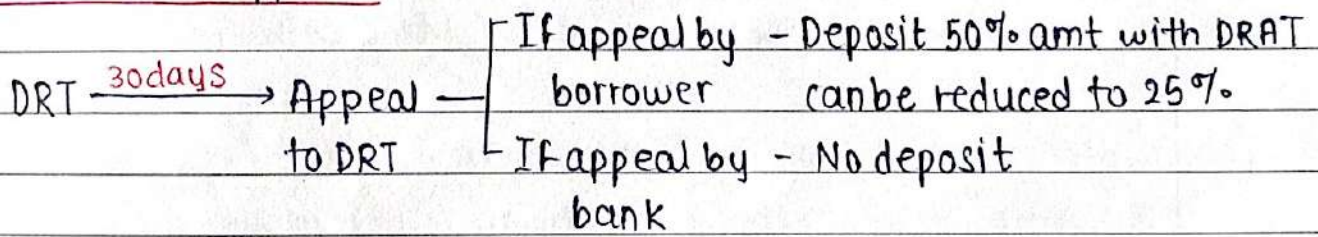
Sec 15: Enforcement of Sec. Int. created on Business of the borrower



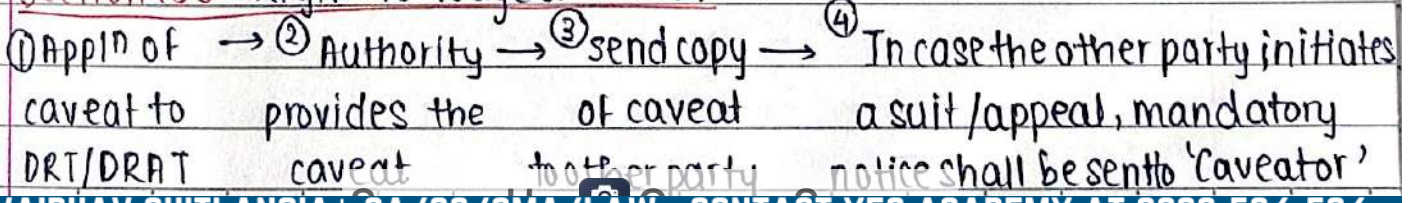
Section 17: Grievance Redressal



Section 18 Appeal



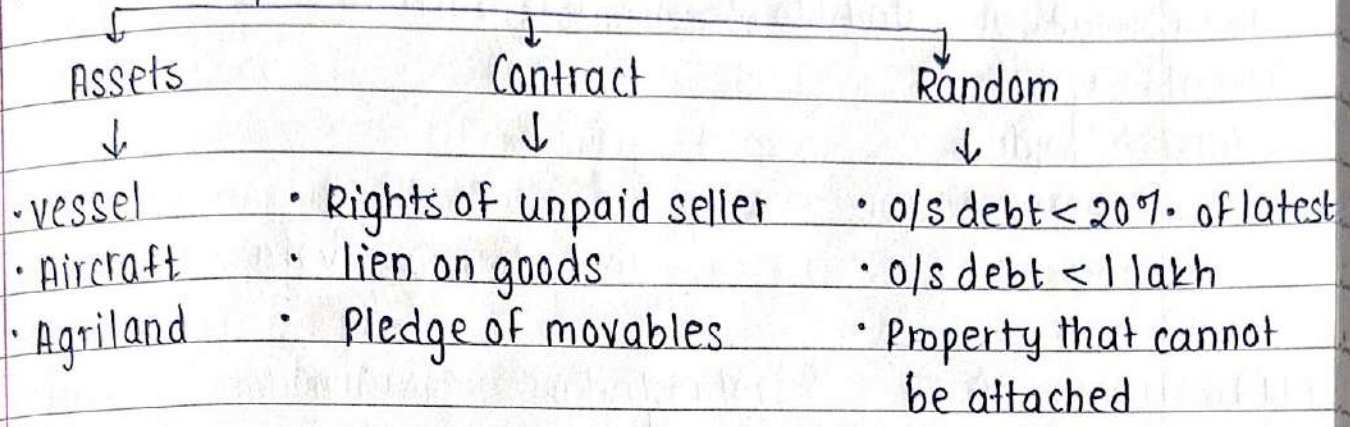
Section 18C Right to lodge a Caveat



Section 19 - Right of borrower to receive Compensation and Cost

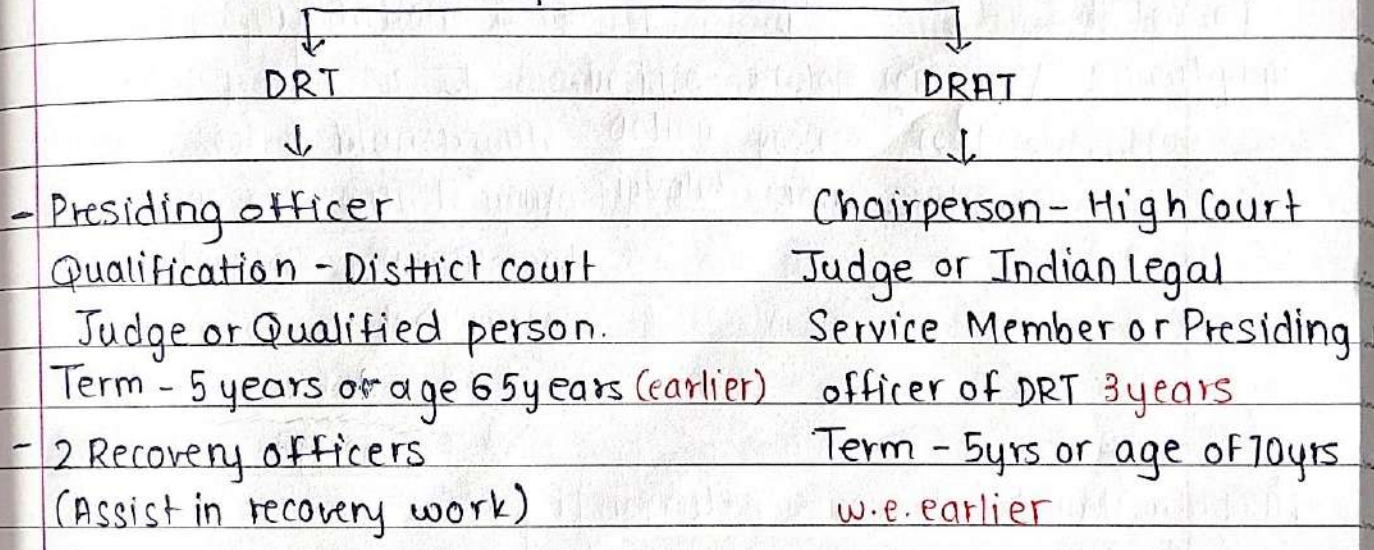
If it is held that the possession of assets was obtained by secured creditor against law → Borrower has right to receive compensation

Section 31 Non applicability



RDDDBFI Act, 1993

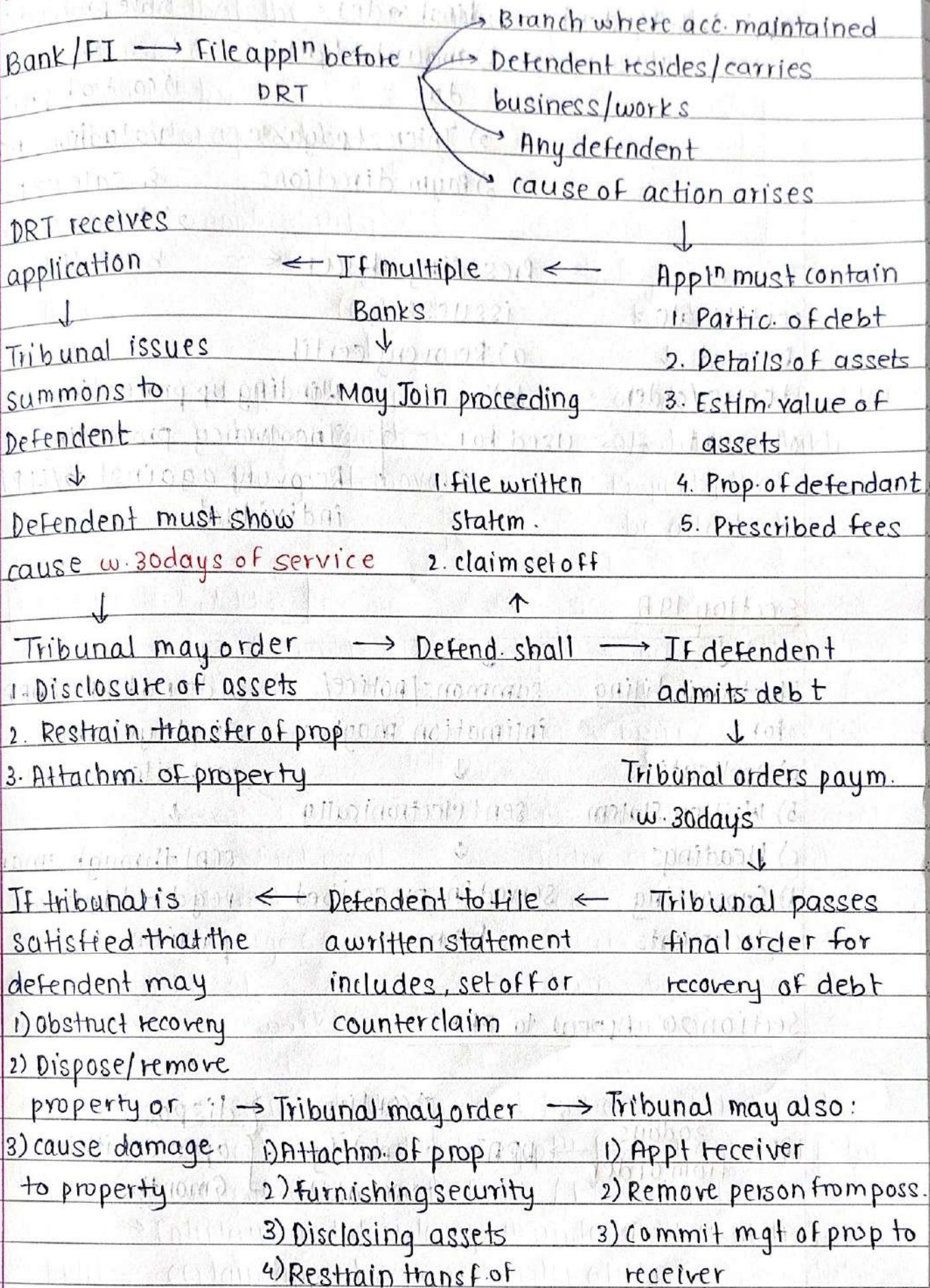
Two Authorities under this Act



Section 17 - Jurisdiction, Powers and Authority of Tribunals

- ① DRT → entertain and decide appl<sup>n</sup> from Banks & FI for recovery of debt due to Banks/ FI under this Act.
- Entertain and decide appl<sup>n</sup> under Part III of IBC, 2016
- ② DRAT - certain appeal against order of DRT

DRT Procedure Section 19



→ After hearing appl. & defendant → Tribunal passes final order: → Distribution of Sale proceeds

1) amount of debt due  
2) Interest payable  
3) Paym. directions

↓

1) cost of preservn, valuation, notice & sale exp.  
2) Debts owed to Bank/FI

Recovery certificate = Deemed decree/order of court ← Presiding officer ← issues:

a) Recovery certif.  
b) used for: { Winding up proceeding, Insolvency proceeding, Recovery against co/LLP/individual

Section 19A

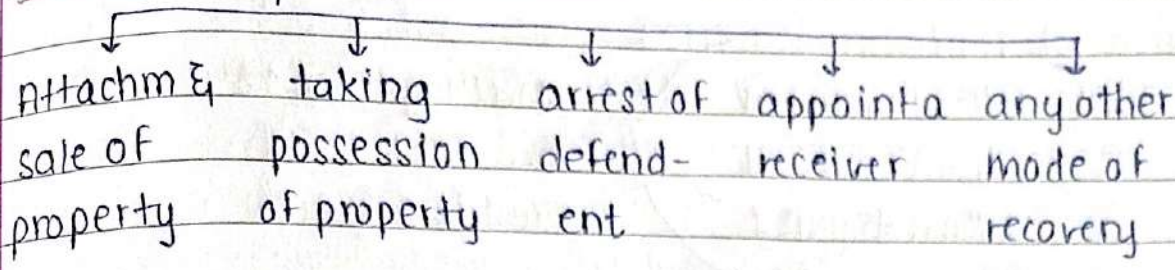
Electronic filing for: summons/notice/intimation maybe: order of DRT/DRAT displayed on website

a) Application ↓  
b) Written Statem sent electronically ↓  
c) Pleadings ↓ sent through email to  
d) Supporting documents served in prescribed form → regd address of parties

Section 20 Appeal to DRAT

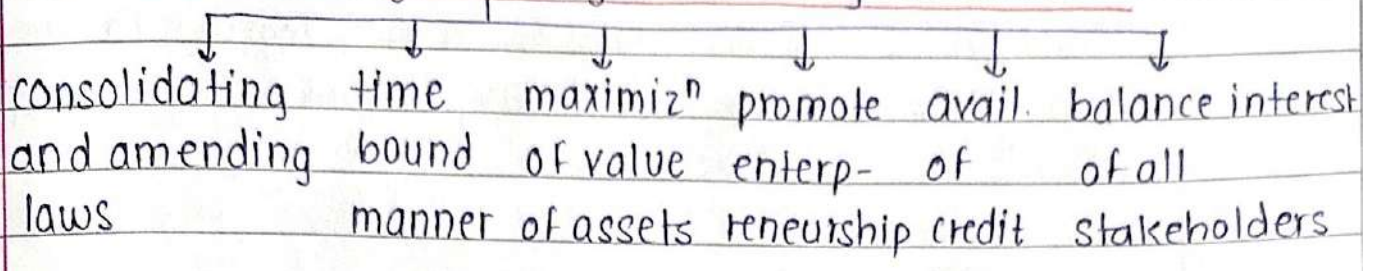
DRT → 30 days from order → DRAT → { confirm, modify, set aside } dispose appeal within 6 months

## Modes of Recovery of Debt

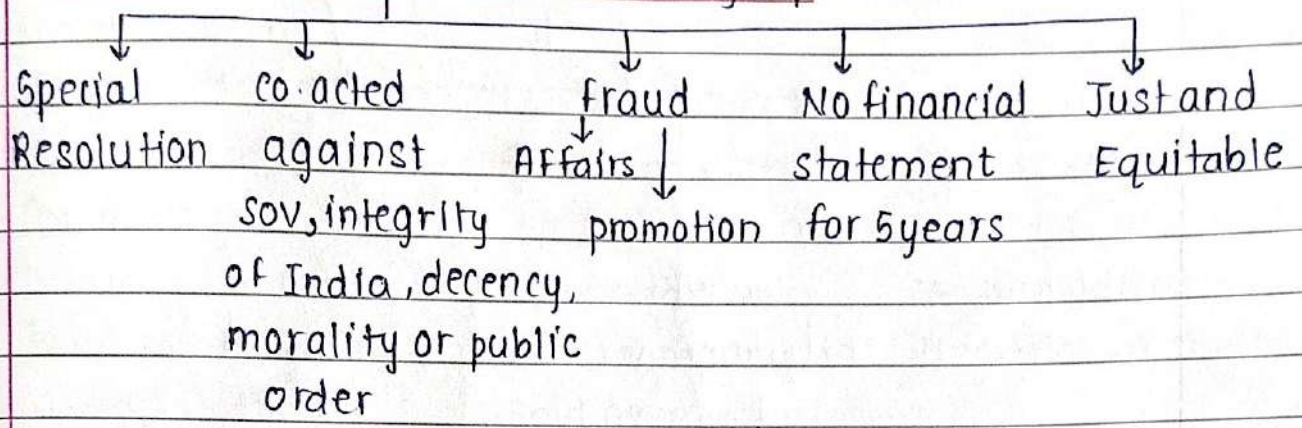


## Ch 25: Winding Up By The Tribunal

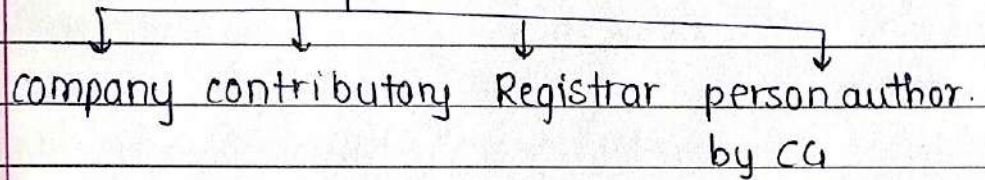
### • Important changes brought about by the IBC, 2016



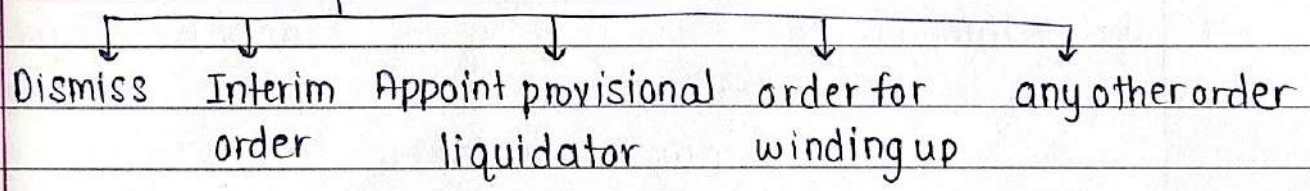
### • Section 271 - Grounds for winding up



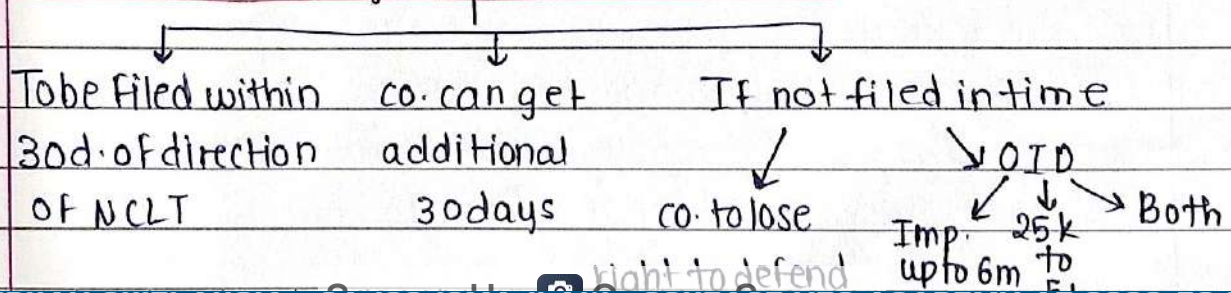
### • Section 272 : Who can file?



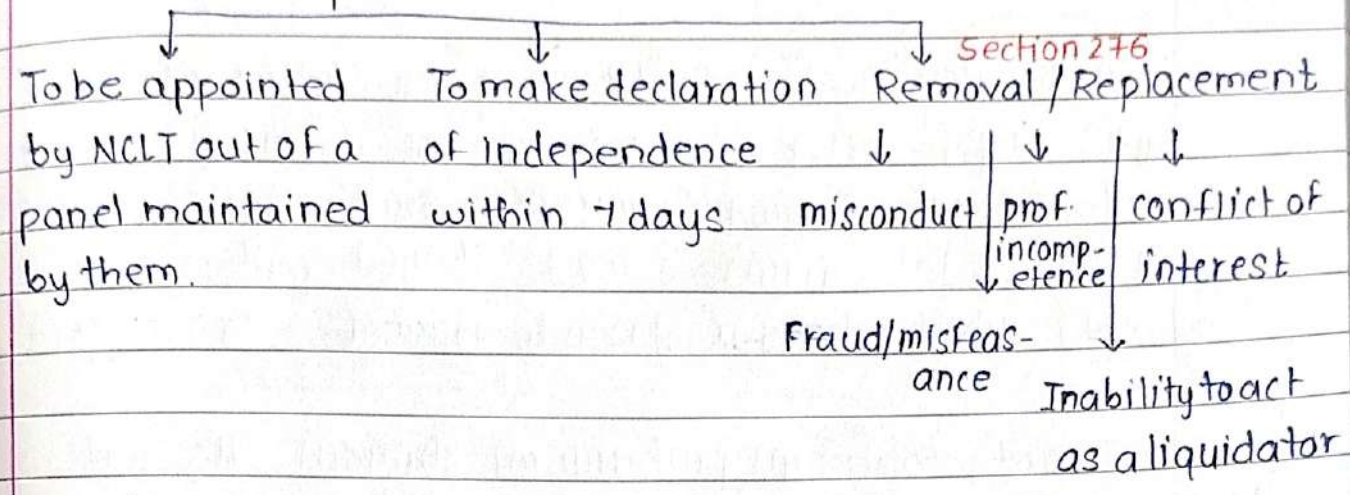
### • Section 273 : Powers of Tribunal



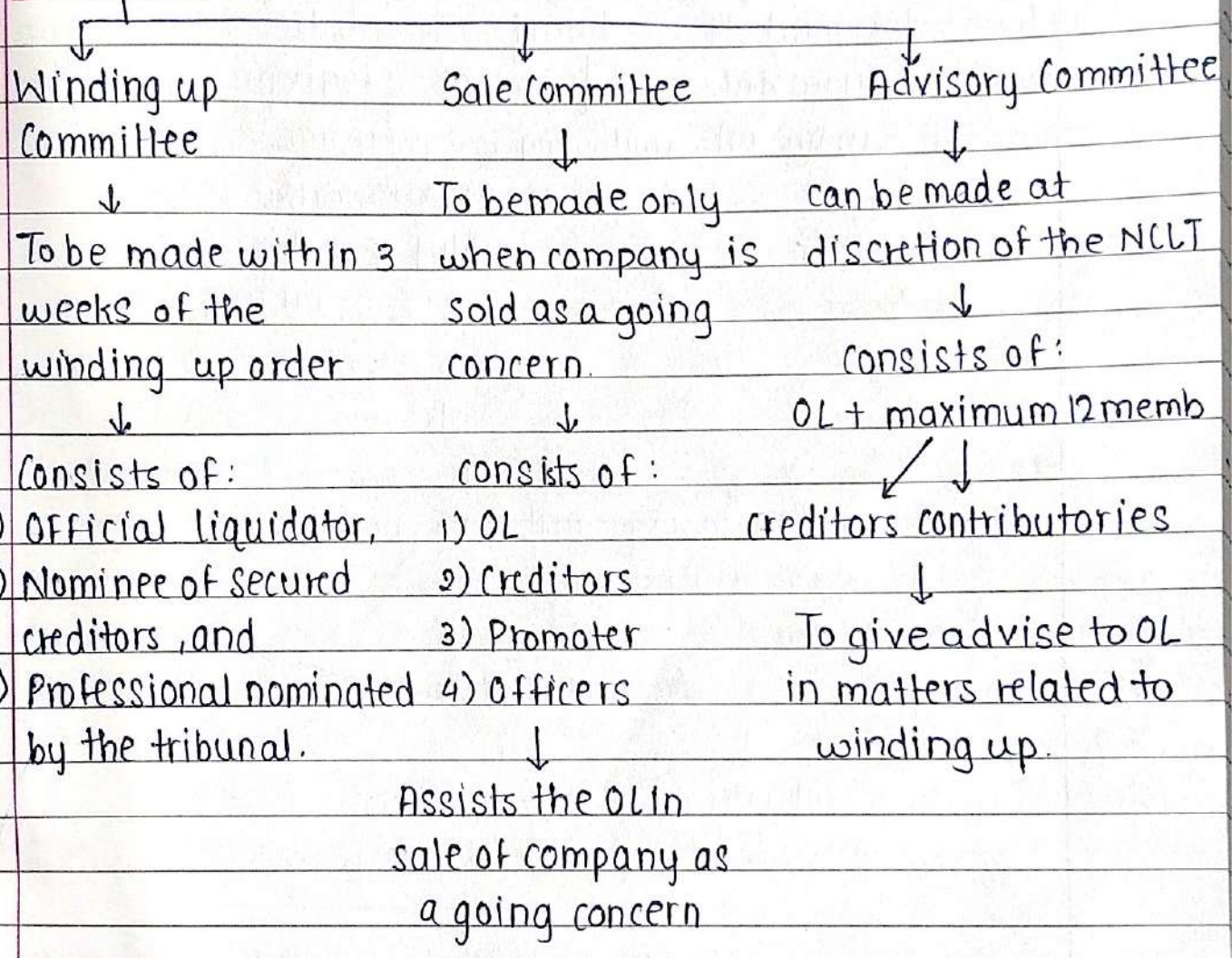
### • Section 274: filing Statement of Affairs



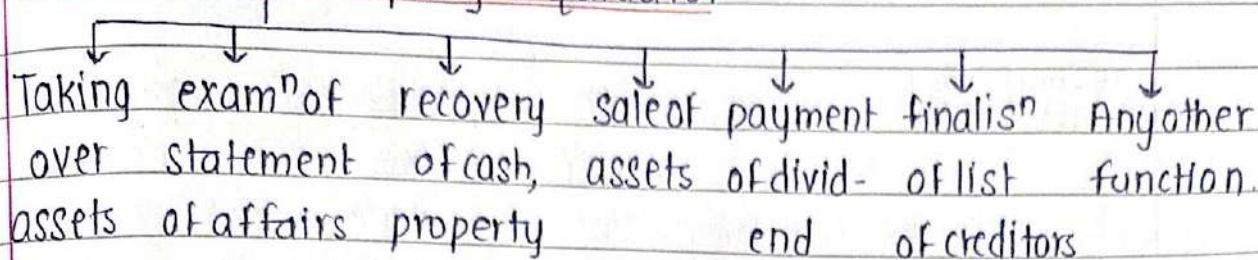
• Section 275 - Company liquidators and their Appointm.



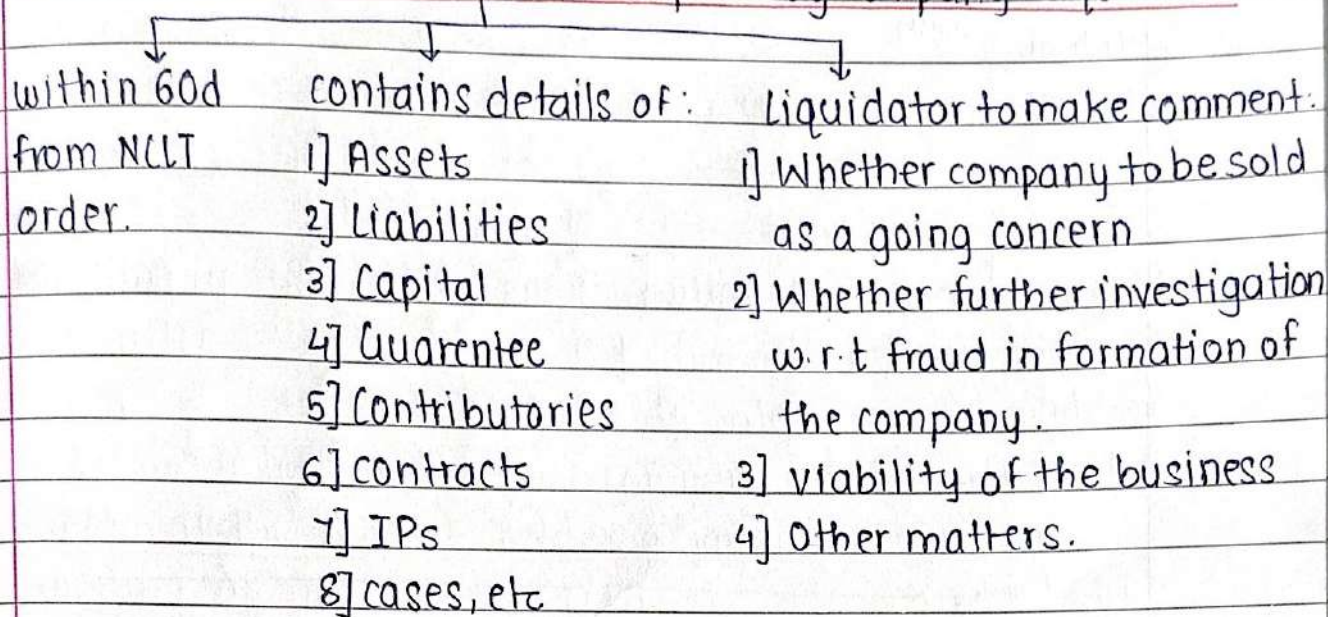
• Committees



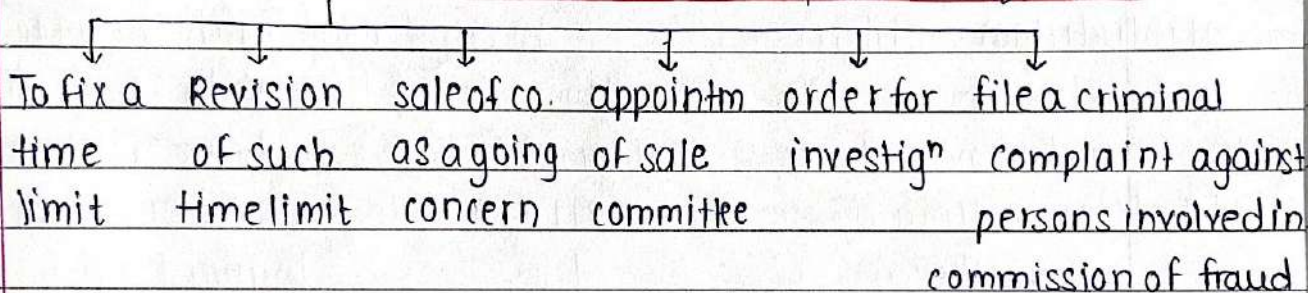
• Functions of Company Liquidator



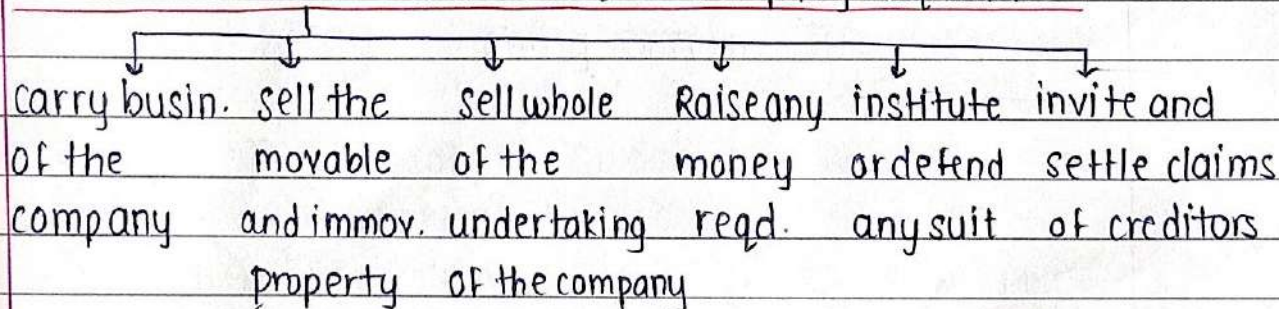
• Section 281 - Submission of Report by Company Liquidator



• Section 282: Directions of Tribunal on Report of Liquidator

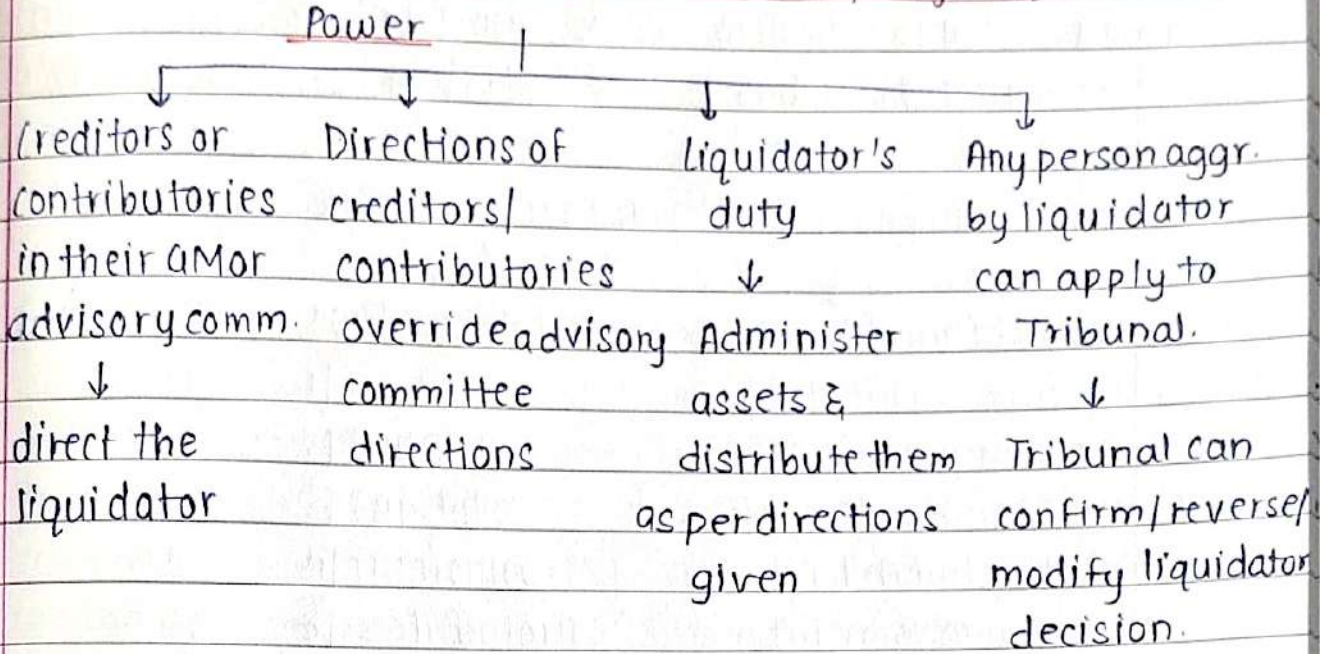


• Section 290: Powers and Duties of Company Liquidator

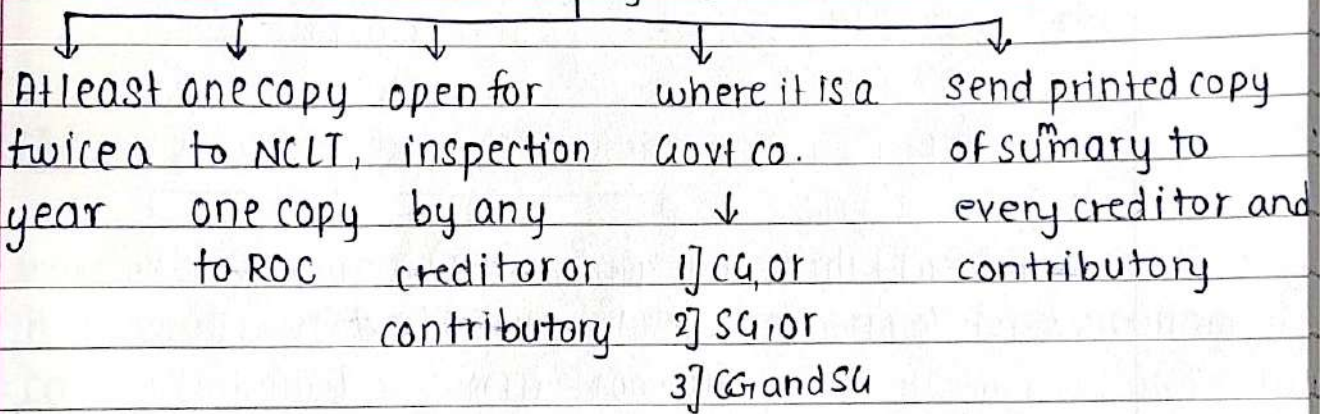


• Who controls

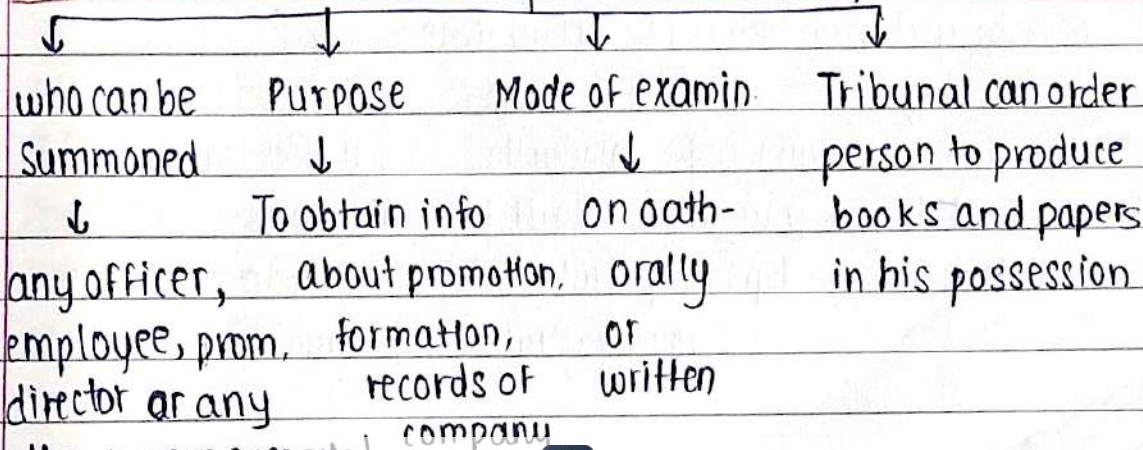
• Section 292 - Exercise and Control of Company's Liquidator's Power



• Section 294 - Audit of Company Liquidator's Accounts



• Section 299 - Power to Summon Persons Suspected of having Property



• Section 300 - Examination of Promoters, Directors.

Gets copy of report of liquidator (at his own cost)
   
 can hire a CA/CS/CMA/legal practitioner
   
 Professional may ask questions to explain the answers.

• Section 302 - Dissolution of company by Tribunal.

Affairs of company completely wound up → company liquidator makes an appl<sup>n</sup> to NCLT for dissol<sup>n</sup> → Tribunal pass an order that co. is dissolved from date of order → CL will forward copy of order to ROC w. 30 day

penalty upto ₹ 5000/- for every day during which default occurs

• Meeting of Creditors / contributories

when the liquidator feels it is required to be called.
   
 when creditors / contributories of 1/10<sup>th</sup> value request for a meeting

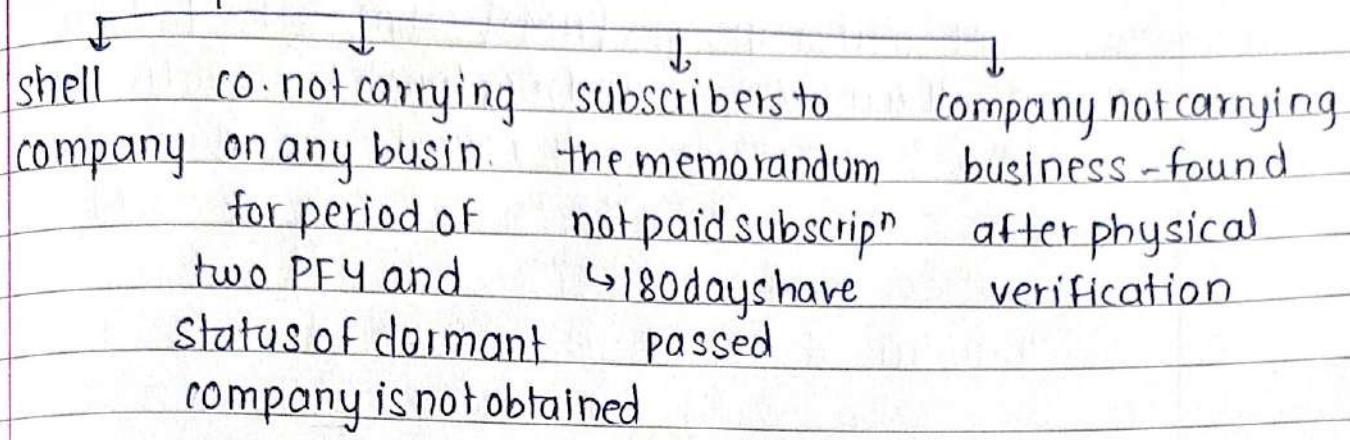
• Summary procedure for liquidation

↓
   
 o/s deposits < 25L
   
 T/O < 50 cr
   
 Paid up capital < 1cr
   
 Book value of assets < 1cr
   
 o/s loan < 50L

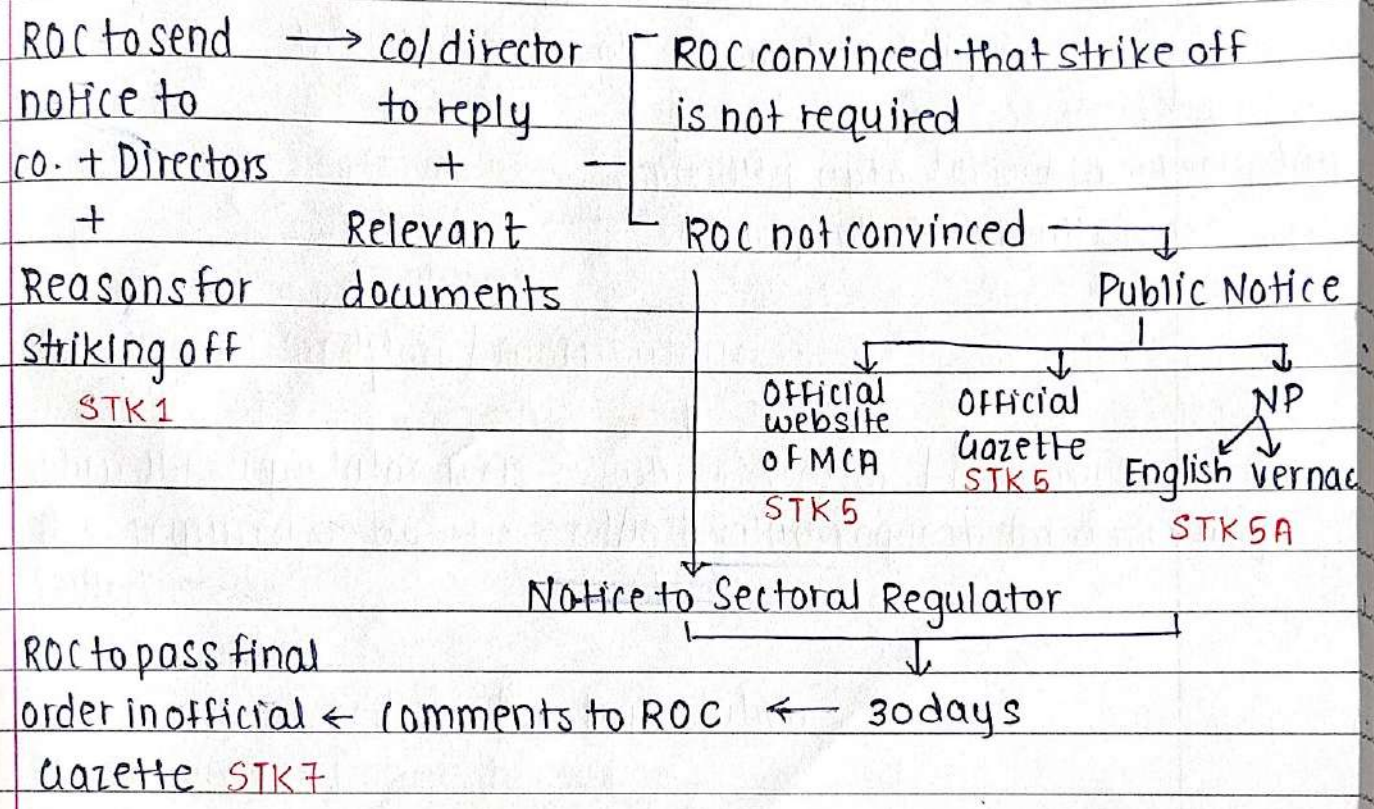
①

## Ch 26: Strike off and Restoration of Name

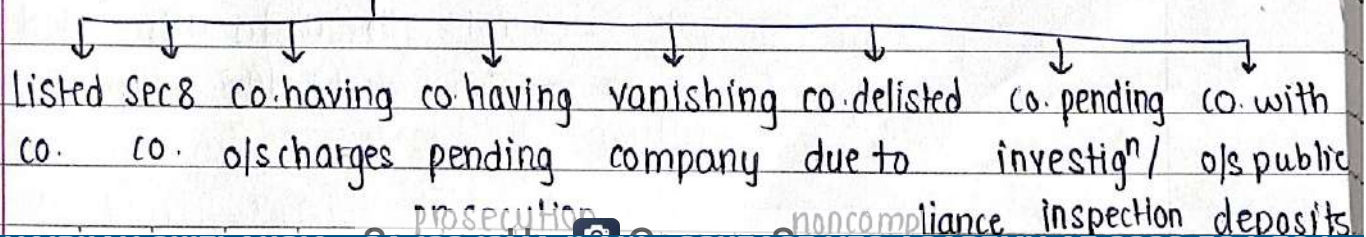
### • Strike off by ROC Suo Moto



### • Process of Strike off by ROC SUOMOTO

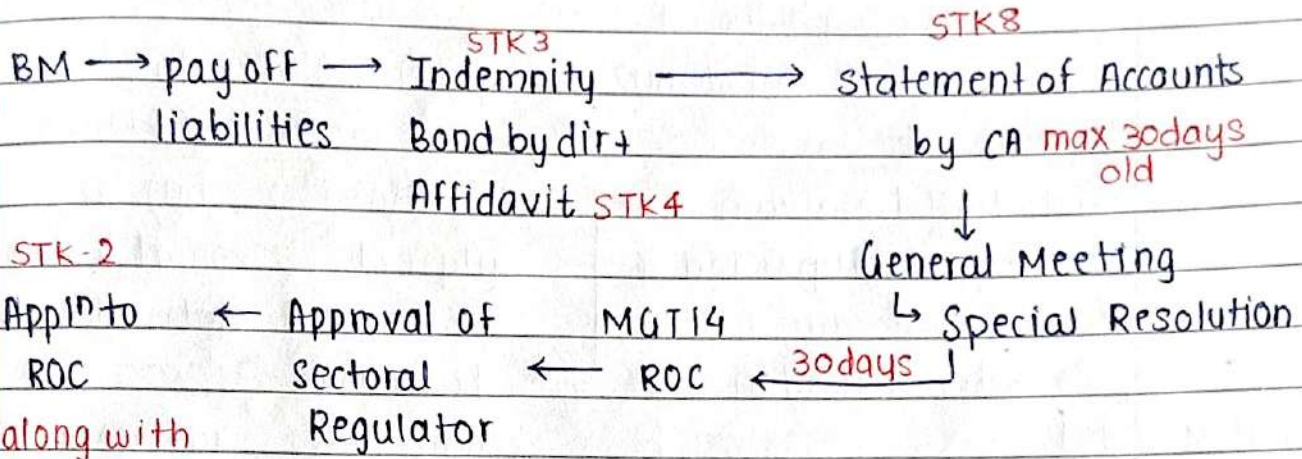


### • Strike off by way of filing an application by the company Companies not allowed to be struck off



- Cos. not permitted to make an application If in the past 3 months,
  - changed its name
  - shifted office from one state to another
  - Regd from one state to another
  - Disposed assets other than ordinary course of business
  - Engaged in activity other than those reqd for filing appl<sup>n</sup>
  - company has - made appl<sup>n</sup> for M&A
  - is being woundup

• Steps for striking off of company



along with <sup>STK-2</sup> App<sup>n</sup> to ROC

<sup>STK4, STK8</sup>, statement of pending litigation + <sup>STK3A</sup> - if govt company

↓

IF any mistake in application, ROC to send back <sup>STK2</sup>

<sup>15 days</sup> Rectify & resubmit → ROC to pass order

• Restoration of name of the company

- ROC/company <sup>3 years</sup> Appeal → NCLT
- company, member, creditor, workmen <sup>20 years</sup> Appeal → NCLT
- ↳ from publication in Official Gazette