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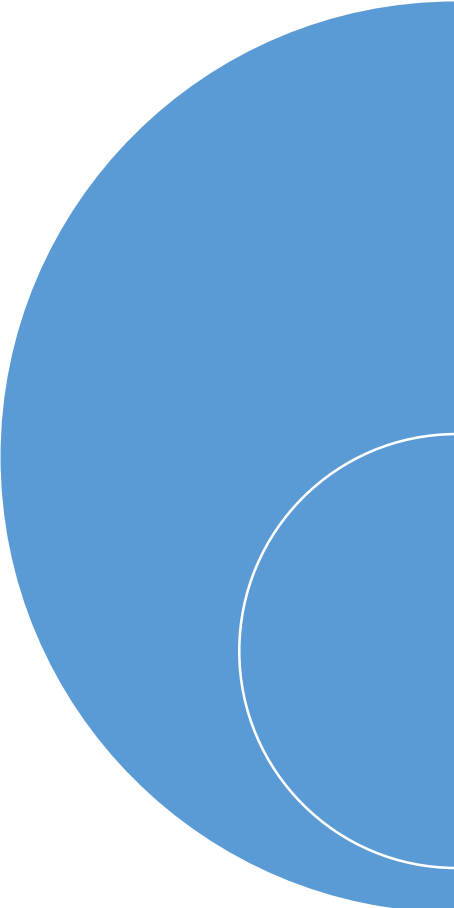
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CHAPTER III LIQUIDATION PROCESS

33. Initiation of liquidation



(1) Where the Adjudicating Authority, - (a) before the expiry of the insolvency resolution process period or the maximum period permitted

- for completion of the corporate insolvency resolution process under section 12
- or the fast track corporate insolvency resolution process under section 56,
- as the case may be,

does not receive a resolution plan under sub-section (6) of section 30;

33. Initiation of liquidation--continued

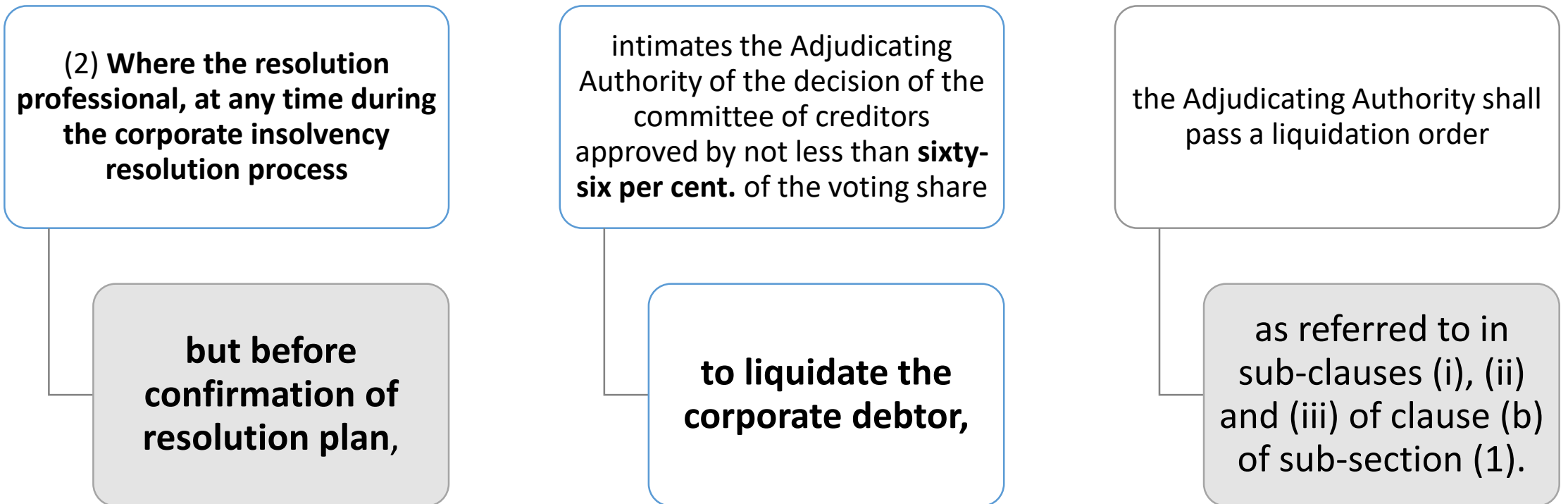
33 [1] (b)

[Adjudicating Authority] **rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall –**

- (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
- (ii) **issue a public announcement stating that the corporate debtor is in liquidation;** and
- (iii) require such order to be sent to the authority with which the corporate debtor is registered.

Is there any gap between the time CIRP is over and the liquidation order is made ? If yes, what happens , subsequent to lifting of moratorium---there will be some gap—AA order --while lifting CIRP –bridges this gap ?

33. Initiation of liquidation--continued



33. Initiation of liquidation--continued

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor,

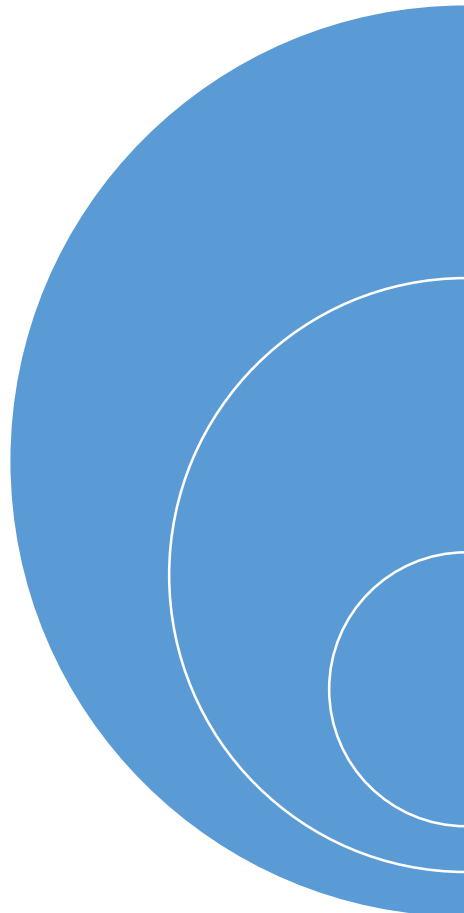
any person other than the corporate debtor,

whose interests are prejudicially affected by such contravention,

may make an application to the Adjudicating Authority for a liquidation order

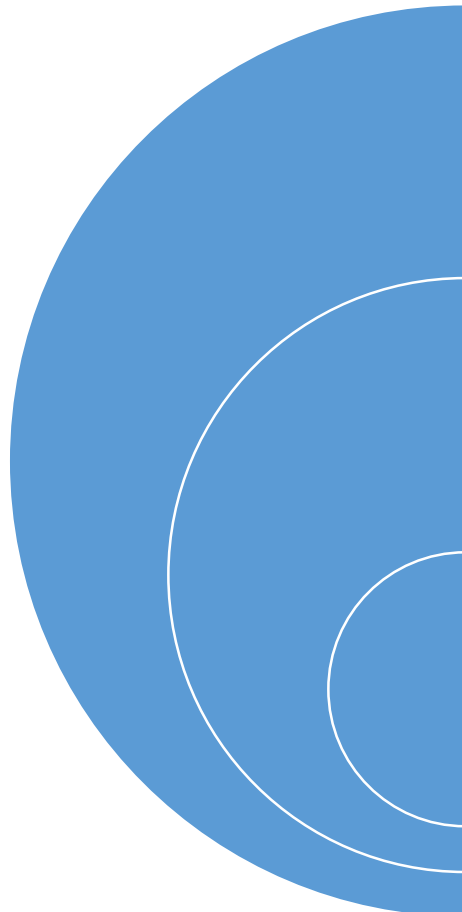
as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

33. Initiation of liquidation--continued



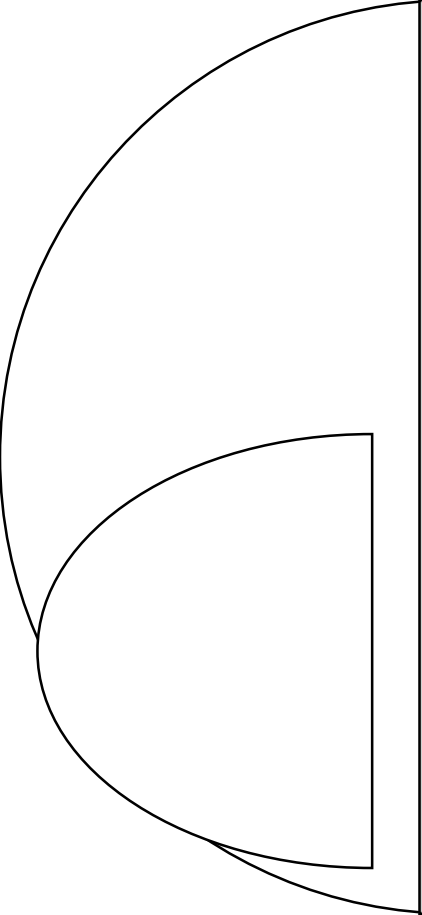
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| (4) On receipt of an application under sub-section (3), |
| if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, |
| it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1). |
| |
| |

33. Initiation of liquidation--continued



| | | | |
|--|---|--|---|
| <p>(5) Subject to section 52, when a liquidation order has been passed,</p> | <p>no suit or other legal proceeding shall be instituted by or against the corporate debtor:</p> | <p>Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor,</p> | <ul style="list-style-type: none">• with the prior approval of the Adjudicating Authority |
| | | | |
| | | | |

33. Initiation of liquidation--continued



(6) the provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions

- as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section

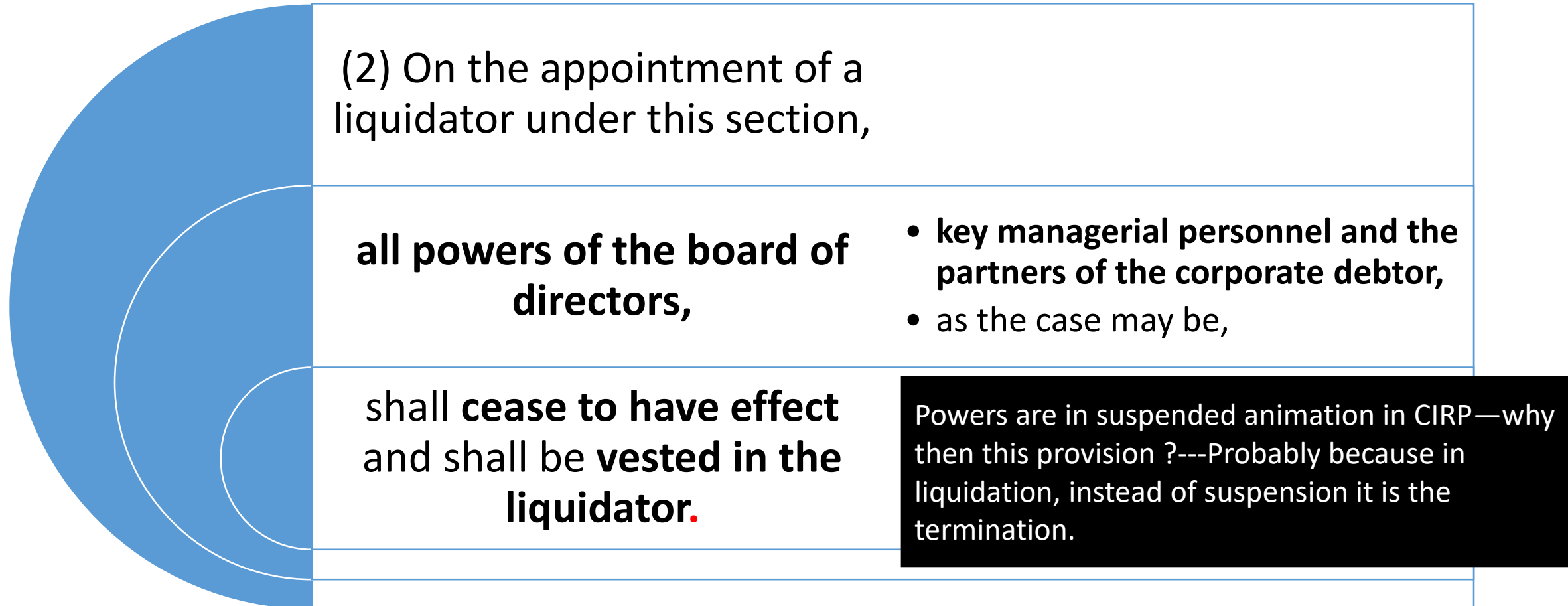
- shall be deemed to be a notice of discharge
- to the officers, employees and workmen of the corporate debtor,
- except when the business of the corporate debtor is continued
- during the liquidation process by the liquidator.

34. Appointment of liquidator and fee to be paid

(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33,

- the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, **subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form**
- shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under subsection (4).

34. Appointment of liquidator and fee to be paid--continued



34. Appointment of liquidator and fee to be paid--continued

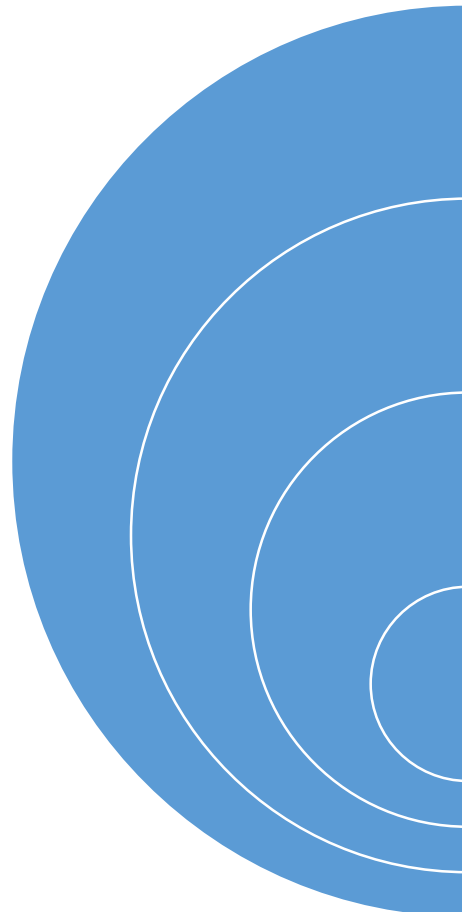
(3) The
personnel of the
corporate debtor

- shall extend **all assistance and cooperation to the liquidator**
- as may be required by him in managing the affairs of the corporate debtor

and provisions of
section 19

- shall apply in relation to voluntary liquidation process
- as they apply in relation to liquidation process
- with the substitution of references to the liquidator for references to the interim resolution professional.

34. Appointment of liquidator and fee to be paid--continued



| |
|---|
| <p>(4) The Adjudicating Authority shall by order replace the resolution professional, if–</p> |
| <p>(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or</p> |
| <p>(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or</p> |
| <p>(c) the resolution professional fails to submit written consent under sub-section (1).</p> |
| |
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| |

34. Appointment of liquidator and fee to be paid--continued

(5) For the purposes of clause (a) and clause (c) of sub-section (4),

- the Adjudicating Authority may direct the Board to propose name of another insolvency professional to be appointed as a liquidator.

(6) The Board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specified form

- **within ten days** of the direction issued by the Adjudicating Authority under sub-section (5).

34. Appointment of liquidator and fee to be paid--continued

(7) The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator,

- by an order appoint such insolvency professional as the liquidator.

(8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings

- and in such proportion to the value of the liquidation estate assets,
- as may be specified by the Board.

34. Appointment of liquidator and fee to be paid--continued

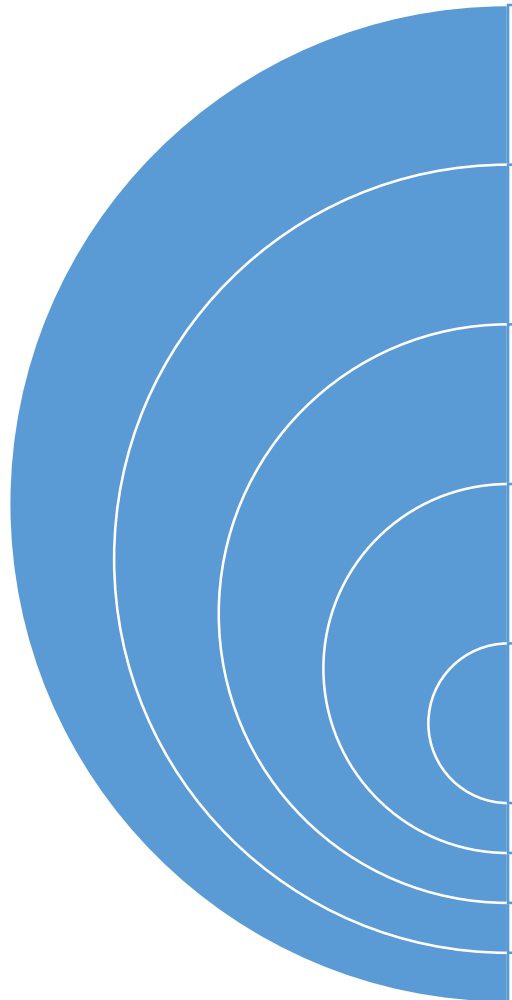
(9) The fees for the
conduct of the
liquidation proceedings

- under sub-section (8)

shall be paid to the
liquidator

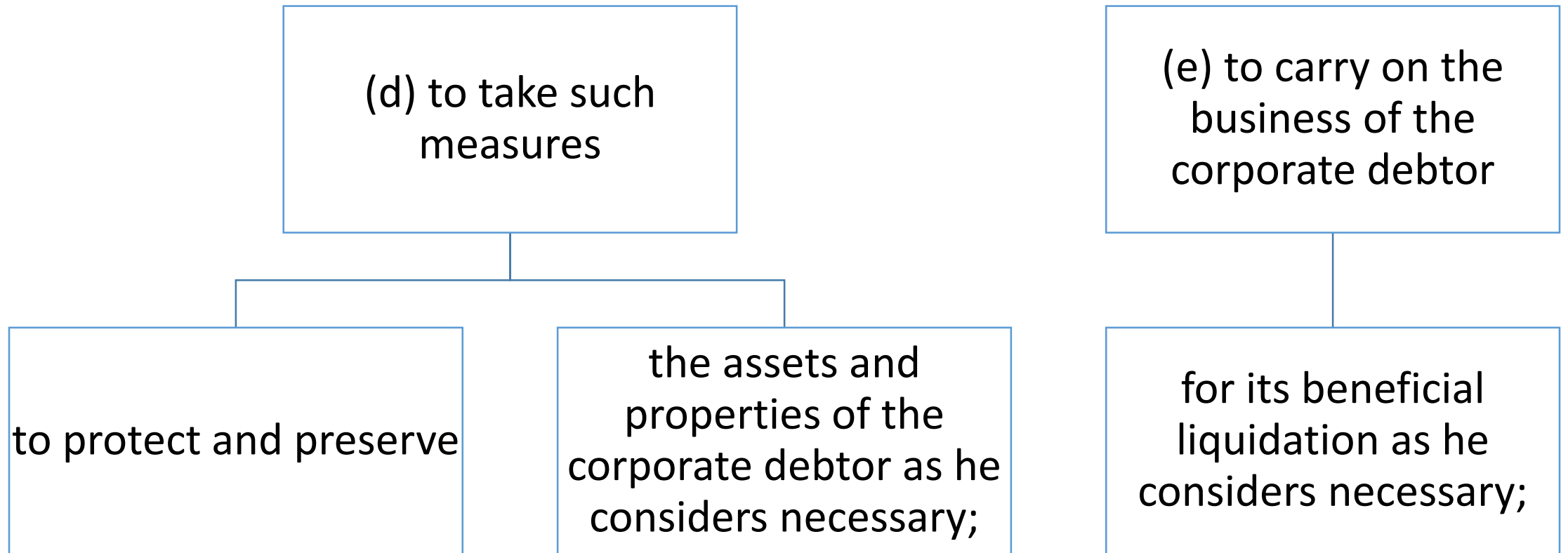
from the proceeds of
the liquidation estate
under section 53.

35. Powers and duties of liquidator.



| | |
|--|--|
| (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: - | |
| (a) to verify claims of all the creditors; | |
| (b) to take into his custody or control all the assets, | <ul style="list-style-type: none">• property, effects and actionable claims of the corporate debtor; |
| (c) to evaluate the assets and property of the corporate debtor | |
| in the manner as may be specified by the Board | <ul style="list-style-type: none">• and prepare a report; |
| | |
| | |
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35. Powers and duties of liquidator--continued



35. Powers and duties of liquidator--continued

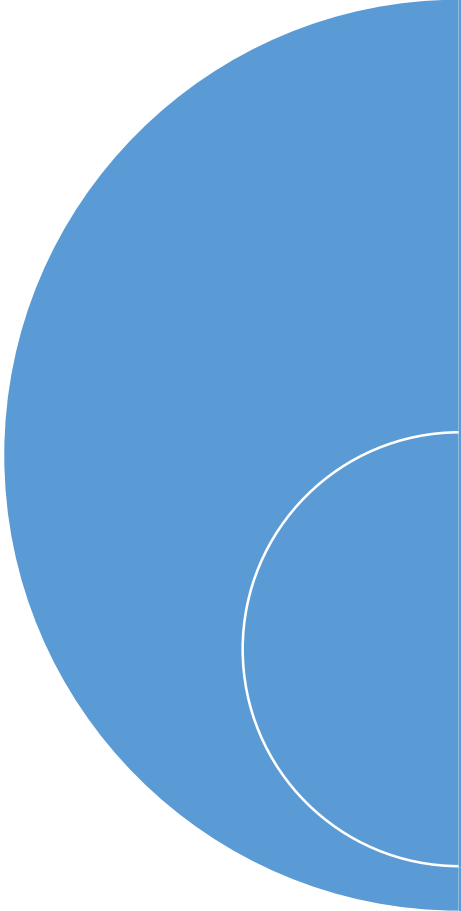
(f) subject to section 52,

- to sell the immovable and movable property and actionable claims
- of the corporate debtor in liquidation by public auction or private contract,
- with power to transfer such property to any person or body corporate,
- or to sell the same in parcels in such manner as may be specified

Provided that the liquidator shall not sell

- the immovable and movable property or actionable claims
- of the corporate debtor in liquidation
- to any person who is not eligible to be a resolution applicant.

35. Powers and duties of liquidator--continued



(g) to draw, accept, make and endorse any negotiable instruments

- including bill of exchange, hundi or promissory note
- in the name and on behalf of the corporate debtor,

with the same effect with respect to the liability

- as if such instruments were drawn, accepted, made or endorsed
- by or on behalf of the corporate debtor in the ordinary course of its business;

35. Powers and duties of liquidator--continued

(h) to take out, in his official name,

- letter of administration to any deceased contributory

and to do in his official name any other act necessary

- for obtaining payment of any money due and payable
- from a contributory or his estate which cannot be ordinarily done
 - in the name of the corporate debtor,

and in all such cases,

- the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money,
- be deemed to be due to the liquidator himself;

35. Powers and duties of liquidator--continued

(i) to obtain any professional assistance from any person

- **or appoint any professional**, in discharge of his duties, obligations and responsibilities;

(j) to invite and settle claims of creditors and claimants

- and distribute proceeds in accordance with the provisions of this Code;

(k) to institute or defend any suit,

- prosecution or other legal proceedings,
- **civil or criminal,**
- **in the name of on behalf of the corporate debtor;**

35. Powers and duties of liquidator--continued

(l) to investigate the financial affairs of the corporate debtor

- to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute

- and verify any paper, deed, receipt document, application, petition, affidavit,
- bond or instrument
- and for such purpose to use the common seal, if any, as may be necessary
- for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

35. Powers and duties of liquidator--continued

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary

- for the liquidation of the corporate debtor
- and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board

35. Powers and duties of liquidator--continued.

(2) The liquidator shall have the power

- **to consult any of the stakeholders entitled**
- to a distribution of proceeds under section 53:

Provided that any such consultation shall **not be binding** on the liquidator:

Provided further that the records of any such consultation

- **shall be made available to all other stakeholders not so consulted**, in a manner specified by the Board.

36. Liquidation estate. -

(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3),

- which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

36. Liquidation estate. -

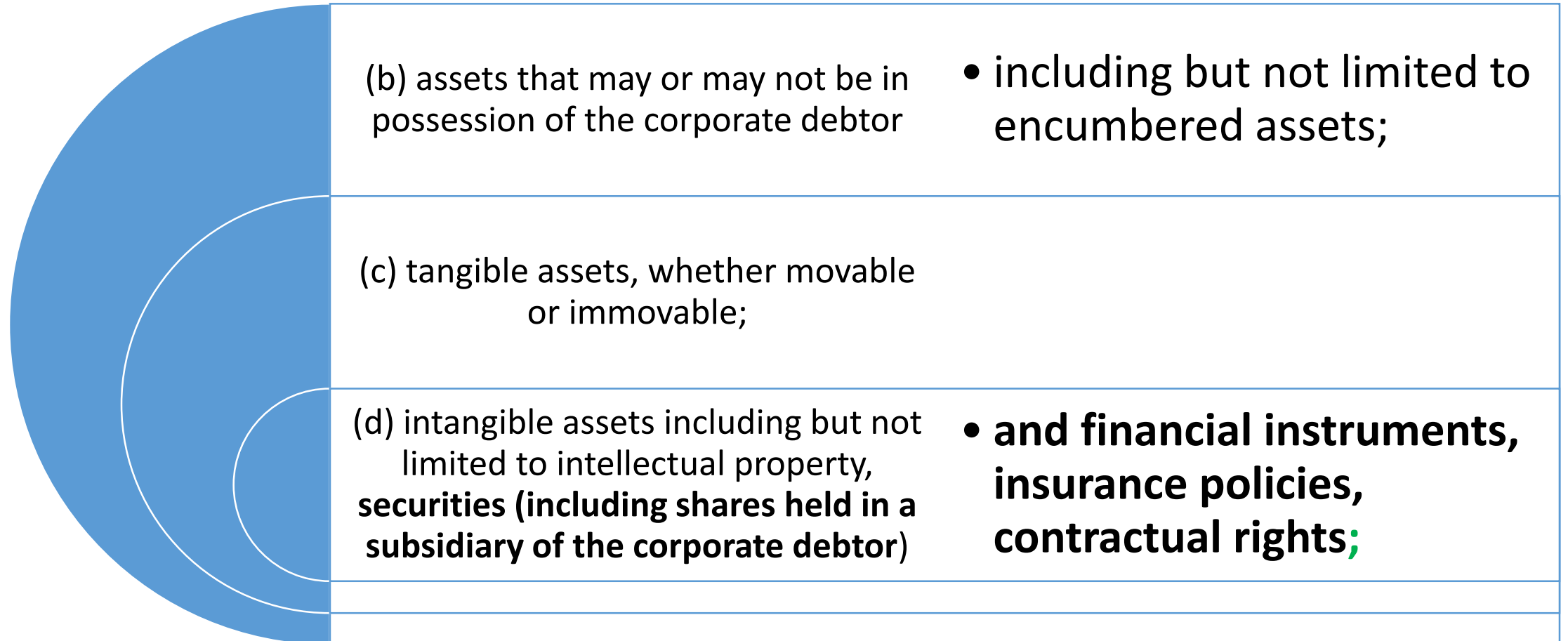
(3) Subject to sub-section (4), the liquidation estate

- shall comprise all liquidation estate assets which shall include the following: -

(a) any assets over which the corporate debtor has ownership rights,

- including all rights and interests therein
 - as evidenced in the balance sheet of the corporate debtor
 - or an information utility or records in the registry
 - or any depository recording securities of the corporate debtor
 - or by any other means as may be specified by the Board,
- including shares held in any subsidiary of the corporate debtor;

36. Liquidation estate. continued



36. Liquidation estate-continued

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

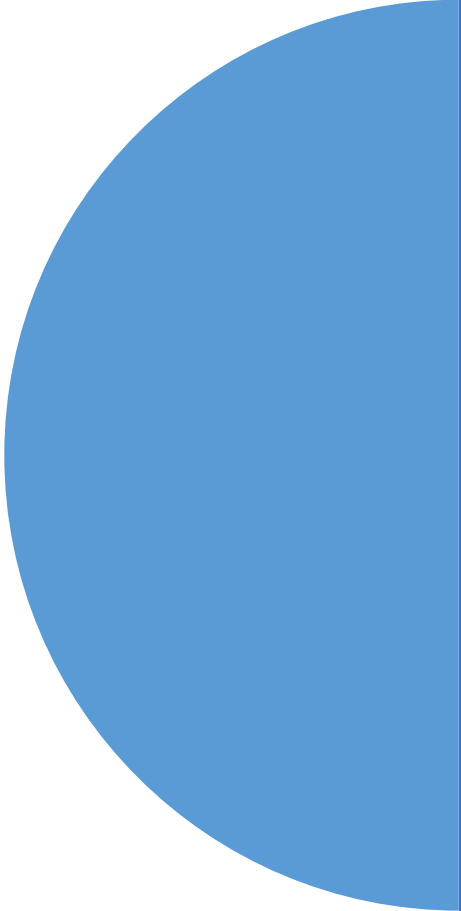
(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

[f] when the assets or their value would be available to the liquidator [at what point of time ---hopefully in time before the distribution ends]

[h] if some property is disposed off---by the CD during the period when moratorium was on---are there any swift methods to set it right ?


36. Liquidation estate –continued



(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -

- (a) assets **owned by a third party** which are in possession of the corporate debtor,
- including - (i) assets **held in trust** for any third party;
- (ii) **bailment contracts**;
- (iii) all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund;
- (iv) **other contractual arrangements** which do not stipulate transfer of title **but only use of the assets**; and
- (v) **such other assets as may be notified by the Central Government in consultation with any financial sector regulator**;

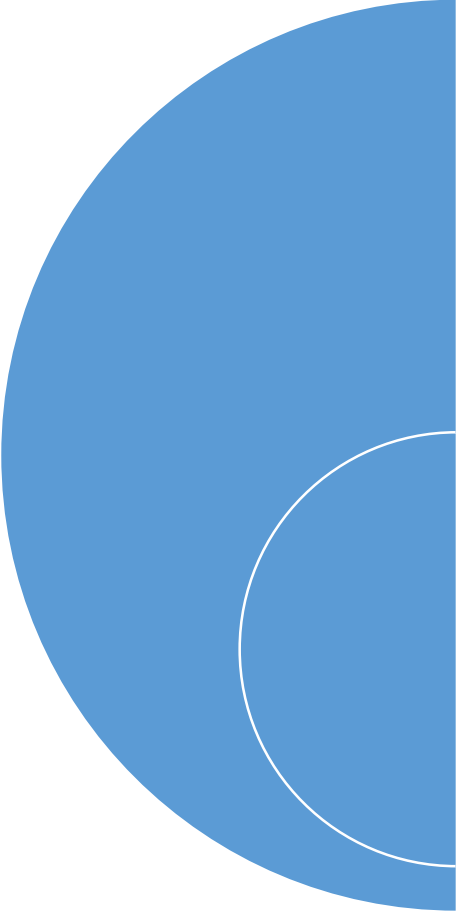
36. Liquidation estate-continued -



(b) assets in security
collateral held by
financial services
providers and are
subject to netting and
set-off in multi-lateral
trading or clearing
transactions;

- (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

36. Liquidation estate -continued



(d) assets of any Indian or foreign subsidiary of the corporate debtor; or

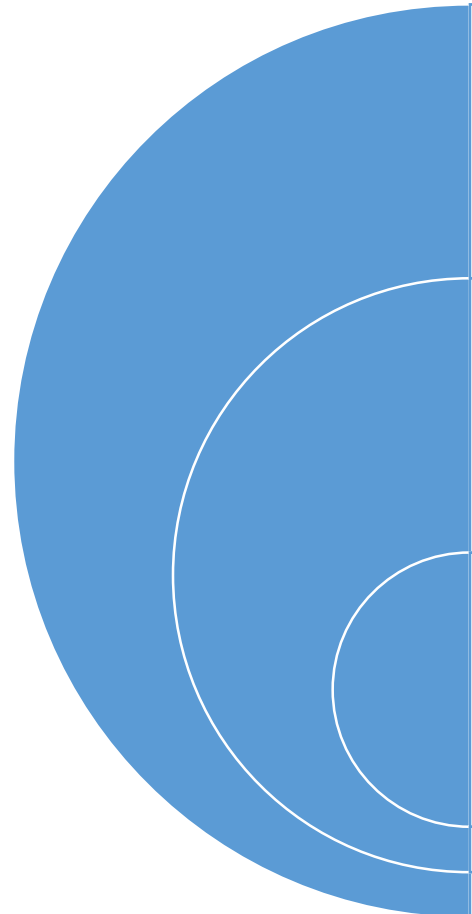
(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

37. Powers of liquidator to access information. -

(1) Notwithstanding anything contained in any other law for the time being in force, the liquidator shall have the power to access any information systems

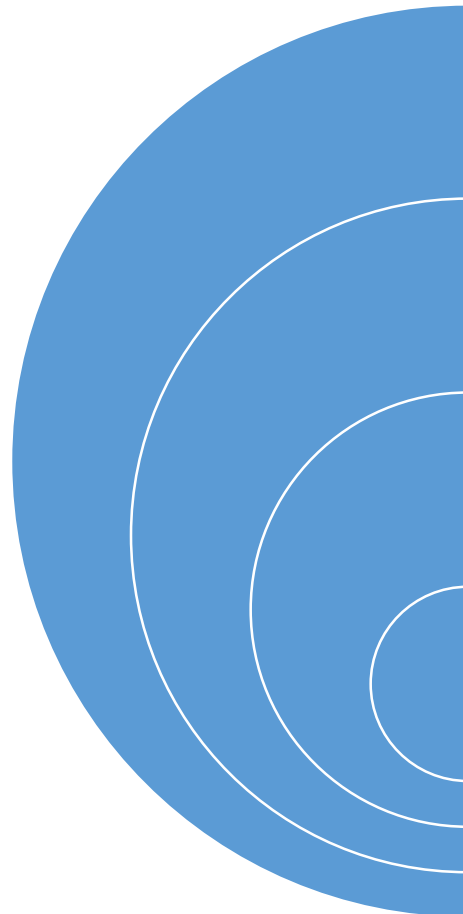
- **for the purpose of admission and proof of claims**
- **and identification of the liquidation estate assets relating to the corporate debtor** from the following sources, namely: -
 - (a) an information utility;
 - (b) credit information systems regulated under any law for the time being in force;

37. Powers of liquidator to access information -continued



| |
|---|
| 1) Notwithstanding anything contained in any other law for the time being in force, the liquidator shall have the power to access any information systems |
| (c) any agency of the Central, State or Local Government including any registration authorities; |
| (d) information systems for financial and non-financial liabilities regulated under any law for the time being in force; |
| |
| |

37. Powers of liquidator to access information -continued



| |
|---|
| 1) Notwithstanding anything contained in any other law for the time being in force, the liquidator shall have the power to access any information systems |
| (e) information systems for securities and assets posted as security interest regulated under any law for the time being in force |
| (f) any database maintained by the Board; and |
| (g) any other source as may be specified by the Board. |
| |
| |
| |

37. Powers of liquidator to access information--continued

(2) The creditors may require the liquidator

- to provide them any financial information relating to the corporate debtor in such manner as may be specified.

(3) The liquidator shall provide information referred to in subsection (2) to such creditors

- who have requested for such information within a period of seven days
- from the date of such request
- or provide reasons for not providing such information.

38. Consolidation of claims

(1) The liquidator shall receive or collect the claims of creditors

- within a period of thirty days from the date of the commencement of the liquidation process.

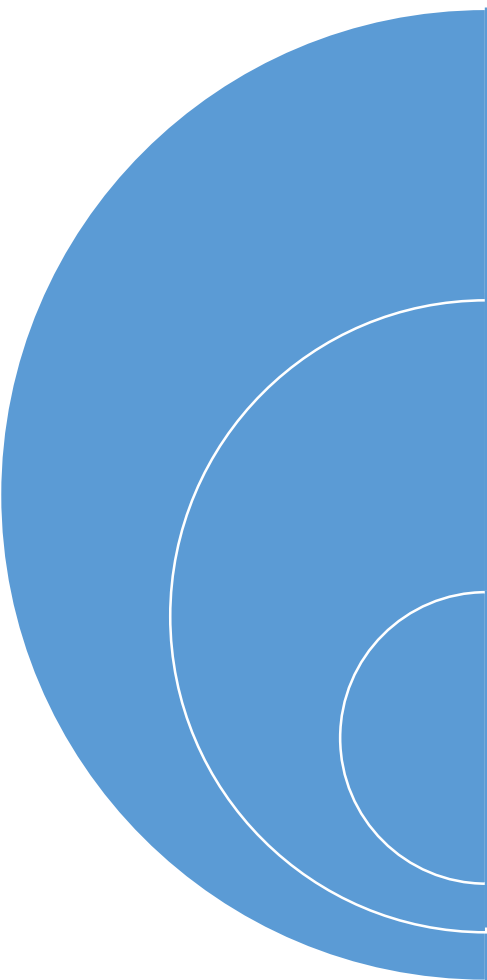
(2) A financial creditor may submit a claim to the liquidator

- by providing a record of such claim with an information utility:

Provided that where the information relating to the claim is not recorded in the information utility,

- the financial creditor may submit the claim in the same manner provided for the submission of claims for the operational creditor under sub-section (3).

38. Consolidation of claims--continued



(3) An operational creditor may submit a claim to the liquidator

- in such form and in such manner
- and along with such supporting documents required to prove the claim as may be specified by the Board.

(4) A creditor who is partly a financial creditor and partly an operational creditor

- shall submit claims to the liquidator to the extent of his financial debt
- in the manner as provided in sub-section (2)
- and to the extent of his operational debt under sub-section (3).

(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

39.Verification of claims

(1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.

(2) The liquidator may require **any creditor or the corporate debtor or any other person**

- to produce any other document or evidence
- which he thinks necessary for the purpose of verifying the whole or any part of the claim

40. Admission or rejection of claims



(1) The liquidator may, after verification of claims under section 39,

- either admit or reject the claim, in whole or in part, as the case may be:

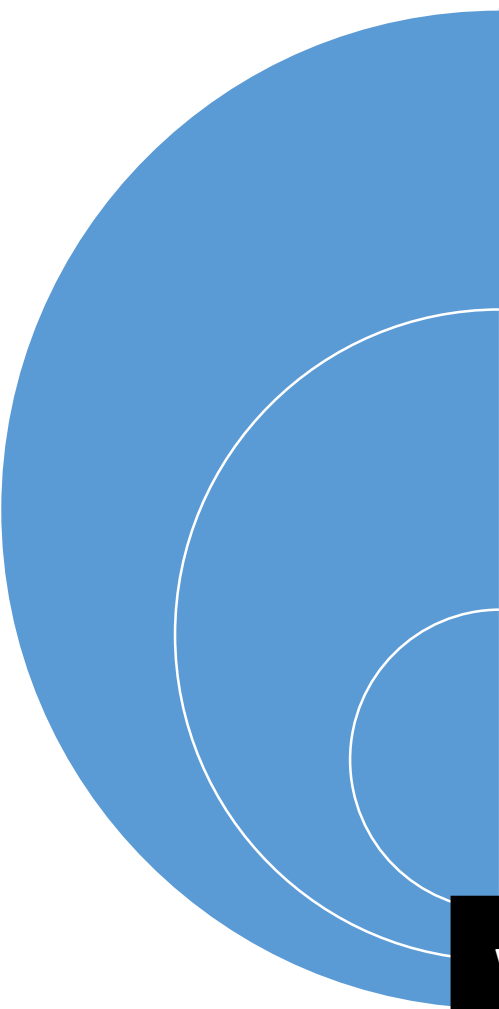
Provided that where the liquidator rejects a claim,

- he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor

- within seven days of such admission or rejection of claims.

41. Determination of valuation of claims -



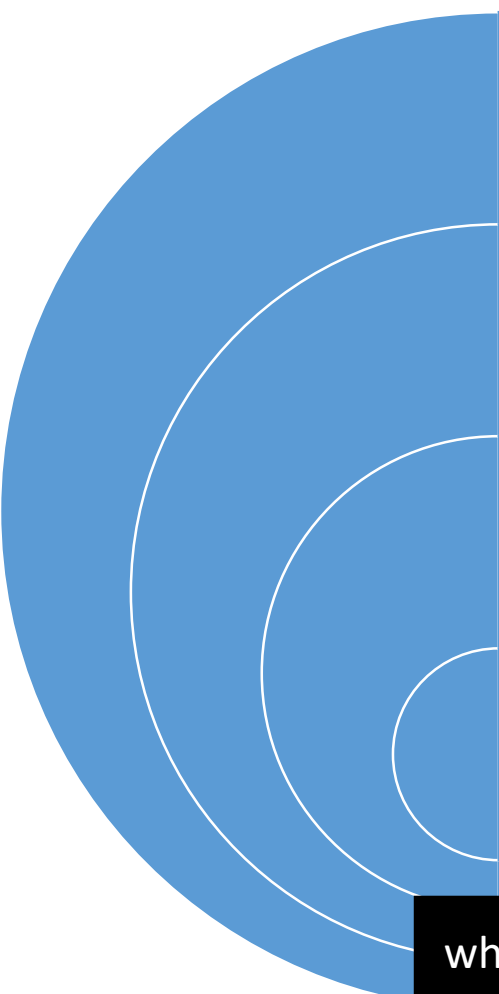
The liquidator shall determine the value of
claims admitted

under section 40

in such manner as may be specified by the
Board

Word used is “specified”—we need to see regulations in this regard to get more information

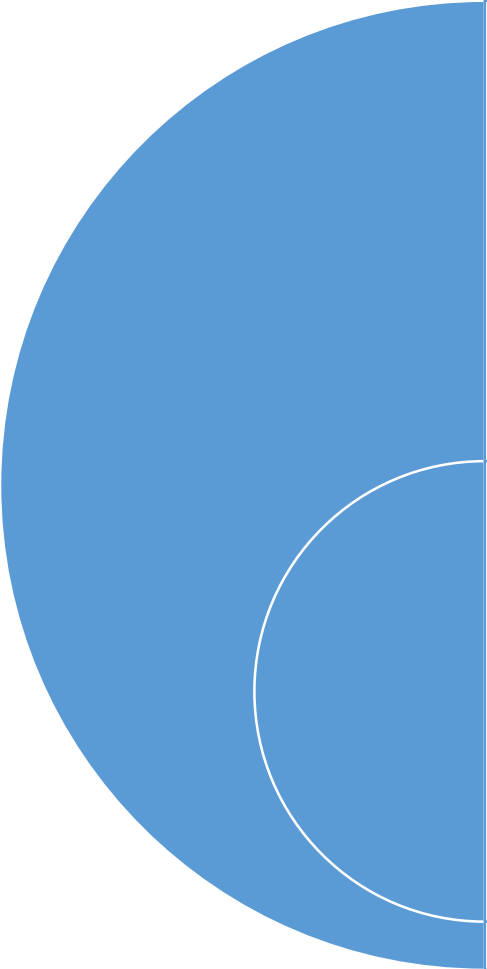
42. Appeal against the decision of liquidator



| |
|---|
| A creditor may appeal to the Adjudicating Authority |
| against the decision of the liquidator |
| accepting or rejecting the claims |
| within fourteen days of the receipt of such decision. |

why a creditor should appeal to AA for acceptance of his claim---probably it is the partial acceptance that may be required to be appealed against

43. Preferential transactions and relevant time



(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time

- given a preference in such transactions
- and in such manner as laid down in sub-section (2)
- to any persons as referred to in sub-section (4),

**he shall apply to the
Adjudicating Authority for
avoidance of preferential
transactions**

- and for, one or more of the orders referred to in section 44.

RP comes into picture at the stage of Section 25 J [CIRP] while exercising his powers –so this provision is also meant for CIRP stage by RP

43. Preferential transactions and relevant time--continued



(2) A corporate debtor shall be deemed to have given a preference, if—

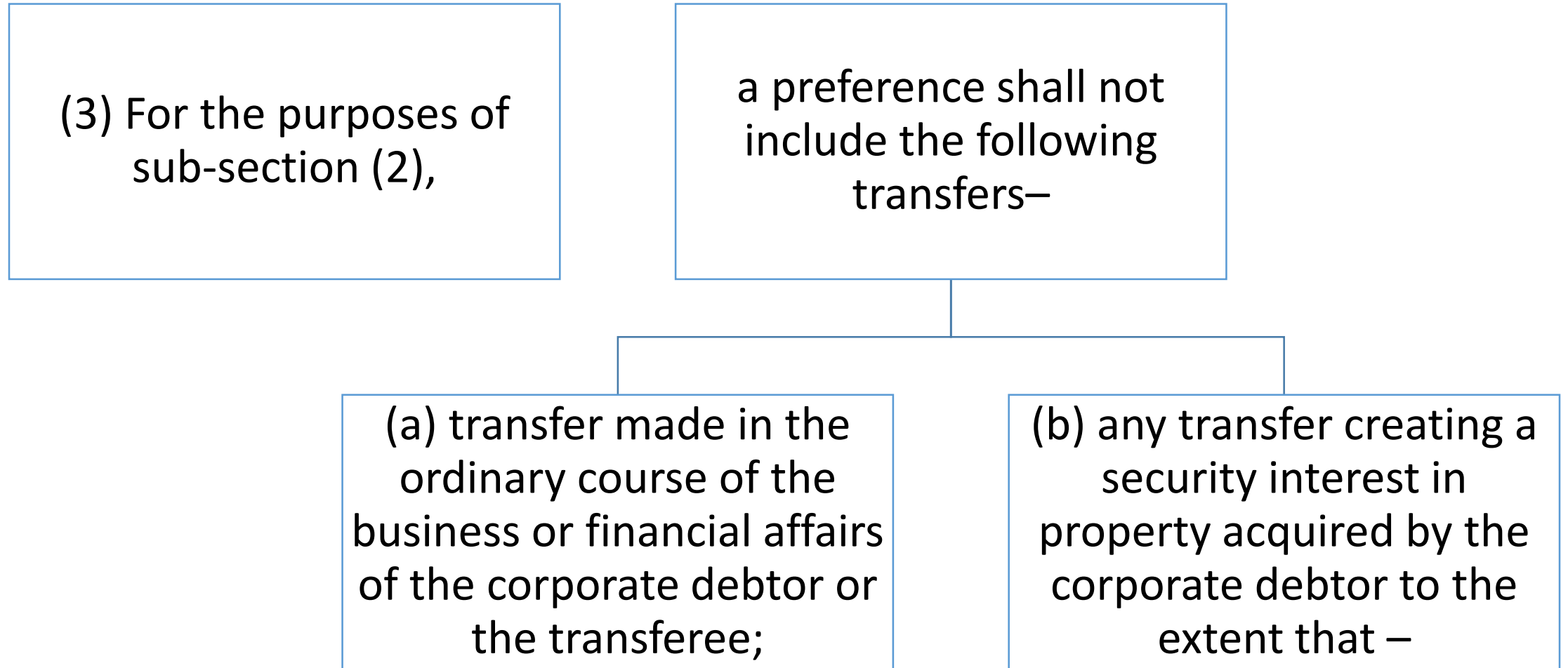
(a) there is a transfer of property or an interest thereof of the corporate debtor

- for the benefit of a creditor or a surety or a guarantor
- **for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and**

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position

- than it would have been in the event of a distribution of assets being made in accordance with section 53.

43. Preferential transactions and relevant time-continued

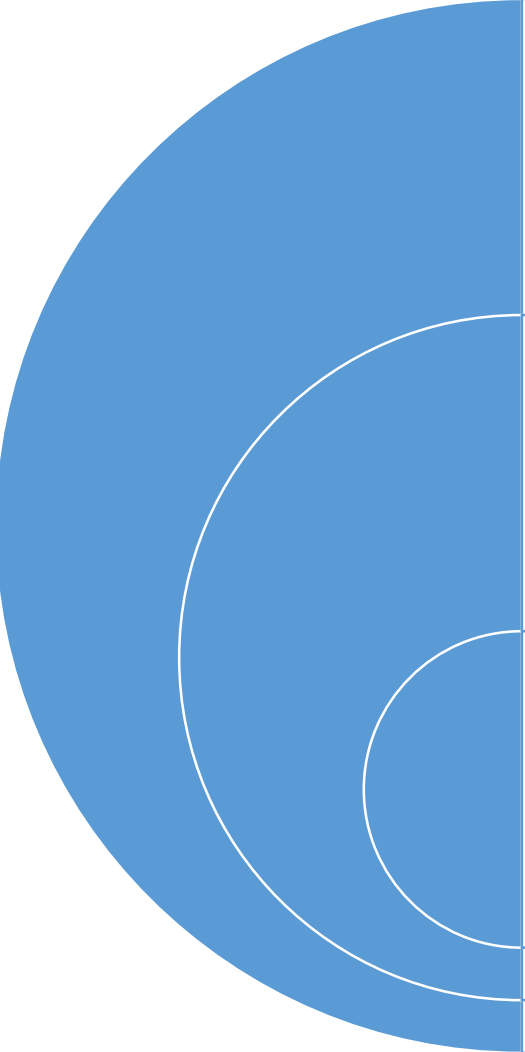


43. Preferential transactions and relevant time--continued

2[b](i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and

2[b](ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

43. Preferential transactions and relevant time--continued



Provided that any transfer made in pursuance of the order of a court

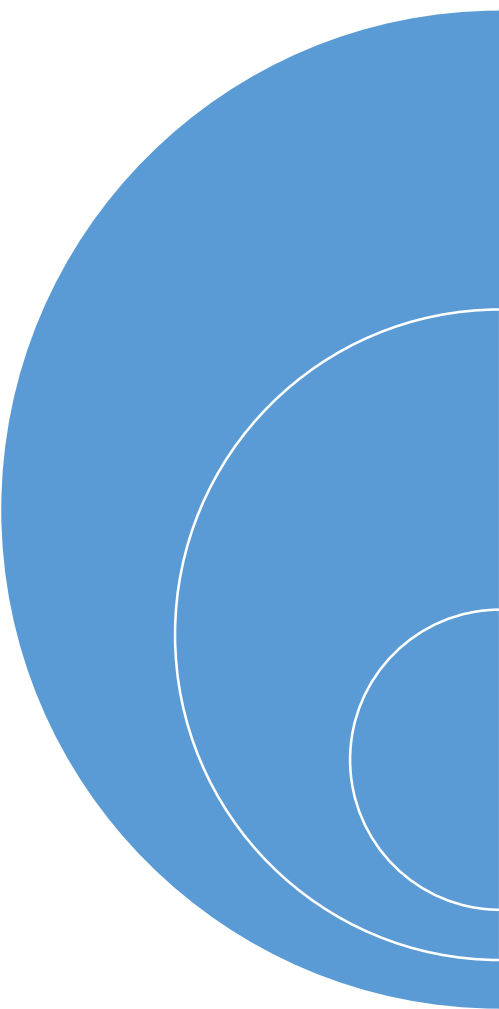
- **shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.**

Explanation. – For the purpose of subsection (3) of this section, “new value” means

- **money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the RP under this Code, including proceeds of such property,**

but does not include a financial debt or operational debt substituted for existing financial debt or operational debt

43. Preferential transactions and relevant time--continued



(4) A preference shall be deemed to be given at a relevant time, if –

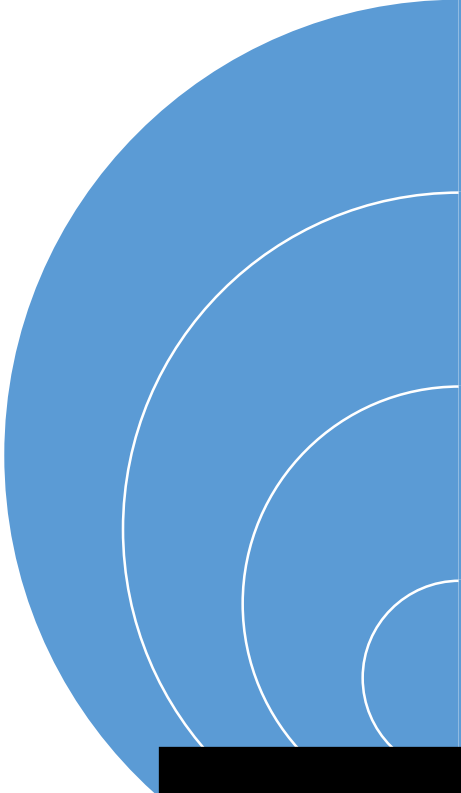
(a) It is given to a related party (other than by reason only of being an employee),

- during the period of **two years preceding the** insolvency commencement date; or

(b) a preference is given to a person other than a related party

- during the period of **one year preceding the** insolvency commencement date

44. Orders in case of preferential transactions



(1) The Adjudicating Authority, may, on an application made **by the resolution professional or liquidator** under sub-section (1) of section 43, by an order:

(a) **require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;**

(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

(c)[require] release or discharge (in whole or in part) of any security interest created by the corporate debtor;

44[1] It means that RP has to seek remedy---while in CIRP---under the provisions of Liquidation Process

Study [b] and [c]

44. Orders in case of preferential transactions

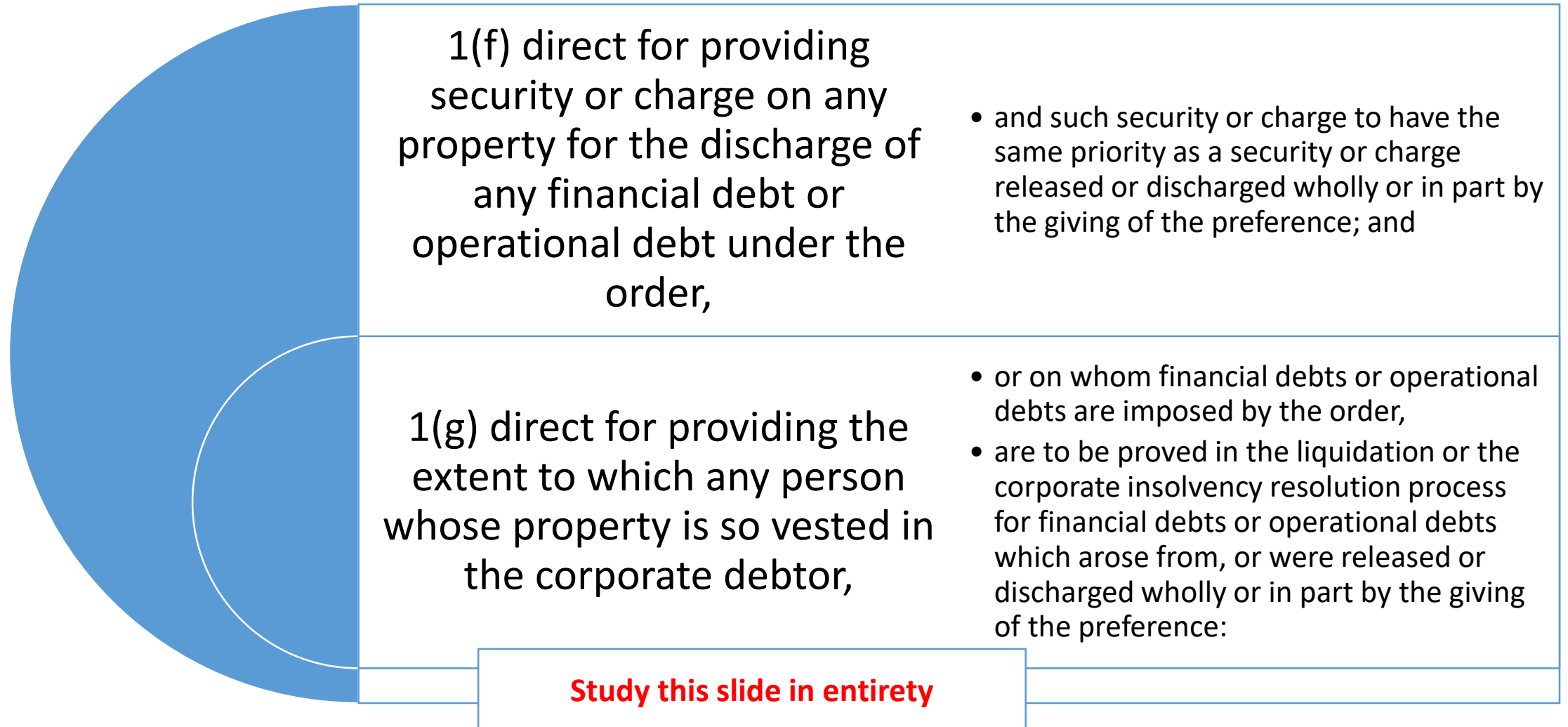
1(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor,

- such sums to the liquidator or to the resolution professional, as the Adjudicating Authority may direct;

1(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference,

- to be under such new or revived financial debts or operational debts to that person
- as the Adjudicating Authority deems appropriate;

44. Orders in case of preferential transactions



44. Orders in case of preferential transactions



Provided that an order under this section shall not –

- (a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;

(b) [shall not] require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

44. Orders in case of preferential transactions



Explanation-I:

- For the purpose of this section, it is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor,
- or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference, -

(a) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;

(b) is a related party,

- it shall be presumed that the interest was acquired, or the benefit was received otherwise than in good faith unless the contrary is shown.

Explanation II—next page

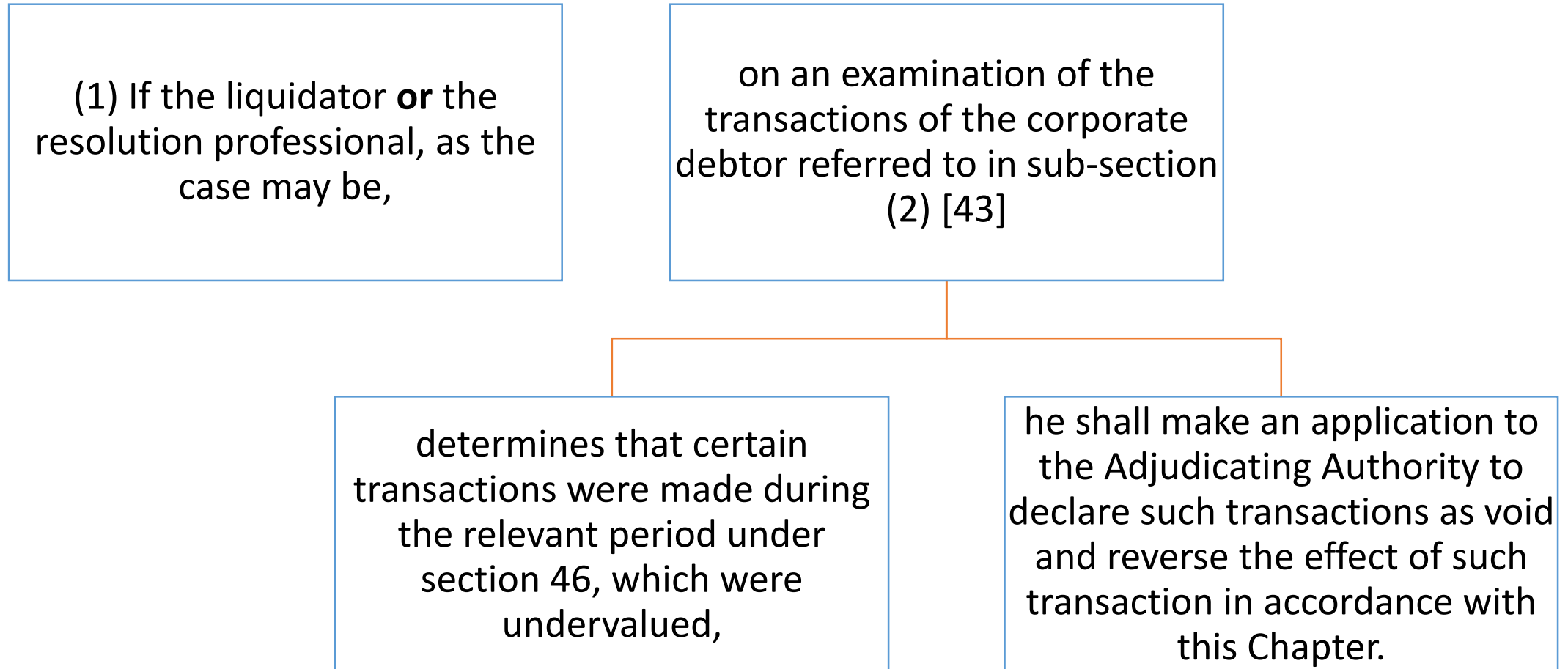
44. Orders in case of preferential transactions



Explanation-II

- A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13.

45. Avoidance of undervalued transactions



45. Avoidance of undervalued transactions

(2) A transaction shall be considered undervalued where the corporate debtor—

- (a) makes a gift to a person; or
- (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less **than the value of the consideration provided by the corporate debtor**,
- and such transaction has not taken place in the ordinary course of business of the corporate debtor.

46. Relevant period for avoidable transactions

(1) In an application for avoiding a transaction at undervalue,

- the liquidator **or** the resolution professional, as the case may be,

shall demonstrate that –

- (i) such transaction was made with any person **within the period of one year preceding the insolvency commencement date**; or
- (ii) **such transaction was made with a related party within the period of two years preceding the insolvency commencement date.**

(2) The Adjudicating Authority may require an independent expert

- to assess evidence relating to the value of the transactions mentioned in this section.

47. Application by creditor in cases of undervalued transactions.

(1) Where an undervalued transaction has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority,

- a creditor, member **or a partner** of a corporate debtor, as the case may be,

may make an application to the Adjudicating Authority

- to declare such transactions void and reverse their effect in accordance with this Chapter.

47. Application by creditor in cases of undervalued transactions.

(2) Where, the Adjudicating Authority, after examination of the application made under subsection (1), is satisfied that –

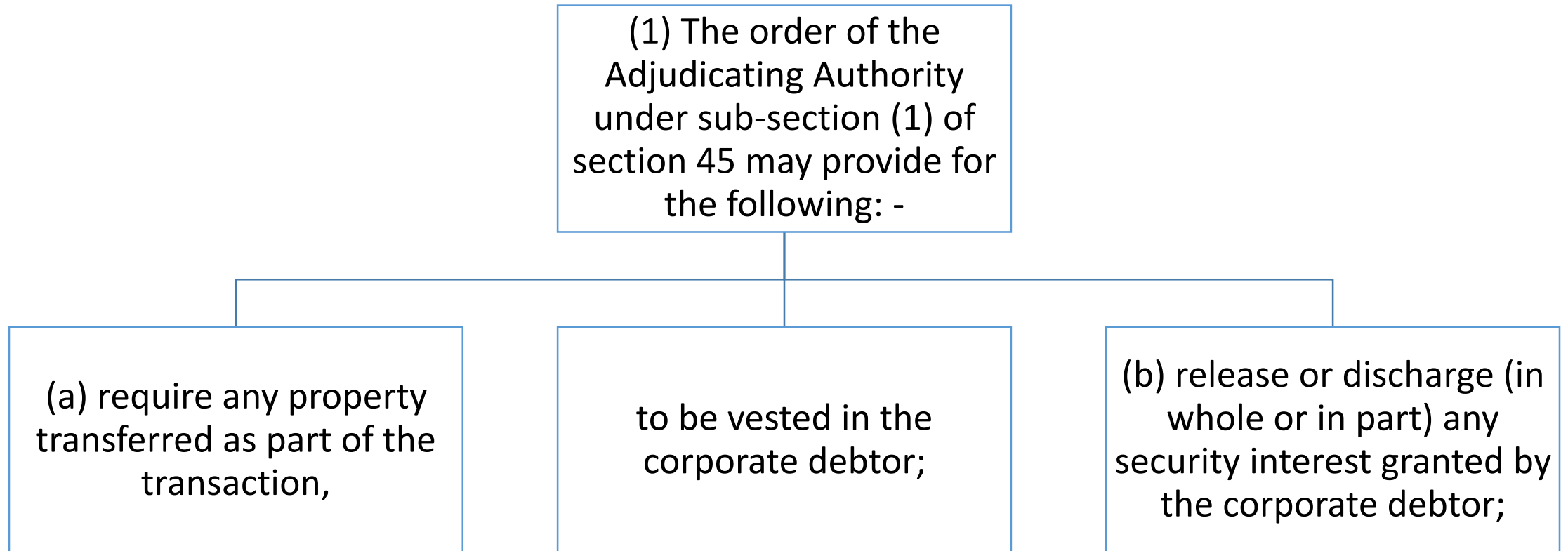
- (a) undervalued transactions had occurred; and
- (b) liquidator or the resolution professional, as the case may be,
- after having sufficient information or opportunity to avail information of such transactions
- did not report such transaction to the Adjudicating Authority,

47. Application by creditor in cases of undervalued transactions.

2-contd-
-it shall
pass an
order-

- (a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48; (b) requiring the Board to initiate disciplinary proceedings against the **liquidator or the resolution professional** as the case may be.

48. Order in cases of undervalued transactions.



48. Order in cases of undervalued transactions.

1(c) require any person to pay such sums, in respect of benefits received by such person,

to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or

1(d) require the payment of such consideration for the transaction as may be determined by an independent expert

49. Transactions defrauding creditors.

(1) Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45

- and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor –

Section 49

(1) Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45



| |
|--|
| (a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or |
| (b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order |
| (i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and |
| (ii) protecting the interests of persons who are victims of such transactions: |
| |
| |
| |

49. Transactions defrauding creditors.

Provided that an order under this section –

(a) shall not affect any interest in property

- which was acquired from a person other than the corporate debtor
- and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances

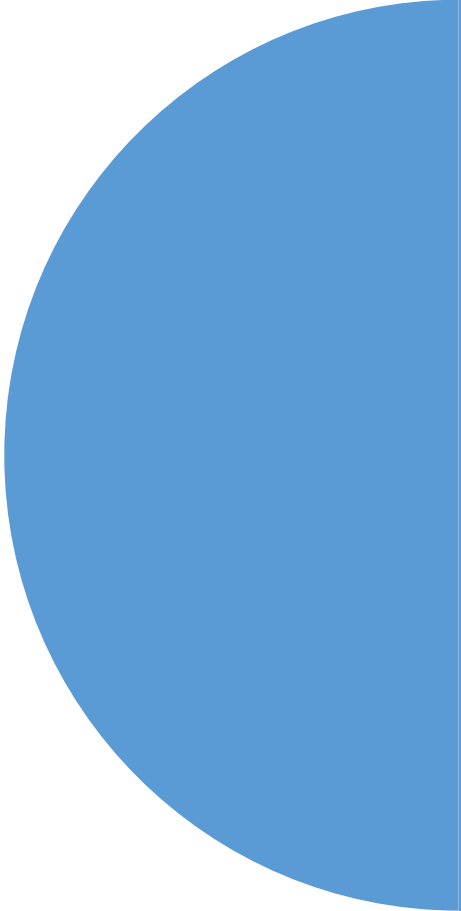
- to pay any sum unless he was a party to the transaction

50. Extortionate credit transactions

(1) Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of **financial or operational debt**

- during the period within two years **preceding the insolvency commencement date**,
 - the liquidator or the resolution professional as the case may be,
- may make an application for avoidance of such transaction to the Adjudicating Authority
- if the terms of such transaction required exorbitant payments to be made by the corporate debtor..

50. Extortionate credit transactions



(2) The Board may specify the circumstances in which a transactions which shall be covered under subsection (1).

- **Explanation.** - For the purpose of this section,
- it is clarified that any debt extended by any person
- providing financial services which is in compliance with any law for the time being in force
- in relation to such debt
- shall in no event be considered as an extortionate credit transaction

51. Orders of Adjudicating Authority in respect of extortionate credit transactions.

Where the Adjudicating Authority after examining the application made under sub-section (1) of section 50 is satisfied that

(a) restore the position as it existed prior to such transaction;

c) modify the terms of the transaction;

(e) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

- the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, **it shall, by an order –**

- (b) set aside the whole or part of the debt created on account of the extortionate credit transaction;

- (d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or

52. Secured creditor in liquidation proceedings---continued.


(1) A secured creditor in the liquidation proceedings may-

- (a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or
- (b) realise its security interest in the manner specified in this section.

(2) Where the secured creditor realises security interest under clause (b) of subsection (1),

- he shall inform the liquidator of such security interest
- and identify the asset subject to such security interest to be realised

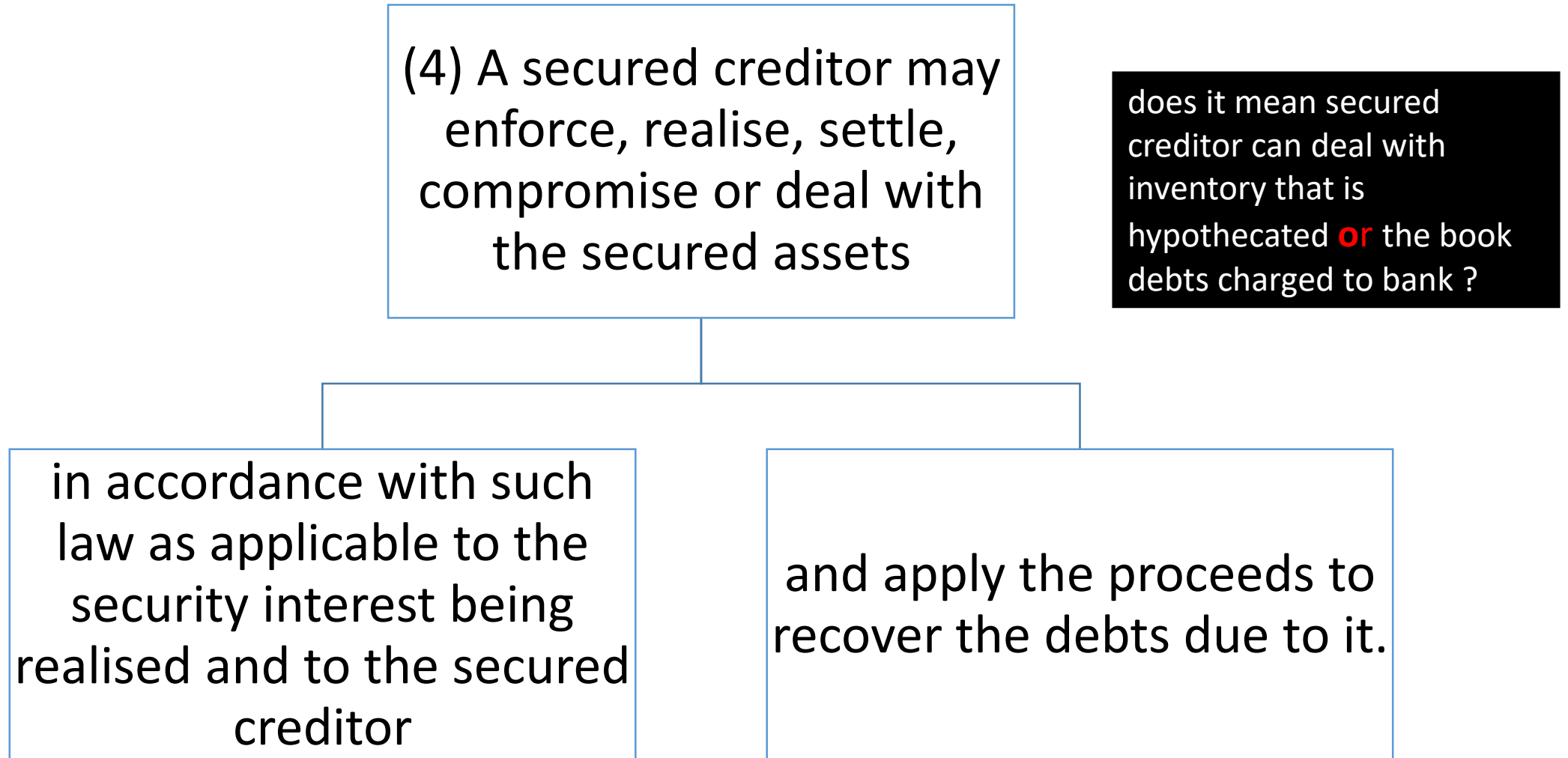
52. Secured creditor in liquidation proceedings--continued



(3) Before any security interest is realised by the secured creditor under this section,

- the liquidator shall verify such security interest
- and permit the secured creditor to realise only such security interest, the existence of which may be proved either
- (a) by the records of such security interest maintained by an information utility; or
- (b) by such other means as may be specified by the Board.

52. Secured creditor in liquidation proceedings--continued



52. Secured creditor in liquidation proceedings--continued

(5) If in the course of realising a secured asset, any secured creditor faces resistance

from the corporate debtor

• or any person connected therewith

in taking possession of, selling or otherwise disposing off the security,

• the secured creditor may make an application to the Adjudicating Authority

to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

52. Secured creditor in liquidation proceedings--continued

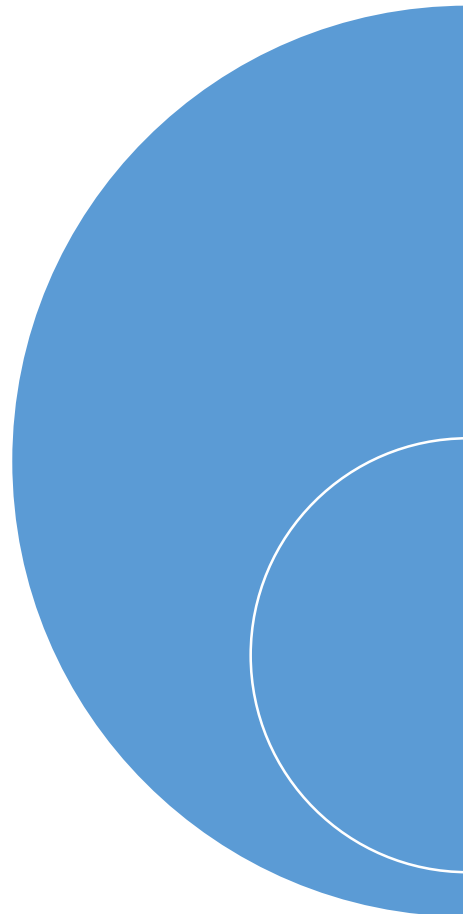
(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under subsection (5)

may pass such order as may be necessary

to permit a secured creditor to realise security interest

in accordance with law for the time being in force.

52. Secured creditor in liquidation proceedings--continued



| | |
|---|--|
| (7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts | <ul style="list-style-type: none">• due to the secured creditor, |
| the secured creditor shall- | <ul style="list-style-type: none">• (a) account to the liquidator for such surplus; and• (b) tender to the liquidator any surplus funds received from the enforcement of such secured assets. |
| | |

52. Secured creditor in liquidation proceedings--continued

(8) The amount of insolvency resolution process costs, ---

- due from secured creditors
- who realise their security interests in the manner provided in this section,

shall be deducted from the proceeds of any realisation by such secured creditors,

- and they shall transfer such amounts to the liquidator to be included in the liquidation estate..

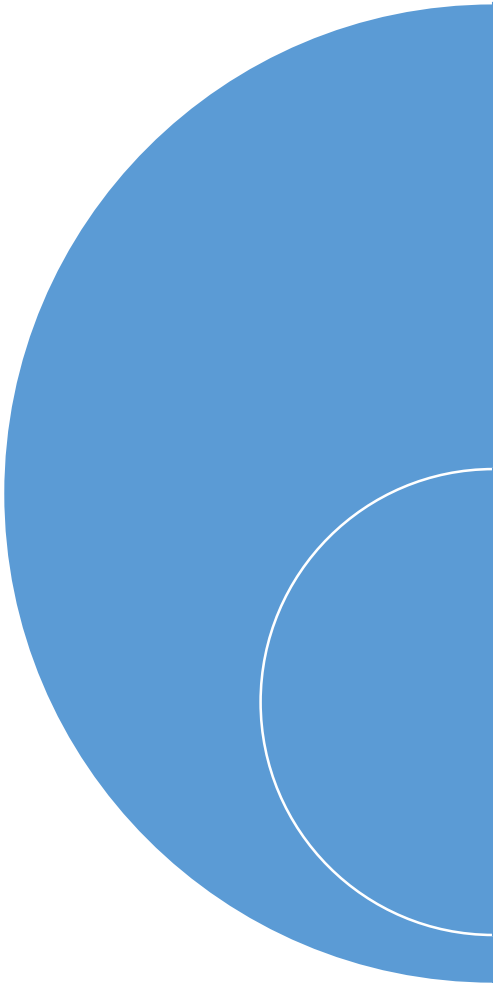
52/8--so first Insolvency Resolution Process Costs---to be recovered and then Liquidation cost ? What if IRPC is not fully recovered ? Is it to be recovered at the time of recovering liquidation cost ?—Read 53/1/a

52. Secured creditor in liquidation proceedings--continued

(9) Where
the proceeds
of the
realisation of
the secured
assets

- are not adequate to repay debts owed to the secured creditor,
- the unpaid debts of such secured creditor
 - shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53

53. Distribution of assets. -



(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force,

- the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period as may be specified, namely: -

(a) the insolvency resolution process costs and the liquidation costs paid in full;

53. Distribution of assets--continued

1(b) the following debts which shall rank equally between and among the following:

- (i) workmen's dues for the period of twenty-four months **preceding the liquidation commencement date; and**
- (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

1(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months **preceding the liquidation commencement date;**

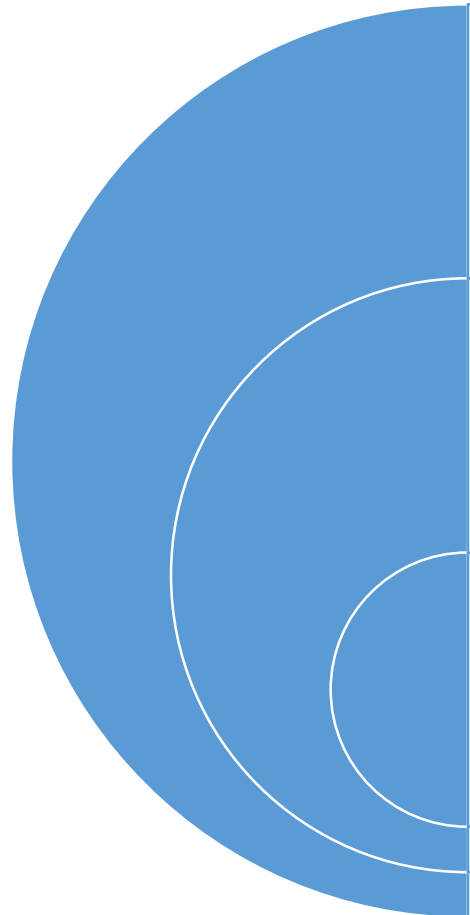
1(d) financial debts owed to unsecured creditors;

53. Distribution of assets--continued -

1(e) the following dues shall rank equally between and among the following: -

- (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
- (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest

53. Distribution of assets--continued



| |
|---|
| 1(f) any remaining debts and dues; |
| (g) preference shareholders, if any; and |
| (h) equity shareholders or partners, as the case may be. |
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53. Distribution of assets--continued -

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking,

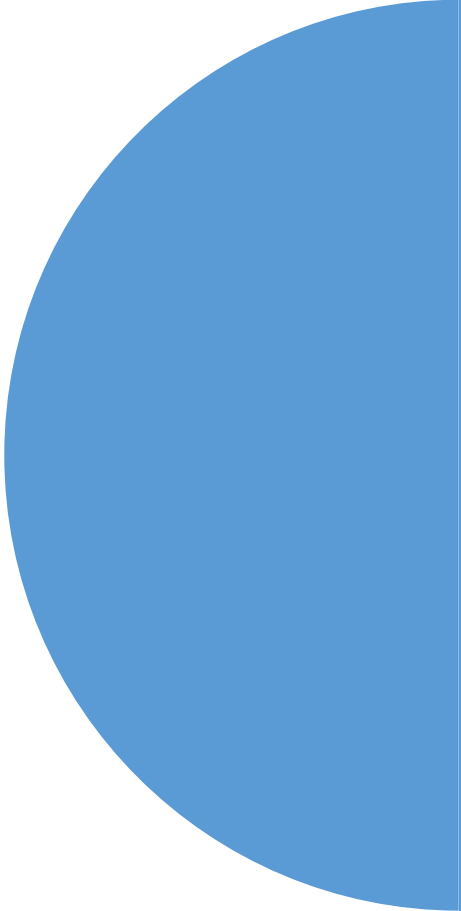
- if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

[study]

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1),

- and the proceeds to the relevant recipient shall be distributed after such deduction.

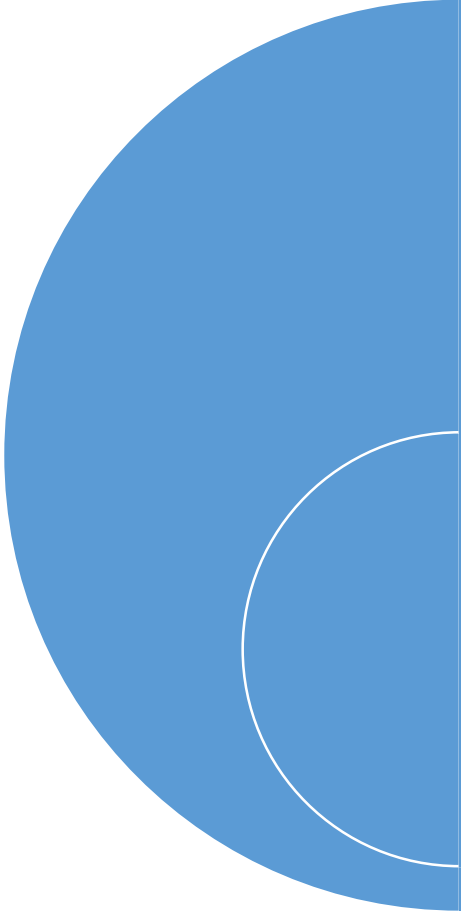
53. Distribution of assets--continued



Explanation. –
For the
purpose of
this section–

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally,
 - each of the debts will either be paid in full,
 - or will be paid in equal proportion within the same class of recipients,
 - if the proceeds are insufficient to meet the debts in full; and
- (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

54. Dissolution of corporate debtor



(1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

- (2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.