

IBC Law

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Topics

- ▶ Salient features of the Insolvency and Bankruptcy Code, 2016 concerning valuation
- ▶ The Companies Act, 2013: Section 192(2), 230 (1), 230 (2), 230 (3), 231, 232, 247 and 281(1)
- ▶ Salient features of the Companies (Registered Valuers and Valuation) Rules, 2017
- ▶ Salient features of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) concerning valuation
- ▶ Section 5(n) of the Banking Regulation Act, 1949 on “secured loan or advance”
- ▶

Salient features of the Insolvency and Bankruptcy Code, 2016 concerning valuation

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- ▶ Corporate Law – 1882, 1913, 1956
 - ▶ Mainly followed the English Corporate law.
- ▶ Corporate law of 1956.
 - ▶ There was no mention of Valuation in this.
- ▶ Corporate Law 2013
 - ▶ Made with Indian view.
 - ▶ Stated a *full section 247 on valuation*.
- ▶ IBBI was given the task to make the rules and start the processes.
- ▶ They made the full set of rules and processes.
 - ▶ Started in Oct 2017.
- ▶ Valuer to act in guarding the society to provide a fair value.
- ▶ Further actions on the same may be done.
- ▶ These are mandatory in different sections of Corporate Law.

▶ Regulation 2

- ▶ “registered valuer” means a person registered as per Companies Act, 2013 (18 of 2013)
- ▶ “fair value” means the estimated realizable value of the assets
 - ▶ They were to be exchanged on the insolvency commencement date
 - ▶ Between a willing buyer and a willing seller
 - ▶ In an arm’s length transaction,
 - ▶ After proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.
- ▶ “liquidation value” means the estimated realizable value
 - ▶ if the corporate debtor were to be liquidated on the insolvency commencement date.

▶ Regulation 26

- ▶ The resolution professional shall within **seven days** of his appointment, appoint **one registered valuer** to determine the fair value and the liquidation value in accordance with Regulation 34:
- ▶ Provided that following shall not be appointed as registered valuers,
 - ▶ (a) a relative of the resolution professional;
 - ▶ (b) a related party of the corporate debtor;
 - ▶ (c) an auditor of the corporate at any time during the five years preceding the insolvency commencement date
 - ▶ (d) a partner or director of the insolvency professional entity of which the RP is a partner or director.

▶ Section 34

- ▶ 34. (1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the RP 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,]* act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

An IP is appointed by NCLT

- ▶ (2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

IP takes over all the power of the board.

- ▶ (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.

All help to be given to IP.

- ▶ (4) The Adjudicating Authority shall by order replace the resolution professional, if—
- ▶ (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;
- ▶ (b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded 2[*in writing; or*]

Replace IP – if it fails to meet requirements, or the boards recommends that.

- ▶ 3[(c) *the resolution professional fails to submit written consent under sub-section (1).*]
- ▶ (5) For the purposes of 4[*clause (a) and (c)*] of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

Another IP to be appointed.

- ▶ (6) The Board shall propose the name of another insolvency professional 5[*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).
- ▶ (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 maybe specified by the Board.
- ▶ (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.

The fees of the IP will be from the proceeds of the liquidation of assets.

What it means

- ▶ NCLT – pass an order for Insolvency. IP is appointed.
- ▶ IP takes all power from the board – he is the CEO.
 - ▶ Board has to help IP.
- ▶ Board can charge the IP, if they do not like.
- ▶ IP will get the fees from the liquidated assets.

Regulation 35 –Fair value and Liquidation value

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- ▶ Fair value and liquidation value shall be
 - ▶ (a) the **two registered valuers** appointed under regulation 27 shall submit to the resolution professional an estimate of the **fair value** and of the **liquidation value** computed in accordance with internationally accepted **valuation standards**, after **physical verification** of the inventory and fixed assets of the corporate debtor;
 - ▶ (b) if in the opinion of the resolution professional, the two estimates of a value are **significantly different**, he may **appoint another registered valuer** who shall submit an estimate of the value computed in the same manner
 - ▶ (c) the **average of the two closest estimates** of a value shall be considered the fair value or the liquidation value, as the case may be.
- ▶ After the receipt of resolution plans value will be send to every member of the committee in electronic form. Confidentiality will be maintained.
- ▶ The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.

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Duty of an IRP/RP vis-à-vis the liquidation value of the corporate debtor

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- ▶ RP has to
 - ▶ Appoint 2 registered valuer for each segment.
 - ▶ If the value of the 2 valuers are significantly different, appoint third.
 - ▶ Average of the two closest.
 - ▶ Put this value in the information memorandum. (regulation 36)
 - ▶ *Ensuring that every resolution plan identifies sources of funds, and provides for making payment of claims of operational creditors at liquidation value in priority to financial creditors and within 30 days of its approval (Regulation 38(1)(b) of the CIRP Regulations);*
 - ▶ *Ensuring that every resolution plan identifies sources of funds to make payment of claims of the dissenting financial creditors at liquidation value in priority to recovery by other financial creditors who approve the resolution plan (Regulation 38(1)(c) of the CIRP Regulations).*

Terms

- ▶ Valuation on date of start of CIRP.
- ▶ All valuation is for the same date.
- ▶ Liquidation value / realizable value is on a desperate sale, on the date of CIRP.
 - ▶ Can sell quickly is perishable
 - ▶ Can sell as a whole
 - ▶ Can sell as parts.

Companies Act – salient features related to valuer & valuation.

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- ▶ Company Act 2013
- ▶ Rules for valuers & valuation – 2017. (18-Oct-2017)

Definitions

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- ▶ 1. “Authority” means an authority specified by the Central Government under section 458 of the Companies Act, 2013 to perform the functions under these rules;
 - ▶ 2. “Asset class” means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation;
 - ▶ 3. “Certificate of recognition” means the certificate of recognition granted to a registered valuers organization under sub-rule (5) of rule 13 and the term “recognition” shall be construed accordingly;
 - ▶ 4. “Certificate of registration” means the certificate of registration granted to a valuer under sub-rule (6) of rule 6 and the term “registration” shall be construed accordingly;
 - ▶ 5. “Registered valuers organization” means a registered valuers organization (RVO) recognized under sub-rule (5) of rule 13;
 - ▶ 6. “valuation standards” means the standards on valuation referred to in rule 18; and
 - ▶ 7. “valuer” means a person registered with the authority in accordance with these rules and the term “registered valuer” shall be construed accordingly.
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- ▶ 23rd October 2017, Central Government has delegated its powers for Registered Valuers to the Insolvency and Bankruptcy Board of India (IBBI)

ELIGIBILITY FOR REGISTERED VALUERS

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A “person” shall be eligible to be a Registered Valuer if he

- ▶ a. is a valuer member of a RVO
- ▶ b. possesses the qualification and experience specified in rule 4
- ▶ c. has passed the Valuation Examination under rule 5 within three years preceding the date of making an application for registration under rule 6:
- ▶ d. is a person resident in India
- ▶ e. is a fit and proper person

No partnership entity or company shall be eligible to be a registered valuer if

- ▶ a. it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate;
- ▶ b. it is undergoing an insolvency resolution or is an undischarged bankrupt;
- ▶ c. all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (f), (g), (h), (i), (j) and (k) of sub-rule (1);
- ▶ d. three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or
- ▶ e. none of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

QUALIFICATION AND EXPERIENCE

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- ▶ a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognized or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or
- ▶ (b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognized or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or
- ▶ (c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership.

VALUATION EXAMINATION

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- ▶ Authority will conduct the exam directly or through a third party
- ▶ Authority may recognize courses conducted by RVO's.

APPLICATION FOR CERTIFICATE OF REGISTRATION

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- ▶ An individual eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-A of Annexure-II along with a non-refundable application fee of five thousand rupees in favour of the authority.
- ▶ A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-B of Annexure-II along with a non-refundable application fee of ten thousand rupees in favour of the authority.
- ▶ If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in Form-C of the Annexure-I I within sixty days of receipt of the application

CONDITIONS OF REGISTRATION

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- ▶ The valuer shall –
 - ▶ At all times possess the eligibility qualification and experience
 - ▶ At all times comply with provisions of the Act, these Rules and internal regulations of the respective RVO
 - ▶ Not conduct valuation of assets other than for which he/it has been registered
 - ▶ Maintain records of all assignments undertaken by him for at least 3 years from the completion of such assignments
 - ▶ Comply with code of conduct of the RVO
 - ▶ Allow only the partner/Director who is a Registered valuer for the asset class that is being valued to sign and act on behalf of it
 - ▶ In case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;
 - ▶ In case a partnership entity/company is the registered valuer, be liable jointly and severally along with the partner/director who signs and acts in respect of a valuation assignment on behalf of the partnership entity/company;

CONDUCT OF VALUATION

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- ▶ These will be done as per valuation standards/
- ▶ As there no declared Valuation Standards from Government, International Valuation Standards 2020 may be used.

CONTENTS OF VALUATION REPORT

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- ▶ The valuer shall in his report state the following
 - ▶ • Background information of the asset being valued
 - ▶ • Purpose of Valuation and Appointing authority
 - ▶ • Identity of Valuer and any other experts involved in valuation
 - ▶ • Disclosure of Valuer interest/conflict, if any
 - ▶ • Date of appointment, valuation date and date of report
 - ▶ • inspections and/or investigations undertaken;
 - ▶ • Nature and sources of the information used or relied upon;
 - ▶ • Procedures adopted in carrying out the valuation and the valuation standards followed
 - ▶ • Restrictions on use of the report, if any;
 - ▶ • Major factors that were taken into account during the valuation
 - ▶ • Conclusion and
 - ▶ • Caveats, Limitations and Disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

RULE 10 : FUNCTIONS OF A VALUER.

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A valuer shall conduct valuation required under the Act as per these rules and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.

RULE 11 :TRANSITIONAL ARRANGEMENT

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- ▶ Any person who may be rendering valuation services under the Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules upto 31st January, 2019:
- ▶ Provided that if a company has appointed any valuer before such date and the valuation or any part of it has not been completed before 31st March, 2018, the valuer shall complete such valuation or such part within three months thereafter
- ▶ Explanation.— It is hereby clarified that conduct of valuation by any person under any law other than the Act, or these rules shall not be effected by virtue of coming into effect of these rules unless the relevant other laws or other regulatory bodies require valuation by such person in accordance with these rules in which case these rules shall apply for such valuation also from the date specified under the laws or by the regulatory bodies

RULE 13 : APPLICATION FOR RECOGNITION AS RVO

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- ▶ An eligible organisation which meets the conditions specified in rule 12 may make an application for recognition as a registered valuers organisation for asset class or classes to the authority in Form-D of the Annexure-II along with a non-refundable application fee of rupees one lakh in favour of the authority.
- ▶ If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary that the applicant is eligible under these rules, it may grant a certificate of recognition as a registered valuers organisation in Form-E of Annexure-I I .

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RULE 14 : CONDITIONS OF RECOGNITION AS RVO

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- ▶ At all times continue to satisfy the eligibility requirements specified under rule 12;
- ▶ Maintain a register of members who are registered valuers, which shall be publicly available;
- ▶ Admits only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 and as specified in its recognition certificate, as members;
- ▶ Make such reports to the authority as may be required by it;
- ▶ Comply with any directions, including with regard to course to be conducted by valuation organisation, issued by the authority;
- ▶ Be converted or registered as company under section 8 of the Act, with governance structure and bye laws, within a period of one year from the date of commencement of these rules if it is an organisation referred to in prov iso to sub-rule (1) of rule 12;
- ▶ Shall have the governance structure and incorporate in its bye laws the requirements specified in Annexure-III within one year of commencement of these rules if it is an organisation referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement of these rules;
- ▶ Display on its website, the status and specified details of every registered valuer being its valuer members including action under rule 17 being taken against him; and
- ▶ Comply with such other conditions as may be specified by authority.

RULE 15 : CANCELLATION OR SUSPENSION OF CERTIFICATE OF REGISTRATION OR RECOGNITION

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The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner specified in rule 17

RULE 16 : COMPLAINT AGAINST A REGISTERED VALUER OR REGISTERED VALUERS ORGANISATION

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A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit: Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

RULE 19 : COMMITTEE TO ADVISE ON VALUATION MATTERS

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- ▶ The Central Government may constitute a Committee to be known as “Committee to advise on valuation matters” to make recommendations on formulation and laying down of valuation standards and policies for compliance by companies and registered valuers.

RULE 20 : PUNISHMENT FOR CONTRAVENTION

- ▶ Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

RULE 21 : PUNISHMENT FOR FALSE STATEMENT

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- ▶ If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—
- ▶ (a) which is false in any material particulars, knowing it to be false; or
- ▶ (b) which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.

MODEL CODE OF CONDUCT FOR REGISTERED VALUERS

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- ▶ Integrity and Fairness
- ▶ Professional competence and Due care
- ▶ Independence and disclosure of Interest
- ▶ Confidentiality
- ▶ Information Management
- ▶ Gifts and Hospitality
- ▶ Remuneration and cost
- ▶ Occupation, employ ability and restrictions

Salient Features of SARFAESI 2002 act

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- ▶ The **Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002** is a legislation that helps financial institutions to ensure asset quality in multiple ways. This means that the Act was framed to address the problem of NPAs (Non-Performing Assets) or bad assets through different processes and mechanisms.
- ▶ The Act provides the legal framework for securitization activities in India
- ▶ It gives the procedures for the transfer of NPAs to asset reconstruction companies for the reconstruction of the assets.
- ▶ The Act enforces the security interest without Court's intervention
- ▶ The Act give powers to banks and financial institutions to take over the immovable property that is hypothecated or charged to enforce the recovery of debt.

- ▶ **Procedural nature of SARFAESI Act** - provides the procedure for providing the remedy of enforcement of security in secured assets without going to the court, directly through the secured creditor.
- ▶ **Retrospective nature of provisions of SARFAESI Act**
- ▶ **Constitutional Validity of SARFAESI Act** - Supreme court has upheld the validity of SARFAESI Act, 2002.
- ▶ **The action under SARFAESI Act during the pendency of Civil Suit** - During the pendency of the bank's civil suit, the bank can resort to simultaneous action under Section 13(4) of the Act
- ▶ **Writ Jurisdiction** - The remedy of appeal is available under the Act against actions relating to recoveries of dues of banks and financial institutions.
- ▶ **Co-operative Banks can take action under SARFAESI Act** -

SARFAESI Act 2016

- ▶ Asset Reconstruction Companies can restart debt recovery tribunal.
- ▶ RBI gets more power over ARC.
 - ▶ Do inspections
 - ▶ Punish if they do not follow the law.
 - ▶ Can put a board member on ARC.
- ▶ Speed up the processes for debt recovery.

Objectives of SARFAESI Act, 2002

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- ▶ Efficient or rapid recovery of non-performing assets (NPAs) of the banks and FIs.
- ▶ Allows banks and financial institutions to auction properties (say, commercial/residential) when borrower fail to repay their loans.

Applicability Of SARFAESI Act, 2002

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- ▶ Registration and regulation of Asset Reconstruction Companies (ARCs) by the Reserve Bank of India
- ▶ Facilitating securitization of financial assets of banks and financial institutions with or without the benefit of underlying securities
- ▶ Promotion of seamless transferability of financial assets by the ARC to acquire financial assets of banks and financial institutions
- ▶ Entrusting the Asset Reconstruction Companies to raise funds by issue of security receipts to qualified buyers
- ▶ Facilitating the reconstruction of financial assets which are acquired while exercising powers of enforcement of securities or change of management or other powers which are proposed to be conferred on the banks and financial institutions
- ▶ Presentation of any securitization company or asset reconstruction company registered with the Reserve Bank of India.
- ▶ Classification of the borrower's account as a non-performing asset.
- ▶ The officers authorized will exercise the rights of a secured creditor in this behalf.
- ▶ An appeal against the action of any bank or financial institution to the concerned Debts Recovery Tribunal.

Methods of Recovery under SARFAESI Act, 2002

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- ▶ **Securitization:** Securitization is the process of issuing marketable securities backed by a pool of existing assets such as auto or home loans.
- ▶ **Asset Reconstruction:** Enacting SARFAESI Act has given birth to the Asset Reconstruction Companies in India. It can be done by either proper management of the business of the borrower, or by taking over it or by selling a part or whole of the business or by the rescheduling of payment of debts payable by the borrower enforcement of security interest in accordance with the provisions of this Act.

Applicability of the Act

- ▶ The SARFAESI Act is not applicable to:
 - ▶ • Regional Rural Banks
 - ▶ • Nationalized Banks
 - ▶ • Co-operative Banks
 - ▶ • State Bank of India and their Associate banks

Section 5(n) in BANKING REGULATION ACT, 1949 “Secured Loan or Advance”

- ▶ 5(n) “secured loan or advance” means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance; and “unsecured loan or advance” means a loan or advance not so secured

Sections of Company law 2013.

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▶ Section 230

- ▶ This is a mechanism to ensure institutional settlement of disputes between creditors and the **company**. It ensures that the **company** has a chance to save itself from insolvency or liquidation by doing a deal with at least majority of creditors.

▶ Section 230(1)

- ▶ For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

▶ Section 230(2)

- ▶ The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—
 - ▶ All material facts relating to the company,
 - ▶ Reduction of share capital of the company,
 - ▶ Any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—
 - ▶ A creditor's responsibility statement in the prescribed form;
 - ▶ Safeguards for the protection of other secured and unsecured creditors;
 - ▶ Report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;
 - ▶ Where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and (v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

Companies Law – Different Section

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- ▶ This is law which governs Companies.
- ▶ Last modification 2013.
 - ▶ There are many amendments that keep on happening
 - ▶ These keep the law current.
 - ▶ Valuers have to keep a tab on these as some may affect them.

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Valuation as a profession was first put in the Corporate Law 2013.

- ▶ Section 230(3)
 - ▶ Calling of the meeting in case of debt restructuring.
 - ▶ Who & how will the parties be informed.
- ▶ Section 231
 - ▶ Power of Tribunal to enforce compromise or arrangement.—
 - ▶ (1) Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—
 - ▶ (a) shall have power to supervise the implementation of the compromise or arrangement; and
 - ▶ (b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.
 - ▶ (2) If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.
 - ▶ (3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

▶ Section 232

▶ Valuation of asset in case of amalgamation.

- ▶ In a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;
- ▶ References to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;
- ▶ A scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and
- ▶ Property includes assets, rights and interests of every description and liabilities include debts and obligations of every description

▶ Section 247

▶ Valuation be a registered valuer

- ▶ Make an impartial, true and fair valuation of any assets which may be required to be valued;
 - ▶ Exercise due diligence while performing the functions as valuer;
 - ▶ Make the valuation in accordance with such rules as may be prescribed;
 - ▶ Not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.
- ▶ Fines may be imposed if the conduct of the valuer is found improper.

▶ Section 281(1)

▶ Liquidation of a company & it's assets.

- ▶ The nature and details of the assets of the company
- ▶ The existing and contingent liabilities of the company;
- ▶ The debts due to the company
- ▶ Guarantees, if any, extended by the company;
- ▶ List of contributories and dues, if any, payable by them and details of any unpaid call;
- ▶ Details of trade marks and intellectual properties,
- ▶ Details of holding and subsidiary companies, if any;
- ▶ Details of legal cases filed by or against the company; and
- ▶ Any other information which the Tribunal may direct.

- ▶ Section 192(2)
 - ▶ Valuation of Assets in case of Non – Cash Transaction with Directors
 - ▶ Director of the company or its holding, subsidiary or associate company or a person connected with him, acquires (or is to acquire) an Asset for consideration other than cash (non-cash asset) from the company, or
 - ▶ The company acquires (or is to acquire) a non cash asset from a person referred to above, unless the arrangement is first approved by a resolution passed at a general meeting of the Company.
 - ▶ If the director or connected person is a director of the company's holding company or a person connected with such a director, approval by a resolution in general meeting of the holding company is also required.
 - ▶ Valuer has to account for all such transactions as well.

Section 5(n) of the Banking Regulation Act, 1949

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- ▶ “Secured loan or advance” means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance.
- ▶ “Unsecured loan or advance” means a loan or advance not so secured.

Loans ::

1. Secured against an asset. Asset = land, machines, shares etc.
 1. Different value is given depend upon the type of asset.
2. Loan against business receivable.
 1. There will be money received and the loan is against those. (Packing credit)
3. Loan against business idea.
 1. Loan is extended towards an idea that may be considered good.
 2. Not in India. Done by VC or Angel Investors.
4. Unsecured Loans
 1. No security of any type.
 2. Personal loans, credit card loans.

Thanks
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