

INSTITUTE OF INSOLVENCY PROFESSIONALS

A wholly owned subsidiary of ICSI and registered with IBBI

Framework for “Special Courts” under IBC

Introduction:

A **Special Court** is a court with limited jurisdiction, that deals with a particular field of law rather than a particular territorial jurisdiction. The legislature has introduced special courts on many occasions through various laws, usually with the intention to enable quick and efficient disposal of cases

The Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “The Code/IBC”) envisages the concept of ‘Special Courts’ from Companies Act 2013. The intention behind setting up these courts is to let magistrate courts try minor violations, and that graver offences should be dealt by Special Courts. These courts are notified under Section 435 of the Companies Act 2013. Under section 435 of the said Act, it is the Central Government which must establish or designate a Special Court for the purpose of speedy trial of offences. Accordingly, Ministry of Corporate Affairs, Government of India has issued several notifications from time to time thereby vesting jurisdiction of Special Courts in Courts of Session. Existing courts in the State of Maharashtra, Jammu and Kashmir, Goa, Gujarat, Madhya Pradesh, West Bengal, and Union territory of Andaman and Nicobar Islands, Uttrakhand, Ladakh and Dadra and Nagar Haveli and Daman and Diu, have been designated as Special Courts for the purposes of trying offences under the Companies Act, 2013. As per the notification, these courts have been designated for the purposes of trial of offences punishable under the Companies Act, 2013 with imprisonment of 2 years or more.

Special Courts Under IBC:

The Special courts under IBC are vested with criminal jurisdiction arising out of offences as laid out in Chapter VII of the Code. While the procedural aspects of the Code maintain that the Adjudicating Authority is empowered to arrive at a finding or observation and that certain action comes under the purview of Chapter VII of Part II of the Code, once such finding or observation is made, the power to initiate a trial shifts to a Special Court under Section 236 of the IBC. The Special Court shall be deemed to be a Court of Session and the person conducting the prosecution shall be deemed to be a public prosecutor (section 236 of the Code). Section 236 of the Code thus lays down that the offences shall be tried by a Special Court established under Chapter XXVIII of the Companies Act, 2013 as mentioned above. However, the corporate offenders in the above-

mentioned cases undergo a trial only when prescribed authorities approach the Court of law with a complaint. This has been underlined in the Act of 2013 as well. The Special Courts, thus, can take cognisance of the offences only when a complaint is made by the Central Government, the IBBI or an authorised person as the case may be, as laid down by section 236 (2) of the Code.

Ministry of Corporate Affairs had earlier proposed for setting up 8 special courts under the National Company Law Tribunal to deal with the insolvency cases. These courts have been proposed to be set up in Mumbai, Delhi, Chennai, Kolkata and Hyderabad.

The available framework for Special Courts under IBC and Companies Act with important provisions and case laws is summarized in the table below.

The table has been color coded as follows:

Provisions of the Code	
Provisions of Companies Act 2013	
Orders of the Special Courts	
Circulars/Notifications/Reports	

TABLE: Special Courts under IBC

Source	Details	Explanation
Section 236 of the Code	<p>(1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.</p> <p>(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorized by the Central Government in this behalf.</p> <p>(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.</p> <p>(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under subsection (2), the presence of the person authorized by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial.</p>	Only special courts as notified by the Central Government will have power to take cognizance of any criminal offences that take place under this Act.
Section 237 of the Code	The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.	As is also under Companies Act, the appeals from special courts will lie in High Courts.
Chapter XXVIII of Companies Act 2013- Section 435	(1) The Central Government may, for the purpose of providing speedy [trial of offences punishable under this Act with imprisonment of two years or more], by notification, establish	These courts were established for speedy trial offences. It is essential to strike a balance between civil and

	<p>or designate as many Special Courts as may be necessary. [Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.]</p> <p>(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.</p> <p>(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.</p>	<p>criminal liabilities for corporate. It was noted that serious violations of the law, especially wrongful conduct involving fraudulent elements, should be dealt with under criminal law.</p>
Section 436 of the Companies Act, 2013	<p>436. Offences triable by Special Courts.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 –</p> <p>(a) all offences specified under sub-section (1) of section 435 shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;</p> <p>(b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate: Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such</p>	<p>This section lays down the jurisdiction of the Special Courts, both territorial and based on the type of offences.</p>

person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) in relation to an accused person who has been forwarded to him under that section; and

(d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years: Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed for –all offences under this Act (w.e.f. 29-5-2015). Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

Section 437 of the Companies Act 2013	437. Appeal and revision.— The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.	Appeals from the applications of Special Courts will lie in High Courts.
Section 438 of the Companies Act 2013	438. Application of Code to proceedings before Special Court.—Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor	The provisions of CrPC are applicable to the proceedings before Special Courts.
In the matter of Insolvency and Bankruptcy Board of India Vs. Aniruddha Mukherjee, Criminal Case/52/2019, before Special Court, Kolkata	The petition was filed by Aniruddha Mukherjee for bail was allowed with surety of Rs. 20,000 to Ld. ACMM Kolkata, however the applicant was asked to be present whenever called and asked to submit their passports to the Court within a week of the order.	Order dated: 29.02.2020 Link for full order: https://ibbi.gov.in/uploads/order/866d97f9ff3c761852bde8d7dc9c1dbd.pdf
In the matter of Insolvency and Bankruptcy Board of India Vs. Intenderpal Singh & Anr., CC/1/2020, before Special Court, Dwarka	The application was filed by IBBI against the Key Managerial Persons of the Corporate Debtor for non-cooperation with the Resolution Professional. As per provision contained in Section 236(2) of the Insolvency and Bankruptcy Code, 2016, the complainant i.e. IBBI has powers to set the criminal law into motion through its authorized officer. After considering the documentary evidence placed on record, the court was satisfied of the offences prima facie committed. Hence, cognizance was taken.	Order dated: 25.01.2020 Link for full order: https://ibbi.gov.in/uploads/order/57bf039a8c6a10ccf518f5de54f5f433.pdf
In the matter of Insolvency and Bankruptcy Board of India Vs. Sandeep Singh	The application was filed by IBBI against the Key Managerial Persons of the Corporate Debtor for non-cooperation with the Resolution Professional. The CD was undergoing liquidation	Order dated: 25.01.2020 Link for full order: https://ibbi.gov.in/uploads/order/d6

Madhok & Ors., CC/1628/2019, before Special Court, Dwarka	and the KMP had refused to provide the details of the assets which would be for sale. As per provision contained in Section 236(2) of the Insolvency and Bankruptcy Code, 2016, the complainant i.e. IBBI has powers to set the criminal law into motion through its authorized officer. After considering the documentary evidence placed on record, the court was satisfied of the offences prima facie committed. Hence, cognizance was taken.	ad1998996547a9dc3aa305933b6dd6.pdf
In the matter of Insolvency and Bankruptcy Board of India Vs. Karan A. Chanana. & Ors., CC/1659/2019, before Special Court, Dwarka	The application was filed by IBBI against the Key Managerial Persons of the Corporate Debtor for non-cooperation with the Resolution Professional. The RP was unable to gain access to books of accounts of the CD due to no response. As per provision contained in Section 236(2) of the Insolvency and Bankruptcy Code, 2016, the complainant i.e. IBBI has powers to set the criminal law into motion through its authorized officer. After considering the documentary evidence placed on record, the court was satisfied of the offences prima facie committed. Hence, cognizance was taken.	Order dated: 20.01.2020 Link for full order: https://ibbi.gov.in/uploads/order/47bf3f7240de558e5c84d1787db30855.pdf
In the matter of Insolvency and Bankruptcy Board of India Vs. Vinod Kumar & Ors., COMA/12/2019, before Special Court, Gurugram	The application was filed by IBBI against the Key Managerial Persons of the Corporate Debtor for not disclosing the details of the properties and transactions of the CD to the RP. As per provision contained in Section 236(2) of the Insolvency and Bankruptcy Code, 2016, the complainant i.e. IBBI has powers to set the criminal law into motion through its authorized officer. After considering the documentary evidence placed on record, the court was satisfied of the offences prima facie committed. Hence, cognizance was taken.	Order dated: 01.11.2019 Link for full order: https://ibbi.gov.in/uploads/order/07e054c22a1dbee91bb9c130feeadfda.pdf
In the matter of PMT Machines Ltd. Vs. The Deputy Director Directorate of Enforcement, Delhi MP-PMLA-5460/DLI/2019 (Exem.) MP-PMLA-	<i>"32. This order is being passed in relation to mortgage properties in favour of banks which are not purchased from proceeds of crime. The same were purchased and mortgage with the banks prior to the of crime period. ED is not precluded to attach other private properties and all other assets of the alleged accused.</i>	Order dated: 16.09.2019 Link for full order: https://ibbi.gov.in/uploads/order/b360ba84328c47061d1fcea417d2546f.PDF

5461/DLI/2019 (Stay) FPA-PMLA-2792-DLI-2019	33. <i>It is clarified that this order shall have no bearing in any proceedings initiated against the alleged accused including extradition proceedings pending or proposed to be initiated in any part of the world. Those are to be considered as per law and without any influence of this order which is being passed in the interest of public as bank money is a public money."</i>	
In the matter of Insolvency and Bankruptcy Board of India Vs. M/s. Bhuvana Infra Projects Private Limited & Ors., Spl CC : 783/2019, before Special Court, Bangalore	The application was filed by IBBI against the Key Managerial Persons of the Corporate Debtor for non-cooperation with the Resolution Professional. The accused also made false representations for purpose of committing fraud and refused to disclose the books and documents of the CD. As per provision contained in Section 236(2) of the Insolvency and Bankruptcy Code, 2016, the complainant i.e. IBBI has powers to set the criminal law into motion through its authorized officer. After considering the documentary evidence placed on record, the court was satisfied of the offences prima facie committed. Hence, cognizance was taken.	Order dated: 10.07.2019 Link for full order: https://ibbi.gov.in/uploads/order/828763988af3b4980c55fd2ff68b8c66.pdf
In the matter of Insolvency and Bankruptcy Board of India Vs. Liberty House Group Pvt. Ltd. & Ors., 2(C) C.C (COMP) Case No. 14 of 2019, before Special Court, Cuttack	The application was filed by IBBI against the successful Resolution Applicant of the Corporate Debtor for contravention of the terms of Resolution Plan. Prima facie case was made against the accused and hence cognizance was taken.	Order dated: 06.06.2019 Link for full order: https://ibbi.gov.in/uploads/order/4b4b84c87384d4ee7390be6183c9c83d.pdf
In the matter of Insolvency and Bankruptcy Board of India Vs. Liberty House Group Pvt. Ltd. & Ors., COMA/2/2019, before Special Court, Gurugram	The application was filed by IBBI against the KMP being CFO, CEO of the successful Resolution Applicant of the Corporate Debtor for contravention of the terms of Resolution Plan. Prima facie case was made against the accused and hence cognizance was taken.	Order dated: 25.04.2019 Link for full order: https://ibbi.gov.in/uploads/order/013ac2b9762ac1719231dbd0fc651dfd.pdf
Report of Company Law Committee 2019	<i>The Government of India has already taken a few steps to decriminalise certain offences under the 2013 Act. Pursuant to the recommendations of the Offences Committee in its report</i>	Link for full report: http://www.mca.gov.in/Ministry/pdf/CLCReport_18112019.pdf

	<i>released last year, the 2013 Act was amended to change the nature of 16 non-compliances from criminal to civil in nature.¹⁰ Instead of being under the jurisdiction of Special Courts, Adjudicating Officers (“AOs”) now adjudicate these 16 civil violations through the in-house adjudication (“IAM”) framework.</i>	
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Concluding Remarks:

The major objective behind creation of Special Courts, under the Act of 2013 was to ensure speedy disposal of cases, so that the usual long-time gap between the commission of fraudulent activities and final hearing of the cases is done away with. This idea was rightly imported for dealing with the aforesaid offences in the Insolvency and Bankruptcy Code as well. “Special Courts” is indeed a welcome step. Time will tell if Special Courts presently designated will be sufficient enough to cope up with the increasing number of cases under IBC.

Notes:

Abbreviations used:

IBBI: Insolvency and Bankruptcy Board of India
IPA: Insolvency Professional Agency
ICSI IIP: ICSI Institute of Insolvency Professionals
IP: Insolvency Professional
CIRP: Corporate insolvency resolution process
IRP: Interim Resolution Professional
AR: Authorised Representative
COC: Committee of Creditors
CD: Corporate Debtor
FC: Financial Creditor
OC: Operational Creditor
Code: Insolvency and Bankruptcy Code, 2016

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