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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (SECOND AMENDMENT) REGULATIONS, 2022.

27 June 2022

Introduction

The Insolvency and Bankruptcy Board of India (**the Board**) vide its circular no. IBBI/2022-23/GN/REG084 dated 14 June 2022, in exercise of the powers conferred under clause (t) of sub-section (1) of section 196 read with sections 7, 9 and 240 of the Insolvency and Bankruptcy Code, 2016 (**the Code**) has introduced the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022 (**Amendment Regulations**).

Amendments

The Key amendments introduced by the Amendment Regulations are as follows:

- It is now mandated that an operational creditor (required to register under the GST regime) shall alongwith application under section 9, furnish copies of relevant extracts of Form GSTR-1 and Form GSTR-3B and the copy of e-way bills.
- The regulations now require the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor to provide the information sought by the IRP/RP in such format and within such time as the IRP/RP may require. A similar requirement has also been mandated for creditor of a corporate debtor who are now required to provide the IRP/RP the information in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and such other information which shall assist the IRP/RP in preparing the information memorandum, getting valuation determined and generally in running the insolvency resolution process.
- In an important change, the regulations now require that if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the fair and liquidation value computed by two registered valuers. For the purposes of this regulation, asset class shall have the

definition ascribed to it under the Companies (Registered Valuers and Valuation) Rules, 2017 and significantly different has been defined to mean a difference of twenty five percent in liquidation value under an asset class.

- The creditors of the corporate debtor have now been mandated to provide to the resolution professional, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc. They are also required to provide the resolution professional latest financial statements and other relevant financial information of the corporate debtor available with them.
- By way of an important amendment, the mandatory contents of a resolution plan, have been updated to include-

“provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:

Provided that this clause shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.”

Comments

- The Amendment Regulations require the operational creditors to furnish extracts of Form GSTR-1, Form GSTR-3B and e-way bills, as applicable along with the application filed under section 9 of the Code. The requirement of submitting these documents at the time of filing of CIRP initiation may enhance the efficiency of the admission process and prevent time wasted by the adjudicating authority in calling for the required documents.
- The Amendment Regulations have bolstered the existing provisions including section-19 of the Code by stipulating a duty on corporate debtor, its promoters or any other person associated with the management of the corporate debtor to provide the information in the form, manner and within timelines as prescribed by the resolution professional.
- The Amendment Regulations have altered the contours regarding valuation (fair and liquidation) of the corporate debtor. This has been done by substituting the existing provision, which provided that if the resolution professional is of the opinion that the two valuations submitted are significantly different, he may appoint another registered valuer with a new and more objective provision which provides for a definition of significantly different and also mandates that a third valuer could be appointed if the committee of creditors moves a proposal for the same or if there is a significant difference in values in an asset class. This gives more discretion to the CoC who has to ultimately exercise its commercial wisdom.
- The Amendment Regulations have tried to ensure free and fast flow of information to the IRP/RP by requiring all creditors of the Corporate Debtor to provide information pertaining to the corporate debtor to the IRP/RP including

information regarding the assets and liabilities of the corporate debtor, the financial statements, valuation reports, bank statements, (forensic audit, stock audit etc.). This change could expedite the whole process by providing the IRP/RP a sustainable data platform on which he could build towards purposes including preparation of information memorandum or identification of avoidable transactions.

- The Amendment Regulations have also dealt with a vexatious issue by providing that a resolution plan ought to provide (as a mandatory content), provisions pertaining to the manner in which the proceeding in relation to avoidance transactions under Chapter III or Chapter VI of Part II of the Code shall be pursued and the manner in which related proceeds from the proceedings shall be distributed. Notably this change has been made applicable only with prospective effect and shall not be applicable to resolution plan submitted to the adjudicating authority, before coming into force of the Amendment Regulations (date of publication in official gazette).

Conclusion

The Amendment Regulations provide for much needed changes and appear to have been prepared after considering the difficulties faced by stakeholders in a CIR process. The provisions dealing with flow of information to the IRP/RP may help in enhancing the speed and efficacy of the CIR Process. Interestingly, the amendment related to a resolution plan having a provision for dealing with avoidable transactions and the proceeds thereof shall not be applicable to plans which have been submitted to the adjudicating authority, however, if plans have been approved by a committee of creditors but not submitted to the adjudicating authority, they may have to be modified for dealing with this requirement. This would have to be seen in view of the earlier amendments which mandated that a plan could be modified only once.

- *Siddharth Srivastava (Partner); Mohit Kishore (Principal Associate); Abhilash Kumar (Associate)*

For any queries please contact: editors@khaitanco.com