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IBBI AMENDS THE CIRP REGULATIONS TO STREAMLINE THE INSOLVENCY PROCESS

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Introduction

The Insolvency and Bankruptcy Board of India (IBBI) on 18 September 2023 notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 (CIRP Amendment Regulations) amending the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).

The key changes brought about by the CIRP Amendment Regulations are as follows:

- a. **Regulation 2D inserted:** The operational or financial creditor to submit the chronology of debt and default by the corporate debtor while filing a Section 7 or Section 9 application under the Insolvency and Bankruptcy Code, 2016 (Code) respectively. The chronology of debt shall include the due date for debt repayment, date of default, dates of part repayment, date of last acknowledgement of debt and limitations, if applicable.
- b. **Regulation 3A inserted:**
 - i. The interim resolution professional/resolution professional (IRP/RP) to take custody and control of the following from the promoters or management of the corporate debtor:
 - records of information with respect to the assets, finances and operations of the corporate debtor;
 - assets recorded in the balance sheets or any other records.
 - ii. The promoters or management of the corporate debtor to provide the list of assets and records to the IRP/RP who, if deemed necessary, shall identify the person(s) who shall hold such assets and records in their possession.
 - iii. The IRP/RP shall prepare a list of assets and records while taking custody and control of the corporate debtor in the event the same is not handed over by the promoters/management as per the above. The IRP/RP shall then, if deemed necessary, identify the person(s) who shall hold such assets and records in their possession.

- iv. The list as stated in (ii) and (iii) above is to be signed by the parties along with two witnesses present for the act of taking control and custody of assets and records by the IRP/RP.
 - v. The IRP/RP shall requisition the information of assets, finances and operations of the corporate debtor as required under Section 18(a) of the Code and Regulation 36, which have not been handed over by the promoters or management.
 - vi. The IRP/RP to requisition from the promoters or management the assets recorded in balance sheet of the corporate debtor, or in the records maintained with any information utility or the depository of securities or any other registry under Section 18(f) of the Code whose custody has not been handed over.
 - vii. Any application made to the Adjudicating Authority (AA) by the IRP/RP under Section 19(2) of the Code shall include the notice of requisition to the promoters/management along with the mention of absence of such assets and records requisitioned as per the list provided/prepared as above.
- c. **Regulation 12 substituted:** Any creditor who fails to submit their claim on or before the last date mentioned in the public announcement may submit their claim along with proof thereof up to the date of issue of request of resolution plan or ninety days from the insolvency commencement date, whichever is later. If the claim is submitted beyond ninety days from the insolvency commencement date, the creditor shall provide reasons for delay in submission.
- d. **Regulation 13 amended:**
- i. Sub-regulation 1(A) inserted: The IRP/RP to provide reasons for non-collation of claims post verification.
 - ii. Sub-regulation 1(B) inserted: If the IRP/RP receives claims beyond the period as stated in Regulation 12 above and up to seven days before the date of meeting of committee of creditors (CoC) for voting on resolution plan or initiation of liquidation, he/she shall verify and categorize such claims as acceptable or non-acceptable for collation.
 - iii. The IRP/RP shall intimate the creditors within seven days of the above categorization and provide reason for non-accepted claims. Further, the IRP/RP to put up the delayed accepted claims before (a) the CoC for its recommendation in the list of creditor and treatment in resolution plan, if any; and (b) the Adjudication Authority for condonation of delay and adjudication, as applicable.
- e. **Regulation 16A amended:**
- i. Sub-regulation 3(A) inserted: A minimum of ten percent of the financial creditors in a class may seek replacement of the authorized representative with a representative of their choice, by making a request to the IRP/RP who shall circulate such request to the other creditors in the said class and announce a voting window, which shall be open for a minimum of twenty four hours.
 - ii. The IRP/RP shall offer at least three choices of insolvency professional including the professional proposed by the class of financial creditors above along with the existing authorized representative of the creditors.
 - iii. The IRP/RP to apply to the AA for appointment of the authorized representative receiving the highest percentage of voting share.
 - iv. The authorised representative shall be entitled to receive a fee for every meeting of the CoC attended in the following manner:

Number of creditors in a class	Fee per meeting of CoC (INR)
10-100	30,000
101-1000	40,000
More than 1000	50,000

- v. The authorized representative shall be entitled to receive fee for every meeting of the class of creditors convened in the following manner:

Number of creditors in a class	Fee per meeting of creditors with authorised representative (INR)
10-100	10,000
101-1000	12,000
More than 1000	15,000

- vi. The fees paid to the authorised representative shall be part of the corporate insolvency resolution process cost (CIRP Cost) in respect of two meetings of the CoC.
- vii. Fee for any additional meetings of the CoC shall be part of the CIRP cost subject to the approval of the CoC.
- viii. Sub-regulation 10 inserted: The authorised representative shall be responsible for: (a) assisting the class of creditors with understanding the discussion of CoC and in facilitating informed decision making; (b) reviewing and commenting on the minutes of the CoC; (c) helping in preparing a strategy for marketing the assets of corporate debtor; (d) working for enhancement of marketability of assets of corporate debtor; (e) assisting the class of creditors in evaluation of resolution plans; (f) ensuring that the class of creditors have access to information or documents; (g) updating the creditors on the progress of CIRP; (h) making suggestions or modifications to the resolution plan as required by the class of creditors; (i) recording proceedings and preparing minutes of meeting of the class of creditors; and (j) acting as representative of the class of creditors before the AA(ies).
- f. **Regulation 28(1) substituted:** *In the event of debt assignment during the CIRP period, both the assignor and assignee creditor shall within seven days of assignment/transfer provide the IRP/RP the terms of the assignment and the identity of the assignee/transferee.*
- g. **Regulation 30B inserted:** Any member of the CoC may propose audit of the corporate debtor along with the objective, scope, cost estimate, timeframe and proposed auditor. Such audit may be conducted if approved by the CoC. The findings of the auditor shall be presented before the CoC and the cost of such audit shall become part of the CIRP cost.
- h. **Regulation 36B(1) substituted:** The information memorandum (IM), evaluation matrix (EM) and request for resolution plan (RFRP) shall be issued within five days from date of issue of final list of resolution applicants. In the event such documents are available, the same may be provided to the prospective resolution applicants of the provisional list.
- i. Form G amended to include the date of issue of final list of prospective resolution applicants and date of issue of IM, EM and RFRP.

- j. Form H amended to attach those minutes of meetings of the CoC which record discussions in regard to the resolution plans received.

Comment

The CIRP Amendments have been brought with the intent to streamline the insolvency process and plug in the existing gaps as highlighted by the stakeholders. The submission of chronology of debt and default along with a Section 7 or 9 application under the Code shall aid the AA in swiftly deciding the CIRP initiation applications. Further, the requisitions to be made by the IRP/RP to the promoters/management in regard to the assets of the corporate debtor shall streamline the process of information gathering. Such notices shall also act as evidence for Section 19 applications when filed before the AA.

The amendment with respect to submission of reasons for delay in claim submission, its noting and condonation of delay by the CoC and the NCLT respectively shall reduce emergence of delayed claims post approval of resolution plans and deter multiple litigations. Inclusion of statutory responsibilities for the authorized representatives of the class of creditors shall prove to be beneficial especially in real estate insolvencies which involve hundreds of homebuyers and will bridge information asymmetry. Further, inclusion of minutes of the CoC in Form H will aid the AA in determining the rationale towards approval of a resolution plan.

Effectively the CIRP Amendments are a step in the right direction including the audit related provisions which shall provide necessary flexibility to the CoC to get audits conducted for specific scenarios in a CIRP.

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