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IBBI LIFTS RESTRICTIONS FOR INSOLVENCY PROFESSIONALS OF PERSONAL GUARANTORS

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Introduction

The Insolvency and Bankruptcy Board of India (IBBI) issued two notifications dated 31 January 2024, in terms of the powers conferred under Section 196(1)(t), Section 240 read with Section 2(e) of the Insolvency and Bankruptcy Code, 2016 (Code), introducing: (a) IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024 (Insolvency Amendments); and (b) IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024 (Bankruptcy Amendments) (collectively referred to as the Amendment Regulations).

The Amendment Regulations have been summarised below:

I. INSOLVENCY AMENDMENTS

- a. Regulation 4 amended: Explanation to Regulation 4(1)(c) has been amended and the insolvency professional (IP) acting as the resolution professional shall be considered independent of the guarantor under Regulation 4(1)(a) if:
 - i. the IP is not an associate of the guarantor; and
 - ii. the IP is not a related party of the corporate debtor.

- b. Regulation 17A inserted: The repayment plan prepared by the personal guarantor in consultation with the resolution professional under Section 105 of the Code shall be placed in the meeting of the committee of creditors (CoC) by the latter for their consideration.

The resolution professional shall notify the CoC if no repayment plan has been received from the personal guarantor within a period stipulated under Section 106 of the Code i.e. within 21 (twenty one) days from the last date of submission of claims (*under Section 102, adjudicating authority within 7 (seven) days of admitting an application of insolvency of personal guarantor shall issue a public notice inviting claims from all creditors within 21 (twenty one) days of such issue*).

II. BANKRUPTCY AMENDMENTS

- c. Regulation 3 amended: Explanation to Regulation 3(1)(c) has been amended and the IP acting as the bankruptcy trustee shall be considered independent of the personal guarantor under Regulation 3(1)(a) if:
 - i. the IP is not an associate of the guarantor; and
 - ii. the IP is not a related party of the corporate debtor.

Comment

The Amendment Regulations remove the restrictions on appointment of an insolvency professional who had previously acted or is acting, as the interim resolution professional or as the resolution professional or the liquidator in the corporate insolvency resolution process or the liquidation of a corporate debtor as the resolution professional or as the bankruptcy trustee for the personal guarantor(s) of the said corporate debtor. The removal of such restrictions has been a long-standing demand of the industry and was captured in the discussion paper titled '*Discussion paper on appointment of RP, sharing of report prepared by the RP with the personal guarantor and mandating summoning of meeting of the creditors*' dated 27 September 2023. It was observed that the resolution professional of the personal guarantor face significant challenges in submission of report to the adjudicating authority under Section 99 of the Code, primarily due to the non-cooperation of such guarantors. The introduction of the Amendment Regulations shall integrate the resolution of a corporate debtor and its personal guarantor(s) thereby mitigating such obstacles. Owing to the inter-relatedness of the corporate debtor(s) and their personal guarantor(s), appointment of the same IP shall lead to increased efficiency since the said IP would be better placed with respect to all information thereby resulting in harmonisation of claims and realisation in both the processes.

The Insolvency Amendments by introduction of Regulation 17A have also mandated the meeting of the CoC of a personal guarantor and presentation of repayment plan thereof. In the absence of receipt of repayment plan from the personal guarantor, the resolution professional shall notify the CoC accordingly. While the above has the effect of inducing participation of creditors of the personal guarantor in its resolution, it may be noted that Regulation 17A negates the power of the resolution professional to independently assess and recommend the requirement of a meeting of the creditors under Section 106(2)(c). Such inconsistencies between the Regulations and the Code may lead to difference in interpretations and processes being followed thereby giving way to potential litigations.

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