

Fourth amendment to IBBI CIRP Regulations, 2016:

Saving time, increasing transparency and facilitating resolution

11 June 2025

Background

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) in 2016 has been hailed as a transformative step in the Indian financial landscape as it has inculcated severe discipline in the credit allocation process and persuaded the borrowers to strictly adhere to the payment schedules. The statutory regulator of IBC i.e. the Insolvency and Bankruptcy Board of India (IBBI) has been playing a key role in this regard by introducing timely and empirical amendments to the regulations which have helped in streamlining the process.

On 26 May 2025, the IBBI notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2025 (Amendment Regulations) which come in the backdrop of a recent discussion paper titled "Streamlining Processes under the Code: Reforms for Enhanced Efficiency and Outcomes" (Feb 2025 Discussion Paper) published by IBBI in February 2025. The Amendment Regulations seek to reduce delays and enhance transparency in the corporate insolvency resolution process (CIRP) inter alia by facilitating resolution of the corporate debtor (CD) in parts, enabling the resolution professional (RP) to present all resolution plans (Plan) to the committee of creditors (CoC) and incentivizing the interim finance providers by enabling their participation.

Amendments introduced

i. Resolution of the CD in Parts -

The existing regulations (Regulation 36B(6A)) provided that if no plans were received for the CD as a whole, the RP could, with the approval of the CoC, issue request for Plan for sale of one or more assets of the CD. The Amendment Regulations now provide for insertion of sub-regulation 1A in regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (IBBI CIRP Regulations) which provides that the RP may in the first instance, post obtaining the consent of CoC, invite expression of interest not only for the CD as a whole but also for sale of one or more assets of the CD or for both. Simultaneously, the Amendment Regulations also provide for omission of Regulation 36B (6A).

ii. Interim Finance Providers as Attendees of CoC Meetings -

The significance of interim finance in a resolution process cannot be understated; however, it has been seen that not many financial institutions / banks / financiers have come forward in the past to fund the going concern costs of the CD, despite the benefit of super priority in payout prescribed under the IBC. This is primarily due to the lack of visibility on the details concerning the relevant CD and the CIRP as a process, resulting in information asymmetry and their resultant apprehension in extending such finance.

The Amendment Regulations seek to curb the aforesaid problem by introducing Regulation 18(5) to the IBBI CIRP Regulations, thereby entitling the CoC to direct the RP to invite the prospective interim finance providers to attend the CoC meetings as observers without any voting rights in relevant meetings of the CoC.

iii. RP now required to present all plans to the CoC –

As per the Amendment Regulations, Regulation 39(2) and 39(3) has been suitably amended to provide that the RP is now required to present all Plans, including Plans which are not compliant with the provisions of IBC and related regulations in his assessment, to the CoC.

iv. Payment to Dissenting Financial Creditors in cases of Deferred Payment –

The Amendment Regulations have added a proviso to Regulation 38(1)(b) to supplement the stipulation regarding payment in priority to dissenting financial creditors by providing that, where the Plan provides for payment in stages or, in other words, deferred payment, then the dissenting financial creditors will be paid at least pro-rata and in priority over the financial creditors voting in favour of the Plan.

Comments

- i. The amendments giving CoC the discretion to call for plans for individual assets of a CD in the first instance is a welcome change. This seems to be based on empirical evidence which showed that in the case of very large assets there do not exist many suitors for the company as a whole. Further, by providing this flexibility to the CoC at the first instance (expression of interest (EOI) stage itself) instead of waiting for non-receipt of Plans for the CD as a whole, the regulator has endeavoured to increase the speed and efficacy of resolution. However, this amendment may achieve its full purpose only when it is coupled with suitable amendments to the IBC itself. The IBC, as it stands today, fundamentally contemplates the insolvency resolution of the CD (as a whole) as a going concern.
- ii. The amendment providing interim finance providers the ability to attend relevant CoC meetings as an observer is again a product of empirical evidence as this practice was being followed prior to this amendment. The amendment therefore is likely to provide greater visibility and resultant confidence to interim finance providers.
- iii. The aspect of RP presenting all Plans before the CoC has been a topic of much debate and confusion and the amendment would result in alleviating a lot of concerns in this regard. It is noteworthy that this amendment aligns with the law laid down by the Hon'ble Supreme Court in the first Essar judgement in 2018, where the court held that RP only does a preliminary due diligence of Plans submitted and the final decision as to whether a Plan is compliant or not vests with the CoC.

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