

# IBBI's proposal for enhancing resolution framework

13 August 2025

## Background

As the Insolvency and Bankruptcy Code, 2016 (Code) is on the brink of hitting a decade in operation, we are now seeing the focus of the Insolvency and Bankruptcy Board of India (IBBI) being widened to practical implementation of resolution plans. In this regard, the IBBI has on 6 August 2025 issued a '*Discussion Paper - Measures to enhance integrity of the Corporate Insolvency Resolution Process (CIRP)*' (Discussion Paper) with the intent to have the members of the committee of creditors (CoC) play an active role in ensuring compliance with statutory mandates including eligibility criteria under Section 29A of the Code, disclosures regarding beneficial ownership and applicability of Section 32A of the Code.

## Issues and Proposal:

- A. **Deliberation regarding Section 29A eligibility of the RA:** The Discussion Paper notes that there are multiple provisions under the Code and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) *inter alia* including Section 29A, Section 30, Regulation 36A and Regulation 39 which either require the prospective resolution applicant (PRA) to undertake that it does not suffer any ineligibility under Section 29A of the Code and requires the resolution professional to undertake due diligence and thereafter submit a compliance certificate in regard to the eligibility of the PRA in terms of Section 29A of the Code. Despite the same, both the Code and CIRP Regulations lack any specific provision mandating and for recording the CoC's deliberation in relation to the eligibility of the PRA which has been proposed to be introduced by the Discussion Paper. The Discussion Paper observes that the express duty cast on the CoC is especially important to enhance transparency, accountability and integrity of the corporate insolvency resolution process (CIRP). It will also encourage CoC members to engage in the due diligence process by seeking additional information from the resolution professional / PRA. Further, the Discussion Paper observes that recording of such observations from the CoC shall cull potential litigations, enhance transparency and uphold the legislative intent of promoting fair and lawful participation.

In view of the above, the Discussion Paper contemplates introduction of new sub-regulation 3C to Regulation 39 of the CIRP Regulations which would mandate the CoC to deliberate on the eligibility of the resolution applicant under Section 29A of the Code, consider the due diligence report as submitted by the resolution professional along with the affidavit as submitted by the PRA and such other information as provided in the resolution plan before commencing on voting on the resolution plan. Such deliberations shall be recorded by the resolution professional in the minutes of the CoC meetings.

While the provision aims at promoting transparency it may be noted that this may lead to considerable delay in voting on the plan as the CoC may be hesitant to "deliberate" on the same. The check under Section 29A of the Code is highly technical. Financial creditors like public sector undertakings may not have the power to undertake the same. To mitigate this issue, the IBBI may consider clarifying what is excepted from the CoC during such deliberation. A mere act of taking on record the eligibility may be practical and may be concluded on time. However, the proposed language of the regulation uses the term "deliberate" which is open ended.

- B. **Beneficial ownership vis-à-vis Section 32A:** The Discussion Paper notes that while Section 32A of the Code provides immunity and clean slate to the corporate debtor and its incoming management, its implementation faces challenges wherein the PRA acquires the corporate debtor under multilayered ownership structures and complex holding arrangements. With the absence of adequate disclosures, it becomes difficult to establish the potential beneficiaries under a resolution plan and accordingly it becomes difficult for them to establish the benefits under Section 32A of the Code. Hence, the Discussion Paper notes that the ultimate beneficiaries under a resolution plan must be disclosed in advance so that the resolution professional along with the CoC can identify potential beneficiaries and accordingly participate in an informed and transparent decision making.

In order to address the above, the Discussion Paper proposes to amend Regulation 38 of the CIRP Regulations so as to mandate that every PRA shall submit as part of the resolution plan (a) a statement of beneficial ownership covering details of all natural persons who ultimately own or control the PRA, together with the shareholding structure and jurisdiction of each intermediate entity; and (b) an affidavit stating whether the PRA is eligible / ineligible under Section 32A of the Code.

We understand that this proposal will rule out any ambiguity which may arise post-acquisition *qua* beneficial ownership *vis-a-vis* Section 32 of the Code.

- C. **Invitation and submission of resolution plan via e-platform:** The Discussion Paper draws from the recommendations of the 10<sup>th</sup> Report of the Standing Committee on Finance on 'Demands for Grants (2025-2026) of the Ministry of Corporate Affairs' which endorses a direct submission system for resolution plans via a central online portal. The same is intended to protect the confidentiality of sensitive information and prevent any undue advantage for involved parties. The suggestion was also supported by the IIPi Study Group Report titled 'Developing Market for Stressed Assets in India' which suggested that resolution proposals to be listed on the eBkay portal.

Drawing from the above and recognizing the need for digitalization in the resolution plan receipt process, the Discussion Paper proposes introduction of Regulation 36AA after Regulation 36A of the CIRP which empowers the IBBI to mandate any activity in relation to invitation and submission of resolution plan may be carried out by a recognized electronic platform. We note that this proposal will uniform the process.

## Comments

The IBBI after duly recognizing the observations made by the Hon'ble Supreme Court in *Kalyani Transco v M/s Bhushan Power & Steel Ltd & Ors (Civil Appeal No. 1808 of 2020)* with regard to the ambit of CoC's commercial wisdom has rightly included the provision for CoC deliberation on Section 29A eligibility of the incoming resolution applicant and its recording by the resolution professional. Since it is the CoC who drives the entire process of insolvency resolution and whose commercial wisdom by and far remains untouched even by the adjudicating authorities, it is essential that they play a proactive role in the due diligence and verification process. However, a practical approach considering time and technicality of the check under Section 29A of the Code may be considered. In relation to disclosures regarding Section 32A of the Code, the same shall be beneficial in matters wherein the PRA due to its complex and multilayered ownership structure is unable to obtain the benefit of 'clean slate'. This is especially observed in scenarios wherein the plan is being implemented via special purpose vehicles to be incorporated at a later date or contemplates a merger / demerger or reorganization of the corporate debtor. Suggestions for submission of the resolution plan electronically is in line with the digitalization of the resolution and liquidation process.

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