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# IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023

*\*This presentation is indicative and created for the sole purpose of creating awareness and educating the stakeholders. A stakeholder must refer to the Code and Rules/Regulations made thereunder or seek professional advice if he intends to take any action or decision in any matter under the Code*

[Source: <https://ibbi.gov.in/>]

# Assistance and cooperation by personnel of the CD

- Current regulation requires CD personnel to provide information as sought by the IRP/ RP
- However, regulations do not specify the procedure to take custody and control of assets and records
- Also, there is lack of clarity and uniformity in the applications filed u/s 19(2) in case of noncooperation

## **Amendment [Reg. 3A]**

- Mandate for the CD's management and promoters to hand over assets as per list of assets and documents after preparing the same, if not readily available
- RP must prepare the list of records and assets if not done by the CD
- Identify the personnel in whose possession these records are to be held, if deemed necessary
- List is to be signed by parties present and witnesses
- RP to requisition from CD, any assets or information not handed over

- An application made u/s 19(2) of the Code in case of failure to provide requested assets/ records be filed showing presence of the same in the notice of requisition and absence of the same in the list of assets and records taken over

## **Modification of timelines for submission and verification of claims**

- At present, a creditor has to submit claims within 90 days of ICD
- RP competent to collate late claims as well but 90 days limit kept for timely completion of process
- Creditors apply to AA for consideration of their claims when not considered by RP. This burdens the AA and introduces uncertainty and delays in process

### **Amendment [Reg. 12(1); 13(1A), (1B), (1C)]**

- Extension of timeline for claim submission to either 90 days from the insolvency commencement date or the date of issue of the latest RFRP, whichever is later
- Claim made post 90 days to be accompanied with reason for delay

- RP must provide reasons for non collation of claim
- For claims received even after the above date but seven days before the date of meeting of CoC for approval of resolution plan, RP to decide about acceptability of collation of late claim
- CoC to recommend their inclusion in the list of claims and their treatment in the resolution plan
- RP to file application to AA for condonation of delay and adjudication of such claims

## **Increase of duties of AR**

- ARs represent creditors in class (CIC) during CIRP. Current roles of AR include:
  - Acting as an intermediary
  - Safeguarding the interests of CIC during CIRP
  - Demand for an increase in role of AR to facilitate the class of creditors in a better manner

### **Amendment [Reg. 16A(10)]**

- Help CIC understand issues in CoC meetings for informed decision-making
- Help CIC evaluate resolution plans

- Facilitate communication with RP and provide necessary information to CIC
- Provide updates on CIRP to CIC
- Represent CIC in interactions with NCLT, NCLAT etc
- Assist the creditors in class in crafting a marketing strategy
- Suggest modifications to the resolution plan as per the requirements of the creditors in class

## **Increase of fee of AR**

- Need for a fee review due to increased role wherein ARs help creditors understand complex issues, evaluate resolution plans, and apprise them on the CIRP progress
- The inclusion of a separate fee for meetings of creditors in class with AR
- Additional efforts and expertise warrant a separate fee besides revision of fee

**Amendment [Reg. 16A(8)]**

Number of creditors in the class	Existing Fee per meeting of the committee (Rs.)	Revised Fee per meeting of the committee	<b>Fee per meeting of creditors in class (CIC) with AR (New provision)</b>
10-100	15,000	30,000	<b>10,000</b>
101-1000	20,000	40,000	<b>12,000</b>
More than 1000	25,000	50,000	<b>15,000</b>

○ *Fee for 2 meetings of CIC for every meeting of CoC to be CIRP cost. Fee for any additional meeting to be CIRP cost if CoC approves the same*

## **Replacement of AR**

- Current regulations lack provision for AR replacement after appointment by the AA
- Circumstances may necessitate AR replacement, such as dissatisfaction with the

## AR's performance

### **Amendment [Reg. 16A(3A), (3B)]**

- Proposal for CIRP Regulations to enable creditors in a class to replace an AR
- Process: Creditors with 10% voting power may seek AR replacement and suggest a new insolvency professional to act as AR
- The RP offers a choice of three IPs, including those suggested by creditors and current AR, and applies to the AA for appointment of the AR which is choice of highest percentage of voting share of creditors in class
- Voting window of at least twenty-four hours

# Audit Requirement in certain CIRPs

- Importance of proper verification by conduct of audit in appropriate cases •  
Important for maintaining accountability and boosting stakeholders' confidence
- Proposal changed from discussion paper to allow scope etc. to be defined by the member of CoC. Audit not mandatory for a particular size of CD. Will be based on the choice of CoC

## **Amendment [Reg. 30B]**

- CoC member(s) can submit a proposal for audit giving its scope, objective, estimate of costs, proposed auditor. The same is to be approved by CoC
- Audit costs to be part of insolvency resolution process cost (IRPC)
- Auditor must be an IP apart from being a suitably qualified professional



- Audit report to be submitted to CoC after the comments of the RP

## Changes in timelines

- Regulation 36(1) provides Submission of IM to CoC by T+95 days
- In Regulation 40A, timeline for issuance of RFRP, including Evaluation Matrix and IM within 5 days of the issue of the **provisional list** (T+105 days)
- As per **Regulation 36B**, RP to issue RFRP, including Evaluation Matrix and IM within 5 days of the issue of the provisional list (T+85) i.e., 90 days • Anomaly between timeline given in Regulation 40A and 36B

### Amendment [Reg. 40A]

- RFRP, including Evaluation Matrix and IM **shall be issued within 5 days of the issue of the final list (T+100) i.e., 105 days** to PRAs as per final list

- Where such documents are available, the same **may also be provided to the PRA in the provisional list**

## **Changes in Form G and Inclusion of relevant minutes in Form H**

- **Form G** aids prospective resolution applicant (PRA) in obtaining relevant information about CD and informs about relevant dates
- Certain relevant dates are required to be added in Form G
- PRAs are not given direct access to financial information or eligibility criteria

### **Amendment [Schedule-I, Form G]**

- Amended Form G requires a URL to be given which gives direct access to financial information about CD and regarding eligibility criteria of PRA instead of RP providing it by email
- Form G to give date of issue of final list of PRAs, date of issue of information memorandum, evaluation matrix & request for resolution plan, and last date of submission of resolution plans

- **Form H** serves as a compliance certificate, giving details of CIRP and resolution plan

- The inclusion of minutes of CoC approving the resolution plan will help AA in understanding the rationale of the decision of CoC. Also, model timeline in form H to be corrected

#### **Amendment [Schedule-I, Form H]**

- Amended the existing structure of Form H to include relevant minutes of the CoC
- Corrected column of model timeline in table in Form H

## **Inclusion of relevant minutes in Form H and changes in Form G**

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## **Providing details of debt, default and limitation in admission application filed u/s 7 or 9**

- No information required to be submitted about limitation in the admission application
- Disputes about limitation consume time of the AA as the facts about limitation and last date of acknowledgement of debt are established later on

- As per section 7(3)(c), application be submitted with any other information as specified by Board
- As per section 9(3)(e) application be submitted with any other information as may be prescribed.  
Further, as per rule 6(1) application be submitted with records as may be specified by Board

### **Amendment [Reg. 2D]**

- New regulation 2D which requires submission along with evidence, chronology of the debt and default including:
  - ✦ the date when the debt became due,
  - ✦ date of default,
  - ✦ dates of part payments, if any,
  - ✦ date of last acknowledgment of debt and
  - ✦ the limitation applicable.

# Timeline for providing information for assignment of debt

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- In case of assignment of debt by a creditor to another person, the details of such assignment are required to be provided to the RP
- However, timeline for bringing the assignee of a debt on record not specified
- Timeline for the same will enable smooth conduct of meeting of CoC

## **Amendment [Reg. 28(1)]**

- The terms of such assignment or transfer and the identity of the assignee or transferee shall be intimated to the IRP/ RP **within seven days** of such assignment or transfer