

Insolvency and Bankruptcy Board of India
Press Release
No. IBBI/PR/2021/23
30th September, 2021

Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2016 on 29th September, 2021.

2. The amendment regulations enhance the conduct, timeliness, and value maximization in corporate insolvency proceedings:

(a) The Code puts in place a creditor-in-control process under corporate insolvency resolution process (CIRP). The committee of creditors (CoC) has a statutory role and it discharges a sort of public function. Judicial pronouncements have clarified the role and responsibilities of the CoC and established the primacy of 'commercial wisdom of CoC' in deciding the fate of the corporate debtor (CD) undergoing corporate insolvency resolution process (CIRP). With this empowerment, comes the responsibility to achieve the goals envisaged under the Code. Accordingly, the regulations provide that the committee and members of the committee in discharge of its functions and exercise powers under the Code and regulations in respect of corporate insolvency resolution process, shall be in compliance with the guidelines as may be issued by the Board.

(b) The significance of timeline cannot be stressed enough, and it is the distinguishing factor under the Code from erstwhile insolvency regimes. There are large costs associated with delay in insolvency process and it causes the erosion of confidence of stakeholders in the process. The amendment seeks to address delays in CIRP such as repeated issue of expression of interest, numerous modifications in request for resolution plans and iterations of modifications in the resolution plan and even consideration of unsolicited resolution plans. It places a cap on the number of times such modifications may be made. This will ensure adherence of timeline envisaged under the Code.

(c) One of the cardinal objectives of the Code is 'value maximisation'. To achieve such an objective and to arrive at resolution of a firm it is understood that sufficient freedom to choose an option must be provided to the stakeholders wherever required. The challenge process in conducting auctions is a time-tested mechanism and has proven largely effective in public procurement. It has also been introduced in pre-packaged insolvency resolution process vide an amendment made to the Code. The challenge mechanism can be an additional option available with the stakeholders under the CIRP and will improve transparency and drive maximization of value.

3. The amended regulations are effective from 30th September, 2021. These are available at www.mca.gov.in and www.ibbi.gov.in.

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EXTRAORDINARY
PART III, SECTION 4
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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, 30th September, 2021**

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021

No. IBBI/2021-22/GN/REG078. In exercise of the powers conferred by clause (t) of subsection (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations), in regulation 17, after sub-regulation (1), the following sub-regulation shall be inserted, namely:-

“(1A) The committee and members of the committee shall discharge functions and exercise powers under the Code and these regulations in respect of corporate insolvency resolution process in compliance with the guidelines as may be issued by the Board.”.

3. In the principal regulations, in regulation 36A, after sub-regulation (4), the following sub-regulation shall be inserted, namely:-

“(4A) Any modification in the invitation for expression of interest may be made in the manner as the initial invitation for expression of interest was made:

Provided that such modification shall not be made more than once.”.

4. In the principal regulations, in regulation 36B, after sub-regulation (5), the following proviso shall be inserted, namely:-

“Provided that such modifications shall not be made more than once.”.

5. In the principal regulations, in regulation 39, for sub-regulation (1A), the following sub-regulations shall be substituted, namely:-

“(1A) The resolution professional may, if envisaged in the request for resolution plan-

(a) allow modification of the resolution plan received under sub-regulation (1), but not more than once; or

(b) use a challenge mechanism to enable resolution applicants to improve their plans.

(1B) The committee shall not consider any resolution plan-

- (a) received after the time as specified by the committee under regulation 36B; or
- (b) received from a person who does not appear in the final list of prospective resolution applicants; or
- (c) does not comply with the provisions of sub-section (2) of section 30 and sub-regulation (1)."

Dr. M. S. SAHOO, Chairperson
[ADVT.- ____]

Note: The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were published vide notification No. IBBI/2016- 17/GN/REG004, dated 30th November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 432 on 30th November, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2021 published vide notification No. IBBI/2021-22/GN/REG075, dated the 14th July, 2021 in the Gazette of India, Extraordinary, Part III, Section 4, No. 284 on 14th July, 2021.

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