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## The Insolvency and Bankruptcy Code, 2016

### Part-II Insolvency Resolution and Liquidation for Corporate Persons

#### Chapter-II Corporate Insolvency Resolution Process

##### Section 8: Insolvency resolution by operational creditor.

\*8. (1) <sup>J1</sup>An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt<sup>J2</sup> or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2)<sup>J3</sup> The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, <sup>1</sup>[if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the <sup>2</sup>[payment] of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

*Explanation.*—For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding <sup>2</sup>[payment] of the operational debt in respect of which the default has occurred.

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#### Reference

\*[Effective from](#) 01.12.2016.

1. Subs. by the [Insolvency and Bankruptcy Code \(Second Amendment\) Act, 2018](#), w.e.f. 06.06.2018, for the words “if any, and”.

2. Subs. by the [Insolvency and Bankruptcy Code \(Second Amendment\) Act, 2018](#), w.e.f. 06.06.2018, for the word “repayment”.

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#### Judicial Pronouncements:

**J1.** The expression “an operational creditor may on the occurrence of a default deliver a demand notice.....” under Section 8 of the Code must be read as including an operational creditor’s authorized agent and lawyer, as has been fleshed out in Forms 3 and 5 appended to the Adjudicatory

Authority Rules. [*Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.* (2017) [ibclaw.in 14 SC](#), p38].

**J2.** There is printing error in Section 8(1), instead of 'a demand notice of unpaid operational debt or copy of an invoice' it is printed as 'a demand notice of unpaid operational debtor.' [It was also observed in *Sabarmati Gas Ltd. v. Shah Alloys Ltd.* (2023) [ibclaw.in 02 SC](#), p18]

**J3.** Under Section 8(2), the existence of a dispute or the record of the pendency of a suit or arbitration proceedings should be pre-existing - i.e. before such notice or invoice was received by the Corporate Debtor. The moment there is existence of such a dispute, the Operational Creditor gets out of the clutches of the Code. [*Innoventive Industries Ltd. v. ICICI Bank and Anr.* (2017) [ibclaw.in 02 SC](#), p29]

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