

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

(See amended CIRP Regulation)

The Insolvency and Bankruptcy Code, 2016 provides for corporate insolvency resolution process for invitation, receipt, and consideration of resolution plans; and approval of a resolution plan to resolve insolvency of the corporate debtor. It envisages that a resolution plan, once approved, must be implemented. In furtherance of this, the Insolvency and Bankruptcy Board of India has notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019 today to discourage persons, other than genuine, capable and credible resolution applicants, to submit resolution plans.

2. The amendment mandates that the request for resolution plans shall require the resolution applicant, in case its resolution plan is approved by the committee of creditors, to provide a performance security. Performance security means security of such nature, value, duration and source, as may be approved by the committee of creditors, having regard to the nature of resolution plan and business of the corporate debtor.

3. The Resolution Professional shall attach the evidence of receipt of performance security while submitting the resolution plan to the Adjudicating Authority for approval. Such performance security shall be forfeited if the resolution applicant of such plan, after its approval by the adjudicating authority, fails to implement or contributes to the failure of implementation of the plan.

4. The amendment also requires that the resolution plan shall include a statement as to whether the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 at any time in the past.

5. The amendment enables a creditor, who is aggrieved by non-implementation of a resolution plan approved by the Adjudicating Authority, to apply to the Adjudicating Authority for appropriate directions.

6. The amendment Regulations are effective from today. These are available at www.mca.gov.in and www.ibbi.gov.in. (source- IBBI-No. IBBI/PR/2019/02 dt. 24.01.2019)

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (AMENDMENT) REGULATIONS, 2019

No. IBBI/2019-20/GN/REG040.—In exercise of the powers conferred by clause (t) of sub-section (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) (Amendment) Regulations, 2019.

(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 36B, after subregulation (4), the following sub-regulation shall be inserted, namely: -

“(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

Explanation I. - For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

Explanation II. - A performance security may be specified in absolute terms such as guarantee from a bank for

Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.”.

3. In the principal regulations, in regulation 38, after sub-regulation (1A), the following sub-regulation shall be inserted, namely: -

“(1B) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.”.

4. In the principal regulations, in regulation 39,-

(i) in sub-regulation (4), for “Form H of the Schedule”, the following shall be substituted, namely: -

“Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation

(4A) of regulation 36B.” ;

(ii) after sub-regulation (8), the following sub-regulation shall be inserted, namely:-

“(9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions.”.

5. In the principal regulations, in the Schedule, in Form H, -(see regulations)

Note: The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016 were published in the Gazette of India Extraordinary vide notification No.

IBBI/2016-17/GN/REG004

on 30th November, 2016 and was subsequently amended by—

1) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment)

Regulations, 2017 vide notification No. IBBI/2017-18/GN/REG013, dated the 16th August, 2017;

2) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second

Amendment) Regulations, 2017 vide notification No. IBBI/2017- 18/GN/REG018, dated the 5th October, 2017;

3) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third

Amendment) Regulations, 2017 vide notification No. IBBI/2017- 18/GN/REG019, dated the 7th November, 2017;

4) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth

Amendment) Regulations, 2017 vide notification No. IBBI/2017- 18/GN/REG022, dated the 31st December, 2017;

5) The Insolvency and Bankruptcy Board of India (Insolvency resolution Process for Corporate Persons) (Amendment)

Regulations, 2018 vide notification No. IBBI/2017-18/GN/REG024, dated the 6th February, 2018;

6) The Insolvency and Bankruptcy Board of India (Insolvency resolution Process for Corporate Persons) (Second

Amendment) Regulations, 2018 vide notification No. IBBI/2017-18/GN/REG030, dated the 27th March, 2018;

7) The Insolvency and Bankruptcy Board of India (Insolvency resolution Process for Corporate Persons) (Third

Amendment) Regulations, 2018 vide notification No. IBBI/2018-19/GN/REG031, dated the 3rd July, 2018 (w.e.f.

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th July, 2018); and

8) The Insolvency and Bankruptcy Board of India (Insolvency resolution Process for Corporate Persons) (Fourth

Amendment) Regulations, 2018 vide notification No. IBBI/2018-19/GN/REG032, dated the 5th October, 2018.

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