

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

The Insolvency and Bankruptcy Board of India (IBBI) has evolved a transparent and consultative process for making regulations. It has been the endeavour of the IBBI to effectively engage stakeholders in the regulation making process to factor in ground reality, secure ownership of regulations and make regulations robust and precise, relevant to the time and for the purpose.

2. The IBBI had invited comments from public, including the stakeholders and the regulated, on the regulations already notified under the Insolvency and Bankruptcy Code, 2016 (Code) by 31st December, 2017. The comments received on the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 were considered by the Advisory Committee on Corporate Insolvency and Liquidation and thereafter by the Governing Board of the IBBI. Accordingly, the IBBI has notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018 and the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2018 today.

3. Important amendments effected by the the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018 are:

a. The regulations provide timelines for various activities in a resolution process. The amendments now require the resolution professional to identify the prospective resolution applicants on or before the 105th day from the insolvency commencement date.

b. The regulations provide that the expenses to be incurred on or by the interim resolution professional / the resolution professional shall be fixed / ratified by the Committee of Creditors and such fixed / ratified expense will form part of insolvency resolution process costs. The amendments now provide that such expenses means the fee to be paid to the interim resolution professional, the fee to be paid to insolvency professional entity, if any, and the fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional / resolution professional.

c. The interim resolution professional / the resolution professional shall disclose item wise insolvency resolution process costs in such manner, as may be required by the Board.

d. A financial creditor submitting a claim to the interim resolution professional shall declare whether it is or is not a related party in relation to the corporate debtor.

e. The forms for submission of claims required affidavit from the claimant. The amendments have dispensed with the requirement of affidavit.

4. Important amendments effected by the the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2018 are:

a. The regulations allow a liquidator to sell an asset on a standalone basis. These also allow the liquidator to sell the assets in a slump sale, a set of assets collectively, or the assets in parcels. The amendments now allow the liquidator to sell the corporate debtor as a going concern.

b. The amendments provide that the liquidation cost includes interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower.

5. The amendment regulations are effective from 1st April, 2018. These are available at www.mca.gov.in and www.ibbi.gov.in.