

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi-110001

CIRCULAR

No: LA/010/2018

23rd April, 2018

To

All Registered Insolvency Professionals
All Registered Insolvency Professional Agencies
(By mail to registered email addresses and on website of the IBBI)

Dear Madam / Sir,

Sub: Commencement of Disciplinary Proceeding

The Insolvency and Bankruptcy Code, 2016 (Code) envisages that an insolvency professional may be appointed as interim resolution professional, resolution professional, liquidator, or a bankruptcy trustee if no disciplinary proceeding is pending against him. Some of these provisions are extracted at Annexure A.

2. The Code, however, does not define 'disciplinary proceeding'. Section 219 envisages issue of show cause notice following an inspection or investigation and section 220 envisages constitution of a disciplinary committee for consideration of the inspection or investigation report. Various regulations made under the Code envisage issue of show cause notice based on findings of an inspection or investigation or on material otherwise available on record. They also envisage constitution of disciplinary committee for disposal of show cause notice.

3. A show cause notice is issued after application of mind to the material available on record or on consideration of the inspection or investigation report. The disciplinary committee disposes of the show cause notice by a reasoned order in adherence to principles of natural justice. The reasoned order carries the determination of contravention, if any, of the provisions of the Code, the rules and regulations, or guidelines, directions or orders issued by the Insolvency and Bankruptcy Board of India. Thus, a disciplinary proceeding commences with the issue of show cause notice and concludes with the disposal of show cause notice by a reasoned order.

4. It is, therefore, clarified that-

- (i) a disciplinary proceeding is considered as pending against an insolvency professional from the time it has been issued a show cause notice by the Insolvency and Bankruptcy Board of India till its disposal by the disciplinary committee; and
- (ii) an insolvency professional who has been issued a show cause notice shall not accept any fresh assignment as interim resolution professional, resolution professional, liquidator, or a bankruptcy trustee under the Code.

5. This Circular is issued in exercise of the powers under section 196 read with section 208 of the Insolvency and Bankruptcy Code, 2016.

Yours faithfully,

-Sd-

(K. R. Saji Kumar)

Executive Director

Email: krs.kumar@nic.in

Disciplinary Proceedings against Insolvency Professionals

Section 7(5): Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and **there is no disciplinary proceedings pending against the proposed resolution professional**, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or **any disciplinary proceeding is pending against the proposed resolution professional**, it may, by order, reject such application:

Provided that

Section 9(5): The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no repayment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) **there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.**

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been repayment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) **any disciplinary proceeding is pending against any proposed resolution professional:**

Provided that

Section 16(2): Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, **if no disciplinary proceedings are pending against him.**

Section 16(3): Where the application for corporate insolvency resolution process is made by an operational creditor and—

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, **if no disciplinary proceedings are pending against him.**

Section 16(4): The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority **against whom no disciplinary proceedings are pending.**

Section 27(5): Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

Section 82(1): Where an application under section 80 is filed by the debtor through a resolution professional, the Adjudicating Authority shall direct the Board within seven days of the date of receipt of the application and shall seek confirmation from the Board that **there are no disciplinary proceedings against the resolution professional** who has submitted such application.

Section 89(3): The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (2), recommend the name of an insolvency professional to the Adjudicating Authority **against whom no disciplinary proceedings are pending.**

Section 97(1): If the application under section 94 or 95 is filed through a resolution professional, the Adjudicating Authority shall direct the Board within seven days of the date of the application to confirm that **there are no disciplinary proceedings pending against resolution professional.**

Section 98(3): The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (2), recommend the name of the resolution professional to the Adjudicating Authority **against whom no disciplinary proceedings are pending.**

Section 98(5): Where the Adjudicating Authority admits an application made under sub-section (1) or sub-section (4), it shall direct the Board to confirm that **there are no disciplinary proceedings pending against the proposed resolution professional.**

Section 125(1): If an insolvency professional is proposed as the bankruptcy trustee in the application for bankruptcy under section 122 or section 123, the Adjudicating Authority shall direct the Board within seven days of receiving the application for bankruptcy to confirm that **there are no disciplinary proceedings pending against such professional.**

Section 145(5): The Board shall, within ten days of the direction of the Adjudicating Authority under sub-section (4), recommend a bankruptcy trustee for replacement **against whom no disciplinary proceedings are pending.**