

## Insolvency and Bankruptcy Board of India

**Subject: Corporate Insolvency Resolution Process - Discussion Paper along with Draft Regulations.**

### Introduction

The Insolvency and Bankruptcy Code, 2016 (hereinafter Code) provides for a market determined time bound mechanism for resolution of corporate persons, to promote entrepreneurship, availability of credit and balance the interests of all stakeholders. It provides for a process where the resolution applicants submit resolution plans and the committee of creditors (hereinafter CoC) approves the best resolution plan. The process involved in the corporate insolvency resolution is laid down under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter CIRP Regulations), which has come into force from 30<sup>th</sup> November, 2016.

2. It is relevant here to mention the progress of corporate insolvency resolution process (hereinafter CIRP) so far initiated under the Code. Till 28<sup>th</sup> February, 2019, around 1683 CIRPs were admitted under the Code. Of these, 146 have been closed on appeal or review or settled and 79 have been withdrawn under section 12A. While 88 CIRPs have ended with orders of resolution, 351 have yielded in orders of liquidation. Around 1019 CIRPs are ongoing. Out of the 88 Corporate Debtors (hereinafter CD) in respect of which resolution orders were approved, it is observed that 31 were earlier with BIFR and/or not going concerns. The total amount realisable under the resolution plans of these 88 CIRPs is 48.25% of the total admitted claims and 209.2% of the liquidation value of the CD. Further, out of 351 CIRPs which ended in liquidation, 253 CDs were earlier with BIFR and/or not going concerns.

3. The Board had sought public comments on the CIRP Regulations for the purpose of review of the same. The public comments received till 4<sup>th</sup> November, 2018 were, *interalia*, placed before the Governing Board, vide Board Note No. 041/2018, during the 12<sup>th</sup> meeting of the Governing Board held on 28<sup>th</sup> December, 2018. The public comments received thereafter till

31<sup>st</sup> December, 2018 along with the analysis thereon is enclosed at **Annexure 1**. The Indian Bank's Association (hereinafter IBA) has submitted to the Board certain issues in the CIRP and suggested some improvements. The suggestions of IBA along with the analysis thereon is enclosed at **Annexure 2**. The issues broadly raised in the public comments, IBA suggestions and those otherwise observed by the Board are detailed in the subsequent paragraphs. Part I of this note features the amendments that may be required to the CIRP Regulations which are clarificatory in nature and Part II of the note features issues for discussion and guidance of the Governing Board.

## **Proposals and Justification**

### **Part I: Amendments to the CIRP Regulations**

This part proposes amendments to the CIRP Regulations.

#### **A. Withdrawal under Section 12A**

4. Section 12A of the Code states that '*The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified*'. Further, Regulation 30A(1) of the CIRP Regulations states that an application for withdrawal under section 12A shall be submitted to the Insolvency Resolution Professional (hereinafter IRP) or Resolution Professional (hereinafter RP) in Form FA of the Schedule to the said Regulations. Form FA envisage applicant filing the application to the Adjudicating Authority (hereinafter AA) through the IRP or RP.

4.1 In the matter of Francis John Kattukaran vs The Federal Bank Ltd. &Anr., the Hon'ble NCLAT considered the issue whether an RP can file an application for withdrawal under section 12A once the proposal is approved by the committee of creditors (hereinafter CoC) with requisite majority. It was held by the Hon'ble NCLAT on 13<sup>th</sup> November, 2018 that "*we are of the view that the 'resolution professional' cannot file an application for withdrawal of an application under Section 7 or 9 or 10 of the I&B Code. As per Section 12A, as quoted below, it is the applicant who can only file such an application for withdrawal on which the Adjudicating Authority may pass an appropriate order.....Therefore, the application for withdrawal can be filed only by the applicant, who initially filed application under Section 7 or 9.....Regulation 30A cannot over-ride the substantive provisions of Section 12A*

*according to which the 'applicant' can only move application for withdrawal of the application before the Adjudicating Authority and not by the 'resolution professional'.*”

4.2 Thus, the jurisprudence developed is to the effect that only the applicant who initiated the CIRP can file the application for withdrawal under section 12A. To align regulation 30A and Form FA with the above position, it is proposed to amend regulation 30A to the effect that an application for withdrawal shall be made by the applicant through the IRP or RP, as the case may be and the IRP or RP shall present the application before the CoC.

4.3. In the case of *Swiss Ribbons Pvt. Ltd. Vs. Union of India*, the Hon'ble Supreme Court had considered the question of withdrawal of application filed under the Code, in a situation where CoC is yet to be constituted. It was held by the Hon'ble Supreme Court as under:

*“A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.” [Emphasis Supplied]*

4.4. In view of the jurisprudence laid down by the Hon'ble Supreme Court, it is clear that a party may approach directly to NCLT for withdrawal or settlement. The Committee may deliberate on the issue whether any change is required in the CIRP Regulations in this regard.

## **B. Aligning Model time-line for CIRP**

5. Regulation 40A of the CIRP Regulations provides the model time-line for CIRP. It was observed that there are a few inconsistencies between the items mentioned in the table in regulation 40A *vis-à-vis* the respective provisions under the CIRP Regulations. For instance, under regulation 27, the valuer has to be appointed by the RP within seven days of his appointment but not later than forty seventh day of the insolvency commencement. Whereas, the relevant item in the table states 'not later than 40<sup>th</sup> day of commencement'. Similarly, regulation 19 requires issuance of notice of not less than five days for a meeting of the CoC. The relevant item in the table for the first meeting of the CoC states “with seven days’

notice”. Also, verification of claims is provided under regulation 13(1) of the CIRP Regulations. However, the relevant item in the table states ‘Regulation 13(2)’. It is proposed to remove these inconsistencies in the table by making necessary modifications.

### **C. Modification in Form H**

6. Form H appended to the CIRP Regulations was amended, vide notification dated 24<sup>th</sup> January, 2019, to omit reference to dissenting financial creditors in para 7, since regulations relating to dissenting financial creditors were deleted from the CIRP Regulations, vide notification dated 5<sup>th</sup> October 2018. Similar reference to dissenting financial creditors appearing in para 9 in Form H is also required to be omitted. It is proposed to further amend Form H for this purpose.

### **D. Harmonising components of insolvency resolution process costs with the provisions under the Code and Regulations**

7. Regulation 31 enumerates the components of insolvency resolution process costs (hereinafter IRPC) specified by the Board under section 5(13)(e) of the Code. It is observed that there are certain inaccuracies in the references made to a section and a sub-regulation in clauses (aa) and (ab) of Regulation 31. Clause (aa) states “*fee payable to the authorised representative under sub-regulation (7) of regulation 16A*”. The reference to sub-regulation (7) needs to be corrected as sub-regulation (8). Clause (ab) states “*out of pocket expenses of authorised representative for discharge of his functions under section 25*”. The reference to section 25 needs to be corrected as section 25A.

## **Part II: Issues for discussion and guidance of the Governing Board**

The suggestions received through the public comments and from the stakeholders are detailed in the subsequent paragraphs for deliberations by the Governing Board.

### **A. Inclusion of legal and other expenses incurred by the financial creditors in the insolvency resolution process cost**

8. The financial creditors incur substantial legal expenses (towards court fee, lawyer's fee etc.) in running the cases before NCLT/NCLAT/Supreme Court. It is suggested by IBA to specify such legal expenses incurred by financial creditors as part of IRPC.

8.1 Section 5(13) of the Code read with regulation 31 of the CIRP Regulations specifies what is included in IRPC. The expenses incurred on or by the IRP or RP which are ratified or approved by the CoC, as the case may be, and other costs directly relating to CIRP approved by the CoC are included within IRPC. The Board, vide circular dated 12<sup>th</sup> June, 2018 on fee and other expenses incurred for CIRP, has clarified that IRPC shall not include, *inter alia*,

(i) *any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor in relation to the CIRP*

(ii) *any expense incurred by a member of CoC or a professional engaged by the CoC*

(iii) *any expense incurred by the CoC directly.*

8.2 On a harmonious reading of the Code, regulations and the circular, it is clear that expenses directly related to the CIRP and incurred by the RP are sought to be covered, but not the expenses directly incurred by the CoC or its members. The scope of IRPC has an impact on the resolution plan, as section 30(2) of the Code read with regulation 38 (1)(a) mandatorily requires the resolution plan to provide for payment of IPRC in priority to any other creditor.

8.3 *Prima-facie*, the legal expenses incurred by the CoC directly or by its members cannot be equated with those incurred by IRP/RP for pursuing matters relating to CIRP before NCLT/NCLAT/Supreme Court. Such expenses of CoC or its members are similar to those incurred by them while defending their actions or decisions taken under any other law. If the legal expenses of financial creditors are included within IRPC, then the dilemma could be

that the objective of the Code of balancing the interests of all stakeholders could be hindered and affected. Therefore, this suggestion may not be pursued.

#### **B. Discouraging frivolous appeals before NCLAT/ Courts.**

9. It is suggested by IBA that frivolous appeals should be discouraged and for this purpose, the Code should stipulate as a pre-condition of such appeal the deposit of certain percentage of total claims of financial creditors by the appellant.

9.1 The Code contains provisions to discourage frivolous initiation of insolvency resolution process or liquidation proceedings. The AA is empowered to impose penalty under section 65 of the Code on any person who initiates such proceedings fraudulently or with malicious intent. Sections 75 to 77 of the Code provides for punishment for furnishing false information in the applications filed by financial creditor under section 7 or by CD under section 10 and for wilful non disclosure of dispute or payment of debt by operational creditor in the application under section 9.

9.2 However, there are no similar provisions in the Code to prevent frivolous appeals. The process under the Code is a time-bound process. A frivolous appeal results in delay in the process. It may also overburden the NCLAT.

9.3 IBA has suggested that as a precondition of appeal, deposit of an amount equal to 0.5% to 1% of the total financial creditors dues could be insisted upon. If the appeal is allowed the amount so deposited could be credited back to the appellant. If the appeal is not allowed/ dismissed or withdrawn, then the amount shall be forfeited.

9.4 The aforementioned pre-condition for appeal as proposed may be similar to the provisions under section 21 of the Recovery of Debt and Bankruptcy Act, 1993 and section 18 of the SARFAESI Act, 2002 to deter frivolous appeals. The provisions herein above mentioned are as under:

- i. Section 21 of the Recovery of Debt and Bankruptcy Act, 1993 : “21. *Deposit of amount of debt due, on filing appeal.—Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal*

*unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal under section 19:*

*Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.”*

ii. Section 18 of the SARFAESI Act, 2002:

*“18. Appeal to Appellate Tribunal - (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:*

*Provided.....*

*Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:*

*Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso. ....”*

9.5 Even though the objective of the Code is not recovery, the aforementioned provisions in the recovery laws to avoid frivolous appeals are worth emulating, as any delay in resolution or liquidation through frivolous appeals will defeat the very objective of the Code which is value maximisation of the assets. Therefore, the proposal is placed for deliberation before the Governing Board and if required suggesting to the Central Government for suitable amendment to the Code.

### **C. Declaring Corporate Debtor as Wilful Defaulter.**

10. It is suggested by IBA that the Board may issue clarification that declaration of moratorium under section 14 of the Code does not prohibit the creditor from declaring a CD or its guarantor as wilful defaulter or in reporting of fraud, in terms of extant RBI guidelines.

10.1 Section 14 of the Code places a moratorium, *interalia*, on ‘*the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law....*’ and ‘*any action to*

*foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property.....*'. Therefore, declaration of CD or its guarantor by the creditor as 'wilful defaulter' or reporting any transaction involving such person as fraud in terms of regulatory guidelines are not *per se* measures of the nature of 'suit or proceedings' or 'action to foreclose, recover or enforce security interest' and as such, not prohibited under section 14 of the Code. Therefore, there is no need for any clarification to be issued by the Board.

#### **D. Insurance Cost of Insolvency Professionals**

11. It is suggested by IBA that the Board may issue guidelines for uniformity and reasonableness in the insurance cost of Insolvency Professionals (hereinafter IPs).

11.1 The IPs during the course of their duty face several types of threats and hence requires insurance policy. However, such insurance policy obtained by the IPs come at a very high premium due to various reasons such as underdeveloped market for insurance policy for IPs. Section 5(13) of the Code which defines IRPC includes, *inter alia*, 'any costs incurred by the Resolution Professional in running the business of the CD as a going concern.' It does not explicitly cover insurance policy cost which is sizeable. However, it has been given to understand that IPs are including this cost as part of IRPC.

11.2 It is felt that data relating to insurance cost of IPs need to be collated and examined before any view is taken by the Governing Board in this regard.

#### **E. Financial creditor being a resolution applicant**

12. IBA has suggested that a financial creditor who desires to be a resolution applicant (directly or indirectly via controlled entity) should be barred from being a member of CoC. This is to avoid any conflict of interest.

12.1 The Code permits a financial creditor to be a resolution applicant. Section 30(5) of the Code states that:

*“(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:*

*Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.”*

*[Emphasis supplied]*

12.2 Therefore, the provisions of the Code are clear that a financial creditor can be a resolution applicant and such financial creditor will have voting right as a member of the CoC. The issue that arise is whether a financial creditor cum resolution applicant, being a member of the CoC, will have an edge over other resolution applicants in terms of information about the CD.

12.3 Regulation 35(2) of the CIRP Regulations requires the RP to disclose the fair value and liquidation value to every member of CoC after the receipt of the resolution plans in accordance with the Code and the Regulations. Where the financial creditor is one of the resolution applicant, there is possibility of asymmetry of information between such financial creditor and the person who is only a resolution applicant. For instance, in a situation where Request for Resolution Plan is re-issued and liquidation value is already disclosed to the members of CoC under regulation 35(2), the financial creditor who is also a resolution applicant may have an advantage as he knows the liquidation value.

12.4 Though, regulation 35 (2) of the CIRP Regulations requires the members of the CoC to submit an undertaking to not use liquidation value to cause an undue gain or undue loss to itself or any other person, practically it may be difficult to avoid information asymmetry.

12.5 In view of the above, this issue is being placed before the Governing Board for deliberations as to whether there is a need for any change in regulation 35(2).

## **F. Replacement of RP**

13. In the third meeting of the Advisory Committee on Service Providers held on 26<sup>th</sup> February, 2018, it was recommended that *'The CoC may file its request seeking replacement of an RP along with reasons for the same for consideration of the Adjudicating Authority'*.

13.1 Section 27 of the Code provides for replacement of RP during CIRP, when CoC 'is of the opinion' that the RP is required to be replaced. For such replacement, CoC is required to resolve by a vote of 66% of the voting share and forward the name the proposed IP to the AA.

13.2 As the CoC is required to form an opinion for replacing the RP, it is expected that the opinion would be based on cogent reasons and such reasons would be reflected in the resolution being passed for the purpose. It would be open to the AA to examine the reasons for change of RP. Further, any order passed by the AA is appealable to NCLAT under

section 61(1) of the Code. Therefore, the RP aggrieved by the decision of AA could resort to the remedy provided under the Code.

13.3 In view of the above, it is expected that the resolutions of the CoC for replacement of RP contains sufficient reasons and the same is also placed before the AA by the RP while seeking such replacement. It is for consideration of the Governing Board, whether this needs to be specifically provided in the Regulations or not.

#### **G. Expenses of Authorised Representatives**

14. Section 21(6A)(b) of the Code read with regulation 2(aa) of the CIRP Regulations provides for appointment of Authorised Representative (AR), when financial debt is owed to a class of financial creditors not less than ten. The rights and duties of such AR is listed under section 25A of the Code. Regulation 16A(8) of the said Regulations provides for the fee payable to an AR, which is fixed fee for every meeting ranging from Rs. 15,000/- to Rs. 25,000/- depending on number of creditors in the class. In terms of regulation 31(ab) of the said Regulations, out of pocket expenses of AR for discharge of his functions are included as IPRC.

14.1 It has been brought to the notice of the Board by some of the ARs that they are often summoned by various AA/NCLAT and further costs are incurred by them in getting legal assistance. It is stated that it is not practical to charge and claim such expenses from financial creditors of a class. Further, after the last meeting of CoC, the AR has no role and if AR is summoned by AA/NCLAT for any hearing, there is no clarity on who would bear the cost.

14.2 As only fixed fee for meeting and out of pocket expenses are contemplated for ARs under the CIRP Regulations, it is for consideration of the Governing Board whether there is a need to revisit the fee structure of ARs to include expenses mentioned as above.

#### **Consultation with Stakeholders**

15. We have sought public comments on the CIRP Regulations which has been considered and examined as indicated above.

#### **Cost Benefit Analysis**

16. From the viewpoint of economic efficiency, the CIRP Regulations are proposed to be amended to bring in more clarity by removing the inconsistencies and aligning with the jurisprudence laid down to facilitate effective resolution process.

### **Financial Implications of the proposal**

17. There are no financial implications involved at present in the proposals contained in this Board note, as the amendments proposed in Part I are clarificatory in nature.

18. The draft regulations to amend CIRP Regulations is placed at **Annexure-3**.

19. Approval of the Governing Board is sought on the draft Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019.

20. This Board Note has the approval of the WTM (RR).

**Annexure - 1 (Board Note)**

| <b>S. No.</b> | <b>User Comment</b>   | <b>Regulation Number</b> | <b>Sub Regulation Number</b> | <b>Observations</b>   |
|---------------|---|--------------------------|------------------------------|---|
| 1             | If a Petition is filed u/s 9 of Insolvency and Bankruptcy Code, 2016 is withdrawn on the basis of consent terms taken on record, then if the party defaults in the payment, there is no provision for reviving the petition or any other provision to deal  |                          |                              | No amendment required. Fresh application to be filed under section 9  |
| 2             | As pursuant to 4th Amendment in the CIRP Regulations, definition of dissenting financial creditors has been deleted, however, in view of above change, the amendment in CIRP Regulations should also be made in Form H (Pl. refer the point 7 & 9).         | 39                       | (4) (a)                      | Form H was amended vide notification dated 24th January, 2019 to omit reference to dissenting financial creditors in para 7. However, similar amendment in para 9 is being amended. |
| 3             | I am not pointing out on any Regulations. I wish to suggest that the latest amended Regulations and Rules alone can be mentioned separately in the website for easy retrieval and reading.  |                          |                              | No action needed. Website provides for latest amended regulations both historical and updated versions  |
| 4             | In the PDF copy of the IBBI (Insolvency process for corporate persons) Regulations as amended upto 05/10/2018 in the website of IBBI, Regulation 19(1) states 5 days notice for calling for 1st meeting of COC, whereas Model Time line says 7 days notice. | 40                       | (1)                          | Regulation 40A - Model timeline is being amended  |

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| 5 | Triumph India software services private limited Corporate Identity Number: U85110KA1991PTC0111727 Triumph India Software services private limited No 375 1st Floor, 1st cross judge colony, R.T.Nagar Bangalore 32. Please give details about Creditors claim.   |  |  | No action required  |
| 6 | The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10. Section 12A talks about withdrawal of application under Section 9. There is no provision under the code for withdrawal of application by OC before admission. I feel an opportunity can be given to other OC to represent before withdrawal as I feel by withdrawing an application by OC, the other OC has to go through the ordeal. Instead a mechanism has to be devised for other OC to represent NCLT before withdrawal. Saves time, cost to other. Unless the application under Section 9 is admitted CoC does not get constituted in which case Sec 12A withdrawal subject to CoC does not arise. I feel before withdrawal of OC petition, opportunity may be given to other OC to save time, cost. |  |  | Rule 8 of the AA rules provides for withdrawal of application by FC, OC or CD before admission. Section 12A deals with withdrawal post admission. No action required. |
| 7 | Dear i am a ablaze info solutions company investor , i invest 2.87.500rs , 57.500 per id, i invested 5 id payment. Please sir give me best solution how to get refund money. And give me full process.Application byTabrez khan  |  |  | Not relevant  |

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| 8 | <p>Low, monthly income population enrol and pay in monthly installments on gold saving scheme to fulfill their personal and family commitments such as marriage, etc. When the corporate insolvency is executed, these investors are considered as Other creditors and asked to submit Form F as Claims. In the Mandatory contents of the resolution plan, it is not specifically stated about the other investors for their priority. Hereby request to consider the gold savings scheme investors as operational creditors and to give first and foremost priority after insolvency resolution process costs or request to include a clause between (a) and (b) stating priority to other investors and then to operational and financial creditors.</p> | 38 | `(1) (b) | <p>Hon'ble SC in the matter of Swiss Ribbon has upheld the validity of section 53 and observed that, ' . We have already seen that repayment of financial debts infuses capital into the economy inasmuch as banks and financial institutions are able, with the money that has been paid back, to further lend such money to other entrepreneurs for their businesses. This rationale creates an intelligible differentia between financial debts and operational debts, which are unsecured, which is directly related to the object sought to be achieved by the Code. In any case, workmen's dues, which are also unsecured debts, have traditionally been placed above most other debts. Thus, it can be seen that unsecured debts are of various kinds, and so long as there is some legitimate interest sought to be protected, having relation to the object sought to be achieved by the statute in question, Article 14 does not get infringed. For these reasons, the challenge to Section 53 of the Code must also fail.'</p> |
| 9 | <p>Withdrawal of application - Since there is liberty to withdraw application u/s 12A, other operational creditors waiting for orders to be passed in an earlier application filed by other OC should be given opportunity to represent before withdrawal.</p>   |    |          | <p>Same as at 6 above</p>   |

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|----|--|----|-----|--------------|
| 10 | we have received the public Announcement in times of India Delhi dated 6Dec2018 with the subject of &quot; FOR THE ATTENTION OF THE CREDITORS OF ABLAZE INFO SOLLUTION PRIVATE LTD&quot;. Pls confirm which Form to be submitted to claim the paid amount. |    |     | Not relevant |
| 11 | We have invested money in Ablez info solutions Pvt, Ltd company, ITD U72900DL2010PTC207909.The company not fulfilled the requirements and we are not received our money back.Regards,Syed Asif   |    |     | Not relevant |
| 12 | I have invested money in Ablaze info solutions pvt, ltd company, ITD, u72900dl2010ptc207909,The company not fulfilled the promises, we did&#039;t receive our investment back.Regards,Syed Asif  |    |     | Not relevant |
| 13 | Ablaze Info Solutions Pvt Ltd.More than 2000 people has invested in the company and investment amount is Rs. 57,500.00 each. No one has received money since 2 yrs. This company is booked under ponzi scheme.   |    |     | Not relevant |
| 14 | To,The Chairman Insolvency and Bankruptcy Board of IndiaNew DelhiSir, Subject: Illegality in Regulation 16(A)(7) of THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (THIRD AMENDMENT) REGU              | 16 | (1) | Not relevant |

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|----|--|----|-----|---|
| 15 | Sir, There is a message circulating in social media that refund process of the insolvent company namely "Ablaze info solutions pvt. Ltd" which Director Anubhav mittal is in jail is processed your office. Is this news correct?                        | 1  | (1) | Not relevant  |
| 16 | Dear Sir, Ablaze Info Sol. Pvt. Ltd. ke against maine aaj online apko document submit kiya through main lekin mail box full ke wajah se bad main msg aya postmaster ka. Uske bad maine aaj apko document nhi courier kar diya hai. Please aap accept kar |    |     | Not relevant  |
| 17 | Sir, today the 18th of Dec 2018 is the last day for claim in the matter of Ablaze Info Solutions, but the email ID provided is not accepting mails as it is showing full. what we should do in this matter now. Rajesh Saini9213205580amanrajsaini@yahoo | 16 | (1) | Not relevant  |
| 18 | On your WEBSITE it is better to provide locations of the IP, Valuers so that if anybody searches by location they can get required professional  |    |     | Related to IP Division. Suggestion sent to IP Division. |
| 19 | Sir, what is the status of money refund in case of Social Trade scam ..  |    |     | Not relevant  |

|    |   |  |  |  |
|----|---|--|--|--|
| 20 | In case of Ablaze infosolution pvt. Ltd. insolvency resolution professional demands proofs of claim but within specified period there mail-id became full and operational creditors are unable to send the proof. |  |  | Not relevant                               |
| 21 | As a stakeholder, we want to know the availability of resolution plan(s) for stakeholders and how general public can download or have access to those resolution plans.   |  |  | Already examined by the Advisory Committee |

**Annexure - 2 (Board Note)**

| S. No. | IBA Comment   | Observations   |
|--------|---|--|
| 1      | <p><b>Issue:</b> Time lag in admission and conclusion of proceedings under IBC.</p> <p><b>Comment and Suggestion:</b> Considering that the use of IBC is on increase and it would continue to be so by virtue of its efficacy, IBBI may please take up with the Ministry for enhancing and strengthening NCLTs and NCLAT establishments by introducing courts/ benches more in number and at more places with judicial and technical members having business/ commercial law background as also sufficient administrative staff with robust infrastructure.</p>   | <p>The issue has already has taken up with the Ministry at various forums. Therefore, it is under consideration by the Ministry.</p> |
| 2      | <p><b>Issue:</b> Inclusion of legal and other expenses by financial creditors in the insolvency resolution process costs under resolution plan.</p> <p><b>Comment and Suggestion:</b> Financial Creditors incur substantial legal expenses (towards court fee, lawyer's fee etc.) in running the cases before NCLT/ NCLAT/ Supreme Court which are currently not specifically admissible as insolvency resolution process costs under IBC. IBBI may please, in terms of section 5(13) (e) of IBC, specify legal expenses incurred by a financial creditor for inclusion under insolvency resolution process costs.</p>  | <p>Placed for deliberations.</p>   |
| 3      | <p><b>Issue:</b> Depositiong with NCLT certain amount of financial creditors' dues as pre condition to allow appeal before NCLAT/ Courts.</p> <p><b>Comment and Suggestion:</b> IBA has suggested that as a precondition of appeal, deposit of an amount equal to 0.5% to 1% of the total financial creditors dues could be insisted upon. If the appeal is allowed the amount, so deposited could be credited back to the appellant. If the appeal is not allowed/ dismissed or withdrawn, then the amount shall be forfeited. On the other hand if the appeal is allowed, then the amount so deposited would go to the credit of corporate creditor when the appeal is by the corporate creditor and to the bidder/ investor when the appel is by the bidder/ investor to be set off against the successful bid. This would be in line with the provisions under section 21 of Recovery of debt and Bankruptcy Act, 1993 and section 18 of the SARFAESI Act, 2002 to deter frivolous appeals.</p> | <p>Placed for deliberations.</p>   |

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| 4 | <p><b>Issue:</b> Provision for combined insolvency proceedings in case of group/ associate companies being borrower and guarantor.</p> <p><b>Comment and suggestion:</b> Quite often a loan by financial creditor is crossed guaranteed or cross securitised by group/ associate companies of the corporate debtor and it would be appropriate and also save on cost and time to trigger insolvency of such group/ associate companies and also enjoin such companies under the corporate resolution initiated against the corporate debtor and run all such insolvencies as a single matter.</p> | <p>Working Group on Group Insolvency has been set up by IBBI to examine the framework.</p>  |
| 5 | <p><b>Issue:</b> Section 60 (2) of IBC provides for filing for insolvency of personal and corporate guarantor at the NCLT where the insolvency application is filled in respect of the borrower as corporate debtor. Given Part III of IBC is not yet notified and brought into force and the corporate insolvency regulations issued by IBBI not having dealt with this situation, there is want of clarity on the applicable regulation in this regard.</p> <p><b>Comment and Suggestion:</b> IBBI may please arrange suitable regulation in this regard.</p>                                   | <p>The issue for filing insolvency application against personal guarantor pertains to Part III of the Code which has not been notified yet. Board is under process of issuing regulations for Part - III of the Code. Hence, not included for further deliberation.</p> |
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| 6 | <p><b>Issue:</b> Need for right to appoint and have oversight on the Liquidator appointed by NCLT so as to protect interest of the financial creditors.</p> <p><b>Comment and Suggestion:</b> While the Committee of Creditors (CoC) has power to appoint and change a Resolution Professional, a Liquidator could be appointed by NCLT in certain situations described under Section 34 (4), (5) and (6) of the IBC. We would like to state in this regard that the CoC should have a mechanism to oversee the functioning of Liquidator, which is not currently available. IBBI may please take up with the Government for suitable modification to IBC to achieve the desired as above.</p>   | <p>Pertains to Liquidation Division. This is being addressed through Monitoring Committee.</p>   |
| 7 | <p><b>Issue:</b> Want of clarity as regards charges of various priorities (such as 1st /2nd /pari passu etc.</p> <p><b>Comment and Suggestion:</b> section 53 of ibc disregards such differential ranking making all charges (whether 1st, 2nd or pari passu) alike, which appears anomalous and unjustifiable. (b) All such secured creditors holding charges of different ranking on the same asset may not together opt for treating the asset similarly i.e. whether to enforce independently standing out of liquidation or relinquish to liquidation pool. IBC currently does not address this situation. It would be fair that both the situations (a) and (b) above should be dealt with under IBC equitably giving the right to 1st charge holder (and in case of pari passu charge, to 66% majority pari passu charge holders) to decide on whether to go for enforcement outside the liquidation or relinquish the security to common liquidation pool. Furthermore in the liquidation waterfall, the available proceeds should first go into the first 1st charge holder/ pari passu charge holders in their proportion and thereafter to the remaining chargeholders. IBBI may please take up with the Government for suitable modification to IBC to achieve desired as above.</p> | <p>The matter was considered by the ILC and ILC in its report has observed that, "<i>The Committee felt that there was no requirement for an amendment to the Code required since a plain reading of section 53 was sufficient to establish that valid inter-creditor and subordination provisions are required to be respected in the liquidation waterfall under section 53 of the Code.</i>" In light of the observation made to ILC, amendment suggested for section 53 may not be accepted.</p> |
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| 8 | <p><b>Issue:</b> IRPs/ RPs not accepting outstanding contingent commitments (such as Bank Guarantee/ Letter of Credit etc. issued by a bank in favour of a third party where no claim is received by the bank issuing it) as financial debt (as it is funded) in the resolution plan.</p> <p style="text-align: center;"><b>Comment and</b></p> <p><b>Suggestion:</b> Despite clear judicial decision that such commitment (by issuing a Bank Guarantee/ Letter of Credit etc.) to a third party be taken as financial dues ( regardless of whether a claim is recieved ot not thereunder for the reason of the contingency not in the control of the bank but it is exercisable at the option of its beneficiary) the RPs/ IRPs are not readily including amount of outstanding commitments into the financial debt. It would help if IBBI could issue a clarification in this regard, if necessary in consultation with RBI.</p> | No change in regulation is required as the issue has been dealt with by AA/ NCLAT.                                    |
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| 9 | <p><b>Issue:</b> Non availability of full case details on NCLT/ NCLAT websites. <b>Comments and Suggestions:</b> Current NCLT/ NCLAT websites do not host requisite information and are difficult to navigate into causing difficulty. IBBI may please suggest NCLT/ NCLAT to make their website user friendly on the lines of Supreme Court/ Website giving full case details (even stating application filed but not yet dmitted) and also provide search engine.</p>  | Operational issue and does not pertain to amendment in the regulation and the Code. Therefore, may not be considered. |
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| 10 | <p><b>Issue:</b> Information on Corporate debtor appearing in Public Announcement of admission of Bankruptcy on the IBBI website is inadequate. <b>Comment and Suggestion:</b> IBBI may please consider to modify Form A under Schedule A to Insolvency Resolution Regulation to include details such as the Corporate's IT PAN, date of filing of Insolvency Application and details of NCLT which has passed an order admitting the Insolvency Application. Infact this information may help Banks and Financial Institution to know about insolvency application if any against their borrower for betterment only.</p> | <p>Form A is issued for the purpose of inviting claims and it already contains CIN/ LLI No. of CD. The details of IRP is also captured in Form A. Hence, the suggestion to amend Form A may not be considered. However, the NCLT Bench could be reflected on the IBBI's website while uploading public announcement. To be taken up with IT Division.</p> |
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| 11 | <p><b>Issue:</b> Regulation for insolvency proceedings before NCLT of personal guarrantors along with the corporate debtor whose debt is guaranteed by the personal guarrantor. <b>Comment and Suggestion:</b> While section 60(2) of IBC has provided for insolvency proceedings before NCLT of personal guarrantors along with corporate debtor whose debt is guaranteed by the personal guarantor, it would help to operationalise it if IBBI issues regulation on it.</p>  | <p>The issue for filing insolvency application against personal guarantor pertains to Part III of the Code which has not been notified yet. Board is under process of issuing regulations for Part - III of the Code. Hence, not included for further deliberation.</p>   |
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| 12 | <p><b>Issue:</b> Clarity on declaring a corporate debtor and guarantor (corporate as well as personal) as wilful defaulter/ reporting of fraud by corporate debtor and guarantor (corporate as well as personal) in terms of RBI guidelines. <b>Comment and Suggestion:</b> Section 14 of IBC provided for moratorium on corporate debtor upon admission of insolvency application against such corporate debtor by NCLT. In our understanding, RBI guidelines which are independent of IBC, do not fall under the moratorium under IBC and should continue to operate regardless of moratorium. It would bring in clarity if IBBI issues a confirmation, in consultation with RBI as appropriate, in validation of our understanding above.</p> | Placed for deliberations. |
| 13 | <p><b>Issue:</b> Clarity required on insurance cost of insolvency professional.<br/><b>Comment and Suggestion:</b> Insolvency Professionals at times obtain professional insurance policy and claim its cost from banks, which is sizeable. Given the onerous role of insolvency professional, this is likely to be more often if not in every case in future, in keeping with international practice. It would help if IBBI would come out with guidelines in this regard for the sake of uniformity and reasonableness.</p>  | Placed for deliberations. |
| 14 | <p><b>Issue:</b> Conflict in case of a financial creditor submitting resolution plan as applicant.<br/><b>Comment and Suggestion:</b> To avoid such conflict a financial creditor who desires to be a resolution applicant (directly or indirectly via controlled entity) should be barred from being a member of CoC. IBBI may please consider to issue suitable guidelines in this regard.</p>   | Placed for deliberations  |

**Annexure-3 (Board Note)**

**GAZETTE OF INDIA  
EXTRAORDINARY  
PART III, SECTION 4  
PUBLISHED BY AUTHORITY**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
NOTIFICATION**

New Delhi, the \_\_\_\_, March, 2019

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

No. IBBI/2018-19/GN/REG\_\_\_\_. -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) (Second 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 30A, for sub-regulation (1), the following sub-regulation shall be substituted, namely:  
“(1) An application for withdrawal under section 12A shall be made by the applicant through the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under regulation 36A and the interim resolution professional or the resolution professional, as the case may be, shall present the application before the committee.”.
  
3. In the principal regulations, in regulation 31,  
(a) in clause (aa), for the words, figures and brackets "sub-regulation (7)", the words, figures and brackets "sub-regulation (8)" shall be substituted;  
  
(b) in clause (ab), for the words and figures "section 25", the words and figures "section 25A" shall be substituted.
  
4. In the principal regulations, in regulation 40A, in the table, for the entries relating to "Regulation 13(1)", "Regulation 13(2)", "section 22(1)/ Regulation 19(1)" and "Regulation 27", the following entries shall respectively be substituted, namely:-

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|-------------------|--|---|-------|
| “Regulation 13(1) | Verification of claims received under regulation 12(1) | Within 7 days from the receipt of the claim | T+21  |
|                   | Verification of claims received under regulation 12(2) |   | T+97” |

|                                   |                         |   |       |
|-----------------------------------|-------------------------|---|-------|
| “Section 22(1) / Regulation 19(1) | 1 st meeting of the CoC | Within 7 days of the constitution of the CoC, but with five days’ notice. | T+30” |
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| “Regulation 27 | Appointment of valuer | Within 7 days of appointment of RP, but not later than 47 <sup>th</sup> day of commencement. | T+47” |
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5. In the principal regulations, in the Schedule, in Form H, in para 9, for the entries relating to regulation 38(1) the following shall be substituted, namely: -

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| “Regulation 38 (1) | Whether the Resolution Plan provides for the amount due to the operational creditors to be given priority in payment over financial creditors.” |  |  |
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Dr. M. S. Sahoo  
Chairperson  
Insolvency and Bankruptcy Board of India  
[ADVT .....]

**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 30<sup>th</sup> 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 16<sup>th</sup> 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 5<sup>th</sup> 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 7<sup>th</sup> 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 31<sup>st</sup> 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 6<sup>th</sup> February, 2018; and

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 27<sup>th</sup>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 4<sup>th</sup>July, 2018.

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 5<sup>th</sup>October, 2018.

9) The Insolvency and Bankruptcy Board of India (Insolvency resolution Process for Corporate Persons) (Amendment) Regulations, 2019 vide notification No. IBBI/2019-20/GN/REG040, dated the 24<sup>th</sup>January, 2019.