

Insolvency and Bankruptcy Board of India

Subject: Bankruptcy Process for Personal Guarantors to Corporate Debtors: Discussion Paper along with Draft Rules and Regulations

Background

The Insolvency and Bankruptcy Code, 2016 (Code) envisages reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all stakeholders. In the two years since the Code's enactment, the provisions relating to corporate insolvency resolution, including fast track resolution, and corporate liquidation, and voluntary liquidation of corporate debtors (CDs) have been operationalised.

2. The CD often has guarantors. For comprehensive corporate insolvency resolution and liquidation, it is necessary that insolvency of the CD as well as its guarantors are considered together to the extent possible. Section 128 of the Indian Contract Act, 1872 enables a creditor to pursue remedy against both the principal borrower and the guarantor(s), as liability of a guarantor is co-extensive with that of the principal borrower, unless the contract provides otherwise. Thus, if the principal borrower defaults in repayment of debt to a creditor, the creditor may choose to pursue remedy against the guarantor for repayment of debt. In effect, insolvency proceedings of a CD and its guarantors are closely linked to each other.

3. Sub-section (2) of section 60 of the Code, was amended by the Amendment Act of 2018, to provide that where a corporate insolvency resolution process (CIRP) or liquidation proceeding of a CD is pending before a National Company Law Tribunal (NCLT), an application for the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such CD shall be filed before the NCLT. Sub-section (3), as amended by the said Amendment Act, provides that an insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the CD pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

4. In the matter of *Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd.*, the Hon'ble NCLAT, vide order dated 8th January, 2019, held that it is not necessary to initiate CIRP against the principal borrower before initiating CIRP against the corporate guarantors. Without initiating any CIRP against the principal borrower, it is always open to the financial creditor to initiate CIRP under section 7 against the corporate guarantors, as the creditor is also the financial creditor qua corporate guarantor. The Hon'ble Supreme Court, vide its order dated 11th February, 2019, upheld the aforesaid order of on appeal.

5. Guarantors could be individuals (personal guarantors to CDs) or corporates (corporate guarantors to CDs). The mechanism for insolvency resolution of corporate guarantor, being CDs, is in place. Resolution of insolvency of personal guarantors complements corporate insolvency regime, particularly when there is high incidence of applications being filed in respect of preferential, fraudulent, undervalued and extortionate transactions. It also puts personal guarantors and corporate guarantors at the same level playing field. Absence of a regime for resolution of insolvency of personal guarantors distorts the choice of borrowers and lenders.

6. It is, however, important to note that personal guarantors are individuals. The insolvency resolution process under the Code provides certain minimum protection to them. Resolution of both corporate insolvency and individual insolvency have certain common objectives, such as, increase the supply of credit by increasing lenders' expected returns, discourage creditors from racing to be first to collect when debtor is in financial distress. Resolution of individual insolvency has few other additional objectives, such as, provision of partial consumption insurance for debtors, fresh start which incentivises the debtors to work after filing for bankruptcy. Thus, while operationalising insolvency resolution of personal guarantors, it is necessary to ensure that the individual has the minimum protection available under the law.

7. Following the practice of engaging with stakeholders in development of regulatory framework, a Working Group (WG) was constituted on 13th June, 2017, which was reconstituted on 4th May, 2018, for recommending the strategy and approach for implementation of the provisions of Part III of the Code. Based on the recommendations of the WG, followed by public consultation and advice of the Advisory Committee, and keeping in view the amendment to the Code enabling phased implementation of individual insolvency,

the Governing Board decided to implement insolvency resolution of personal guarantors to CDs in the first instance, particularly because it is complementary to CIRP. Further progress in this regard is discussed in another Board Note of the ensuing meeting.

8. Chapter III of Part III of the Code provides for an insolvency resolution process (IRP) in which the creditors enter into a repayment plan for the repayment of debts of the debtor. It is not a debt recovery process by one creditor, but a collective process where all creditors of a debtor sit across the table to negotiate a plan according to which all debts of the debtor are to be repaid.¹ However, a failure in the IRP may result in triggering of a bankruptcy process. The next logical steps therefore, is to notify rules and regulations for bankruptcy of personal guarantors to CDs.

Bankruptcy

9. There is a saying: ‘Bankruptcy is a creditor's remedy as well as debtor's right’. This very well summarises that a nation's legal system should have a bankruptcy law framework that is creditor-friendly in the ex-ante sense and debtor friendly in the ex-post sense.²

10. The Bankruptcy Law Reforms Committee noted the following as the goals of the provisions of Part III of the Code:

- “• *Providing a fair and orderly process for dealing with the financial affairs of insolvent individuals.*
- *Providing effective relief or release from the financial liabilities and obligations of the insolvent.*
- *Providing mechanisms that enable both debtor and creditor to participate with the least possible delay and expense.*
- *Providing the correct ex-ante incentives so that individuals are not able to unfairly strategise during the process of bankruptcy.”*

¹ The Report of the Bankruptcy Law Reforms Committee Report, Volume 1: Rationale and Design, (November 2015), Paragraph 3.2.1.

² Richard A. Posner, “Corporations, Secured and Unsecured Financing, Bankruptcy”, in Economic Analysis of Law, 2011.

11. Globally, bankruptcy laws in relation to individuals have been noted to be a contract between the debtor, the creditor and the society.³ The key driving concern for a society in a bankruptcy law is ameliorating the negative systemic effects of unregulated distressed debt.⁴ However, bankruptcy laws may also benefit the debtors and creditors involved in the process. For instance, from the debtor's standpoint, bankruptcy relieves the burden of debts and offers the prospect of rehabilitation. On the other hand, for a creditor, bankruptcy is a collection device designed to substitute an orderly collective procedure for a disorderly race in which creditors are free to pursue their claims individually.⁵

12. Additionally, a bankruptcy law occupies a prime position in the economic regulatory landscape of a country due to the sheer magnitude of people it affects. In India, large parts of the credit market consist of loans to individuals, and to small and medium enterprises (SMEs) which may be in the form of sole proprietorships.⁶ As per a report of the International Finance Corporation of the World Bank Group, "*Proprietorship is the most commonly adopted ownership structure (94.5 percent of all MSMEs)*" among SMEs⁷. Therefore, insolvency procedures for most SMEs will be covered by Part III of the Code.

Report of Working Group

13. The bankruptcy process, as provided in Chapters IV and V of Part III of the Code, involves realisation and distribution of the estate of the debtor. On failure of IRP, an application for bankruptcy may be made by a creditor individually or jointly with other creditors or by a debtor, in accordance with section 121 of the Code. The WG on individual insolvency deliberated on bankruptcy processes for personal guarantors to CDs and has submitted its second report on the subject, along with draft bankruptcy rules and the draft bankruptcy regulations. The report, along with draft rules and regulations for bankruptcy process, is placed at **Annexure A**. While the bankruptcy rules provide the process and forms

³ Insolvency Law and Practice, 'Report of the Insolvency Law Review Committee', Cmnd 8558 (1982), paragraph 192.

⁴ The World Bank, 'Report on Treatment of Insolvency of Natural Persons', (2013), Paragraph 77

⁵ *Ibid*, paragraph 78.

⁶ The Report of the Bankruptcy Law Reforms Committee Report, Volume I: Rationale and Design', (November 2015), paragraph 6.

⁷ The World Bank, IFC Research Study on 'Micro, Small and Medium Enterprise Finance in India, A Research Study on Needs, Gaps and Way Forward', (November 2012).

and forms of applications for initiating bankruptcy proceedings, the regulations provide the details of the bankruptcy procedure.

14. The WG reiterated that a phased implementation of individual insolvency and bankruptcy is the intention of legislature and a practical necessity and suggested that the provisions of the Code may first be notified for personal guarantors to CDs. The remaining provisions of Part III applicable to individuals with business and to individuals without business may be notified in subsequent phases. In the meantime, the efforts may be made to build capacity of the ecosystem for and prepare the citizens to use and benefit from individual insolvency regime, while ploughing back learning from insolvency of personal guarantors to individual insolvency in general.

15. The WG has made the following recommendations in respect of bankruptcy of personal guarantors to CDs:

- a. The application may be made in the prescribed form by the debtor or the creditor, along with a fee of five thousand rupees. The form may provide the details relating to the contract of guarantee and a disclosure to specify that the application has not been filed in respect of 'excluded debts'.
- b. Unlike CIRP, past auditors or accountants may not be disqualified from being appointed as a bankruptcy trustee. Such persons may know the accounts of the debtor better and may help build trust with the creditors. For appointment as a bankruptcy trustee, an insolvency professional (IP) must not be an associate of the debtor and should not represent any other stakeholder in the same bankruptcy process. An IP, who is a related party of CD or who has been appointed as a resolution professional or liquidator of such CD, may not be eligible to be a bankruptcy trustee. This disqualification should extend to the partners or directors of the insolvency professional entity in which the IP is a partner or director.
- c. The fee of the bankruptcy trustee may be decided by the committee of creditors (CoC). It may be advisable to allow flexibility in fixing the fee of the bankruptcy trustee instead of mandating a specific rate. A table similar to the one provided in regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

(Liquidation Regulations) may be provided in the bankruptcy regulations as well detailing a fee structure. The CoC may choose to rely on this for calculation of fee of the bankruptcy trustee.

- d. The bankruptcy trustee should provide regular reports to the Adjudicating Authority and the CoC. He shall provide:
 - i. a preliminary report within 90 days of the bankruptcy commencement date;
 - ii. a first progress report within 180 days of the bankruptcy commencement date;
 - iii. a second progress report within 270 days of the bankruptcy commencement date;
 - iv. subsequent progress reports within ten days from the end of every quarter, as may be required; and
 - v. a final report as provided in section 137 of the Code.
- e. The WG noted that the CoC comprises only financial creditors in CIRP. In the UK, a CoC in bankruptcy has a minimum of 3 and maximum of 5 creditors. The WG felt that it may not be advisable for the rules or regulations to put a cap on the number of creditors in the CoC, though it may not be efficient to have meetings and voting by all creditors in complex cases with multiple creditors. The WG suggested that the MCA may consider amending the Code to put a cap on the number of creditors in the CoC, if the need is felt, based on some experience after the provisions of Part III of the Code are notified.
- f. Section 135(2) of the Code provides that the voting share of creditors shall be determined by the bankruptcy trustee, under the regulations. However, section 24(6) of the Code provides that, in CIRP, the voting share of creditors in the CoC is determined based on the debt owed to them by the CD. The WG favoured the CIRP approach, that is, voting share based on the debt owed and recommended that the bankruptcy regulations may provide that the creditors shall have a voting share based on the amount of debt owed to them by the debtor.
- g. Section 172 of the Code allows the secured creditors to step outside the bankruptcy process and realise their security outside. However, they may choose to surrender their security to the bankruptcy trustee for general benefit of creditors too. The WG suggested that the bankruptcy regulations should provide that the voting share of

secured creditors shall only be for the unsecured part of their debt, if any, if they realise their security outside the bankruptcy process. A similar provision exists in the Code in sections 110, in relation to IRP.

- h. The WG recommends that, in order to reflect the threshold given in CIRP in section 21(8), threshold for approval of various decisions by creditors during bankruptcy may be fixed at fifty-one percent of their voting share. However, this may only apply to those decisions for which an approval threshold has not been provided in the Code.
- i. The WG recommends that the threshold value for personal ornaments in section 79(14)(c) may be fixed at five lakh rupees. The WG has proposed the same value, in this regard, in the insolvency rules.
- j. The WG noted that the purpose of section 79(14)(e) of the Code is to exempt a dwelling unit used as a consumption asset, necessary for the sustenance of the debtor and his family. Prescription of a uniform or single value for a dwelling unit may not be appropriate. Various factors may affect the value of a house which should be exempted, such as number of family members of the debtor, the area in which the house is, etc. The WG has, therefore, proposed an all-encompassing formula which considers the size of the debtor's family, minimum area required for each family member and the circle rate of the area. This has been proposed as a Schedule to the bankruptcy rules.
- k. On the lines of regulation 33 of the Liquidation Process Regulations, it has been recommended that assets in the estate shall be sold through auction. However, private sale may be permitted if- (i) the asset is perishable, (ii) value of asset is likely to deteriorate if the sale is delayed; or (iii) the selling price of the asset is higher than the reserve price of a failed auction. Further, a schedule, similar to Schedule I to the aforesaid regulations, may be provided in the bankruptcy regulations providing details of the manner of sale.
- l. The WG contemplated sale of the bankrupt's assets through auctions and private sale. It suggested that permission of the AA shall be taken by the bankruptcy trustee before any private sale of any immovable property of the bankrupt is made to the following persons: (i) a creditor of the bankrupt; (ii) a professional appointed by the bankruptcy

trustee; (iii) an associate of the bankrupt; (iv) the bankruptcy trustee; or (v) any company where the bankrupt or any of her creditors is a promoter. Further, if any private sale of movable property above Rs. 10 lakh is made to such persons, then prior permission should be taken from the AA.

- m. The WG recommended that the bankruptcy trustee shall not proceed with a sale and shall submit a report to the AA for appropriate orders, if he believes that there is any collusion amongst one or more of the following persons: (i) the buyers; (ii) the bankrupt; (iii) the creditors; (iv) associates of the bankrupt; (v) corporate debtor for whom the bankrupt has given a personal guarantee; or (vi) any related parties of such corporate debtor.

Approval sought

16. The Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018 came into force on 22nd October, 2018 laying down the process of making regulations and public consultation for the same. These Regulations require that for the purpose of making or amending any regulations, the IBBI shall place the draft of the proposed regulations, with the approval of the Governing Board, on its website seeking comments from the public for at least 21 days.

17. It is, therefore, proposed to put out a discussion paper, on the lines of this note enclosing Report of the Working Report along with draft Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 in public domain for comments/suggestions.

MARCH 2019

REPORT ON BANKRUPTCY PROCESS
PROPOSING RULES AND REGULATIONS FOR PERSONAL GUARANTORS
TO CORPORATE DEBTORS

WORKING GROUP ON INDIVIDUAL INSOLVENCY

PREFACE

The Insolvency and Bankruptcy Code, enacted in 2016, has reconceptualised the insolvency framework in India. The Code has established a creditor-in-control regime with strict timelines for insolvency processes of corporates. In relation to insolvency of individuals, the Code seeks to provide collective resolution for debts of the debtor, to enable an ‘earned start’ for the debtor and to achieve resolution through inexpensive and quick mechanisms. In the years since the Code’s enactment, the provisions regarding insolvency resolution and liquidation of corporates have been fully operationalised. The provisions relating to insolvency of individuals, encapsulated in Part III of the Code, are pending notification.

The present working group has been deliberating on the issues relating to insolvency and bankruptcy of individuals and drafting the subordinate legislation to enable operationalisation of Part III of the Code. In view of the differences in circumstances of various categories of individuals, the working group has deemed it prudent that the approach towards insolvency vary depending on such differences.

The working group has therefore, proposed that a separate set of rules and regulations be made for separate categories of individuals under Part III of the Code- (i) individuals who are personal guarantors to corporate debtors, (ii) individuals engaged in partnership or proprietorship firms, and (iii) individuals without businesses. Along with this distinction in treatment, the working group also recommends the view that the Code and the respective subordinate legislation for the three categories of individuals above may be implemented in phases.

The present working group has greatly benefited from the inputs and recommendations of its predecessor. The present working group submitted its report, along with draft rules and regulations for insolvency resolution process of individuals who are personal guarantors to corporate debtors, in March, 2019 to the Insolvency and Bankruptcy Board of India. The working group also commenced work on drafting rules and regulations for bankruptcy of individuals who are personal guarantors to corporate debtors

In this report, the working group has recommended draft rules and regulations for bankruptcy of personal guarantors to corporate debtors. The approach of these rules and regulations has been similar to the approach adopted for the liquidation process of corporate debtors under the Code. This is due to similarities in the underlying debt and economic exposure of personal guarantors to the corporates for whom they have given a guarantee. These rules and regulations are now submitted to the Insolvency and Bankruptcy Board of India, along with this report, for its valuable and due consideration.

Further, the working group intends to continue in its endeavour to suggest mechanisms to streamline the processes for insolvency and bankruptcy of the other categories of individuals under Part III of the Code. In relation to this, the working group aims to analyse existing jurisprudence in India and internationally; identify the merits of differentiated treatment of

different classes of individuals; and suggest mechanisms to ensure smooth functioning of the Code.

I am hopeful that the recommendations of the working group highlighted in this report will provide a further impetus to strengthen the bankruptcy framework for individuals in India and aid in ensuring effective implementing provisions of Part III of the Code.

[Name and Signature]

ACKNOWLEDGMENTS

The working group is submitting its report providing recommendations and subordinate legislation for bankruptcy of personal guarantors to corporate debtors. The working group greatly benefited from the inputs provided by all its members. The working group appreciates the support provided by the team from Vidhi Centre for Legal Policy comprising of Ms. Aishwarya Satija and Ms. Shreya Garg, in terms of legal research and drafting, which proved to be very useful to the working group.

The working group is grateful to the Insolvency and Bankruptcy Board of India for providing logistical support such as collating suggestions, facilitating discussions and providing administrative and technical support for the functioning of the working group.

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I. Background

1. Introduction

1.1. The Insolvency and Bankruptcy Code, 2016 (“**Code**”) was enacted with the aim of maximising the value of assets, promoting entrepreneurship, promoting availability of credit and balancing the interests of all stakeholders.¹ Part III of the Code provides a framework for insolvency and bankruptcy of partnership firms and individuals, including personal guarantors. However, this part of the Code has not been operationalised yet.

1.2. The provisions of Part III of the Code are aimed at providing debtors a chance at resolving their debts through a sound bankruptcy law.² The Bankruptcy Law Reforms Committee, while recommending the broad design of the Code, noted the following as the goals of these provisions:

- “• *Providing a fair and orderly process for dealing with the financial affairs of insolvent individuals.*
- *Providing effective relief or release from the financial liabilities and obligations of the insolvent.*
- *Providing mechanisms that enable both debtor and creditor to participate with the least possible delay and expense.*
- *Providing the correct ex-ante incentives so that individuals are not able to unfairly strategise during the process of bankruptcy.”*³

1.3. Globally, bankruptcy laws in relation to individuals have been noted to be a contract between the debtor, the creditor and the society.⁴ The key driving concern for a society in a bankruptcy law is ameliorating the negative systemic effects of unregulated distressed debt.⁵ However, bankruptcy laws may also benefit the debtors and creditors involved in the process. For instance, from the debtor’s standpoint, bankruptcy relieves her of the burden of her debts and offers the prospect of rehabilitation. On the other hand, for a creditor, bankruptcy is a

¹ Long title, Code.

² ‘The Report of the Bankruptcy Law Reforms Committee Report, Volume 1: Rationale and Design’, (November 2015), paragraph 6.2.

³ ‘The Report of the Bankruptcy Law Reforms Committee Report, Volume 1: Rationale and Design’, (November 2015), paragraph 6.

⁴ Insolvency Law and Practice, ‘Report of the Insolvency Law Review Committee’, Cmnd 8558 (1982), paragraph 192.

⁵ The World Bank, ‘Report on Treatment of Insolvency of Natural Persons’, (2013), Paragraph 77 <https://siteresources.worldbank.org/INTGILD/Resources/WBInsolvencyOfNaturalPersonsReport_01_11_13.pdf> last accessed 13 February 2019.

collection device designed to substitute an orderly collective procedure for a disorderly race in which creditors are free to pursue their claims individually.⁶

- 1.4. Additionally, a bankruptcy law occupies a prime position in the economic regulatory landscape of a country due to the sheer magnitude of people it affects. In India, large parts of the credit market consist of loans to individuals, and to small and medium enterprises (“SMEs”) which may be in the form of sole proprietorships.⁷ As per a report of the International Finance Corporation of the World Bank Group⁸, “*Proprietorship is the most commonly adopted ownership structure (94.5 percent of all MSMEs)*” among SMEs. Therefore, insolvency procedures for most SMEs will be covered by Part III of the Code.
- 1.5. Further, bankruptcy provisions become especially important in India due to the contribution SMEs have towards the economy. It has been noted that SMEs contribute to more than 45% of India’s industrial output, 40% of the country’s total exports and create 1.3 million jobs every year.⁹
- 1.6. In view of the above, the Insolvency and Bankruptcy Board of India (“IBBI”) constituted a working group¹⁰ to make recommendations for subordinate legislation for, and effective implementation of, Part III of the Code. This working group deliberated on various issues and prepared drafts of the subordinate legislation for Part III. However, before the working group had finished formulating its recommendations, it was reconstituted.
- 1.7. By an order dated 4 May 2018, the IBBI reconstituted a working group (“**Working Group**”), under the chairmanship of Mr. P.K. Malhotra, former Secretary to the Government of India in the Ministry of Law and Justice, to recommend the strategy and approach for implementation of the provisions of Part III of the Code. The order constituting the Working Group has been inserted as Annexure I to this report. In furtherance of its mandate, the Working Group deliberated upon relevant issues, by considering market practices and legal principles, including international practices. It also consolidated views and recommendations from various stakeholders.
- 1.8. Based on the above, the Working Group has prepared drafts for subordinate legislation for bankruptcy of personal guarantors in Part III of the Code and

⁶ *Ibid*, paragraph 78.

⁷ *The Report of the Bankruptcy Law Reforms Committee Report, Volume 1: Rationale and Design*, (November 2015), paragraph 6.

⁸ ‘*Micro, Small and Medium Enterprise Finance in India, A Research Study on Needs, Gaps and Way Forward*’, (November 2012).

⁹ *The Report of the Bankruptcy Law Reforms Committee Report, Volume 1: Rationale and Design*, (November 2015), paragraph 6.

¹⁰ IBBI Press Release, ‘*The Insolvency and Bankruptcy Board of India constitutes Working Group*’, (15 June 2017) < http://ibbi.gov.in/webadmin/pdf/press/2017/Jun/release_15June.pdf > last accessed 15 February 2019.

discussed them herein. Prior to this, the Working Group had already submitted a report, and drafts for subordinate legislation, on insolvency resolution process (“**IRP**”) of personal guarantors to corporate debtors under Part III of the Code. Additionally, the Working Group deliberated that it will continue to study the personal insolvency landscape and recommend subordinate legislation for individuals (other than personal guarantors to corporate debtors) and partnership firms in Part III of the Code.

2. Working process of the WG

- 2.1. The Working Group had its first meeting on 13th June, 2018. A sub-group¹¹, under the Chairmanship of Mr. Sumant Batra, was set up by the Working Group to examine drafts prepared by the previous working group and suggest drafts of subordinate legislation, for consideration of the reconstituted Working Group.
- 2.2. Thereafter, the Working Group met five times to discuss the draft rules and regulations for IRP of personal guarantors to corporate debtors. The Working Group submitted its report, along with draft rules and regulations, for IRP of personal guarantors to corporate debtors to the IBBI in October, 2018. In relation to bankruptcy of personal guarantors to corporate debtors, the Working Group met on 26th November, 2018. The Working Group has now finalised its recommendations for, and draft subordinate legislation on, bankruptcy of personal guarantors to corporate debtors under Part III of the Code.

3. Structure of the report

- 3.1. This report discusses key recommendations of the Working Group regarding bankruptcy process for personal guarantors to corporate debtors, under Part III of the Code. Part I of this report provides a brief background to bankruptcy of individuals and outlines the process of insolvency and bankruptcy under Part III of the Code. Part II of this report discusses general recommendations of the Working Group, which are regarding implementation and operation of the provisions for bankruptcy in Part III of the Code. Part III of this report discusses specific recommendations of the Working Group, which are the key recommendations for subordinate legislation for bankruptcy of personal guarantors to corporate debtors in Part III of the Code. These recommendations provide broad principles for design of the subordinate legislation.

¹¹ This sub-group comprised of *Mr. Sumant Batra* (Kesar Dass B. and Associates), *Dr. Shylendra* (Institute of Rural Management Anand), *Ms. Aishwarya Satija* (Vidhi Centre for Legal Policy) and representatives from IBBI.

3.2. This report contains three annexures. Annexure I is regarding composition of the Working Group. Annexure II provides the draft Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“**Bankruptcy Rules**”) proposed by the Working Group. Annexure III provides Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (“**Bankruptcy Regulations**”) proposed by the Working Group.

4. Outline of Part III of the Code

Reforms made to the current law

4.1. Prior to enactment of the Code, the two key legislations which addressed the insolvency and bankruptcy of individuals and partnership firms were the Provincial Insolvency Act, 1920 (“**Provincial Act**”) and the Presidency-Towns Insolvency Act, 1909 (“**Presidency Act**”). The Code was passed with the aim of replacing these legislations¹² and providing a consolidated statute for insolvency of such persons, by enabling collective and timely resolution and maximising value to creditors.

4.2. The process provided in the Code is significantly different from the framework provided in the Provincial and Presidency Acts. While the Presidency Act applies to Chennai, Kolkata and Mumbai¹³, the Provincial Act applies to the rest of India¹⁴. Some of the key changes in the processes under the Code, compared to those under the Presidential and Provincial Acts, are:

- (i) *Objective trigger*: The Provincial and Presidency Acts allow a creditor to file for the insolvency of a debtor by proving that aggregate debts owed by the debtor are above 500 rupees and by proving that the debtor had committed an ‘act of insolvency’.¹⁵ Proving acts of insolvency has been noted to be a historical criterion for initiation of insolvency proceedings as it relates to wrongful acts by the debtor instead of inability to repay debts.¹⁶ The Code dispenses with this requirement of proving acts of insolvency and

¹² Section 243, Code.

¹³ Section 3, Presidency Act.

¹⁴ Section 1(2), Provincial Act.

¹⁵ Sections 6, 7, 9 and 10 of the Provincial Act, Sections 9, 12 and 13 of the Presidency Act. Proving an act of insolvency is a subjective criterion and involves establishing that the debtor has committed acts, such as being imprisoned in execution of a decree of a court for payment of money; giving notice to creditors regarding suspension of payment of debts; transferring property with the intent to delay creditors; etc.

¹⁶ The World Bank, ‘Report on Treatment of Insolvency of Natural Persons’, (2013), Paragraph 63 <https://siteresources.worldbank.org/INTGILD/Resources/WBInsolvencyOfNaturalPersonsReport_01_11_13.pdf> last accessed 13 February 2019.

allows initiation of insolvency, by the debtor or the creditor, on proving a default in repayment of debt by the debtor.¹⁷

- (ii) *Automatic stay*: A stay on suits, proceedings and other acts regarding the debtor enables the debtor to solely concentrate on the resolution of insolvency. The Code thus provides for an automatic moratorium as soon as insolvency proceedings are admitted against the debtor.¹⁸ This is distinct from the Provincial and Presidency Acts, which leave providing such stay at the discretion of the court.¹⁹
- (iii) *Linear process*: Under the Provincial and Presidency Acts, there is no preliminary stage to enable negotiation of a plan between the creditors and the debtor. On application under these acts, the immediate process which applies is realisation and distribution of the assets of the debtor. In case the creditors arrive at a plan with the debtor, then such plan could be approved resulting in annulment of insolvency.²⁰ On the other hand, the Code provides a linear process where on application for insolvency, an IRP takes place to enable the debtor and creditors to arrive at a repayment plan. A bankruptcy process may then be triggered to liquidate the assets of the debtor in case the IRP fails.²¹
- (iv) *Easy discharge*: Events of insolvency for individuals involve stigma and various disqualifications (such as not being a public servant, not being elected or sit or vote as a member of any local authority, etc.²²) which may affect the debtor's life negatively. Therefore, discharging the debtor appropriately from the state of insolvency is key to rehabilitating the debtor in the society. Obtaining an order of discharge under the Provincial and Presidency Acts is difficult and may be refused by the court based on various grounds, such as omission to keep proper books, continuing trade after insolvency, etc.²³

As opposed to this, the Code provides for easier and objective methods of discharge. In case of IRP, a discharge is obtained as per the repayment plan and may be either before or after complete implementation of the repayment

¹⁷ Section 78, 94 and 95, Code.

¹⁸ Section 101, Code. Please note that the Code also provides for interim-moratorium on filing of an application for initiation of an insolvency resolution process, as per Section 96.

¹⁹ Section 18, Presidency Act; Section 29, Provincial Act.

²⁰ Section 29 and 30, Presidency Act; Section 38 and 39, Provincial Act.

²¹ Section 121, Code.

²² Section 103A, Presidency Act; Section 73, Provincial Act.

²³ Section 39, Presidency Act; Section 42, Provincial Act.

plan.²⁴ In bankruptcy, a discharge may be obtained once the assets of the debtor are completely distributed to all the creditors.²⁵ However, if this has not been done within a year of commencement of bankruptcy, the debtor shall automatically be discharged on expiry of such year.²⁶

- (v) *Payment waterfall*: The Code has revised the payment waterfall which provides priority for distribution to creditors, compared to the Provincial and Presidency Acts. The priority of government dues has been lowered, high priority has been given to workmen dues and employee wages without a cap on such dues or wages, etc.²⁷

4.3. In addition to the above, it may be beneficial to describe the various processes regarding insolvency provided under the Code. Part III of the Code provides three broad processes for insolvency of partnership firms and individuals (including personal guarantors), as discussed below. Along with this, the jurisdiction of the Adjudicating Authority under Part III of the Code has also been discussed below.

Fresh start

4.4. Chapter II of Part III of the Code provides a fresh start process for debtors with low income and assets. The debtor may apply personally or through a resolution professional to discharge her debt if she meets the eligibility criteria, as provided in Section 80 of the Code. If the application is admitted, the resolution professional examines objections that any creditor may have to discharge of the debtor's debts. Based on this examination, the resolution professional may submit final list of debts to be discharged to the Adjudicating Authority.²⁸ Pursuant to this, the Adjudicating Authority may either pass a discharge order for the debts of the debtor²⁹ or pass an order revoking the admission of the fresh start application³⁰. The latter may be done in the event of change in financial circumstances of the debtor, non-compliance with restrictions imposed on the debtor or due to mala-fide behaviour of the debtor.³¹

Insolvency resolution process

²⁴ Section 119(1), Code.

²⁵ Section 138(1)(b), Code.

²⁶ Section 138(1)(a), Code.

²⁷ Section 178, Code.

²⁸ Section 86, Code.

²⁹ Section 92, Code. This order may be along with any interest, penalty or sums owed under contract from date of application till the date of the discharge order.

³⁰ Section 91, Code.

³¹ Section 91(1), Code.

4.5. Chapter III of Part III of the Code provides for an IRP in which the creditors enter into a repayment plan for the repayment of debts of the debtor. IRP is a process to repay the debt and restructure the business as per a ‘repayment plan’. It is not a debt recovery process by one creditor, but a collective process where all creditors of a debtor sit across the table to negotiate a plan according to which all debts of the debtor are to be repaid.³² However, a failure in the IRP may result in triggering of a bankruptcy process, as is discussed below in paragraph 8.2 of this report.

4.6. The Working Group has already prepared drafts of the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“**IRP Rules**”) and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (“**IRP Regulations**”). While the IRP Rules provide the process and forms for application for initiating IRP, the IRP Regulations explain the details of the procedure for the IRP. A report on IRP for personal guarantors to corporate debtors was also prepared by the Working Group and submitted to the IBBI.

Bankruptcy process

4.7. The bankruptcy process, as provided in Chapters IV and V of Part III of the Code, involves realization and distribution of the estate of the debtor. On failure of an IRP, an application for bankruptcy may be made by the debtor or the creditor in accordance with Section 121 of the Code. The Working Group has prepared draft Bankruptcy Rules and the draft Bankruptcy Regulations. These are provided as Annexures II and III of this report, respectively.

4.8. While the Bankruptcy Rules provide the process and forms of applications for initiating bankruptcy proceedings, the Bankruptcy Regulations provide the details of the bankruptcy process. This report discusses the key recommendations of the Working Group in relation to bankruptcy of personal guarantors under the Code.

Adjudicating Authority

4.9. Section 179 of the Code provides that the Adjudicating Authority for individuals and partnership firms is the Debt Recovery Tribunal (“**DRT**”). However, for personal guarantors, both the National Companies Law Tribunal (“**NCLT**”) and DRT have jurisdiction in different scenarios.

4.10. Section 60(2) lays down that if a corporate insolvency resolution process (“**CIRP**”) or liquidation process is ongoing against a corporate debtor, then an application for IRP or bankruptcy of the personal guarantor to the corporate debtor shall be filed with the NCLT in which the CIRP or liquidation is going on. Therefore, the

³² The Report of the Bankruptcy Law Reforms Committee Report, Volume 1: Rationale and Design, (November 2015), Paragraph 3.2.1.

Adjudicating Authority for personal guarantors will be the NCLT if a parallel CIRP or liquidation proceeding is going on for the corporate for whom the guarantee is given.

- 4.11. The same applies when any insolvency or bankruptcy proceeding is going on against the personal guarantor in a court or tribunal and an IRP or liquidation is initiated against the corporate debtor.³³ For example, if 'X' is an individual going through an IRP in a DRT and X has given a personal guarantee for a debt owed by company 'Y', then if CIRP is initiated against Y in an NCLT it would have the effect of transferring the proceedings going on against X in the DRT to the NCLT.

³³ Section 60(3), Code.

II. General recommendations of the Working Group

5. Separate rules and regulations

5.1. At the time of enactment of the Code, Part III of the Code was envisaged to apply to partnership firms and individuals, including individuals who are personal guarantors. However, an amendment was made to Section 2 of the Code to distinguish applicability of Part III into three categories of persons or entities: (i) personal guarantors to corporate debtors; (ii) partnership firms and proprietorship firms (“**individuals with business**”); and (iii) other individuals (“**individuals without business**”).³⁴ **The Working Group discussed that this amendment indicates that these three categories of entities have distinct peculiarities, characteristics and dynamics. It was noted that though involvement of individuals is a common factor in these categories, they may require slightly distinct treatment and processes in insolvency.**

5.2. The Working Group noted that giving personal guarantees for loans taken by corporations is an especially prevalent practice in India. A personal guarantee is a contract whereby an individual becomes the surety for a loan taken by a company or a limited liability partnership.³⁵ As per Section 128 of Indian Contract Act, 1872, liability of a personal guarantor is co-extensive with that of principal debtor (here, corporate debtor), unless the contract provides otherwise. This means that if the principal debtor defaults in repayment of debt to the creditor, the creditor may choose to go after the personal guarantor for repayment of her debt.³⁶ Thus, insolvency proceedings of a corporate debtor and its personal guarantor will be closely linked to each other.

5.3. The Working Group noted that the parliament was cognizant of this link between the two insolvency proceedings and has, thus, provided a common forum for these proceedings in Section 60 (refer to paragraph 4.9-4.11 above). It was however discussed that merely having a common forum may not be sufficient to coordinate parallel proceedings of the corporate debtor and its personal guarantor. This has been further discussed in paragraph 7 below. **The Working Group came to the conclusion that it may be essential to draw links between insolvency proceedings of a personal guarantor and its corporate debtor. It was agreed that this can be achieved through subordinate legislation. Consequently, it shall be more efficient to have a separate set of rules and regulations which are only applicable to proceedings regarding personal guarantors under Part III**

³⁴ Paragraph 2, Insolvency and Bankruptcy (Amendment) Act, 2018.

³⁵ Section 55(22), Code.

³⁶ Pollock and Mulla, ‘*The Indian Contract and Specific Relief Act*’, (2012) ed. 14 Vol. II, p. 1383.

of the Code. As stated above, the recommendations discussed in this report are related to bankruptcy of personal guarantors to corporate debtors. Recommendations on insolvency and bankruptcy procedures for other individuals have not been discussed in this report.

5.4. Further, the Working Group noted that the conditions and factors involved in the insolvency procedures of individuals with business are likely to be different from individuals without business. Individuals with business are likely to behave in a way consistent with the classical economic ideals on which business insolvency systems are founded.³⁷ On the other hand, behavior of individuals without business interest is expected to be somewhat informal.³⁸

5.5. It was noted that some jurisdictions have simpler procedures for insolvency of individuals without business. Such debtors are often known as ‘consumer debtors’, and it generally means debtors who are not pursuing business and whose debts will mostly be borne out of consumption of goods and services.³⁹ For example, the United Kingdom (“UK”) recently introduced an individual voluntary arrangement protocol to provide a straightforward reorganization procedure for consumer debtors.⁴⁰ In the United States (“US”), there is a separate law for consumer debtors which provides full insolvency procedures for them, with a specific emphasis on counselling and rehabilitation.⁴¹ Counselling in the US, and in laws in other jurisdictions, for consumer debtors is focused on equipping debtors with adequate skills for budgeting and managing debts.⁴²

5.6. The Working Group agreed that simpler procedures for insolvency and bankruptcy of individuals without business may be thought of. In this regard, it may be beneficial to contemplate if any out of court mechanisms for settling debt, such as mediation, may be suitable. The Working Group agreed that the way forward should be to develop a framework for insolvency of individuals without business. This framework may include lesser involvement of the

³⁷ Iain Ramsay, ‘*Personal Insolvency in the 21st Century, A Comparative Analysis of the US and Europe*’, (2017), p.81.

³⁸ *Ibid.*

³⁹ The World Bank, ‘*Report on Treatment of Insolvency of Natural Persons*’, (2013), Paragraph 147. <https://siteresources.worldbank.org/INTGILD/Resources/WBInsolvencyOfNaturalPersonsReport_01_11_13.pdf> last accessed 13 February 2019.

⁴⁰ The Straightforward Consumer IVA Protocol 2016 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644976/IVA_Protocol_2016.pdf> last accessed 14 February 2019.

⁴¹ The Bankruptcy Abuse Prevention and Consumer Protection Act, 2005.

⁴² The World Bank, ‘*Report on Treatment of Insolvency of Natural Persons*’, (2013), Paragraph 147. <https://siteresources.worldbank.org/INTGILD/Resources/WBInsolvencyOfNaturalPersonsReport_01_11_13.pdf> last accessed 13 February 2019.

Adjudicating Authority, lesser process costs, and more rehabilitative assistance for such debtors.

5.7. Based on the above, the Working Group noted that it may be beneficial to have different procedures and frameworks for individuals with business and those without business under Part III of the Code. It was concluded that in personal insolvency, one size may not fit all. Therefore, it shall be appropriate to have separate set of rules and regulations for personal guarantors to corporate debtors, for individuals with business, and for individuals without business.

6. Notification in phases

6.1. Part III of the Code applies to all individuals- who may be either personal guarantors, or engaged in business, or not engaged in any business. The Working Group noted that in a populous country like India, implementation of Part III may pose significant administrative burden on the Adjudicating Authority. DRTs are the Adjudicating Authority for Part III, unless Section 60(2) or (3) of the Code applies. It has been noted that DRTs in India are overburdened and have a large number of pending cases.⁴³ Since time is of the essence in insolvency proceedings, efficient disposal of cases may be vital for the Code to be effective.

6.2. The Working Group agreed that to ensure efficient implementation of the provisions of Part III of the Code, it may be implemented in parts. In this regard, the provisions of the Code may first be notified for personal guarantors to corporate debtors.

6.3. The remaining provisions of Part III applying to individuals with business and to individuals without business may be notified in subsequent phases. During this time, the government may consider undertaking capacity building and training exercises for DRTs to enable smooth implementation.

7. Linking proceedings with corporate debtor

7.1. The Working group noted that proceedings related to the personal guarantor and the corporate debtor are related to each other, as the debt pursuant to the guarantee will be common for both of them. It was discussed that merely having a common forum may not be sufficient to coordinate parallel proceedings of the corporate debtor and its personal guarantor. It was, therefore, agreed that certain links may be built in to the regulatory processes for the corporate debtor's and the personal

⁴³ Prasanth V Regy and Shubho Roy, '*Understanding Judicial Delays in Debt Tribunals*', (2 May 2017) <https://www.nipfp.org.in/media/medialibrary/2017/05/WP_2017_195.pdf> last accessed 14 February 2019.

guarantor's proceedings. The Working Group has suggested various provisions for this in the Bankruptcy Regulations. For example, a bankruptcy trustee can apply to the Adjudicating Authority if the interim resolution professional, resolution professional or liquidator of the corporate debtor, as the case may be, does not cooperate with her.

- 7.2. Other provisions, such as service of copy of application filed for initiating bankruptcy against personal guarantor to the corporate debtor, eligibility of the bankruptcy trustee being based on relationship with the corporate debtor, etc., have also been proposed in the Bankruptcy Regulations. **The Working Group agreed that provisions may be made in subordinate legislation to Part II of the Code to provide procedural links, and cooperation by insolvency professionals, in proceedings of the corporate debtor and its personal guarantor under the Code.**

III. Specific recommendations of the Working Group

8. Application for bankruptcy

Application forms and fee

8.1. Unlike liquidation under the Code, a bankruptcy process may only be initiated through application. A bankruptcy process does not follow failure of an IRP automatically but only makes it possible for either the debtor or creditor to make a separate application for bankruptcy. This is to enable greater effort at the possibility of voluntary negotiations such that personal assets of the debtor remain with her to the extent possible.

8.2. An application for bankruptcy may be filed within three months from an order of the Adjudicating Authority with respect to the debtor- (a) rejecting an application for IRP if the resolution professional finds that the IRP application was filed with the intent to defraud the creditors or the resolution professional; (b) rejecting a repayment plan; or (c) stating that an approved repayment plan has not been completed.⁴⁴ Such application may be filed by the debtor⁴⁵ or the creditor⁴⁶.

8.3. The Working Group deliberated on the forms to be provided for applications filed by the debtor or the creditor in bankruptcy. Such forms have been proposed by the Working Group in the Bankruptcy Rules. The Working Group also agreed that 5000 Rupees be recommended as the application fee, in this regard.

Key contents

8.4. The Working Group designed the forms to include all the relevant financial information of the debtor which may be required for initiating bankruptcy. Some key contents proposed in the forms, which may not merely relate to identification of the debtor or to her financial information, have been discussed here.

8.5. As mentioned above, the proceedings of a personal guarantor are related to those of the corporate debtor for whom the guarantee has been given. **While deliberating on the application forms, it was decided by the Working Group that details relating to the contract of guarantee must also be included in such forms. The Working Group further agreed that a copy of the application filed for bankruptcy of a personal guarantor should also be sent to the corporate debtor (for whom the guarantee has been given by the debtor).**

⁴⁴ Section 121, Code.

⁴⁵ Section 122, Code.

⁴⁶ Section 123, Code.

8.6. The Working Group also contemplated on certain disclosures that should be made by the debtor in the application forms related to excluded debt and excluded assets. Section 79(15)(e) of the Code defines certain debts like student loans, liability to pay damages, liability to pay maintenance, etc. as ‘excluded debts’. The Working Group noted that such a concept of excluded debt is also present in other jurisdictions like the US⁴⁷ and the UK⁴⁸. These are essentially debts which may not be discharged or restructured pursuant to an insolvency or a bankruptcy process.

8.7. An application for IRP may not be initiated by the debtor in relation to default on repayment of debts falling within ‘excluded debts’.⁴⁹ Such debts are also not discharged after bankruptcy, as per Section 139(d) of the Code. **It was discussed by the Working Group that the application forms should contain a disclosure to specify that the application has not been filed in respect of ‘excluded debts’. Therefore, this has been recommended to be included in the application forms in the Bankruptcy Rules.**

8.8. The Working Group also discussed if the applicant should have the onus of disclosing if the debtor’s assets fall within the scope of ‘excluded assets’. Section 79(14) of the Code defines certain assets as ‘excluded assets’, such as unencumbered life insurance policy, unencumbered furniture or household equipment, etc. Such assets are excluded from the bankruptcy estate and may not be sold or realised as part of the bankruptcy process.⁵⁰ The Working Group noted that having certain excluded assets is a key concern in personal insolvency. This has been discussed in detail in paragraph 11 of this report below.

8.9. **Based on the above, the Working Group decided that the forms given in the Bankruptcy Rules should enable the applicant to disclose if assets mentioned in the forms fall within the scope of ‘excluded assets’, defined in Section 79(14) of the Code.**

9. Bankruptcy trustee

Eligibility for appointment

9.1. On filing of an application to initiate bankruptcy, an interim-moratorium is triggered to put a stay on any ongoing legal action against property or debt of the debtor.⁵¹ Before admitting the application, the appointment of a bankruptcy trustee

⁴⁷ 11 US Code Section 523.

⁴⁸ Section 281, Insolvency Act, 1986.

⁴⁹ Section 94(3), Code.

⁵⁰ Section 155(2)(a), Code.

⁵¹ Section 124, Code.

is confirmed by the Adjudicating Authority.⁵² In relation to this, an insolvency professional may be proposed to be appointed as the bankruptcy trustee by the applicant.⁵³ An insolvency professional may be nominated by IBBI in the alternate.⁵⁴

9.2. The Working Group discussed the criteria for eligibility of a bankruptcy trustee at length. **It was discussed that unlike corporate insolvency⁵⁵, past auditors or accountants of the debtor need not be disqualified from being appointed as a bankruptcy trustee.** The Working Group noted that such persons may know the accounts of the debtor better and may help build trust with the debtor.

9.3. **Further, the Working Group discussed that to be appointed as a bankruptcy trustee, an insolvency professional must not be an associate⁵⁶ of the debtor and should not represent any other stakeholder in the same bankruptcy process. The Working Group also concluded that such disqualifications should extend to the partners or directors of the insolvency professional entity in which the insolvency professional works.** Such disqualifications have been provided to ensure that there is no bias or collusion during the process. It was also discussed that similar disqualifications have been provided for appointment as a resolution professional⁵⁷ in CIRP and as a liquidator⁵⁸ in liquidation.

9.4. Additionally, the Working Group agreed that qualifications of the bankruptcy trustee must be linked to her relation with the corporate debtor, for whom the debtor has given a guarantee. Since the proceedings of a guarantor and the principal debtor will be connected, this was deemed essential by the Working Group. **The Working Group, therefore, concluded that an insolvency professional, who is a related party of such corporate debtor⁵⁹ or who has been appointed as a resolution professional or liquidator of such corporate debtor, shall not be eligible to be a bankruptcy trustee. These disqualifications shall extend to the partners or directors of the insolvency professional entity in which the insolvency professional works.**

⁵² Section 125 and 126, Code.

⁵³ Section 125(1), Code.

⁵⁴ Section 125(3) and (4), Code.

⁵⁵ Regulation 3, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”).

⁵⁶ As defined in Section 79(2), Code.

⁵⁷ Regulation 3, CIRP Regulations.

⁵⁸ Regulation 3, Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Liquidation Regulations**”).

⁵⁹ As defined in Section 5(24), Code.

Consent for appointment

9.5. Provisions of Part II of the Code were recently amended⁶⁰ to mandate taking consent from insolvency professionals prior to their appointment under the Code, in line with the recommendation of the Insolvency Law Committee⁶¹. Part III of the Code currently does not mandate taking consent of insolvency professionals before being appointed as a resolution professional or bankruptcy trustee, as the case may be.

9.6. Other jurisdictions, such as UK and Singapore, also have provisions requiring consent of an insolvency professional for appointment. For instance, the appointment of a bankruptcy trustee in UK only takes effect once she accepts such appointment.⁶² In Singapore, a person appointed as a bankruptcy trustee⁶³ or as a liquidator⁶⁴ has to provide consent on appointment. The Working Group noted that providing such consent may give autonomy to insolvency professionals to choose the assignments they want to take up. Further, it may also keep a check on them being overburdened and enable them to give sufficient time to each assignment.

9.7. The Working Group, therefore, concluded that a requirement to obtain consent for appointment as a bankruptcy trustee should be provided in the subordinate legislation. A disclosure regarding consent (and other qualifications) of the insolvency professional for appointment has, thus, been recommended to be included in the application form in the Bankruptcy Rules. This will allow insolvency professionals who are suggested by the applicant to disclose their consent. Additionally, the Bankruptcy Regulations have a form for such consent (and other disclosures) by an insolvency professional, which may be utilised when an insolvency professional is not suggested by the applicant.

Fees of bankruptcy trustee

9.8. Section 144(1) of the Code provides that the fee to be charged by bankruptcy trustee, in proportion to the estate in bankruptcy, shall be determined in the manner specified in regulations. **Pursuant to this, the Working Group contemplated that the fee of the bankruptcy trustee may be decided by the committee of creditors. It was noted that it may be beneficial to have some flexibility in calculating the fee of the bankruptcy trustee instead of mandating a specific rate.**

⁶⁰ Paragraph 16, 20 and 26, Insolvency and Bankruptcy (Second Amendment) Act, 2018.

⁶¹ Ministry of Corporate Affairs, Government of India, *Report of the Insolvency Law Committee*, (March 2018), Paragraph 12, < https://ibbi.gov.in/uploads/resources/ILRReport2603_03042018.pdf > last accessed 13 February 2019.

⁶² Section 292(4), Insolvency Act 1986.

⁶³ Section 34 and 41(3A), Bankruptcy Act, 1995.

⁶⁴ Section 11(4), Companies Act, 1967.

9.9. However, the Working Group discussed that it may be appropriate to provide some guidance to the committee of creditors for calculation of such fee. In this regard, it was decided to provide a table, to guide payment to the bankruptcy trustee, based on amount of assets realised and distributed. **The Working Group concluded that a table similar to the one provided in Regulation 4(3) of the Liquidation Regulations be provided in the Bankruptcy Regulations. It was noted that the committee of creditors may choose to rely on this for calculation of fee of the bankruptcy trustee.**

Reporting requirements

9.10. The Working Group discussed that a bankruptcy trustee performs key functions involved in the bankruptcy process as she is responsible for investigating affairs of the bankrupt, and for realising and distributing the estate of the bankrupt.⁶⁵ It was, thus, felt appropriate that certain safeguards be built into the regulations to ensure that there is sufficient supervision of the bankruptcy trustee.

9.11. **The Working Group decided that the bankruptcy trustee should provide regular reports to the Adjudicating Authority and the committee of creditors. It was agreed that the bankruptcy trustee shall provide:**

- (i) a preliminary report within 90 days of the bankruptcy commencement date;
- (ii) a first progress report within 180 days of the bankruptcy commencement date;
- (iii) a second progress report within 270 days of the bankruptcy commencement date;
- (iv) subsequent progress reports within ten days from the end of every quarter, as may be required; and
- (v) a final report as provided in Section 137 of the Code.

9.12. **The Working Group also noted that such reports shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits a person to access them.**

10. Committee of Creditors

Creditors within the committee

⁶⁵ Section 149, Code.

- 10.1. The Code uses both the terms ‘committee of creditors’⁶⁶ and ‘list of creditors’⁶⁷ in Chapters IV and V of Part III of the Code. Both these terms have been used to refer to the creditors whose claims have been admitted in the bankruptcy process. There is no cap on the number or value of creditors within the committee of creditors in the bankruptcy process. Section 135(4) of the Code provides that all the creditors whose claims have been admitted are entitled to vote, unless they are associates of the debtor.
- 10.2. The Working Group noted that in CIRP, there is essentially a cap on the committee of creditors as only financial creditors form part of the committee.⁶⁸ It also noted that in UK, a committee of creditors in bankruptcy has a minimum of 3 and maximum of 5 creditors.⁶⁹ **In this regard, the Working Group noted that it may not be suitable for the rules or regulations to put a cap on the creditors within the committee of creditors. However, it was also discussed that in complex cases with multiple creditors, it may not be efficient to have meetings and voting by all creditors. The Working Group, thus, decided to recommend that the Central Government may consider amending the Code to put a cap on the number of creditors within the committee. This may be contemplated by the Central Government, if the need is felt, based on some experience after the provisions of Part III of the Code have been notified.**
- 10.3. In addition to the above, the Working Group noted that creditors who are associates of the debtor are not permitted to vote as per Section 133(4)(b) of the Code. Associates of the debtor are persons included in Section 79(2). In this regard, the rules are to prescribe relatives who would be covered under the definition of ‘associates of the debtor’.⁷⁰ **The Working Group proposed that the Bankruptcy Rules provide that the relatives defined in the explanation to Section 5(24A) of the Code, shall be the relatives for the purposes of explanation (ii) to Section 79(2).**

Meetings of creditors

- 10.4. The creditors may vote on various resolutions in the meetings of creditors. Section 133 and 134 of the Code provide details for summoning and conducting of the meetings of creditors. **The Working Group decided that in order to ease communication for meetings of creditors, the Bankruptcy Regulations shall allow service of notice for such meetings through electronic means, such as through e-mail. This is also allowed for providing notice to creditors for**

⁶⁶ For example, Sections 145, 153, 175 of the Code.

⁶⁷ For example, Sections 107, 108, 135 of the Code.

⁶⁸ Section 21(2), Code.

⁶⁹ Para 6.150, Insolvency Rules, 1986.

⁷⁰ Explanation (ii) to Section 79(2), Code.

meetings under CIRP.⁷¹ It was also discussed that the notice period for meetings of creditors may be given in such time as is decided by the creditors. However, such notice period should not be less than forty-eight hours prior to the proposed meeting to enable sufficient notice to all creditors.

- 10.5. For the purposes of calling meetings of creditors, Section 134(1) of the Code provides that the bankruptcy trustee shall be the convener. However, the Working Group noted that the bankruptcy trustee should also be the chairperson of the meetings and not just the convener. This is to enable the bankruptcy trustee to lead the meetings and not just organise them. It was noted that in UK, a bankruptcy trustee is the chairperson for meetings of the committee of creditors.⁷² In CIRP also, the resolution professional is the chairperson for the meetings of committee of creditors.⁷³ **The Working Group therefore agreed to provide, in the Bankruptcy Regulations, that the bankruptcy trustee shall be the chairperson for meetings of creditors.**

Voting share and threshold

- 10.6. Section 135(4) of the Code provides that the voting share of creditors shall be determined by the bankruptcy trustee, as per the regulations. The Working Group discussed that Section 24(6) of the Code provides that, in CIRP, the voting share of creditors in the committee of creditors is determined based on the debt owed to them by the corporate debtor. **The Working Group discussed that this principle, of voting share being based on the debt owed, may be made consistent in all processes under the Code for voting by creditors. It was, therefore, decided that the Bankruptcy Regulations will provide that the creditors shall have a voting share based on the amount of debt owed to them by the debtor.**
- 10.7. In case of secured creditors, Section 172 of the Code allows them to step outside the bankruptcy process and realise their security outside the process. However, they may choose to surrender their security to the bankruptcy trustee for general benefit of creditors too. **In this regard, the Working Group discussed that the Bankruptcy Regulations should provide that the voting share of secured creditors shall only be for the unsecured part of their debt, if any, if they realise their security outside the bankruptcy process. A similar provision has been provided in the Code in Sections 110, in relation to IRP.**
- 10.8. The Working group also discussed voting thresholds under the Code. Section 145(2) of the Code provides that replacement of a bankruptcy trustee shall require approval of seventy-five percent of voting share of creditors. However, for other

⁷¹ Regulation 20, CIRP Regulations.

⁷² Paragraph 6.154, Insolvency Rules, 1986.

⁷³ Regulation 24(1), CIRP Regulations.

decisions of the creditors, an approval threshold during bankruptcy has not been provided in the Code. **The Working Group discussed that, in order to reflect the threshold given in CIRP in Section 21(8), threshold for approval of various decisions by creditors during bankruptcy may be fixed at fifty-one percent of their voting share. However, this will only apply to those decisions for which an approval threshold has not been provided in the Code.**

Manner of voting

10.9. Unlike IRP, there is no repayment plan to vote on in bankruptcy. Section 153 of the Code provides various acts for which the bankruptcy trustee has to take approval of creditors, for instance carrying on business of the debtor, mortgaging property of the debtor to raise money etc. Section 135(1) of the Code provides the right to vote to creditors and their proxies, if any. **In this regard, the Working Group has provided a form in the Bankruptcy Regulations for nomination of a proxy by a creditor.**

10.10. The Working Group also discussed the manner of voting in meetings of creditors. It was noted that the CIRP Regulations were recently amended⁷⁴ to provide that voting by committee of creditors shall be done at physical meetings.⁷⁵ However, if there are members who are not present in such meeting, they may vote electronically.⁷⁶ Prior to this, the CIRP Regulations provided that voting shall take place in physical meetings *only* if all the members of the committee of creditors are present, otherwise the voting shall be electronically. This amendment was made to provide flexibility in voting since having all members of the committee of creditors present may not be feasible. **The Working Group agreed that similar provisions for voting through both physical meetings and electronic means, as is provided in the CIRP Regulations, shall be provided in the Bankruptcy Regulations.**

11. Excluded assets

11.1. The estate of the debtor vests with the bankruptcy trustee from the date of her appointment, as provided in Section 154(1) of the Code. This estate comprises of the assets of the debtor as on the bankruptcy commencement date.⁷⁷ However, as discussed above in paragraph 8.8 of this report, certain assets of the debtor are not included in the bankruptcy estate. Section 155(2)(a) of the Code provides that ‘excluded assets’ shall not form part of the bankruptcy estate.

⁷⁴ Paragraph 15 and 16, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)(Third Amendment) Regulations, 2018.

⁷⁵ Regulation 25, CIRP Regulations.

⁷⁶ *Ibid.*

⁷⁷ Section 155, Code.

- 11.2. Section 79(14) of the Code defines certain assets as excluded assets. These are assets which are deemed necessary for the survival of the debtor during and after insolvency or bankruptcy proceedings. An important goal of personal insolvency is rehabilitating honest debtors in society and avoiding repeat bankruptcies.⁷⁸ In order for a debtor to start afresh after the bankruptcy process, she should have access to assets to live a life with dignity and continue her livelihood.
- 11.3. However, such assets must not be encumbered, for instance a house which is mortgaged will generally not be exempted from bankruptcy.⁷⁹ Such provisions of protecting certain assets from bankruptcy are also provided in other jurisdictions. For instance, property such as tools, furniture, vehicles etc. are excluded from the estate in bankruptcy in UK.⁸⁰
- 11.4. The Working Group noted that for assets given in clauses (c) and (e) of Section 79(14) of the Code, the threshold value up to which the assets will be exempted are to be prescribed through rules. These assets in clauses (c) and (e) are- (i) unencumbered personal ornaments used by the debtor and her immediate family, which cannot be parted with because of religious restrictions, and (ii) an unencumbered single dwelling unit owned by a debtor, respectively. The details of thresholds contemplated by the Working Group in relation to these assets have been discussed below.

Personal ornaments

- 11.5. The insolvency resolution process for individuals is aimed to be based on a more humane approach, and thus takes into account the non-monetary value that may be attached to items such as a dwelling house or personal ornaments. Further, the sentimental value that such a property may hold for a debtor, may be much more than just the monetary value that it may hold for the creditor. In relation to personal ornaments given in Section 79(14)(c), the Working Group was of the opinion that it is more appropriate to seek public comments for the threshold value instead of prescribing an amount at the outset.
- 11.6. Based on the comments received in public consultations, the Working Group recommends that the threshold value for personal ornaments in Section 79(14)(c) shall be fixed at 5 lakh rupees. The Working Group has proposed the same value, in this regard, in the Bankruptcy Rules.**

⁷⁸ The World Bank, 'Report on Treatment of Insolvency of Natural Persons', (2013), Paragraph 359 <https://siteresources.worldbank.org/INTGILD/Resources/WBInsolvencyOfNaturalPersonsReport_01_11_13.pdf> last accessed 13 February 2019.

⁷⁹ *Ibid*, Paragraph 228.

⁸⁰ Section 283, Insolvency Act 1986.

Dwelling house

- 11.7. The Working Group felt that the primary goal in Section 79(14)(e) of the Code is to exempt a dwelling unit used as a consumption asset, necessary for the sustenance of the debtor and her family. In this regard, it was agreed that prescribing a uniform or single value for a dwelling unit would not be appropriate. Various factors may affect the value of a house which should be exempted, such as number of family members of the debtor, the area in which the house is, etc. **The Working Group has therefore proposed an all-encompassing formula which considers the size of the debtor's family, minimum area required for each family member and the circle rate of the area. This has been proposed as a Schedule in the Bankruptcy Rules.**

Manner of excluding

- 11.8. As discussed above, the values to be exempted from the estate of the debtor for personal ornaments in Section 79(14)(c) is proposed to be 5 lakh rupees, and for a dwelling unit in Section 79(14)(e) is based on the formula discussed above in paragraph 11.7 above. These values are referred to as 'threshold values'. In cases where the actual value of an assets in Sections 79(c) and (e) is lower than the threshold values, the whole asset will be exempt. **However, the Working Group discussed three possible scenarios if the actual value of an asset exceeds its threshold value. These have been envisaged in the Bankruptcy Rules, and have been discussed below.**
- 11.9. First, when the value of a single dwelling house or personal ornaments exceeds the prescribed threshold value, the asset may be taken over and sold, but the debtor will be entitled to an amount equivalent to the threshold value. For example, if the threshold value of the dwelling unit of the debtor is calculated to be 25 lakh rupees, and the actual value is 40 lakh rupees, in the event the dwelling unit is disposed of under the repayment plan, the debtor shall be entitled to 25 lakh rupees from the proceeds of the sale of the dwelling unit.
- 11.10. Second, the debtor may choose to retain a dwelling unit or personal ornaments which exceed the prescribed threshold value, in case she is able to provide the non-exempt differential value for the benefit of the creditors. For instance, if the threshold value of the dwelling unit of the debtor was calculated to be 25 lakh rupees, and the actual value is 40 lakh rupees, the debtor may retain the house if she provides the differential amount of 15 lakh rupees.
- 11.11. Finally, the Adjudicating Authority may also decide to exempt assets above the prescribed threshold value where it deems it necessary. For example, in a situation where a dwelling unit which has been remodelled exclusively for use by a differently abled member of the debtor's family, the Adjudicating Authority may decide to exempt the dwelling unit even if its value is above the threshold value.

12. Administration and distribution of the estate

Mode of sale

- 12.1. The usual trend in most jurisdictions used to be to sell an asset in bankruptcy through public auctions or through the open market, for example sale of financial instruments on stock exchanges.⁸¹ However, as noted in the World Bank Report on the Treatment of Insolvency of Natural Persons, “*a notable trend has developed in many insolvency and creditor/debtor regimes to abandon exclusive reliance on public auctions for such sales and instead to give the insolvency representative flexibility to choose to dispose of the debtor’s assets in private sales if that solution is likely to produce greater value for creditors.*”⁸² Such an approach of allowing private sale in some circumstances may enable the bankruptcy trustee to maximise value of repayment to creditors.⁸³
- 12.2. In case of liquidation, Regulation 33 of the Liquidation Regulations allows private sale in some circumstances. **Based on this, the Working Group agreed that assets in the estate shall be sold through auction. However, private sale may be permitted if- (i) the asset is perishable, (ii) value of asset is likely to deteriorate if the sale is delayed; or (iii) the selling price of the asset is higher than the reserve price of a failed auction. It was also decided that a schedule, similar to Schedule I of the Liquidation Regulations, should be provided in the Bankruptcy Regulations providing details of the manner of sale.**

Sale to certain persons

- 12.3. The Working Group noted that sale to certain persons who are related to either the debtor or the bankruptcy trustee may not be suitable without any safeguards. It was noted that the proviso to Regulation 33(2) of the Liquidation Regulations provides that any private sale, to related parties of the corporate debtor, related parties of the liquidator, or to any other professional appointed by the bankruptcy trustee, shall only be made with the prior permission of the Adjudicating Authority.
- 12.4. In line with this, UNCITRAL’s Legislative Guide on Insolvency Law notes that “*Although it may be suggested that an insolvency law should specifically preclude a sale to related parties to avoid collusion, absolute prohibition of such a sale may*

⁸¹ The World Bank, ‘*Report on Treatment of Insolvency of Natural Persons*’, (2013), Paragraph 219 <https://siteresources.worldbank.org/INTGILD/Resources/WBInsolvencyOfNaturalPersonsReport_01_11_13.pdf> last accessed 13 February 2019.

⁸² *Ibid.*

⁸³ UNCITRAL, ‘*Legislative Guide on Insolvency Law*’, (2005), Paragraph 79 <https://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf> last accessed 13 February 2019.

*not be necessary, provided it is adequately supervised and carefully scrutinized before being allowed to proceed, to avoid fraud and collusion.”*⁸⁴

- 12.5. **The Working Group contemplated the manner of sale of the bankrupt’s assets through auctions and private sale. Based on the above, the Working Group discussed that before any private sale of any immovable property of the bankrupt is made to the following persons, permission of the Adjudicating Authority shall be taken by the bankruptcy trustee- (i) any creditors of the bankrupt; (ii) any professional appointed by the bankruptcy trustee; (iii) any associate of the bankrupt; (iv) the bankruptcy trustee; or (v) any company where the bankrupt or any of her creditors is a promoter. Further, if any private sale of movable property above Rs. 10 lakhs is made to such persons, then prior permission should be taken from the Adjudicating Authority.**
- 12.6. **In addition to the above, the Working Group also decided that if the bankruptcy trustee believes that there is any collusion amongst one or more of the following persons, then the bankruptcy trustee shall not proceed with a sale and shall submit a report to the Adjudicating Authority for appropriate orders- (i) the buyers; (ii) the bankrupt; (iii) the creditors; (iv) associates of the bankrupt; (v) corporate debtor for whom the bankrupt has given a personal guarantee; or (vi) any related parties of such corporate debtor.**

After-acquired property

- 12.7. Any property that the debtor may acquire or that may devolve upon her after the commencement of bankruptcy, until a discharge is given, is usually known as after-acquired property. Bankruptcy laws usually aim to prevent debtors from strategically timing the filing of bankruptcy petitions to allow a debtor to escape from paying creditors full value of their claims, yet benefit from post-bankruptcy order windfalls (such as inheritances).⁸⁵
- 12.8. In this regard, Section 150(2) of the Code provides that if the bankrupt receives any property (through acquisition or devolution) or has an increase in income, then she shall inform the bankruptcy trustee. Section 159 provides that the bankruptcy trustee has a right to claim any after-acquired property of the bankrupt for the estate in bankruptcy. Such claim should be made by the bankrupt trustee within fifteen days of her coming to know about the acquisition or devolution of such property.
- 12.9. **The Working Group noted that these safeguards given in the Code were essential to swell the estate of the bankrupt and prevent strategic filing of**

⁸⁴ *Ibid*, Paragraph 81.

⁸⁵ The World Bank, ‘*Report on Treatment of Insolvency of Natural Persons*’, (2013), Paragraph 257 <https://siteresources.worldbank.org/INTGILD/Resources/WBInsolvencyOfNaturalPersonsReport_01_11_13.pdf> last accessed 13 February 2019.

insolvency by debtors. However, it was discussed that it might be beneficial to have a safeguard to ensure that the bankrupt does not dispose of any after-acquired property before the bankrupt trustee has had a chance to claim it. It was thus decided that the Bankruptcy Regulations should provide that the bankrupt shall not dispose of any after-acquired property without prior permission of the Adjudicating Authority. Additionally, if any such property is disposed of by the bankrupt, she shall intimate the bankruptcy trustee about details of the buyer and other relevant information. A timeline of seven days shall be provided for such intimation.

Disclaimer of onerous property

- 12.10. Sections 160-163 of the Code provide the procedure for disclaimer of onerous property by a bankruptcy trustee. Disclaimer of onerous property has the effect of ending liability of the bankrupt, or her estate, from any ‘onerous property’ i.e. any unprofitable contract or any property which cannot be disposed of for value.⁸⁶ These provisions also allow the bankruptcy trustee to discharge all personal liability in respect of the property disclaimed.⁸⁷
- 12.11. Disclaimer of any onerous property which is not a leasehold⁸⁸, takes place automatically when the bankruptcy trustee serves a notice of disclaimer on the bankrupt or any other person interested in the onerous property.⁸⁹ There is currently no prior notification to the bankrupt, or any other interest person, of the intention of the bankruptcy trustee to disclaim any onerous property.
- 12.12. **The Working Group was noted that the Bankruptcy Regulations should ensure that there is transparency regarding the bankruptcy trustee’s functions. In this regard, it was discussed that the bankruptcy trustee should notify the bankrupt, and any other person interested in any onerous property, of her intention to disclaim such property and other relevant details. It was deliberated that such notification should be made at least 7 days prior to disclaimer of the property. In addition to this, it was also deemed fit that the notice of disclaimer, provided in Section 160(1), should be filed with the Adjudicating Authority within 3 days of giving such notice.**
- 12.13. Section 163 of the Code allows certain persons, who have suffered loss or damage as a result of a disclaimer of onerous property, to challenge such disclaimer and apply to the Adjudicating Authority for appropriate orders. The Working Group noted that there is no timeline provided in the Code for this challenge to be filed

⁸⁶ Section 160(3)(a), Code.

⁸⁷ Section 160(3)(b), Code.

⁸⁸ Section 162, Code.

⁸⁹ Section 160(1), Code.

with the Adjudicating Authority. **It was decided that the Bankruptcy Regulations should provide that a disclaimer may be challenged, under Section 163, within 30 days from that date of notice of disclaimer in Section 160(1).**

Distribution

- 12.14. The Working Group discussed that the provisions in Liquidation Regulations regarding distribution may be suitably included in the Bankruptcy Regulations. **The Working Group decided that Regulations 41 and 43 of the Liquidation Regulations may be adopted in the Bankruptcy Regulations with suitable changes.**
- 12.15. **The Working Group also agreed that the Bankruptcy Regulations should provide that distribution shall only be commenced after a preliminary report is filed by the bankruptcy trustee, with the Adjudicating Authority.** This is to ensure that some minimum exercise of investigating the affairs of the debtor has been undertaken by the bankruptcy trustee.
- 12.16. **The Working Group also noted that appropriate provision shall be made in the Bankruptcy Regulations for treatment of unclaimed proceeds, similar to Regulation 46 of the Liquidation Regulations.**

13. Removal of difficulties

- 13.1. The Working Group noted that certain minor drafting and timeline errors are present in Chapters IV and V of Part III of the Code. Section 242 of the Code empowers the Central Government to issue removal of difficulty orders. The Working Group recommends the following changes for the consideration of Central Government. **In the opinion of the Working Group, such changes may be rectified through a removal of difficulties order, or through any other means deemed appropriate by the Central Government:**
- (i) There is an anomaly in the timeline provided in Section 132. The bankruptcy trustee is supposed to prepare a list of creditors within 14 days from the bankruptcy commencement date, while claims can be registered till 17 days from bankruptcy commencement date (according to Sections 130(1)(b) and 131(1)). Since a list of creditors should be made after claims have been filed, this may be remedied by increasing the timeline provided in Section 132 to 24 days instead of 14 days. This will provide enough time for preparation of list of creditors after all claims have been filed.
 - (ii) The following cross-referencing errors are present in Section 132, which may be remedied,-

- “Section 118” in sub-section (a) may be replaced with “Section 122” as that is the correct provision for application filed by bankrupt;
 - “Section 125” in sub-section (a) may be replaced with “Section 129” as that is the correct provision for filing of statement of affairs by the bankrupt
 - “Section 130” in sub-section (b) may be replaced with “Section 131” as that is the correct provision for registration of claims.
- (iii) Section 133(1) currently requires the bankruptcy trustee to deliver a notice of a meeting within 21 days from the bankruptcy commencement date for a meeting which takes place no later than 21 days from the bankruptcy commencement date (according to Section 133(2)(a)). This seems to be an anomaly since there must be some time gap between notice of meeting and the meeting. This may be addressed by changing the timeline in Section 133(1) to 30 days and that in Section 133(2)(a) to 45 days.
- (iv) Section 135(2) has a typographical error. The words “*bankruptcy trustee*” may be inserted instead of “*resolution professional*”.

Annexure

भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the [...] [...], 2019

G.S.R. [...].— In exercise of the powers conferred by sub-section (1) of section 239 and clauses (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb) and (zc) of sub-section (2) of section 239 read with clause (e) of section 2 and sub-section (2) and (3) of section 60 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby makes the following rules, namely-

1. Short title and commencement.

(1) These rules may be called the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Application.

These rules shall apply to matters relating to bankruptcy of personal guarantors to corporate debtors under chapter IV and chapter V of Part III of the Code.

3. Definitions. —

In these rules, unless the context otherwise requires, -

(a) “Adjudicating Authority” means-

(i) for the purpose of section 60, the National Company Law Tribunal constituted under section 408 of the Companies Act, 2013 (18 of 2013); or

(ii) in cases other than (i), the Debt Recovery Tribunal constituted under sub-section (1A) of section 3 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993);

(b) “bankrupt” means a debtor under clause (a) of sub-section (3) of section 79;

(c) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(d) “debt” means debt which has been guaranteed by the guarantor and “default” shall be construed accordingly;

(e) “debtor” means a personal guarantor to a corporate debtor;

(f) “electronic form” shall have the meaning assigned to it in clause (r) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(g) “electronic means” means an authorized and secured computer programme which is capable of producing confirmation of sending communication to the participant entitled to receive such communication at the last electronic mail address provided by such participant and keeping record of such communication;

(h) “form” means a form appended to these rules;

(i) “schedule” means a schedule appended to these rules;

(j) “section” means a section of the Code;

(k) “serve” means sending any communication by any means, including registered post, speed post, courier or electronic form, which is capable of producing or generating an acknowledgement of receipt of such communication:

Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personally works for gain.

- (1) words and expressions used and not defined in these rules, but defined under the Code, shall have the meaning assigned to them in the Code.

4. Relatives.

For the purposes of explanation (ii) of clause (b) of sub-section (2) of section 79, the manner of relationship shall mean the manner listed in clause (a) and (b) of explanation to sub-section (24A) of section 5.

5. Excluded assets.

- (1) For the purpose of clause (c) of sub-section (14) of section 79, value of ornaments not exceeding five lakh rupees shall be allowed.
- (2) For the purpose of clause (e) of sub-section (14) of section 79, value of dwelling unit not exceeding the threshold amount shall be allowed.

Explanation- The threshold amount shall be computed in accordance with the methodology provided in the Schedule.

- (3) The Adjudicating Authority may, depending on the facts and the circumstances, exclude assets that have a value higher than the value allowed in sub-rule (1) or (2), as the case may be.
- (4) In the event the value of the dwelling unit is higher than the threshold value referred to in clause (e) of sub-section (14) of section 79 is higher than the threshold values under sub-rule (2) –
 - (i) the debtor shall be entitled to an amount equivalent to the threshold value, in the event the dwelling unit is disposed of; or
 - (ii) the debtor may retain the dwelling unit on payment of the amount in excess of the threshold value, for the benefit of the creditors.

6. Application by debtor.

- (1) A debtor shall apply for bankruptcy under section 122, in Form A, with an application fee of five thousand rupees only.
- (2) The debtor shall forthwith serve a copy of the application under sub-rule (1) to the last known address of the creditor(s) and the corporate debtor for whom the debtor is a personal guarantor.

7. Application by creditor.

- (1) A creditor shall apply for bankruptcy of the debtor under section 123, in Form B, with an application fee of five thousand rupees only.
- (2) The creditor shall forthwith serve a copy of the application under sub-rule (1) to the last known address of the creditor(s) and the corporate debtor for whom the debtor is a personal guarantor.

- (3) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.

8. Public notice.

The Adjudicating Authority shall issue a public notice inviting claims from all creditors of the bankrupt, under clause (b) of sub-section (1) of section 130, in Form C.

9. Notice to creditors.

The Adjudicating Authority shall send a notice to the creditors as per clause (a) of sub-section (1) of section 130, in Form D.

10. Statement of financial position.

The statement of financial position shall be filed by the bankrupt under sub-section (2) of section 129, in Form E.

11. Claim with proof.

- (1) A creditor shall submit a claim with proof to the bankruptcy trustee on or before the last date mentioned in the public notice, in Form F.
- (2) Form F shall be submitted by the creditor through electronic means or by registered post or speed post or courier.
- (3) A creditor who fails to submit claim with proof as per sub-rule (1) within the time stipulated in the public announcement, may submit such proof to the bankruptcy trustee till the date specified in the notice issued under sub-section (2) of section 176.
- (4) The creditor shall bear the costs relating to the proof of claim.

12. Notice of dividend.

- (1) The notice of dividend as per clause (a) of sub-section (1) of section 176 shall contain the following particulars -
 - (a) the date on which the dividend is proposed to be distributed;
 - (b) the list of creditors who shall be entitled to a dividend;
 - (c) the amount of dividend for each creditor under (b);
 - (d) request for any details required from the creditors for the distribution of dividend, and the last date for receipt of such information;
 - (e) the last date by which the creditors must establish their claim against the estate with the bankruptcy trustee; and
 - (f) a statement confirming that no further dividends shall be declared.
- (2) The notice under clause (b) of sub-section (1) of section 176 shall provide the reasons for not declaring dividend.

- (3) The notice of dividend under section 176(1) shall be sent thirty days prior to the date specified for the distribution of dividend.

13. Copy of application.

On the appointment of the bankruptcy trustee nominated by the Board under sub-section (5) of section 125 by the Adjudicating Authority, a copy of the application as filed, if not provided earlier, shall be provided to such bankruptcy trustee by the Adjudicating Authority within two days of the appointment.

14. Restriction on bankrupt.

The restriction on the bankrupt under clause (d) of sub-section (1) of section 141 shall be applicable for any financial or commercial transaction of one lakh rupees.

15. Filing of the application and documents.

- (1) Till such time the rules of procedure for conduct of proceedings under the code are notified, the applications under rule 6 or 7 shall be filed before the National Company Law Tribunal in accordance with rules 20, 21, 22, 23, 24 and 26 of part III of the National Company Law Tribunal Rules, 2016 issued under section 469 of the Companies Act, 2013, , and before the Debt Recovery Tribunal in accordance with rule 3 of Debt Recovery Tribunal (Rules), 1993 issued under section 36 of the Recovery of Debts and Bankruptcy Act, 1993 and regulation 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 issued under section 22 of the Recovery of Debts and Bankruptcy Act, 1993, as applicable.
- (2) The application, accompanying documents and reports in the bankruptcy process shall also be filed in electronic form, as and when such facility is made available and as may be prescribed by the Adjudicating Authority:

Provided that till the time such facility is made available, the applicant may submit the application, accompanying documents and reports in scanned, legible portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority.

FORM A

(See sub-rule (1) of rule 6)

APPLICATION BY DEBTOR TO INITIATE BANKRUPTCY PROCESS.

(Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

[Date]

To,

The Adjudicating Authority

[Address]

From,

[Name and address of the debtor]

In the matter of [name of the debtor]

Subject: Application to initiate bankruptcy process in respect of [name of the debtor].

Madam/Sir,

I/ We hereby submit this application to initiate a bankruptcy process in respect of [name of debtor]. The details for the purpose of this application are set out below-

Part I

| PARTICULARS OF THE DEBTOR | | | | |
|---------------------------|---|---------|-----------|----------|
| 1. | Title and full name | | | |
| 2. | Date of birth and e-mail address | | | |
| 3. | Any other name by which the debtor is or has been known (as applicable) | | | |
| 4. | Address | Present | Permanent | Business |
| | | | | |
| 5. | Occupation/ Business/ Profession | | | |
| 6. | Annual income | | | |

| | | | | | | | |
|-----|---|----------------------------|-----------------|-------------|-----|-----------------------------------|-----------------------|
| 7. | List of associates of the debtor who may be creditors | Name | | Age | | Address | |
| | | | | | | | |
| 8. | Bank account details (Joint and Several) | Account number | | IFSC code | | Name of Branch and Branch address | |
| | | | | | | | |
| 9. | Identification numbers | Aadhaar number | Passport number | | PAN | | GSTIN |
| | | | | | | | |
| 10. | Contact number(s) | Home | | Mobile | | Business | |
| | | | | | | | |
| 11. | List of assets of debtor and immediate family as on the application date. Note: this will include all assets of debtor, irrespective of them being excluded assets. Please mention which assets are the excluded assets. | Immovable | | Description | | Estimated value | |
| | | | | | | | |
| | | Movable | | Description | | Estimated value | Excluded asset or not |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | Vehicles | | | | | |
| | | Shares in listed companies | | | | | |
| | | Shares in other companies | | | | | |
| | | Life insurance policy | | | | | |
| | | Jewelry | | | | | |
| | | Pension policy | | | | | |

| | | | | |
|-----|---|--|--|--|
| | Investment in mutual funds | | | |
| | Investment in other funds | | | |
| | Investment in partnerships and other business concerns, | | | |
| | Any other movable property | | | |
| 12. | Number of directorships held in the last three years (along with name of company in which directorship is held and Directors Identification Number) | | | |
| 13. | Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other) | | | |
| 14. | Details regarding guarantee given by debtor (in addition to information in point 1-13 of this part) | | | |
| | Name of corporate debtor for which guarantee is given | | | |
| | Any current or past position held in the corporate debtor | | | |
| | Whether corporate debtor is an associate as per section 79(2) of the Code (state how) | | | |

| | | |
|-----|---|--|
| | Any securities held in corporate debtor for whom guarantee is given | |
| 15. | Name and address of person resident in India authorised to accept the service of process on debtor's behalf | |

Part – II

Please complete this Part if you have been self-employed, or a partner in a firm. If not, go to Part III.

| BUSINESS PARTICULARS OF DEBTOR | | |
|---------------------------------------|--|--|
| 1. | Name of business and form of business | |
| 2. | Details of any registration | |
| 3. | Description of business | |
| 4. | Business address | |
| 5. | Annual income of debtor | |
| 6. | If business organization is a firm, details mentioned below: | |
| (i) | Date of joining firm | |
| (ii) | Capital subscription as per latest balance sheet | |
| (iii) | Profit sharing as per latest balance sheet | |
| (iv) | Name, address and authority of person submitting application on behalf of the firm | |

| | | |
|----|--|--|
| 7. | Commencement date of business and date of close of operations (if applicable) | |
| 8. | Address where books of accounts / accounting records are kept (including soft copy records) | |
| 9. | Whether employees to whom debt owed (state yes or no, and if yes, details to be mentioned in Part III) | |

Part - III

| PARTICULARS OF DEBT [CREDITOR WISE, AS APPLICABLE] | | | | |
|--|--|---------|-----------|----------|
| 1. | Name(s) of creditor(s) | | | |
| 2. | Address | Present | Permanent | Business |
| | | | | |
| 3. | Total outstanding debt (including any interest or penalties) | | | |
| 4. | Amount of debt in default | | | |
| 5. | Reason for the default in payment of debt | | | |
| 6. | Date when the debt was due | | | |
| 7. | Date when the default occurred | | | |
| 8. | Nature of the debt | | | |

| | | |
|-----|--|---|
| 9. | Secured debt including particulars of security held, the date of its creation, estimated value of security as per the creditor | |
| 10. | Unsecured debt | |
| 11. | Details of retention of title arrangements (if any) in respect of goods to which the debt refers | |
| 12. | Record of default with the information utility, if any | |
| 13. | List of documents attached to this application in order to prove the existence of debt and the amount in default | |
| 14. | Statement by debtor in respect of excluded debts | <p>I [<i>debtor</i>] hereby state that the debt(s) for which the bankruptcy process application is filed does not include any-</p> <ul style="list-style-type: none"> (i) liability to pay fine imposed by a court or tribunal; (ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; (iii) liability to pay maintenance to any person under any law for the time being in force; (iv) liability in relation to a student loan; (v) any other debt prescribed under Section 79(15)(e) of the code. |

Part-IV

In the event the application has been filed through an insolvency professional, please complete serial number 1-6 in respect of such insolvency professional. If the application has been filed personally, please provide details of the proposed insolvency professional in serial number 1-5.

PARTICULARS OF & DECLARATION BY INSOLVENCY PROFESSIONAL

| | | | | |
|----|--|---------|-----------|----------|
| 1. | Title and full name | | | |
| 2. | In case associated with an Insolvency Professional Entity (IPE), details of the IPE and nature of association. | | | |
| 3. | Address | Present | Permanent | Business |
| | | | | |
| 4. | E-mail address(es) | | | |
| 5. | Contact number | Home | Mobile | Business |
| | | | | |

| | | |
|----|--|--|
| 6. | Declaration by insolvency professional | <p>I, <i>[name of insolvency professional]</i>, an insolvency professional registered with <i>[name of insolvency professional agency]</i> having registration number <i>[registration number]</i> have been proposed as the insolvency professional by <i>[name of applicant debtor]</i> in connection with the proposed bankruptcy process of <i>[name of the debtor]</i>.</p> <p>I hereby:</p> <ul style="list-style-type: none"> (i) agree to accept appointment as the insolvency professional if an order of appointment is passed by the Adjudicating Authority; (ii) state that the registration number allotted to me by the Board is <i>[insert registration number]</i> and that I am currently qualified to practice as an insolvency professional; (iii) disclose that I am currently serving as an insolvency professional / resolution professional / liquidator/ bankruptcy trustee in <i>[insert number and details of the proceedings]</i>; (iv) certify that there are no disciplinary proceedings pending against me with the Board or <i>[name of the insolvency professional agency he is a member of]</i>; (v) affirm that I am eligible to be appointed as an insolvency professional in respect of the debtor in accordance with Regulation 3 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019; (vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 <i>[insert disclosures, if any]</i>. |
|----|--|--|

[Name of the debtor] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

| |
|--|
| Signature of debtor / person authorized to act on behalf of the debtor [<i>Please enclose the authorization document if this application is being submitted on behalf of the debtor</i>] |
| Name in block letters |
| Address of person signing |

DECLARATION

I, [Name of applicant], currently residing at [insert address], hereby declare and state as follows:

1. In respect of my application for bankruptcy, I have relied on the documents specified below: [*Please list the documents relied on*].
2. The contents of the said application along with the said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.

Date:

Place:

(Signature of the applicant)

VERIFICATION

I, [name of applicant], do hereby verify that the contents of this application are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at _____ on this _____ day of _____ 20__

Applicant's signature.

ATTACHMENTS: List of documents to be appended to the application:

1. All records of the insolvency resolution process in respect of the debtor, including the following-
 - (i) Application for the insolvency resolution process;
 - (ii) Order(s) of the Adjudicating Authority-

- (a) accepting / rejecting the application under serial number (i) above, as the case may be;
 - (b) approving / rejecting the repayment plan, as the case may be;
 - (c) entitling the debtor to apply for bankruptcy;
 - (d) any other order that may have been passed by the Adjudicating Authority in relation to the insolvency resolution process.
2. All documents mentioned in serial number 13 of Part III of this form.
 3. Copy of the income tax returns with detailed computation of the income of the debtor, or the firm, as the case may be, for the previous three years.
 4. Copy of the personal guarantee contract.
 5. Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891)
 6. The latest and complete copy of the financial contract reflecting all amendments and waivers to date.
 7. Relevant ownership and title documents for all assets.
 8. Copy of the authorization, wherever required under this form.
 9. Proof that the application fee has been paid.
 10. Documentary evidence of all information sought in each entry for each part of the form.
 11. A statement of affairs of the debtor made up to a date not earlier than two days from the date of the application including the following information and supporting documents, namely-
 - (i) debtor's assets (inclusive of excluded assets) and liabilities for the previous three years;
 - (ii) secured and unsecured debts (inclusive of excluded debts mentioned in serial number 14 of Part III of the form) with names of the creditors, and all requisite details for the previous three years;
 - (iii) particulars of debt owed by debtor to associates of the debtor for the previous three years;
 - (iv) guarantees given in relation to any of the debts of the debtor, and if any of the guarantors is an associate of the debtor;
 - (v) financial statements with all annexures and schedules for the business owned by the debtor, or of the firm in which the debtor is a partner, as the case may be, for the previous three years, if applicable;
 - (vi) wealth tax statements filed by the debtor, if any, for the previous five years.
 - (vii) Income statement of the debtor, for the previous three years.

FORM B

(See sub-rule (1) of rule 7)

APPLICATION BY CREDITOR TO INITIATE BANKRUPTCY PROCESS

(Under rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

[Date].....

To,

The Adjudicating Authority
[Address]

From,

[Name and address of the creditor]

In the matter of [name of the debtor]

Subject: Application to initiate bankruptcy process in respect of [name of the debtor] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the creditor], hereby submits this application to initiate a bankruptcy process in the case of [name of debtor]. The details for the purpose of this application are set out below:

Part - I

| PARTICULARS OF APPLICANT | | | | | |
|--------------------------|-----------------------------------|----------------|-----------|----------|-------|
| 1. | Title and full name | | | | |
| 2. | Date of birth and e-mail address | | | | |
| 3. | Contact number(s) | Home | Mobile | Business | |
| | | | | | |
| 4. | Identification number of creditor | Aadhaar number | CIN | PAN | GSTIN |
| | | | | | |
| 5. | Address | Present | Permanent | Business | |
| | | | | | |

Part – II

| PARTICULARS OF THE DEBTOR | | | | | |
|----------------------------------|--|----------------|-----------------|-------------------------------------|-----------------------|
| 1. | Title and full name | | | | |
| 2. | Date of birth and e-mail address (to the extent known) | | | | |
| 3. | Any other name by which the debtor is or has been known (as applicable) (to the extent known) | | | | |
| 4. | Address | Present | Permanent | Business | |
| | | | | | |
| 5. | Occupation/ Business/ Profession | | | | |
| 6. | Annual income (to the extent known) | | | | |
| 7. | List of associates of the debtor, including relatives, who may be creditors (to the extent known) | Name | Age | Address | |
| | | | | | |
| 8. | Bank account details (Joint and Several) | Account number | IFSC code | Name of the Bank and Branch address | |
| | | | | | |
| 9. | Identification numbers | Aadhaar number | Passport number | PAN | GSTIN |
| | | | | | |
| 10. | Contact number(s) | Home | Mobile | Business | |
| | | | | | |
| 11. | List of assets of debtor as on the application date (to the extent known) Note: this will include all assets of debtor, irrespective of them being excluded assets. | Immovable | Description | Estimated value | |
| | | | | | |
| | | Movable | Description | Estimated value | Excluded asset or not |

| | | | | | |
|-----|--|---|--|--|--|
| | | Vehicles | | | |
| | | Shares in listed companies | | | |
| | | Shares in other companies | | | |
| | | Life insurance policy | | | |
| | | Jewelry | | | |
| | | Pension policy | | | |
| | | Investment in mutual funds | | | |
| | | Investment in other funds | | | |
| | | Investment in partnerships and other business concerns, | | | |
| | | Any other movable property | | | |
| 12. | Number of directorships held in the last three years (along with name of company in which directorship is held and Director Identification Number) | | | | |
| 13. | Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other) (to the extent known) | | | | |
| 14. | Details regarding guarantee given by debtor (in addition to information in points 1-13 of this part)- | | | | |
| | Name of corporate debtor for which guarantee is given | | | | |

| | | |
|-----|---|--|
| | Any current or past position held in the corporate debtor (to the extent known) | |
| | Identification number | |
| | Whether corporate debtor is an associate (to the extent known) | |
| | Any securities held in corporate debtor for whom guarantee is given | |
| 15. | Name and address of person resident in India authorised to accept the service of process on debtor's behalf | |

Part-III

| PARTICULARS OF DEBT | | |
|---------------------|--|--|
| 1. | Total debt (including any interest or penalties) | |
| 2. | Amount in default | |
| 3. | Date on which debt was due | |
| 4. | Date on which default occurred | |
| 5. | Nature of the debt | |
| 6. | Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable) | |
| 7. | Unsecured debt (as applicable) | |
| 8. | Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy) | |
| 9. | Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order) | |
| 10. | Record of default with the information utility, if any (attach a copy) | |

| | | |
|-----|--|---|
| 11. | Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy) | |
| 12. | Provision of law, contract or other document under which debt has become due (attach a copy) | |
| 13. | A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the debtor (attach a copy) | |
| 14. | List of documents attached to this notice in order to prove the existence of debt and the amount in default | |
| 15. | Statement by the secured creditor under Section 123(2) of the code | <p>Tick whichever is applicable-</p> <p><input type="checkbox"/> In the event a bankruptcy order accepting the application is passed by the Adjudicating Authority, I shall relinquish my security mentioned in serial number 6 for the benefit of all the creditors of the debtor.</p> <p><input type="checkbox"/> The application is only in respect of unsecured debt as per the details mentioned in serial number 7.</p> |

| | | |
|-----|--|---|
| 16. | Statement by creditor in respect of excluded debts | <p>I [debtor] hereby state that the debt(s) for which the bankruptcy process application is filed does not include any-</p> <p>(i) liability to pay fine imposed by a court or tribunal;</p> <p>(ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;</p> <p>(iii) liability to pay maintenance to any person under any law for the time being in force;</p> <p>(iv) liability in relation to a student loan;</p> <p>(v) any other debt prescribed under Section 79(15)(e) of the code.</p> |
|-----|--|---|

Part-IV

In the event the application has been filed through an insolvency professional, please complete serial number 1-6 in respect of such insolvency professional. If the application has been filed personally, please provide details of the proposed insolvency professional in serial number 1-5.

| PARTICULARS OF & DECLARATION BY INSOLVENCY PROFESSIONAL | | | | |
|---|--|---------|-----------|----------|
| 1. | Title and full name | | | |
| 2. | In case associated with an Insolvency Professional Entity (IPE), details of the IPE and nature of association. | | | |
| 3. | Address | Present | Permanent | Business |
| | | | | |
| 4. | E-mail address(es) | | | |
| 5. | Contact number | Home | Mobile | Business |
| | | | | |

| | | |
|----|--|--|
| 6. | Declaration by insolvency professional | <p>I, [<i>name of insolvency professional</i>], an insolvency professional registered with [<i>name of insolvency professional agency</i>] having registration number [<i>registration number</i>] have been proposed as the insolvency professional by [<i>name of applicant debtor</i>] in connection with the proposed bankruptcy process of [<i>name of the debtor</i>].</p> <p>I hereby:</p> <ul style="list-style-type: none"> (vii) agree to accept appointment as the insolvency professional if an order of appointment is passed by the Adjudicating Authority; (viii) state that the registration number allotted to me by the Board is [<i>insert registration number</i>] and that I am currently qualified to practice as an insolvency professional; (ix) disclose that I am currently serving as an insolvency professional / resolution professional / liquidator/ bankruptcy trustee in [<i>insert number and details of the proceedings</i>]; (x) certify that there are no disciplinary proceedings pending against me with the Board or [<i>name of the insolvency professional agency he is a member of</i>]; (xi) affirm that I am eligible to be appointed as an insolvency professional in respect of the debtor in accordance with Regulation 3 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019; (xii) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 [<i>insert disclosures, if any</i>]. |
|----|--|--|

[*Name of the creditor*] has paid the requisite fee for this application through [*state means of payment*] on [*date*].

Yours sincerely,

| |
|---|
| Signature of creditor/ person authorised to act on behalf of the creditor [<i>Please enclose the authorization document if this application is being submitted on behalf of the creditor</i>] |
|---|

| |
|-----------------------|
| Name in block letters |
|-----------------------|

| |
|---------------------------|
| Address of person signing |
|---------------------------|

List of documents to be attached to the application:

1. All records of the insolvency resolution process in respect of the debtor, including the following-
 - (i) Application for the insolvency resolution process;
 - (ii) Order(s) of the Adjudicating Authority-
 - (a) accepting / rejecting the application under serial number (i) above, as the case may be;
 - (b) approving / rejecting the repayment plan, as the case may be;
 - (c) entitling the creditor to apply for bankruptcy;
 - (iii) any other order that may have been passed by the Adjudicating Authority in relation to the insolvency resolution process.
2. All documents mentioned in serial number 14 of Part III of this form.
3. Copy of the demand notice served on the debtor in Form B of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
4. Copy of the income tax returns with detailed computation of the income of the debtor, or the firm, as the case may be, for the previous three years, if available.
5. Copy of the personal guarantee contract.
6. Copy of the authorization, wherever required under this form.
7. Proof that the application fee has been paid.
8. Documents evidencing the debt and the default in relation to the debt, as may have been provided by the debtor at any point in time, if available.
9. Documents evidencing the assets, liabilities, income and any other relevant information as may have been provided by the debtor at any point in time, if available.
10. Documentary evidence of all information sought in each entry for each part of the form.

Form C
Public Notice

(Under Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

FOR THE ATTENTION OF THE CREDITORS OF [Full Name and title of Bankrupt]

Notice is hereby given that the [*Debt Recovery Tribunal/National Company Law Tribunal in case of bankrupt under Section 60 of the code*] has ordered the commencement of a bankruptcy process against the [*name of bankrupt*] residing at [*last known address of the bankrupt*] on [*bankruptcy commencement date*].

The creditors of [*name of the bankrupt*], are hereby called upon to submit their claims with proof on or before [*insert the date falling seven days from date of issue of public notice*] to the bankruptcy trustee at [*address*].

The last date for submission of claims of creditors shall be [*date*]. The creditors may submit their claims through electronic means, or by hand or registered post or speed post or courier.

Additional details of the bankruptcy trustee: [*Name, last known address, e-mail address, phone number and the registration number of the bankruptcy trustee*]

Note: Submission of false or misleading claims with proof shall attract penalties.

Date and Place:

FORM D
NOTICE TO CREDITOR

(Under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

To

[Name and address of creditor]

From

[Adjudicating Authority]

Notice is hereby given that the *[Debt Recovery Tribunal/National Company Law Tribunal in case of bankrupt under Section 60 of the code]* has ordered the commencement of a bankruptcy process against the *[title and full name of bankrupt]* residing at *[last known address of the bankrupt]* on *[bankruptcy commencement date]*.

You have been mentioned as a creditor of the bankrupt as per the documents submitted in the application for the bankruptcy process. You are hereby called upon to submit a claim with proof of the debt due to you on or before *[insert the date falling seven days from date of issue of public announcement]* to the bankruptcy trustee at *[address]*.

The last date for submission of claims shall be *[date]*. You may submit your claim through electronic means, or by hand or registered post or speed post or courier.

Additional details of the bankruptcy trustee: *[Name, last known address, e-mail address, phone number and the registration number of the bankruptcy trustee]*

Note: Submission of false or misleading claims with proof shall attract penalties.

Date and Place:

FORM E**STATEMENT OF FINANCIAL POSITION OF BANKRUPT**

(Under Rule 10 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

Part I

| RELEVANT PARTICULARS | | | | | |
|----------------------|---|--------------------|--------------|-----------------|------------------------------|
| 1. | Full name of bankrupt | | | | |
| 2. | Address | Present | Permanent | Business | |
| | | | | | |
| 3. | Bank account details (Joint and Several) | Account Number | IFSC Code | | Name of Bank and Bank Branch |
| | | | | | |
| 4. | List of assets of bankrupt and immediate family as on the application date for the previous three years. Note: this will include all assets of bankrupt, irrespective of them being excluded assets. Please mention the assets which may be excluded assets. | Immovable property | Descripti on | Estimated value | Excluded asset or not |
| | | | | | |
| | | Movable property | Descripti on | Estimated value | Excluded asset or not |
| | | Vehicles | | | |

| | | | | | |
|------|---|--|--|--|--|
| | | Shares in listed companies | | | |
| | | Shares in other companies | | | |
| | | Life insurance policy | | | |
| | | Jewelry | | | |
| | | Pension policy | | | |
| | | Investment in mutual funds | | | |
| | | Investment in other funds | | | |
| | | Investment in partnerships and other business concerns | | | |
| | | Any other property not covered above | | | |
| 5. | The following information is required in relation to the guarantee given by the debtor: | | | | |
| i. | Name of corporate debtor for which guarantee is given | | | | |
| ii. | Any current or past position held in the corporate debtor | | | | |
| iii. | Whether corporate debtor is an associate | | | | |
| iv. | Any securities held in corporate debtor | | | | |

| | | |
|----|--|--|
| | for whom guarantee is given | |
| 6. | Name and address of person resident in India authorised to accept the service of process on bankrupt's behalf (if applicable) | |

Part II

| FINANCIAL INFORMATION | | |
|-----------------------|---|--|
| 1. | Statement of assets and liabilities for the previous three years | |
| 2. | Secured and unsecured debts, with details of the creditors, the total amount due, amount in default and details of the security, for the previous three years | |
| 3. | Details of the debts owed to associates of the bankrupt, for the previous three years | |
| 4. | Details of guarantees given in relation to any of the debts of the debtor, and if any of the guarantors is an associate of the debtor | |
| 5. | Details of the business owned by the bankrupt, or of the firm in which the bankrupt is a partner, as the case may be, for the previous three years, if applicable | |
| 6. | Details of the wealth tax statements filed by the bankrupt, if any, for the previous five years. | |
| 7. | Details of trusts held by bankrupt and immediate family of bankrupt | |
| 8. | Any other relevant information | |

FORM F
CLAIM WITH PROOF BY A CREDITOR

(Under Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

[Date]

To

The Bankruptcy Trustee

[Name of the Bankruptcy Trustee]

[Address as set out in public notice]

From

[Name and address of the creditor]

Subject: Submission of claims with proof.

Madam/Sir,

[Name of the creditor], hereby submits this proof of claim in respect of the bankruptcy process in the case of [name of bankrupt]. The details for the same are set out below:

| S. No. | Particulars | | | | |
|--------|--|---------|-----------|----------|-------|
| 1. | Title and full name of creditor | | | | |
| 2. | Identification number of creditor | Aadhar | PAN | CIN | GSTIN |
| | | | | | |
| 3. | Address | Present | Permanent | Business | |
| | | | | | |
| 4. | Total amount of claim (Including any interest as at the bankruptcy commencement date) | | | | |

| | | |
|------------|---|--|
| 5. | Details of documents by reference to which the debt can be substantiated. | |
| 6. | Details of any dispute as well as the record of such dispute | |
| 7. | Details of how debt was incurred and the date when debt incurred | |
| 8. | Details of any mutual credit, mutual debts, or other mutual dealings between the bankrupt and the creditor which may be set-off against the claim | |
| 9. | Details of any retention of title arrangements in respect of goods or properties to which the claim refers | |
| 10. | Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a repayment plan | |
| 11. | Details of any security held (including value and date when it was given) | |

| | | |
|-----|---|--|
| 12. | For secured creditors only | |
| | Tick whichever is applicable – <input type="checkbox"/> security interest is being enforced <input type="checkbox"/> Security interest is being relinquished. | |
| | If security is being relinquished, please complete the statement of relinquishment of security interest in the column on the right. | I, <i>[name of secured creditor]</i> , hereby release and relinquish my security interest and any claim, right, lien or interest in any property based on such security interest, other than the right to receive dividends as per the Code, in <i>[insert description of the subject and nature of security interest]</i> , which was created by <i>[name of bankrupt]</i> , on <i>[insert date of creation of security interest]</i> on account of <i>[insert description of circumstances leading to creation of security interest]</i> . <i>Signature of the secured creditor, or the authorised signatory.</i> |
| | If security is being realised, provide details of any action that has been taken to enforce / realise the security. | |
| | If security is being realised, specify balance amount of | |

| | | |
|--|--|--|
| | debt which is being claimed. | |
| 13. | List of documents attached to this proof of claim in order to prove the existence and non-payment of claim due to the creditor | |
| 14. | Details of bank account to which the share of creditor's proceeds from bankruptcy can be deposited. | |
| Signature of creditor or person authorised to act on his behalf <i>[Please enclose the authority if this is being submitted on behalf of a creditor]</i> | | |
| Name in block letters | | |
| Address of person signing | | |

DECLARATION

I, *[name of claimant]*, currently residing at *[insert address]*, declare and state as follows:

1. *[Name of bankrupt]*, the debtor was, at the bankruptcy commencement date, being the _____ day of _____ 20__, justly and truly indebted to me to the sum of INR *[insert amount of claim]*.
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

[Please list the documents relied on as evidence of claim]
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, I have not, nor has any person by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the bankrupt and the creditor which may be set-off against the claim.]

Date:

Place:

(Signature of the claimant)

VERIFICATION

I, [Name], the claimant hereinabove, do hereby verify that the contents of this claim with proof are true and correct to my knowledge and belief and no material facts have been concealed therefrom.

Verified at _____ on this _____ day of _____ 201__

(Claimant's signature)

SCHEDULE

METHODOLOGY FOR CALCULATING THE THRESHOLD AND ACTUAL VALUE OF AN UNENCUMBERED SINGLE DWELLING UNIT

(Under sub-rule (2) of Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019)

1. Calculation of threshold value of a dwelling unit

Threshold value of dwelling unit = Adjusted threshold area of dwelling unit (as per Table A) × circle rate of the lowest residential category of that zone notified by the relevant authority, adjusted by the quarterly RESIDEX HPI@Assessment Prices released by the National Housing Bank.

Explanation:

(a) Table A: Adjusted threshold area of dwelling unit

Urban and Rural

| Number of persons in dwelling unit | Adjusted threshold area of dwelling unit (in square feet) |
|------------------------------------|---|
| 1 | 400 |
| 2 | 400 |
| 3 | 400 |
| 4 | 400 |
| 5 | 475 |
| 6 | 550 |
| 7 | 625 |
| 8 | 700 |
| 9 | 775 |
| 10 | 850 |
| 11 | 925 |
| 12+ | 1000 |

2. Calculation of actual value of a dwelling unit

(1) The following methods in the given order of priority shall be followed for the calculation of the actual value of the dwelling unit –

- (i) Rent capitalisation method;
- (ii) Comparable method;
- (iii) Land and building method.

(2) Rent capitalisation method

Fair market value of the dwelling unit = (Annual rent + interest on security deposit – outgoings)/Rent yield

Explanation:

(a) *For the purpose of determining the annual rent of the dwelling unit, the following shall be taken into account, in the order of priority-*

- (i) *Comparable rent of an asset of the same size in the same building;*
- (ii) *Comparable rent of an asset of the same size in the adjacent building;*
- (iii) *Comparable rent of an asset of the same size in the neighborhood or locality;*
- (iv) *Rents fixed by the rent control boards of the respective states.*

(b) *The interest on security deposit shall be calculated for a period of 3 months @ 1 year government securities rates on the amount of the security deposit.*

(c) *The outgoings from the property shall be an aggregate of the following -*

- (i) *Municipal taxes;*
- (ii) *Repairs and maintenance charges; and*
- (iii) *Insurance premium.*

(d) *Rent yield is fixed at 2% and shall be subject to revision every three years.*

(3) Comparable Method

The fair market value of the dwelling unit shall be calculated taking into account a unit similar to the dwelling unit in the following respects -

- (i) Size;
- (ii) Locality;
- (iii) Age; and
- (iv) Use.

(4) Land and building method

Fair market value of the dwelling unit = Value of the land (A) + Value of the building
i.e. the dwelling unit (E)

Explanation-

(a) Value of the land (A) shall be calculated in the following order of priority -

- (i) Sale value of the adjacent land;*
- (ii) Sale value of the land in the same locality;*
- (iii) Sale value of the land in the neighborhood or adjoining localities;*
- (iv) Guideline/circle rates issued by local authorities for land & construction.*

(b) Value of the Building (E) shall be calculated in the following manner –

| | |
|---|------------|
| <i>Reproduction cost based on plinth area rate issued by state PWDs</i> | <i>(B)</i> |
| <i>Amount of depreciation</i> | <i>(C)</i> |
| <i>Builders' effort @3% of (B)</i> | <i>(D)</i> |
| <i>Value of building (B-C+D)</i> | <i>(E)</i> |

(c) Amount of Depreciation = (Cost of reconstruction - salvage value)/Estimated useful life of the building

For the purposes of (c), the salvage value is as follows -

- (i) Up to 3 Year Old Building: 80%*
- (ii) 3 – 5 Year Old Building: 50%*
- (iii) 5 – 10 Year Old Building: 25%*
- (iv) 10 Years or older buildings: 10%*

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (BANKRUPTCY PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) REGULATIONS, 2019

IBBI/2019-20/GN/[●]. - In exercise of the powers conferred under clause (t) of sub-section (1) of section 196, and clauses (zr) and (zs) of sub-section (1) of section 240 read with clause (e) of section 2 and sub-section (2) and (3) of section 60 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following Regulations, namely -

PRELIMINARY

1. Short title and commencement.

- (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
- (2) These regulations shall come into force on [●] 2019.
- (3) These regulations shall apply to the bankruptcy process for personal guarantors to corporate debtors under Part III of the Code.

2. Definitions.

In these regulations, unless the context otherwise requires-

- (a) “bankrupt” means a debtor within the meaning of clause (a) of sub-section (3) of section 79;
- (b) “bankruptcy process period” means the period beginning from the bankruptcy commencement date until the date of completion of administration of the estate as per section 137 or until date of discharge order under section 138, whichever is earlier;
- (c) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
- (d) “committee” means the committee of creditors constituted by the bankruptcy trustee as defined in sub-section (11) of section 79;
- (e) “debtor” means a personal guarantor to a corporate debtor which is undergoing a corporate insolvency resolution or liquidation process under Part II of the Code;
- (f) “electronic form” shall have the meaning assigned to it in clause (r) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (g) “electronic means” mean an authorized and secured computer programme which is capable of producing confirmation of sending communication to the member entitled to receive such communication at the last electronic mail address provided by such member and keeping record of such communication;
- (h) “form” means a form appended to these regulations;

- (i) “registered valuer” means a person registered as such in accordance with the Companies Act, 2013 (18 of 2013) and rules made thereunder;
- (j) “related party of the corporate debtor” shall have the meaning assigned to it in sub-section (24) of section 5;
- (k) “section” means a section of the Code;
- (l) words and expressions used and not defined in these regulations, but defined in the Code, shall have the meaning assigned to them in the Code.

BANKRUPTCY TRUSTEE

3. Eligibility of bankruptcy trustee.

- (1) An insolvency professional shall be eligible to be appointed as a bankruptcy trustee for a bankruptcy process if he, and all partners and directors of the insolvency professional entity of which he is a partner or director,
 - (a) are independent of the bankrupt, and if the insolvency professional entity of which he is a partner or director is independent of the bankrupt.
 - (b) are not subject to any ongoing disciplinary proceedings by the Board or to a restraint order issued by the Board.
- (2) A person shall be considered independent of the bankrupt in sub-regulation (1), if he:
 - (i) is not an associate of the debtor;
 - (ii) is not a related party of the corporate debtor for whom the bankrupt has given a personal guarantee;
 - (iii) has not been appointed as an interim resolution professional or resolution professional or liquidator in respect of a corporate debtor for whom the bankrupt is a personal guarantor;
 - (iv) does not represent any other stakeholders in the same bankruptcy process.
- (3) Where an insolvency professional is to be appointed as a bankruptcy trustee, and the application under section 122 or 123 does not propose the name of such insolvency professional to act as bankruptcy trustee, he shall provide written consent to the Adjudicating Authority under Form A.

4. Fees of bankruptcy trustee.

- (1) The bankruptcy trustee shall be entitled to a fee as decided by the committee, including fee paid upfront to the bankruptcy trustee if any.
- (2) The committee may rely on the table given in Schedule I to calculate the fee of the bankruptcy trustee, in sub-regulation (1), based on amount realized and distributed from realization of the bankrupt's estate.

- (3) The fee payable to the bankruptcy trustee shall form part of the bankruptcy process cost.

5. Registers and books of bankrupt.

- (1) Where the books of account of the bankrupt are incomplete on the bankruptcy commencement date, the bankruptcy trustee shall get them completed and brought up-to-date within ninety days of the bankruptcy commencement date.
- (2) The bankruptcy trustee shall maintain a cash book, and such other ledgers, registers and books, as may be required to account for the administration of the estate in the bankruptcy process, and shall preserve them for a period of eight years after the completion of administration of the estate.
- (3) Where the bankruptcy trustee is authorised to carry on the business of the bankrupt, he shall keep separate books of account in respect of such business and such books shall, as far as possible, be in conformity with the books already kept by the bankrupt in the course of its business.
- (4) The bankruptcy trustee shall keep receipts for all payments made or expenses incurred by him in relation to the bankruptcy process.

6. Reporting requirements.

- (1) The bankruptcy trustee shall prepare and submit the following reports to the Adjudicating Authority and the committee in the manner specified under these regulations -
 - (a) a preliminary report;
 - (b) progress reports;
 - (c) a final report.
- (2) The bankruptcy trustee shall preserve a physical or an electronic copy of the reports referred to in sub-regulation (1) for eight years after the completion of the administration of the estate.

7. Preliminary report.

- (1) The bankruptcy trustee shall submit a preliminary report to the Adjudicating Authority and the committee within ninety days of the bankruptcy commencement date.
- (2) The bankruptcy trustee shall send a copy of the preliminary report to the bankrupt at the time of submission of the report under sub-regulation (1).
- (3) The preliminary report referred to in sub-regulation (1) should include the following details-
 - (a) A list of the assets and liabilities of the bankrupt as on the bankruptcy commencement date based on the available reliable data and records;

- (b) The proposed plan of action in relation to administration of the estate, including the timeline in which it is proposed to be carried out and the estimated costs;
- (c) Any further inquiry to be made in respect of the assets, business or affairs of the debtor;
- (d) Details of the assets which are intended to be realised, including the following-
 - (i) Value of the assets, valued either in accordance with regulation 35 or as per valuation undertaken during insolvency resolution process of the bankrupt;
 - (ii) Method of realisation of the assets;
 - (iii) Reasons for choice of the method under (ii);
 - (iv) Expected amount from realisation;
 - (v) Any other information that may be relevant for the realisation of the assets.
- (e) Details of the assets which do not form part of the bankrupt's estate, reasons for the same, and the proposed plan of action in respect of such assets, if any.

(4) The preliminary report shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it on specified terms and conditions.

8. Early completion of administration.

At the time of the preparation of the preliminary report or any time after, if the bankruptcy trustee is of the opinion that –

- (a) the realisable assets of the bankrupt are insufficient to cover the costs of bankruptcy process, and
- (b) the affairs of the bankrupt do not require further investigation,

he may prepare a report under section 137 and present it to the committee for its approval.

9. Progress Reports.

- (1) The bankruptcy trustee shall submit progress reports to the Adjudicating Authority and committee in accordance with the following schedule-
 - (a) The first progress report within one hundred and eighty days of the bankruptcy commencement date;
 - (b) The second progress report within two hundred and seventy days of the bankruptcy commencement date;
 - (c) subsequent progress reports within ten days from the end of every quarter, as may be required.

- (2) The bankruptcy trustee shall also send a copy of the progress report to the bankrupt at the time of submission of the report under sub-regulation (1).
- (3) The progress report prepared under sub-regulation (1) shall include-
- (a) A statement indicating the progress in the bankruptcy process including:
 - (i) Settlement of list of creditors;
 - (ii) Distribution of dividend made to the creditors, including interim dividend;
 - (iii) A significant change in the expected realisation for any asset and basis for such change;
 - (iv) A significant change in the value of assets or liabilities of the bankrupt, with reasons for such change;
 - (v) Distribution of unsold property made to the creditors;
 - (vi) Details of any property that remains to be realised;
 - (vii) Any other relevant information.
 - (b) An asset sale report containing the following details of the assets realised including—
 - (i) realised value;
 - (ii) cost of realisation;
 - (iii) manner and mode of realisation, including details as per Schedule II;
 - (iv) reasons for any reduction in the realisable value compared to the value mentioned in the preliminary report;
 - (v) person in favour of whom the property has been realized.
 - (c) Details of fee and remuneration due to and received by the bankruptcy trustee along with a description of the activities carried out by him;
 - (d) Details of the fee and remuneration paid to professionals appointed by the bankruptcy trustee along with a description of activities carried out by them;
 - (e) Other expenses incurred by the bankruptcy trustee in relation to the bankruptcy process;
 - (f) Developments in relation to any material litigation by or against the bankrupt;
 - (g) Filing of and developments in relation to disclaimer of certain properties, or avoidance of transactions under chapter V of Part III of the code;

- (h) Accounts maintained by the bankruptcy trustee showing the receipts and payments made during the period of the report, as well as cumulative receipts and payments made since the bankruptcy commencement date; and
 - (i) Any other relevant aspect of the bankruptcy process.
- (4) The progress report prepared by the bankruptcy trustee closest to the end of the financial year shall enclose audited accounts of the bankruptcy trustee's receipts and payments for the financial year, if auditing of such accounts would have been mandated by section 44AB of the Income Tax Act, 1961 (43 of 1961) for the bankrupt.
 - (5) The progress reports shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it on specified terms and conditions.

10. Final Report.

- (1) The final report prepared by the bankruptcy trustee under section 137 shall contain an account of the completion of the administration and distribution of the bankruptcy estate, including the following -
 - (a) manner of realisation of the assets of the bankrupt;
 - (b) manner of distribution of the dividends amongst the creditors;
 - (c) details regarding the discharge of the bankrupt, if applicable;
 - (d) unclaimed dividend, if any;
 - (e) surplus dividend, if any; and
 - (f) if the bankruptcy process cost exceeds the estimated cost provided in the preliminary report, along with reasons for the same.
- (2) In the event the application for discharge is filed under clause (a) of sub-section (1) of section 138, the bankruptcy trustee shall file a final report with the Adjudicating Authority under section 137, within fifteen days of the approval of the report by the committee.
- (3) In the event the application for discharge is filed under clause (b) of sub-section (1) of section 138, the final report shall be a part of such application.

11. Appointment of professionals.

- (1) A bankruptcy trustee may appoint accountants, legal or other professionals, as may be necessary, to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the bankruptcy process cost.
- (2) The bankruptcy trustee shall not appoint a professional under sub-regulation (1) who:

- (a) is a relative of the bankruptcy trustee;
 - (b) is an associate of the bankrupt;
 - (c) is a related party of the corporate debtor for whom the bankrupt has given a personal guarantee; or
 - (d) has been appointed as an interim resolution professional or a resolution professional or a liquidator in respect of the corporate debtor for whom the bankrupt has given a personal guarantee.
- (3) A professional appointed or proposed to be appointed under sub-regulation (1) shall disclose the existence of any pecuniary or personal relationship with any of the creditors, the corporate debtor for whom the bankrupt has given a personal guarantee or the concerned bankrupt within three days after he becomes aware of it, to the bankruptcy trustee.

12. Persons to extend cooperation.

- (1) The following persons shall extend all assistance and cooperation to the bankruptcy trustee to complete the bankruptcy process:
- (a) The bankrupt;
 - (b) Creditors of the bankrupt;
 - (c) Employees and workmen of the bankrupt, if any;
 - (d) Partners of the bankrupt, if any;
 - (e) Auditors of the bankrupt, if any; and
 - (f) Any other professional appointed by the bankruptcy trustee under regulation 11, if any.
- (2) The bankruptcy trustee shall document and maintain the particulars of any consultation with the persons mentioned in sub-regulation (1).
- (3) The bankruptcy trustee may make an application to the Adjudicating Authority for a direction that a person, who-
- (a) is covered under sub-regulation (1);
 - (b) was the resolution professional or the previous bankruptcy trustee of the bankrupt;
 - (c) has possession of any of the properties of the bankrupt;
 - (d) has been appointed as an interim resolution professional or a resolution professional or a liquidator in respect of the corporate debtor for whom the bankrupt has given a personal guarantee; or

(e) any other person deemed necessary,

shall cooperate with him in the collection of information or any other action necessary for the conduct of the bankruptcy process.

- (4) An application may be made under sub-regulation (3) only after the bankruptcy trustee has made reasonable efforts to obtain the information or cooperation from such person and failed to obtain it.

CLAIMS

13. Debt payable at future time.

- (1) A person may prove for a claim whose payment was not yet due on the bankruptcy commencement date and is entitled to distribution in the same manner as any other creditor.
- (2) Subject to any contract to the contrary, where a creditor has proved for a claim under sub-regulation (1), and the debt has not fallen due before distribution, he is entitled to the principal amount and the interest that has become due till the bankruptcy commencement date along with the outstanding principal amount owed.

14. Negotiable instruments.

Where a person seeks to prove a debt under a bill of exchange, promissory note or other negotiable instrument or security of a like nature, such bill of exchange, note, instrument or security, as the case may be, or its certified true copy shall accompany the proof of claim.

15. Periodical Payments.

In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the bankruptcy commencement date.

16. Determination of quantum of claim.

Where the amount claimed by a claimant is not precise due to any reason, the bankruptcy trustee shall make the best estimate of the amount of the claim based on the information available with him.

17. Debt in foreign currency.

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the bankruptcy commencement date.

Explanation- "The official exchange rate" is the reference rate published by the Reserve Bank of India or derived from such reference rates.

18. Notice for proof of debt.

- (1) The bankruptcy trustee shall send a notice to the creditors mentioned in the list prepared under section 132, for submission of the complete proof of debt in respect of their claims.

- (2) The notice under sub-regulation (1) shall be sent within the time mentioned in sub-section (1) of section 171, and the submission by creditors shall be within thirty days from the date of the notice.

19. Verification of claims.

- (1) The bankruptcy trustee shall verify the claims submitted and shall prepare a list of creditors within the time-period specified in section 132, including the following information in respect of each creditor, –
- (a) the name;
 - (b) the amount of total debt;
 - (c) the amount of debt in default;
 - (d) the amount of debt under (c) that is admitted;
 - (e) the proofs admitted or rejected in part, and the proofs wholly rejected;
 - (f) security interest in respect of the claims, if any.
- (2) The bankruptcy trustee shall certify the constitution of a committee to the Adjudicating Authority within three days post the first meeting of the creditors under regulation 20.
- (3) A revised list of creditors, if required, shall be prepared by the bankruptcy trustee on the basis of the information received under sub-section (1) of section 171, and the committee may be modified, if required.
- (4) The list of creditors, and any modification to the committee, mentioned in sub-regulation (3) shall be filed with the Adjudicating Authority within fifteen days from the last date for receipt of proofs of debt, and simultaneously, the remaining members of the committee shall be intimated.
- (5) The inclusion of a creditor under sub-regulation (3) shall not affect the validity of any decision taken in any meeting of the committee prior to such inclusion.
- (6) The revised list of creditors, as modified from time to time and filed with the Adjudicating Authority, shall be –
- (a) available for inspection by the persons who submitted claims with proof;
 - (b) available for inspection by partners and guarantors of the bankrupt;
 - (c) displayed on the website, if any, of the bankrupt.

MEETINGS OF COMMITTEE

20. First meeting of the creditors.

(1) The notice under sub-section (1) of section 133 calling the first meeting of the creditors shall be served on the creditor at the address it has provided to the bankruptcy trustee by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with regulation 22.

(2) A notice under this regulation shall comply with the requirements under regulation 23.

21. Meetings of the committee.

(1) A bankruptcy trustee may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting on a request by not less than thirty-three percent in value of creditors.

(2) A meeting of the committee, other than the meeting mentioned in regulation 20, shall be called by giving notice to every member in such period as decided by the committee, provided that such notice shall not be given less than forty-eight hours prior to the meeting.

(3) The notice under sub-regulation (2) shall be served on the members at the address they have provided to the bankruptcy trustee, by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with regulation 22.

(4) Any resolution or decision of the committee under the code shall require approval of more than fifty percent in value of the creditors.

(5) A notice under this regulation shall comply with the requirements under regulation 23.

22. Service of notice by electronic means.

(1) A notice by electronic means may be sent to the members through e-mail, as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

(2) The subject line in the e-mail shall state the name of the bankrupt, the place, the time and the date on which the meeting is scheduled.

(3) If notice is sent in the form of a non-editable attachment to an e-mail, such attachment shall be in the Portable Document Format or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.

(4) When notice or notifications of availability of notice are sent by an e-mail, the bankruptcy trustee shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained as “proof of sending”.

(5) The obligation of the bankruptcy trustee shall be satisfied when he transmits the e-mail and he shall not be held responsible for a failure in transmission beyond his control.

(6) The notice made available on the electronic link or Uniform Resource Locator shall be readable, and the recipient should be able to obtain and retain copies, and the bankruptcy

trustee shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.

23. Contents of the notice for a meeting.

- (1) The notice shall inform the members of the venue, time, date and agenda of the meeting.
- (2) The notice of the meeting shall provide that a creditor may attend and vote in the meeting either in person or through a proxy in accordance with regulation 30.
- (3) If an option to participate through electronic voting is made available to the creditors, the notice of the meeting shall –
 - (a) state the process and the manner for voting and the time schedule, including the time period during which the votes may be cast:
 - (b) provide the login ID and the details of a facility for generating password and for keeping security and casting of an electronic vote in a secure manner; and
 - (c) provide contact details of the person who will address the queries connected with the voting.

24. Quorum.

- (1) Where a meeting of the committee could not be held for want of quorum, unless the creditors have previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.
- (2) In the event a meeting of the committee is adjourned in accordance with sub-regulation (1), the adjourned meeting shall be quorate with the creditors attending the meeting.

25. Conduct of meeting.

- (1) The bankruptcy trustee shall act as the chairperson of meetings of the committee.
- (2) At the commencement of a meeting, the bankruptcy trustee shall take a roll call when every creditor, including those attending through proxy, shall state for the record, the following–
 - (a) his name;
 - (b) whether he is attending in the capacity of a proxy;
 - (c) whether he is representing a creditor or group of creditors; and
 - (d) that he has received the agenda and all the relevant material for the meeting.
- (3) After the roll call, the bankruptcy trustee shall inform the creditors of the names of all persons who are present for the meeting and confirm if the required quorum is complete.
- (4) The bankruptcy trustee shall ensure that the required quorum is present throughout the meeting.

- (5) From the commencement of the meeting till its conclusion, no person other than the creditors and any other person whose presence is required by the bankruptcy trustee shall be allowed access to the place where meeting is held without the permission of the bankruptcy trustee.
- (6) The bankruptcy trustee shall ensure that minutes are made in relation to each meeting of the committee and such minutes disclose the particulars of the creditors who attended the meeting by proxy.
- (7) The bankruptcy trustee shall circulate the minutes of the meeting to all creditors in the committee by electronic means within forty-eight hours of the said meeting.

26. Transfer of debt due to creditors.

- (1) In the event a creditor assigns or transfers the debt due to such creditor to any other person during the bankruptcy process period, both parties shall provide the bankruptcy trustee the terms of such assignment or transfer and the identity of the assignee or transferee.
- (2) The bankruptcy trustee shall notify each creditor and the Adjudicating Authority of any resultant change in the committee within two days of such change.

27. Attendance of bankrupt.

- (1) The bankrupt shall attend any meeting which the bankruptcy trustee may, by notice, require him to attend and any adjournment thereof.
- (2) The notice specified in sub-regulation (1) shall be delivered to the bankrupt before the date of the meeting, by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with regulation 22.
- (3) The notice specified in sub-regulation (1) shall be given to the bankrupt in such time prior to the meeting as is decided for notice to creditors under regulation 21(2).
- (4) The bankruptcy trustee shall circulate the minutes to the bankrupt, along with the creditors, of the meetings attended by the bankrupt as per this regulation.

VOTING BY COMMITTEE

28. Calculation of voting share.

- (1) In the event a creditor has opted to enforce its security interest and participate only in relation to the unsecured part of their debt, their voting share shall be calculated with respect to the unsecured part of the debt.
- (2) The voting share for a creditor who has opted to relinquish its security interest shall be calculated with respect to the amount of debt relinquished.
- (3) The voting share for each creditor shall be calculated by the bankruptcy trustee based on the amount of debt owed to such creditor.

- (4) For the purposes of sub-section (3) of section 135, an unliquidated debt shall mean a debt to which a value cannot be assigned by the bankruptcy trustee.

29. Voting by the committee.

- (1) The bankruptcy trustee shall, at the meeting, take a vote of the members of the committee who are participating in the meeting on any item listed for voting after discussion on the same.
- (2) The bankruptcy trustee may provide each member of the committee the means to exercise its vote either at the meeting or by electronic means or through electronic voting system in accordance with the provisions of this regulation.
- (3) The bankruptcy trustee shall-
- (a) circulate the minutes of the meeting by electronic means to all participants of the meeting within forty-eight hours of the conclusion of the meeting, which shall include the decision of the creditors on the agenda items along with the names of the creditors who voted for or against the decision, or abstained from voting; and
 - (b) seek a vote on the matters listed for voting in the meeting from the creditors who were not present in the meeting or did not vote at the meeting, by electronic means or through an electronic voting system, where the voting shall be kept open for a minimum of twenty-four hours from the circulation of the minutes as per sub-regulation 3(a).
- (4) At the end of the voting period, the voting portal shall forthwith be blocked.
- (5) Once a vote on a resolution is cast by a creditor, such creditor shall not be allowed to change it subsequently.
- (6) The circulation of minutes relating to matters under sub-regulation 3(b) to all participants of the meeting, shall be made by electronic means within twenty-four hours of the conclusion of the voting.

Explanation- For the purposes of this regulation-

- (a) *the expressions “voting by electronic means” or “electronic voting system” means a “secured system” based process of display of electronic ballots, recording of votes of the members of the creditors and the number of votes polled in favour or against, such that the voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security;*
- (b) *the expression “secured system” means computer hardware, software, and procedure that-*
- (i) are reasonably secure from unauthorized access and misuse;*
 - (ii) provide a reasonable level of reliability and correct operation;*
 - (iii) are reasonably suited to perform the intended functions; and*

(iv) *adhere to generally accepted security procedures.*

30. Voting by proxy.

- (1) A creditor who is entitled to vote at a meeting of the committee shall be entitled to appoint a person as a proxy to attend and vote on his behalf, who shall not be a creditor or associate of the bankrupt.
- (2) The appointment of a proxy shall be in Form B.
- (3) The form for appointment of proxy shall be completed and delivered by the creditor to the bankruptcy trustee forty-eight hours prior to the meeting of the committee.
- (4) The proxy shall only be entitled to vote on any resolution on behalf of a creditor.

REALISATION OF ASSETS

31. Mode of sale.

- (1) The bankruptcy trustee shall ordinarily sell the assets of the bankrupt through an auction process as specified in Schedule II(a).
- (2) The bankruptcy trustee may sell the assets by private sale, in the manner specified in Schedule II(b) when-
 - (a) The asset is perishable in nature.
 - (b) The value of the asset is likely to deteriorate significantly if the sale is delayed;
 - (c) The selling price of the asset is higher than the reserve price of a failed auction.
- (3) The bankruptcy trustee shall not proceed with a sale if he has reason to believe that there is any collusion amongst any one or more of the following:
 - (a) the buyers,
 - (b) the bankrupt,
 - (c) the creditors,
 - (d) associates of the bankrupt or creditors,
 - (e) the corporate debtor for whom the bankrupt has given a personal guarantee, or
 - (f) related party of the corporate debtor for whom the bankrupt has given a personal guarantee,

and shall submit a report to the Adjudicating Authority for appropriate orders.

Explanation: For the purposes of this regulation:

The term “associate” will apply mutatis mutandis to the creditor, as under sub-section (2) of section 79.

32. After acquired property.

- (1) If the bankrupt serves a notice in respect of an after acquired property under sub-section (2) of section 150, or otherwise, he shall not dispose of such property without the prior permission of the Adjudicating Authority.
- (2) If the bankrupt disposes of property before giving the notice under sub-section (2) of section 150, he shall within seven days from such disposal, disclose to the bankruptcy trustee the relevant details of the person to whom the property has been transferred, and shall also provide any other information which may be necessary to enable the bankruptcy trustee to trace the property and recover it for the estate.
- (3) Any expenses incurred by the bankruptcy trustee in acquiring title to such after-acquired property shall form part of the bankruptcy process costs.

33. Disclaimer of onerous property.

- (1) The bankruptcy trustee shall notify the bankrupt and the persons interested in the onerous property in respect of the proposed disclaimer, at least seven days prior to serving the notice of disclaimer under sub-section (1) of section 160.
- (2) The notification under sub-regulation (1) shall contain the intention of the bankruptcy trustee to disclaim the property, particulars of the property intended to be disclaimed, and details of the interested persons in such property.
- (3) The notice under sub-section (1) of section 160 shall be filed with the Adjudicating Authority within three days of giving such notice to the persons mentioned therein.
- (4) An application under sub-section (1) of section 163 shall be made within thirty days of the applicant becoming aware of the disclaimer or from the date of the notice of disclaimer under sub-section (1) of section 160, whichever is earlier.

Explanation: For the purposes of section 160, 161 and 162 and this regulation, a person interested in onerous property shall be –

- (a) Any person who claims an interest in the disclaimed property; or*
- (b) Any person who is under any liability in respect of the onerous property; or*
- (c) Where the disclaimed property is a dwelling house, any person who is in occupation of or entitled to occupy the dwelling house, on the date of application for bankruptcy is filed.*

34. Purchase of assets by certain persons.

- (1) Any purchase or acquisition of interest in any asset comprised in the bankruptcy estate, if conditions in sub-regulation (2) are met, may only be made by the following persons with prior permission of the Adjudicating Authority:

- (a) any creditor of the bankrupt;
 - (b) any professional appointed by the bankruptcy trustee under regulation 11;
 - (c) any associate of the bankrupt;
 - (d) the bankruptcy trustee; or
 - (e) any company where the bankrupt or the creditor is a promoter or a director or partner.
- (2) Permission under sub-regulation (1) shall be obtained if, from the bankruptcy estate,:
- (a) A movable property valued above 10 lakh rupees is being transferred through private sale;
 - (b) Any immovable property is being transferred through private sale.
- (3) Any realisation made contrary to the provisions of this regulation may be set aside by the Adjudication Authority, and it may make such order as it may deem fit.

Explanation: The term “associate” in this regulation will apply mutatis mutandis to the bankruptcy trustee and creditor, as under sub-section (2) of section 79 of the Code.

35. Valuation of assets.

- (1) The bankruptcy trustee shall appoint a registered valuer to value the assets which may or may not form part of the bankrupt’s estate, when he is of the opinion that it is necessary or when a resolution to that effect has been passed by the committee.
- (2) The provisions of regulation 11 shall apply *mutatis mutandis* to registered valuers appointed under sub-regulation (1).
- (3) The registered valuer appointed under sub-regulation (1) shall submit to the bankruptcy trustee the estimates of the realizable value of the asset(s) computed in accordance with internationally accepted valuation standards, after physical verification of the assets of the bankrupt.
- (4) The bankruptcy trustee may appoint an additional registered valuer for valuing the assets of the bankrupt if required in the circumstances of the case, who shall independently submit his estimate as per sub-regulation (3).
- (5) In the event an additional registered valuer is appointed under sub-regulation (4), the average of the estimates received from both valuers will be considered to be the value of the assets.

36. Realisation of security interest by secured creditor.

- (1) Where a secured creditor realises his security and the amount realised is in excess of the debts due to the secured creditor, such creditor shall tender such surplus funds to the bankruptcy trustee.

- (2) A secured creditor who seeks to realise his security under the bankruptcy process shall intimate the bankruptcy trustee of the price at which he proposes to realise the secured asset.
- (3) The bankruptcy trustee shall attempt to identify a buyer willing to purchase the security at a price higher than the price intimated under sub-regulation (2), and the asset shall then be sold to such buyer, if any, at the higher price by the secured creditor.
- (4) If an asset is sold as per sub-regulation (2), the secured creditor shall realise the asset at the least proposed price and shall bear the cost for identification of the buyer.
- (5) The cost for identification of a buyer under sub-regulation (3) shall be borne by the secured creditor, only in the event such identified buyer purchases the asset of the secured creditor.

PROCEEDS OF BANKRUPTCY PROCESS AND DISTRIBUTION OF PROCEEDS

37. All money to be paid in to bank account.

- (1) The bankruptcy trustee shall open a bank account in the name of the bankrupt followed by the words 'in bankruptcy process', in a scheduled bank, for the receipt of all moneys due to the bankrupt.
- (2) The bankruptcy trustee shall deposit in the bank account opened under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the bankruptcy trustee of the bankrupt, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day.
- (3) The bankruptcy trustee may maintain cash of one lakh rupees or such higher amount as may be permitted by the Adjudicating Authority to meet bankruptcy process costs.
- (4) All payments out of the account by the bankruptcy trustee above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

38. Distribution to claimant of deceased creditor.

- (1) In the event an application is made by a claimant or heir of a deceased creditor for receiving dividend payable to such deceased creditor, the bankruptcy trustee shall satisfy himself as to the claimant's right and title to receive the dividend, and may call for evidence regarding such right or title.
- (2) Once the bankruptcy trustee has satisfied himself on the veracity of the claim as per sub-regulation (1), he may apply to the Adjudicating Authority for sanctioning the payment of such dividend or return to the claimant.

39. Distribution.

- (1) Subject to the provisions of section 174 and 178, the bankruptcy trustee shall not commence distribution unless a preliminary report is filed with the Adjudicating Authority.
- (2) The bankruptcy process cost shall be deducted before any dividend distribution is made.

40. Return of money.

A creditor shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.

41. Unclaimed proceeds of bankruptcy or undistributed assets.

- (1) After the approval of the final report but before its filing with the Adjudicating Authority under regulation 10, the bankruptcy trustee shall apply to the Adjudicating Authority for an order to pay into the [Insolvency and Bankruptcy Fund] any unclaimed dividends of bankruptcy process or undistributed asset or any other balance payable to the creditors in his hands.
- (2) Any bankruptcy trustee who retains any money which should have been paid by him into the Insolvency and Bankruptcy Fund under this regulation shall pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be determined by the Board.
- (3) The bankruptcy trustee shall, when making any payment referred to in sub-regulation (1), furnish to the Board, a statement setting forth the following –
 - (a) The names and last known address of the creditors entitled to the unclaimed dividend or undistributed asset or any other balance;
 - (b) The amount of the unclaimed dividend or any other balance for each creditor under (a);
 - (c) The value of the undistributed assets.
- (4) The bankruptcy trustee shall be entitled to a receipt from the Board for any money paid by him under sub-regulation (2), and such receipt shall be an effectual discharge of the bankruptcy trustee in this respect.
- (5) A person claiming to be entitled to any money paid into the Insolvency and Bankruptcy Fund may apply to the Board for an order for payment of the money claimed.
- (6) The Board may, if satisfied that such person under sub-regulation (5) is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.
- (7) Any money paid into the Insolvency and Bankruptcy Fund under sub-regulation (1), which remains unclaimed for a period of fifteen years, shall be liable to be utilised for the purposes of the Insolvency and Bankruptcy Fund.

42. Bankruptcy process costs.

- (1) “Bankruptcy process costs” shall mean -
 - (a) the fees payable to any person acting as a bankruptcy trustee;
 - (b) costs mentioned in regulation 5(4), regulation 9(3)(b)(ii), regulation 11(1), regulation 32(3);

- (c) any costs incurred at the expense of the Government to facilitate the bankruptcy process; and
 - (d) such other costs directly relatable to the bankruptcy process which may be ratified by the committee.
- (2) The committee shall approve all the costs mentioned in sub-regulation (1).

FORM A

WRITTEN CONSENT TO ACT AS BANKRUPTCY TRUSTEE

(Under regulation 3(3) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)

[Date]

To
The Adjudicating Authority
[Name of Bench]

From
[Name of the Insolvency Professional]
[Registration number of the Insolvency Professional]
[Address of the Insolvency Professional registered with the Board]

Subject: Written consent to act as bankruptcy trustee

1. I, [name], an insolvency professional enrolled with [name of insolvency professional agency] and registered with the Board, note that I have been proposed to be appointed as bankruptcy trustee for the bankruptcy process of [name of the bankrupt].

2. In accordance with Regulation 3(3) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, I hereby give consent to the proposed appointment.

3. I declare and affirm as under: -

- (a) I am registered with the Board as an insolvency professional.
- (b) I am not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency.
- (c) I do not suffer from any disability to act as a bankruptcy trustee.
- (d) I am eligible to be appointed as bankruptcy trustee of the bankrupt under regulation 3 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 and other applicable provisions of the Code and regulations.
- (e) I shall make the disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;
- (f) I have the following processes in hand:

| Sl. No. | Role as | No. of Processes on date of Consent |
|---------|---------------------------------|-------------------------------------|
| 1. | Interim Resolution Professional | |
| 2. | Resolution Professional of: | |

| | | |
|----|--|--|
| | a. Corporate debtors b. Personal guarantors or individuals or partnership firms | |
| 3. | Liquidator of: a. Liquidation Process b. Voluntary Liquidation Process | |
| 4. | Bankruptcy Trustee | |
| 5. | Authorised Representative | |
| 6. | Any other (please state) | |

Date:

Place:

(Signature of Insolvency Professional)
Registration No.....

FORM B
Proxy Form

(Under regulation 30 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)

Full name of the bankrupt:

[Insert matter name / application number for the bankruptcy process]

| | | | | |
|-----------------------|---------------|-----------|----------|-------|
| Full Name of Creditor | | | | |
| Address | Present | Permanent | Business | |
| | | | | |
| Identification number | Aadhar Number | PAN | CIN | GSTIN |
| | | | | |
| Email ID | | | | |

I being *[insert name of creditor]* holding *[insert voting share]* of the debt of the bankrupt, hereby appoint:

| | | | | | |
|-----------|-----------------------|---------------|-----------|----------|-------|
| 1. | Full name | | | | |
| | Address | Present | Permanent | Business | |
| | | | | | |
| | Identification Number | Aadhar Number | PAN | CIN | GSTIN |
| | | | | | |
| | E-mail id | | | | |
| | Signature | | | | |

or failing him;

| | | | | | |
|-----------|-----------------------|---------------|-----------|----------|-------|
| 2. | Full name | | | | |
| | Address | Present | Permanent | Business | |
| | | | | | |
| | Identification Number | Aadhar Number | PAN | CIN | GSTIN |
| | | | | | |
| | E-mail id | | | | |
| | Signature | | | | |

as my proxy to attend and vote for me and on my behalf at the meeting of the committee to be held on *[insert date and time of meeting]* at *[insert venue of the meeting]*, and at any adjournment thereof in respect of the matters indicated in the notice of the meeting *[provide details of the notice]*, as listed below:

[insert matters as listed in the agenda]

Signed this *[insert date]* day of *[insert month]* *[insert year]*

Signature of creditor:

Signature of proxy holder(s):

Schedule I
FEES OF BANKRUPTCY TRUSTEE
[Under regulation 4(2)]

| Amount of realisation in rupees (less bankruptcy process cost) | Percentage of fee on the amount realised | | | |
|--|---|--------------------------|--------------------------|------------|
| | In the first six months | In the next three months | In the next three months | Thereafter |
| On the first 50 lakh | 10.00 | 7.50 | 5.00 | 3.75 |
| On the next 75 lakh | 7.5 | 5.00 | 3.75 | 2.80 |
| On the next 1 crore | 5.00 | 3.75 | 2.50 | 1.88 |
| On the next 9 crores | 3.75 | 2.80 | 1.88 | 1.41 |
| On the next 40 crores | 2.50 | 1.88 | 1.25 | 0.94 |
| On the next 50 crores | 1.25 | 0.94 | 0.68 | 0.51 |
| On further sums realised | 0.25 | 0.19 | 0.13 | 0.10 |
| Amount of distribution in rupees | Percentage of fee on the amount distributed | | | |
| | In the first six months | In the next three months | In the next three months | Thereafter |
| On the first 50 lakh | 5.00 | 3.75 | 3.00 | 1.88 |
| On the next 75 lakh | 3.75 | 3.00 | 1.88 | 1.41 |
| On the next 1 crore | 2.50 | 1.88 | 1.25 | 0.94 |
| On the next 9 crores | 1.88 | 1.40 | 0.94 | 0.71 |
| On the next 40 crores | 1.25 | 0.94 | 0.63 | 0.47 |
| On the next 50 crores | 0.63 | 0.48 | 0.34 | 0.25 |
| On further sums distributed | 0.13 | 0.10 | 0.06 | 0.05 |

SCHEDULE II
MODE OF SALE
[Under regulation 31]

(a) AUCTION

- (1) Where an asset is to be sold through auction, the bankruptcy trustee shall do so in the manner specified herein.
- (2) The bankruptcy trustee shall prepare a marketing strategy in writing for the sale of the asset and may take help of marketing professionals if it is required, which shall be submitted to the Adjudicating Authority under regulation 9 as a part of the progress report.
- (3) The marketing strategy may include-
 - (a) releasing advertisements for auction of the asset;
 - (b) preparing information sheets for the asset;
 - (c) preparing a notice of sale; and
 - (d) liaising with agents.
- (4) The bankruptcy trustee shall prepare terms and conditions of sale, including reserve price, earnest money deposit, pre-bid qualification, and time period for full payment.
- (5) The reserve price shall be the value of the asset arrived at in accordance with regulation 35 and such valuation shall not be more than six months old.
- (6) The bankruptcy trustee shall provide any assistance, if necessary, for the conduct of due diligence by interested buyers.
- (7) The bankruptcy trustee shall sell the assets through an electronic auction on an online portal, or on a portal designated by the Board (if any), where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.
- (8) The bankruptcy trustee may sell assets through a physical auction, with prior permission of the Adjudicating Authority, if he is of the opinion that it will maximize the realization from the sale of the assets and is in the best interest of the creditors.
- (9) An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders unless the bankruptcy trustee has received permission from the Adjudicating Authority allowing otherwise regarding the visibility of the bid price.
- (10) If required, the bankruptcy trustee may conduct multiple rounds of auctions with a view to maximize the realization from the sale of assets, and to promote the best interests of the creditors.

- (11) On the close of the auction, the payment schedule shall be communicated to the highest bidder. On payment of the full amount, the bankruptcy trustee shall execute the sale and the asset will be transferred in the manner specified in the terms of the sale.

(b) PRIVATE SALE

- (1) Where an asset is to be sold through private sale, the bankruptcy trustee shall conduct the sale in the manner specified herein.
- (2) The bankruptcy trustee shall prepare a strategy in writing to approach interested buyers for assets to be sold by private sale, which shall be submitted to the Adjudicating Authority under regulation 9 as a part of the progress report.
- (3) Private sale may be conducted through directly liaising with potential buyers or their agents, through retail shops, or through any other means that is likely to maximize the realizations from the sale of assets.
- (4) The completion of sale, and the delivery of the assets shall be as per the terms of sale.