

## **Insolvency and Bankruptcy Board of India**

### **Sub: Amendments to the IBBI (Insolvency Professional Agencies) Regulations, 2016.**

Despite the best of efforts and intentions, a regulator may at times not fully have appreciation of the ground realities, as much and as early as the stakeholders and the regulated may have, particularly in a dynamic environment. The stakeholders could, therefore, play a more active role in making regulations. They may contemplate and deliberate, at length, the important issues in the extant regulatory framework that hinder transactions/processes and offer solutions to address them, in addition to responding urgently to draft regulations proposed by the regulator. This is akin to crowdsourcing of ideas. This enables every idea to reach the regulator. Consequently, the universe of ideas available with the regulator is much larger and the possibility of a more conducive regulatory framework much higher. Keeping this in view, the IBBI invited comments from stakeholders; on the regulations notified under the Code. It was indicated that the comments received between 4<sup>th</sup> July, 2017 and 31<sup>st</sup> December, 2017 shall be processed together and following the due process, regulations shall be modified to the extent considered necessary. It was also indicated that it would be the endeavor of the IBBI to notify modified regulations by 31<sup>st</sup> March, 2018 and bring them into force from 1<sup>st</sup> April, 2018.

2. The above invitation invited comments on the IBBI (Insolvency Professional Agencies) Regulations, 2016 and the IBBI (Model Bye-laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. Though a total of 71 comments were received on these two regulations, there was no meaningful comment to be pursued through amendment of regulations.

3. Regarding the role of IPAs, the Bankruptcy Law Reforms Committee observed: *“The Committee is also of the opinion that the regulatory structure be so designed such that competition is promoted amongst the multiple IP agencies to help achieve efficiency gains. Greater competition among the IP agencies will in turn lead to better standards and rules and better enforcement.”*

4. Section 204 provides for functions of IPAs. It reads as under:

*“204. An insolvency professional agency shall perform the following functions, namely: —*

- (a) grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee;*
- (b) lay down standards of professional conduct for its members;*
- (c) monitor the performance of its members;*
- (d) safeguard the rights, privileges and interests of insolvency professionals who are its members;*
- (e) suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws;*
- (f) redress the grievances of consumers against insolvency professionals who are its members;*  
*and*
- (g) publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations.”*

5. The Governing Board in its meeting held on 11<sup>th</sup> and 12<sup>th</sup> November, 2016 had decided by majority that only a section 8 (not-for-profit) company may be allowed to be registered as an IPA. Accordingly, regulation 3 of the IPA Regulations provides that no person shall be eligible to be registered as an IPA unless it is a company registered under section 8 of the Companies Act, 2013. Following notification of the regulations, the following three IPAs were registered in November, 2016:

- (i) Indian Institute of Insolvency Professionals of ICAI
- (ii) ICSI Insolvency Professional Agency, and
- (iii) Insolvency Professional Agency of ICAI.

6. Since November, 2016, no new IPA has come up. Even though three are registered as on date, being promoted by statutory professional institutes, they share similar background and have perhaps been unable to step out of the shadow of the parent bodies. Despite prodding through monthly meetings, inspections and otherwise, they do not seem to have motivation to innovate and compete. They are not even adequately staffed for the task. They are not doing enough to measure up to the expectation under section 204 of the Code. In short, it is not turning out to be a competitive industry.

7. It was felt that not-for-profit requirement is discouraging competition. Accordingly, this was placed before the Advisory Committee on Service Providers in its meeting held on 26<sup>th</sup>

February, 2018 for its consideration. The Committee advised that the requirement of not-for-profit company may be dropped.

8. The Committee also discussed measures to build capacity of IPAs so that they could perform their role envisaged under Section 204. It recommended that IPAs:

- (i) may have regular employees who can focus on research activities;
- (ii) internally meet at least 50% of training requirement of their members; and
- (iii) have collaboration with academia for balance training and research needs.

9. It is proposed to allow all companies incorporated under the Companies Act, 2013 to be eligible for registration as an IPA. The Advisory Committee's suggestions on capacity building of IPAs may also be accepted.

10. It is submitted for consideration and approval by the Governing Board.