

Insolvency and Bankruptcy Board of India

Sub: Amendments to:

- (i) the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (CIRP regulations) and**
- (ii) the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (hereafter Fast Track regulations)**

A Board Note (Annexure A) was circulated on 15th August, 2017 seeking approval of the Governing Board, by resolution passed by circulation under regulation 3 (2) of the IBBI (Procedure for Governing Board Meetings) Regulation 2017, to amend the two captioned regulations.

2. Of the eight members, approval was received from seven of them. A note (Annexure B) was received from [REDACTED] Member. This note was circulated to other Members.

3. The amendments to two regulations (Annexure C) were notified on 16th August, 2017.

4. The Board Note approved through circulation is placed before the Governing Board for ratification.

Insolvency and Bankruptcy Board of India

(CIRP Division)

Sub: Amendments to:

- (i) **the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (CIRP regulations) and**
- (ii) **the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (hereafter Fast Track regulations)**

Section 13 (1) (b) of the Insolvency and Bankruptcy Code, 2016 (Code) provides that the Adjudicating Authority shall, after admission of an application “*cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15*”. Section 15 of the Code states that the public announcement of corporate insolvency resolution process shall be made in the manner specified by the Board and shall contain the last date for submission of claims. Section 18(1) of the Code, *inter alia*, provides that an interim resolution professional shall “*collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor ...*” and “*receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15*”. These provisions envisage submission and collation of all claims from all creditors.

2. Section 3 (10) defines ‘creditor’ to mean *any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder*. Accordingly, ‘creditors’ is an inclusive definition, and not restricted to financial and operational creditors. Similarly, section 3 (11) defines ‘debt’ to mean *a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt*. Accordingly, ‘debt’ is an inclusive definition, and not restricted to financial debt and operational debt. Further, section 3 (6) defines ‘claim’ to mean: *(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured; (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured*. Accordingly, ‘claim’ is right to payment, and not limited to right to payment arising from

operational or financial debt. Thus, 'claim' envisaged under the Code is a right to payment, whether arising from an operational debt, a financial debt or otherwise, of an operational creditor, a financial creditor or otherwise.

3. The Board has specified, in pursuance of section 15, through CIRP and Fast Track regulations, the manner of submission of claims. The Form A attached to regulations provides a format of public announcement which *inter alia* provides: "*The creditors of [name of the corporate debtor], are hereby called upon to submit a proof of their claims on or before [insert the date falling fourteen days from the appointment of the interim resolution professional] to the interim resolution professional at the address mentioned against item 8.*" These regulations provide for Forms for submission of claims by operational creditors (including workmen and employees), and financial creditors.

4. From above, it is clear that the Code and regulations envisage submission of all claims by all creditors and oblige the interim resolution professional to collate all claims. The details of claims form part of the information memorandum which is a key input for evolution of resolution plans.

5. About 200, including 11 of the 12 big accounts identified by the RBI have been admitted for corporate insolvency resolution process. It is understood from discussions with the stakeholders and orders of the NCLT that there could be claims from creditors other than operational or financial creditors, and in certain cases it is difficult to determine whether a particular creditor is an operational creditor, or a financial creditor or any other. A creditor who is not a financial creditor or an operational creditor needs a specific form for submitting his claim. It is proposed to amend the regulations to provide for a form for submission claims by creditors other than financial and operational creditors.

6. Since many insolvency resolution transactions are on and claims are to be submitted and collated in a time bound manner, the approval of the Governing Board is sought, by resolution passed by circulation under regulation 3 (2) of the IBBI (Procedure for Governing Board Meetings) Regulation 2017, to amend the two regulations as indicated in Annexures I and II to this note and other consequential changes. Given the urgency of the matter, it is proposed to dispense with the practice of public consultation in the instant matter. These amendments in the regulations will enable other creditors to submit their claims and facilitate interim resolution

professional to receive and collate claims and determine the financial position of corporate debtor.

7. The Governing Board is requested to kindly approve the proposal in this note.

Encl.: Annexures I and II.

THE GAZETTE OF INDIA
EXTRAORDINARY
PART – III, SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, AUGUST .. , 2017

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, the August, 2017

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY
RESOLUTION PROCESS FOR CORPORATE PERSONS) (AMENDMENT)
REGULATIONS, 2017**

IBBI/2017-18/GN/REG013.- In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy, Code, 2016, the Insolvency and Bankruptcy Board of India hereby makes the following regulations to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely: -

1. These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017.

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

3. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations), after regulation 9, the following regulation shall be inserted, namely:-

“ 9A. **Claims by other creditors.**

- (1) A person claiming to be a creditor, other than those covered under regulations 7, 8, or 9, shall submit proof of his claim to the interim resolution professional or resolution professional in person, by post or by electronic means in Form F of the Schedule.
- (2) The existence of the claim of the creditor referred to in sub-section (1) may be proved on the basis of –
 - (a) the records available in an information utility, if any, or
 - (b) other relevant documents which adequately establish the claim, including any or all of the following:-
 - (i) documentary evidence of demanding satisfaction of the claim;
 - (ii) bank statements of the creditor showing non-satisfaction of claim;
 - (iii) an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any.”

4. In the principal regulations, in the schedule, in Form A, substitute following Para:

“The financial creditors shall submit their proof of claims by electronic means only. The operational creditors, including workmen and employees, may submit the proof of claims in person, by post or by electronic means.”

by

“The financial creditors shall submit their proof of claims by electronic means only. All other creditors may submit the proof of claims in person, by post or by electronic means.”

5. In the principal regulations, in the Schedule, after Form E, the following new Form F shall be inserted, namely:-

“ FORM F

PROOF OF CLAIM BY CREDITORS (OTHER THAN FINANCIAL CREDITORS AND OPERATIONAL CREDITORS)

(Under Regulation 9A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

Date

To

The Interim Resolution Professional / Resolution Professional

[*Name of the Insolvency Resolution Professional / Resolution Professional*]

[*Address as set out in public announcement*]

From

[*Name and address of the creditor*]

Subject: Submission of proof of claim.

Madam / Sir,

I, [*Name of the creditor*], hereby submit the following proof of claim in respect of the corporate insolvency resolution process in the case of [*name of corporate debtor*]. The details of the same are set out below:

PARTICULARS

1.	Name of the Creditor	
2.	Identification number of the Creditor (If an incorporated body corporate, provide identification number and proof of incorporation. If a partnership or individual, provide identification record of all partners or the individuals)	
3.	Address and email address of the creditor for correspondence	
4.	Total amount of claim (Including any interest as at the insolvency commencement date)	
5.	Details of documents by reference to which claim can be substantiated	
6.	Details of how and when the claim arose	
7.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	
8.	Details of: a. any security held, the value of security and its date, or b. retention title arrangement in respect of goods or properties to which the claim refers	

9.	Details of bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	
10.	List of documents attached to this proof of claim in order to prove the existence and non-satisfaction of claim due to the creditor	
Signature of the creditor or any person authorised to act on his behalf (Please enclose the authority if this is being submitted signed on behalf of the creditor)		
Name in BLOCK LETTERS		
Position with or in relation to the creditor		
Address of the person signing		

* PAN, Passport, AADHAAR or the identity card issued by the Election Commission of India.

AFFIDAVIT

I, *[name of deponent]*, currently residing at *[insert address]*, do solemnly affirm and state as follows:

1. *[Name of corporate debtor]*, the corporate debtor was, at the insolvency commencement date, being the _____ day of _____ 20__, justly and truly indebted to me for the sum of Rs. *[insert amount of claim]*.
3. 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]
4. The said documents are true, valid and genuine to the best of my knowledge, information and belief.
5. 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 (if any):
[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim.]

Solemnly, affirmed at *[insert place]* on _____ day, the _____ day of _____ 20__ .

Before me,

Notary / Oath Commissioner

Deponent's signature

VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph ____ to ____ of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom.

Verified at _____ on this _____ day of _____ 201__ .

Deponent's signature” .

(Dr. M. S. Sahoo)

Chairperson

Insolvency and Bankruptcy Board of India

Footnote: The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were published in the Gazette of India vide notification No. IBBI/2016-17/GN/REG004 on 30th November, 2016.

THE GAZETTE OF INDIA
EXTRAORDINARY
PART – III, SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, AUGUST .. , 2017

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, the August, 2017

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (FAST TRACK
INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS)
(AMENDMENT) REGULATIONS, 2017**

IBBI/2017-18/GN/REG014.- In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy, Code, 2016, the Insolvency and Bankruptcy Board of India hereby makes the following regulations to amend the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, namely: -

1. These regulations may be called the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017.

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

3. In the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations), after regulation 9, the following regulation shall be inserted, namely:-

“ 9A. **Claims by other creditors.**

- (3) A person claiming to be a creditor, other than those covered under regulations 7, 8, or 9, shall submit proof of his claim to the interim resolution professional or resolution professional in person, by post or by electronic means in Form F of the Schedule.
- (4) The existence of the claim of the creditor referred to in sub-section (1) may be proved on the basis of –
 - (a) the records available in an information utility, if any, or
 - (b) other relevant documents which adequately establish the claim, including any or all of the following:-
 - (iv) documentary evidence of demanding satisfaction of the claim;
 - (v) bank statements of the creditor showing non-satisfaction of claim;
 - (vi) an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any.”

4. In the principal regulations, in the schedule, in Form A, substitute following Para:

“The financial creditors shall submit their proof of claims by electronic means only. The operational creditors, including workmen and employees, may submit the proof of claims in person, by post or by electronic means.”

by

“The financial creditors shall submit their proof of claims by electronic means only. All other creditors may submit the proof of claims in person, by post or by electronic means.”

5. In the principal regulations, in the Schedule, after Form E, the following new Form F shall be inserted, namely:-

“ FORM F

PROOF OF CLAIM BY CREDITORS (OTHER THAN FINANCIAL CREDITORS AND OPERATIONAL CREDITORS)

(Under Regulation 9A of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017)

Date

To

The Interim Resolution Professional / Resolution Professional

[Name of the Insolvency Resolution Professional / Resolution Professional]

[Address as set out in public announcement]

From

[Name and address of the creditor]

Subject: Submission of proof of claim.

Madam / Sir,

I, *[Name of the creditor]*, hereby submit the following proof of claim in respect of the corporate insolvency resolution process in the case of *[name of corporate debtor]*. The details of the same are set out below:

PARTICULARS

1.	Name of the Creditor	
2.	Identification number of the Creditor (If an incorporated body corporate, provide identification number and proof of incorporation. If a partnership or individual, provide identification record of all partners or the individuals)	
3.	Address and email address of the creditor for correspondence	
4.	Total amount of claim (Including any interest as at the insolvency commencement date)	
5.	Details of documents by reference to which claim can be substantiated	
6.	Details of how and when the claim arose	
7.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	
8.	Details of: a. any security held, the value of security and its date, or b. retention title arrangement in respect of goods or properties to which the claim refers	

9.	Details of bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	
10.	List of documents attached to this proof of claim in order to prove the existence and non-satisfaction of claim due to the creditor	
Signature of the creditor or any person authorised to act on his behalf (Please enclose the authority if this is being submitted signed on behalf of the creditor)		
Name in BLOCK LETTERS		
Position with or in relation to the creditor		
Address of the person signing		

* PAN, Passport, AADHAAR or the identity card issued by the Election Commission of India.

AFFIDAVIT

I, *[name of deponent]*, currently residing at *[insert address]*, do solemnly affirm and state as follows:

2. *[Name of corporate debtor]*, the corporate debtor was, at the insolvency commencement date, being the _____ day of _____ 20__, justly and truly indebted to me for the sum of Rs. *[insert amount of claim]*.
6. 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]
7. The said documents are true, valid and genuine to the best of my knowledge, information and belief.
8. 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 (if any):
[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim.]

Solemnly, affirmed at *[insert place]* on _____ day, the _____ day of _____ 20__ .

Before me,

Notary / Oath Commissioner

Deponent's signature

VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph ____ to ____ of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom.

Verified at _____ on this _____ day of _____ 201__ .

Deponent's signature” .

(Dr. M. S. Sahoo)

Chairperson

Insolvency and Bankruptcy Board of India

Footnote: The IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 were published in the Gazette of India vide notification No. IBBI/2016-17/GN/REG012 on 14th June, 2017.

Note from [REDACTED]

We are in receipt of the proposal proposing amendments to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017.

2. The first one will be indicated in the note of CIRP and the other will be Fast Track Resolution.

3. The proposed amendment draft is at Annexure-I to the said note. We have also gone through the comments of [REDACTED] and [REDACTED] Section 3(6) of the Code defines 'claim' and as per 3(6)(b) the 'claim' means :-

“right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, un matured, disputed, undisputed, secured or unsecured.”

5. The word 'Creditor' has been defined under Section 3 (10) and the debt has defined under Section 3(11) of the code. When there is an agreement where, in lieu of a certain payment by a person to a builder/firm will provide him an apartment/ flat/ plot whatsoever it may be, within a particular time frame, the duty is casted on both the parties to fulfil their obligations well in time as per terms and conditions of the agreement. The moment there is a breach that firm is not in a position to provide the agreed plot/apartment/flat, and has received some payment in the form of instalment or a lump-sum, then in such an eventuality, the money which has been received by a firm/builder becomes 'capital gain' and aggrieved comes within the definition of financial creditor, for which form is already provided under regulations there to provide/ submit the claim.

6. Since no copy of agreement or any other document has been provided, as such this view is based on the provisions of code and note of the Board received by me, however, we are of the view that there is no need for the proposed amendment. But the Board is at liberty to take a decision after discussing the entire matter by calling a meeting of members or otherwise at its discretion.

7. It is also to be kept in mind that the Real Estate (Regulation & Development) Act, 2016 has come into force, a special law and Section 89 of said Act confers overriding effect hence whether the provisions of Code will prevail or that of the Act of 2016 also needs to be looked into.

Since the present issue is not a single one, there is every likely-hood that such type of issues, may come in bulk in future, hence we are also of the view that any decision may not be taken in a hurry and haste but only after due deliberations and consultations.

Notified copies of the following:-

- (i) the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (**Amendment**) Regulations, 2017, and
- (ii) the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) (**Amendment**) Regulations, 2017