

Insolvency and Bankruptcy Board of India

Sub: Insolvency and Bankruptcy Board of India (Complaint Handling Procedure) Regulations, 2017.

As stated in the preamble, the Insolvency and Bankruptcy Code, 2016 (Code) is an Act to consolidate and amend the laws relating to 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 the stakeholders”.

2. A key innovation of the Code is four pillars of institutional infrastructure. These are:

- (a) class of regulated persons, called insolvency professionals, who assist the stakeholders in conduct of insolvency and bankruptcy process. The insolvency professional agencies, being front-line regulators, develop and regulate the profession of insolvency professionals;
- (b) a new industry of ‘information utilities’ who store and make available authentic information required to carry out various transactions under the Code efficiently and expeditiously;
- (c) the adjudicating authorities, namely, NCLT and DRT for corporates and individuals respectively and their appellate bodies, namely, NCLAT and DRAT; and
- (d) a regulator, namely, the Insolvency and Bankruptcy Board of India, which has regulatory over-sight over the service providers, namely, insolvency professionals, insolvency professional agencies and information utilities. It also writes and enforces rules for transactions, namely, corporate insolvency resolution, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Code.

3. The Code segregates commercial aspects of insolvency resolution from judicial aspects and empowers stakeholders and adjudicating authority to decide matters within their domain expeditiously. It empowers and facilitates the stakeholders to complete the resolution process in time. However, it is important that while stakeholders complete transactions, the institutional infrastructure needs to ensure **maximisation of value of assets of persons, and balance of the interests of all the stakeholders**. While rendering services, conduct of the service providers may affect the interests of stakeholders and / or fail to comply with any of the provisions of the Code, rules, regulations, guidelines or orders issued thereunder. The regulatory framework

needs to penalise errant conduct on the part of service providers and remedy the harm, if any, caused to any stakeholder, and must not harass innocent service providers.

4. Take the example of an insolvency professional. He has a very important and delicate responsibility in the scheme of the Code. He manages the affairs of the corporate debtor under corporate insolvency resolution process. He is duty bound to preserve and protect the assets of the corporate debtor. He plays a key role in formulation and approval of the resolution plan. While managing a corporate debtor or facilitating approval of a resolution plan, he is guided by the maximisation of the value of corporate debtor and balance of the interests of stakeholders, among others. His conduct has potential to promote the interests of a set of stakeholders, sometimes at the cost of other stakeholders. Such conduct could be the most professional, fair and equitable conduct on his part or could be under the influence of a set of stakeholders. Such conduct could be real or just a perception. Therefore, the stakeholders may have genuine complaints against him most often and in some cases, malicious complaints. This assumes significance because the stakeholders, namely, debtors and creditors, some of whom may make malicious complaints are outside the jurisdiction of the Board. It is, therefore, necessary to have an objective, credible mechanism which does not spare any misconduct, while it does not penalize an honest conduct of a service provider.

5. The relevant provisions of the Code are reproduced:

a. Section 196 (1): The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely: -

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(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;

b. Section 217: Any person aggrieved by the functioning of an insolvency professional agency or insolvency professional or an information utility may file a complaint to the Board in such form, within such time and in such manner as may be specified.

c. Section 218 (1): Where the Board, on receipt of a complaint under section 217 or has reasonable grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may, at any time by

an order in writing, direct any person or persons to act as an investigating authority to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility.

d. Section 240 (2): In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: -

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(zzy) the form, manner and time of filing complaints under section 217.

6. In pursuance of the above provisions, the Board has notified the IBBI (Inspection and Investigation) Regulations, 2017. It is now necessary to provide for receipt and disposal of grievances and complaints by the Board. Wherever the Board forms a prima facie opinion that disposal of grievances and complaints require inspection or investigation, these will be dealt under the IBBI (Inspection and Investigation) Regulations, 2017. It is proposed to make the IBBI (Grievances and Complaint Handling) Regulations which will provide for the following:

a. The Board may provide for receipt of (i) grievances, (ii) complaints or grievances-cum-complaints against an insolvency professional, insolvency professional entity, insolvency professional agency and information utility. Grievance would mean any kind of suffering a stakeholder has gone through because of conduct of a service provider. Complaints would mean an alleged violation of a specific provision of the law.

b. Grievances may be submitted in plain paper along with a suggestion how the grievance can be addressed. If the grievance does not involve a violation of law, the Board may advise the concerned service provider to redress the grievance. The Board may close a grievance in not more than 30 days from its receipt.

c. Complaints or grievances-cum-complaints may be filed in prescribed form along with a fee of Rs. 10,000. No fee needs to be paid if it is filed by Government or a statutory authority provided it is signed by an officer not below the rank of joint secretary. The form may enable (i) a narration of conduct of the service provider, (ii) the evidence of conduct to be attached to the form, (iii) how the said conduct has affected the transaction, market or a stakeholder, and (iv) how and which provision of law has been violated. The complainant may indicate if his identity is to be kept confidential and in that case, the Board shall maintain it.

d. The Board shall form a prima facie view if the complaint needs to be escalated to inspection or investigation or closed. For this purpose, the Board may seek additional information from the complainant as well as the service provider complained against. If the Board proposes to close it, it will inform the complainant of its decision to close it. The prima facie view may be

taken within 15 days of its receipt. If complainant is not satisfied with the closure, he may file an appeal in plain paper which will be considered by an officer of the Board not below the level of CGM, who will pass an order either to close it or to escalate it to inspection or investigation, within 30 days of receipt of the appeal. Once the matter moves to inspection and investigation, the complainant would have no role except when the Board needs him for evidence. If the complaint moves to inspection or investigation, or if the complaint is not frivolous in the opinion of the Board, the fee of Rs. 10,000 will be refunded to the complainant.

e. The Board may provide an electronic grievance and complaints handling mechanism. Till it is electronic, manual mode may be available.

f. The Board may disclose the receipt and disposal of grievances and complaints in summary form on its website.

7. This is submitted for consideration of the Governing Board and depending on the approval, the regulations will be notified.
