

Insolvency and Bankruptcy Board of India

Subject: Rules and Regulations for Individual Insolvency and Bankruptcy

IBBI had constituted a Working Group to recommend the strategy and approach for implementation of the provisions of the Insolvency and Bankruptcy Code, 2016 dealing with the insolvency and bankruptcy in respect of individual guarantors to corporate debtors and individuals having business, and submit a report along with draft rules and regulations. The Governing Board in its last meeting held on 21st September, 2017 considered the report of the Working Group and directed that public comments be sought on the (i) the draft Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Individuals and Firms) Rules, 2017 (**Annexure A**), and (ii) the draft Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017 (**Annexure B**).

2. Accordingly, IBBI placed these draft rules and regulations on its the website seeking public comments. A summary of public comments received on the draft rules and regulations is at **Annexure C**.

3. IBBI participated in ten roundtables of stakeholders in different cities to seek and understand their perspective relating to the draft rules and regulations A summary of comments gathered at these roundtables on the draft rules and regulations is at **Annexure D**.

4. An analysis of the issues dealt in the draft rules and regulations is at **Annexure E**.

5. The Advisory Committee on Individual Insolvency and Bankruptcy, in its meeting held on 8th November, 2017, considered the report of the Working Group and the Annexures A to E listed above. A summary of discussions of the meeting carrying the recommendations of the Committee on various issues is at **Annexure F**.

6. It is suggested for consideration of the Governing Board:

- a. Draft regulations may be modified to incorporate the recommendations of the Advisory Committee and then notify the same;

- b. The annexures C to F may be forwarded to MCA for its consideration for finalising rules;
- c. The rules and regulations may be synchronised in co-ordination with the MCA;
- d. The rules and regulations may be notified simultaneously in co-ordination with MCA;
- e. MCA may be requested to commence implementation of the insolvency framework with individual guarantors to corporates which are undergoing CIRP; and
- f. DFS may be requested to prepare the DRTs and depending on the preparedness, insolvency framework in respect of individuals with business may be implemented.

DRAFT
MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, the [...] [...], 2017

G.S.R. [...].— In exercise of the powers conferred by sub-section (1) and clauses (m), (n) and (o) of sub-section (2) of section 239 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 Insolvency Resolution Process for Individuals and Firms) Rules, 2017.
(2) They shall come into force from the [...] day of [...], 2017.
- 2. Application.** —These Rules shall apply to matters relating to the insolvency resolution process for individuals and firms under Part III of the code.
- 3. Definitions.** — (1) In these Rules, unless the context otherwise requires-

(a) “Adjudicating Authority” means-

- (i) the National Company Law Tribunal constituted under the Companies Act, 2013 (18 of 2013) for personal guarantors if Section 60 (2) or 60 (3) is applicable; or
- (ii) the Debt Recovery Tribunal constituted under Section 3(1A) of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) for individuals and firms in all other cases as applicable;

(b) “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;

(c) “insolvency resolution process” means insolvency resolution process for individuals and firms under Part III of the code;

(d) “separate debt” means a debt, including a personal debt, for which a partner of a firm is liable, other than a partnership debt.

(2) Unless the context otherwise requires, 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. Application by debtor.** — (1) A debtor shall apply under Section 94(1) in Form 1.
- (2) In case the default is in respect of a separate debt, the person liable for such separate debt shall apply for an insolvency resolution process for himself, personally or through a resolution professional.
- (3) The debtor shall forthwith dispatch a copy of the application filed with the Adjudicating Authority to -
- (a) the last known address of the creditor(s), simultaneously by registered post, speed post and courier and in any case through electronic means at the last known e-mail address;
- (b) the last known address of the of the other partners of the firm simultaneously by registered post, speed post and courier and in any case through electronic means at the last known e-mail address, for an application under sub-rule 2.
- 5. Demand notice by creditor.** — (1) A creditor shall deliver a demand notice to the debtor for the payment of the unpaid debt in default under Section 95(4)(b), which shall contain the following-
- (i) the amount of debt due;
- (ii) the amount of debt in default;
- (iii) the basis for (i) and (ii);
- (iv) a statement that if the debtor does not pay the unpaid debt in default within a period of fourteen days from the receipt of the demand notice, an insolvency resolution process will be initiated; and
- (v) a statement that the right to make an application in respect of the debt is not barred by limitation under the applicable law.
- (2) The demand notice shall be delivered to the debtor at the last known address simultaneously by registered post, speed post and courier and in any case through electronic means at the last known e-mail address.
- (3) If the demand notice under sub-rule (2) is not delivered to the debtor, it shall be affixed at the last known address of the debtor and shall be deemed to be delivered.
- (4) A copy of the demand notice delivered under this section may be filed in an information utility, if any.
- 6. Application by creditor.** — (1) A creditor, either by itself or jointly, shall apply for initiating the insolvency resolution process for an individual or a firm, as the case may be, under Section 95, in Form 2.
- (2) In case the default is in respect of a separate debt, a creditor shall file an application for triggering the insolvency resolution process of the person who is liable for the separate debt.
- (3) The creditor shall forthwith dispatch a copy of the application filed with the Adjudicating Authority to the last known address of the debtor simultaneously by registered post, speed post and courier and in any case through electronic means at the last known e-mail address.

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

7. **Copy of application.** — On the appointment of the resolution professional nominated by the Board under Section 97(4) by the Adjudicating Authority, a copy of the application as filed shall be forthwith provided to such resolution professional by the Adjudicating Authority.
8. **Report of the resolution professional.** — (1) A copy of the report prepared by the resolution professional under Section 99 shall be provided by the resolution professional to the applicant on submission to the Adjudicating Authority, and shall include the following declaration-

I hereby recommend acceptance / rejection of the application for the following reasons:

[reasons to be provided in summary]

(2) The resolution professional may require the applicant to rectify the application prior to the submission of the report under sub-rule (1), which shall be recorded in the report.

(3) For the purposes of preparation of the report under sub-rule (1), the resolution professional may request further information or explanations in connection with the application from relevant government departments or banks or financial institutions, which should be furnished within seven days of the receipt of the request.

(4) In case the information requested is not provided within the stipulated time, the resolution professional may apply to the Adjudicating Authority for appropriate directions.

9. **Excluded assets.** — (1) For the purposes of Section 79(14)(c), unencumbered personal ornaments up to INR [...] of the debtor or his immediate family which cannot be parted with, in accordance with religious usage, shall be excluded assets.

(2) For the purposes of Section 79(14)(e), an unencumbered single dwelling unit owned by the debtor upto the threshold value calculated according to the methodology provided in the Schedule shall be an excluded asset.

(3) In the event the actual value of the excluded asset is greater than the threshold value in sub-rule (1) or (2) –

- (i) the debtor shall be entitled to an amount equivalent to the threshold value, in the event the excluded asset is disposed of; or
- (ii) the debtor may retain the excluded asset on provision of the amount in excess of the threshold value, for the benefit of the creditors.

- (4) The Adjudicating Authority may, depending on the circumstances of each case, exclude assets which may be above the values in sub-rule (1) or (2).

10. 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 4 or 6 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, 4, 7, 8 and 9 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 insolvency resolution 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.

- (3) Till the time the facility mentioned in sub-rule (1) 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.

11. Withdrawal of application. — An application under rule 4 or 6 shall not be withdrawn by the applicant before admission under section 100, without the leave of the Adjudicating Authority.

12. Application fee. — (1) An application under rule 4 or 6 filed with the National Company Law Tribunal, shall be accompanied by a fee of INR 1000.

- (2) An application under rule 4 or 6 filed with the Debt Recovery Tribunal, shall be accompanied by a fee of INR 100.

- (3) The application fee may be paid through any permissible mode of payment.

13. Definition of relatives. — For the purposes of Explanation (ii) of Section 79(2)(b), the manner in which a debtor or spouse of debtor is related to a person includes:

- (a) son;
- (b) daughter;
- (c) mother;
- (d) father;
- (e) son's daughter and son;
- (f) daughter's daughter and son;
- (g) grandson's daughter and son;

- (h) granddaughter's daughter and son;
- (i) brother;
- (j) sister;
- (k) brother's son and daughter;
- (l) sister's son and daughter;
- (m) father's father and mother;
- (n) mother's father and mother;
- (o) father's brother and sister; and
- (p) mother's brother and sister.

Explanation:

- (i) The relatives mentioned in (a), (b), (c) and (d) shall include relatives other than those included in the definition of immediate family under Section 79(17) of the code.
- (ii) Wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included.

14. Miscellaneous.

The information required to be provided by the creditors under Section 103(2) shall be as per Form 2 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017.

FORM 1

(See sub-rule (1) of rule 4)

APPLICATION BY DEBTOR TO INITIATE INSOLVENCY RESOLUTION PROCESS.

*(Under rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority
for Insolvency Resolution Process for Individuals and Firms) Rules, 2017)*

[Date]

To,

The Adjudicating
Authority

[Address]

From,

[Name and last known address of the debtor]

In the matter of [name of the debtor]

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

Madam/Sir,

I/ We hereby submit this application to initiate an insolvency resolution 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.	Last known address	

5.	Occupation			
6.	Monthly income			
7.	List of associates of the debtor, including relatives, who may be creditors	Name	Age	Address
8.	Bank account details	Account number	IFSC code	Branch address
9.	Identification numbers	Aadhaar number	Passport number	PAN
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 may be excluded assets.	Immovable	Description	Estimated value
		Movable	Description	Estimated value
		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.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other)			
13.	In case of a firm			
(i)	Firm name			
(ii)	Business address			
(iii)	Registration number and date of registration (if applicable)			
(iv)	Nature of business			
(v)	List of assets of the firm in the format in number 10.			
	Details of each partner of firm:			
(vi)	Details mentioned in serial number 1-11 of this part			
(vii)	Date of joining firm			
(viii)	Capital subscription as per latest balance sheet			
(ix)	Profit sharing as per latest balance sheet			

(x)	Name, address and authority of person submitting application on behalf of the firm	
14.	In case of a personal guarantor-	
	Name of corporate debtor for which guarantee is given	
	Any current or past position held in the corporate debtor	
	Identification number	
	Whether corporate debtor is an associate	
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.	Monthly income of debtor	

5.	If business organization is a firm, details mentioned in serial no. 12 (v) – (x) in Part I of this form.	
6.	Commencement date of business and date of close of operations (if applicable)	
7.	Address where books of accounts / accounting records are kept (including soft copy records)	
8.	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.	Last known address	
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 insolvency resolution 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.
15.	Statement by debtor regarding limitation	<p>I [<i>debtor</i>] hereby state that the right to make this application is not barred by limitation as per the applicable law.</p>

Part - IV

PARTICULARS OF & DECLARATIONS BY RESOLUTION PROFESSIONAL THROUGH WHOM APPLICATION FILED				
1.	Title and full name			
2.	In case associated with an Insolvency Professional Entity (IPE), details of the IPE and nature of association.			
3.	Last known address			
4.	E-mail address(es)			
5.	Contact number	Home	Mobile	Business

6.	Declaration by resolution 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 resolution professional by [<i>name of applicant debtor</i>] in connection with the proposed insolvency resolution 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 resolution 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 a resolution professional in respect of the debtor in accordance with Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017. (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>]. <p>(Signature of the insolvency professional)</p>
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[Name of the debtor] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of debtor / authorized person
Name in block letters
Position with or in relation to the debtor
Address of person signing

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

1. All documents mentioned in serial number 13 of Part III of this form.
2. 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.
3. Copy of the partnership deed, if applicable.
4. Copy of the personal guarantee contract, if applicable.
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 seven days from the date of the application including the following information and supporting documents, namely-
 - (i) debtor's assets (inclusive of assets which may be 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) if debtor is a member of a HUF, financial statements of the business operations of the HUF;
- (vii) wealth tax statements filed by the debtor, if any, for the previous five years.

Note: For a firm, the statement of affairs for the firm, and of each individual partner should be prepared separately, for attachment herewith.

FORM 2

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

APPLICATION BY CREDITOR TO INITIATE INSOLVENCY RESOLUTION PROCESS

*(Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority
for Insolvency Resolution Process for Individuals and Firms) Rules, 2017)*

[Date]

.....

To,

The
Adjudicating
Authority
[Address]

From,

[Name and last known address of the
creditor]

In the matter of [name of the debtor]

Subject: Application to initiate insolvency resolution 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 an insolvency
resolution 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
5.	Last known address			

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.	Last known address			
4.	Occupation			
5.	Monthly income (to the extent known)			
6.	List of associates of the debtor, including relatives, who may be creditors (to the extent known)	Name	Age	Address
7.	Bank account details	Account number	IFSC code	Branch address
8.	Identification numbers	Aadhaar number	Passport number	PAN
9.	Contact number(s)	Home	Mobile	Business
10.	List of assets of debtor as on the application date (to the extent	Immovable	Description	Estimated value

	known) Note: this will include all assets of debtor, irrespective of them being excluded assets.			
		Movable	Description	Estimated value
		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		
11.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other) (to the extent known)			

12.	In case of a firm	
(i)	Firm name	
(ii)	Business address	
(iii)	Registration number and date of registration (if applicable) (to the extent known)	
(iv)	Nature of business	
(v)	List of assets of the firm in the format in serial number 10. (to the extent known)	
	Details of each partner of firm:	
(vi)	Details mentioned in serial number 1-11 of this part (to the extent known)	
(vii)	Date of joining firm (to the extent known)	
(viii)	Capital subscription as per latest balance sheet (to the extent known)	
(ix)	Profit sharing as per latest balance sheet (to the extent known)	
(x)	Name, address and authority of person submitting application on behalf of the firm	
13.	In case of a personal guarantor-	
	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)	

14.	Name and address of person resident in India authorised to accept the service of process on debtor's behalf	
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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	

Part-IV

PARTICULARS OF & DECLARATIONS BY RESOLUTION PROFESSIONAL THROUGH WHOM APPLICATION FILED				
1.	Title and full name			
2.	In case associated with an Insolvency Professional Entity (IPE), details of the IPE and nature of association.			
3.	Last known address			
4.	E-mail address(es)			
5.	Contact number	Home	Mobile	Business

6.	Declaration by resolution 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 resolution professional by [<i>name of applicant debtor</i>] in connection with the proposed insolvency resolution 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 resolution 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 a resolution professional in respect of the debtor in accordance with Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017; (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>]. <p>(Signature of the insolvency professional)</p>
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[*Name of the creditor*] has paid the requisite fee for this application through [*state means of payment*] on [*date*].

Yours sincerely,

Signature of person authorised to act on behalf of the creditor
Name in block letters
Position with or in relation to the creditor
Address of person signing

List of documents to be attached to the application:

1. All documents mentioned in serial number 14 of Part III of this form.
2. Copy of the demand notice served on the debtor in Form 2.
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, if available.
4. Copy of the personal guarantee contract, if applicable.
5. Copy of the authorization, wherever required under this form.
6. Proof that the application fee has been paid.
7. 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.
8. 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.
9. Documentary evidence of all information sought in each entry for each part of the form.

SCHEDULE

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

*(Under Rule 9(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority
for Insolvency Resolution Process for Individuals and Firms) Rules, 2017)*

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 All India House Price Index released by the Reserve Bank of India

Explanation:

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

Rural

Number of persons in dwelling unit	Adjusted threshold area of dwelling unit (in square feet)
1	300
2	300
3	300
4	300
5	375
6	450
7	525
8	600

9	675
10	750
>10	750

Urban

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.

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

Reproduction cost based on plinth area rate issued by state PWDs (B)

Amount of depreciation (C)

Builders' effort @3% of (B)	(D)
Value of building (B-C+D)	(E)

(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 (INSOLVENCY RESOLUTION PROCESS FOR INDIVIDUALS AND FIRMS) REGULATIONS, 2017

IBBI/2017-18/GN/[●]. - In exercise of the powers conferred under sub-section (1)(t) of Section 196, sub-section (1) and clause (zn), (zo), (zp) and (zq) of sub-section (2) of section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following Regulations, namely -

CHAPTER I

PRELIMINARY

1. Short title and commencement.

- (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017.
- (2) These Regulations shall come into force on [●] 2017.
- (3) These Regulations shall apply to the insolvency resolution process.

2. Definitions.

- (1) In these Regulations, unless the context otherwise requires-
 - (a) “Adjudicating Authority” means-
 - (i) the National Company Law Tribunal constituted under the Companies Act, 2013 (18 of 2013) for personal guarantors if Section 60 (2) or 60 (3) is applicable; or
 - (ii) the Debt Recovery Tribunal constituted under Section 3(1A) of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) for individuals and firms in all other cases as applicable.
 - (b) “committee of creditors” means the committee of creditors constituted by the resolution professional under Regulation 6;
 - (c) “electronic form” shall have the meaning assigned to it in section 2(r) of the Information Technology Act, 2000 (21 of 2000);
 - (d) “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;
 - (e) “participant” means a person entitled to attend a meeting of the creditors and includes the committee of creditors, the debtor, the resolution professional and

any other person authorised by the committee to attend such meeting;

- (f) “insolvency resolution process” means the insolvency resolution process for individuals and firms under Chapter III of Part III of the code;
 - (g) “insolvency resolution process costs” means the costs specified in Regulation 28;
 - (h) “insolvency resolution process period” means the period beginning from the date of the order passed under Section 100, until one hundred and eighty days, or the date of the order passed under section 114, whichever is earlier;
 - (i) “insolvency commencement date” means the date of admission of an application by the Adjudicating Authority for initiating the insolvency resolution process under Chapter III of Part III of the code.
- (2) Unless the context otherwise requires, 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.

CHAPTER II

GENERAL

3. Eligibility for resolution professional.

- (1) An insolvency professional shall be eligible to be appointed as a resolution professional for an insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is a partner or director, or the insolvency professional entity of which he is a partner or director, are not associates of the debtor.
- (2) An insolvency professional shall not be eligible to be appointed as a resolution professional if he, or the insolvency professional entity of which he is a partner or director, is under a restraint order of the Board.
- (3) An insolvency professional shall not continue as a resolution professional if the insolvency professional entity of which he is a director or a partner, or any other partner or director of such insolvency professional entity represents any other stakeholder in the same insolvency resolution process.

4. Debt counselling.

Debt counselling may be provided to the debtor prior to the commencement of the insolvency resolution process and thereafter by such entities as may be recognised by the Board or the Central Government in this respect.

CHAPTER III
PROOF OF CLAIMS OF CREDITORS

5. Submission of proof of claim

- (1) A creditor shall submit a claim and proof of such claim to the resolution professional on or before the last date mentioned in the public announcement, in Form 1.
- (2) Form 1 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 proof of claim as per sub-regulation (1) within the time stipulated in the public announcement, may submit such proof to the resolution professional till the approval of a repayment plan by the creditors.
- (4) A creditor who submits proof of claim under sub-regulation (3) shall be entitled to participate in the meetings of the committee of creditors, if such creditor is included in the committee as per Regulation 7.
- (5) The inclusion of a creditor under sub-regulation (4) shall not affect the validity of any decision taken in any meeting of the committee of creditors prior to such inclusion.
- (6) The creditor shall bear the costs relating to the proof of claim.

6. Verification of claims

- (1) The resolution professional shall commence the verification of each claim as soon as it is received, and prepare a list of creditors reflecting the name of the creditors, amount claimed, amount admitted, and security interest in respect of the claims, if any, within the time period stipulated in Section 104 (2).
- (2) The resolution professional shall file a report certifying the constitution of a committee of creditors on the preparation of the list of creditors, to the Adjudicating Authority under sub-regulation (1).
- (3) The list of creditors constituting the committee filed with the Adjudicating Authority under sub-regulation (2) shall be-
 - (a) available for inspection by the persons who submitted proofs of claim;
 - (b) available for inspection by partners and guarantors of the debtor;
 - (c) displayed on the website, if any, of the debtor;
 - (d) presented at the first meeting of the committee of creditors.

7. Committee of creditors

- (1) A committee of creditors formed under Regulation 6(2) shall consist of the following members:

- (a) ten largest creditors by value;
 - (b) one representative elected by all workmen other than those workmen included in sub-clause (a), if applicable; and
 - (c) one representative elected by all employees other than those employees included in sub-clause (a), if applicable.
- (2) In the event the number of creditors is less than ten, the committee shall include all such creditors.

8. Determination of amount of claim.

- (1) Where the amount claimed by a creditor is not precise due to any reason, the resolution professional shall make the best estimate of the amount of the claim based on the information available with him.
- (2) The resolution professional shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

9. Preparation of statement of affairs

- (1) A statement of affairs of the debtor shall be prepared by the resolution professional for the purposes of section 107(3).
- (2) In case of a firm, the resolution professional shall prepare separate statement of affairs for the firm, and for each partner of the firm respectively.
- (3) A statement of affairs shall include the following information -
 - (a) debtor's assets and liabilities for the previous three years;
 - (b) details of the excluded assets and excluded debts of the debtor;
 - (c) secured and unsecured debts with names of the creditors, and all requisite details for the previous three years;
 - (d) particulars of debt owed by debtor to associates of the debtor for the previous three years;
 - (e) guarantees given in relation to any of the debts of the debtor, and whether any of the guarantors is an associate of the debtor;
 - (f) Details of the financial statements 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;
 - (g) Details of the wealth tax statements filed by the debtor, if any, for the previous five years.

10. Debts in foreign currency

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

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

CHAPTER IV

MEETINGS OF CREDITORS

11. Meetings of the committee of creditors

- (1) A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting on a request by thirty-three percent in number of creditors.
- (2) A meeting of the committee other than the meeting as specified in Regulation 12(1) shall be called by giving not less than seven days’ notice in writing to every participant.
- (3) The notice under sub-regulation (2) shall be served on the participant at the address it has provided to the resolution professional, by hand or registered post or courier or speed post, but in any event, be served by electronic means in accordance with Regulation 13.
- (4) Any decision other than for approval or modification of the repayment plan shall require approval of more than fifty percent in value of the creditors present and voting.
- (5) A notice under this Regulation shall comply with the requirements under Regulation 15.

12. First meeting of the creditors.

- (1) The meeting of the committee of creditors referred to in Section 106 shall not be held any time prior to fourteen days or later than twenty-eight days, from the date of submission of the report by the resolution professional under section 106(1).
- (2) The meeting of the committee shall be called by giving not less than fourteen days’ notice in writing to every participant, and shall be accompanied by the documents as mentioned in section 107(3).
- (3) The notice under sub-regulation (3) shall be served on the creditor at the address it has provided to the resolution professional by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with Regulation 13.

- (4) A notice under this Regulation shall comply with the requirements under Regulation 15.

13. Service of notice by electronic means.

- (1) A notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator (URL) for accessing such notice.
- (2) The subject line in the e-mail shall state the name of the debtor, 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 (PDF) or in a non-editable format together with a 'link or instructions' for the recipient for downloading the relevant version of the software.
- (4) When the notice or notifications of availability of notice are sent by an e-mail, the resolution professional 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 resolution professional 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 resolution professional shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.

14. Service of notice on firm

Any application or notice in non-electronic form shall be deemed to be duly served on all partners of the firm, if it is served at the place of business of the firm in India and upon any one of the partners of the firm or upon any person having at the time of service the control or management of the firm business.

15. Contents of the notice for a meeting.

- (1) The notice shall inform the participants of the venue, the 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 21.
- (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.

16. Quorum

- (1) A meeting of the committee shall be quorate if creditors representing thirty three percent in number are present in person or by proxy.
- (2) The quorum requirement may be modified by the resolution professional in consultation with the creditors, for any future meetings of the committee.
- (3) 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 to the same time and place on the next day.
- (4) In the event a meeting of the committee is adjourned in accordance with sub-regulation (3), the adjourned meeting shall be quorate with the creditors attending the meeting.

17. Conduct of meeting.

- (1) The resolution professional shall act as the chairperson of the meeting of the committee.
- (2) At the commencement of a meeting, the resolution professional shall take a roll call, when every participant, 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 resolution professional shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete.

- (4) The resolution professional 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 participants and any other person whose presence is required by the resolution professional shall be allowed access to the place where meeting is held without the permission of the resolution professional.
- (6) The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes disclose the particulars of the participants who attended the meeting by proxy.
- (7) The resolution professional shall circulate the minutes of the meeting to all creditors in the committee and debtor by electronic means within forty-eight hours of the said meeting.

18. 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 insolvency resolution process period, both parties shall provide the resolution professional, the terms of such assignment or transfer and the identity of the assignee or transferee.
- (2) The resolution professional shall notify each participant and the Adjudicating Authority of any resultant change in the committee within two days of such change.

CHAPTER V **VOTING BY CREDITORS**

19. Calculation of voting share

- (1) A member of the committee under Regulation 7(1) shall have voting share in proportion of the debt due to such creditor or debt represented by a representative, as the case may be, to the total debt.
- (2) The debt due to any creditor shall be calculated as on the insolvency commencement date, on the basis of the claims admitted.
- (3) For the purposes of Section 109(3), an unliquidated debt shall mean a debt to which a value cannot be assigned by the resolution professional.

Explanation: For the purposes of sub-regulation (1), total debt is the sum of –

- (a) the amount of debt due to the creditors listed in Regulation 7(1)(a);
- (b) the amount of the aggregate debt due to workmen under Regulation 7(1)(b), if applicable; and

- (c) the amount of aggregate debt due to employees under Regulation 7(1)(c), if applicable.

20. Voting by the committee

- (1) The resolution **professional** shall, at the meeting, take a vote of the committee of creditors who are participating in the meeting on any item listed for voting, after discussion on the same.
- (2) The resolution professional may provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system in accordance with the provisions of this Regulation.
- (3) The resolution professional 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; and
 - (b) seek a vote on the matters listed for voting in the meeting from the members of the committee who did not participate in the meeting or did not vote at the meeting, which may be by electronic means or an electronic voting system where the voting shall be kept open a minimum of twenty-four hours from the circulation of the minutes.
- (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 resolution professional shall circulate 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.
- (7) The circulation under sub-regulation (6) shall be made by electronic means within twenty-four hours of the conclusion of the voting, or forty-eight hours of the conclusion of the meeting if no electronic voting is done.

Explanation- For the purposes of these Regulations-

- (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.

21. 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 debtor.
- (2) The appointment of a proxy shall be in Form 2.
- (3) The form for appointment of proxy shall be completed and delivered by the creditor to the resolution professional 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.
- (5) A proxy may vote electronically on behalf of a creditor by following the procedure set out in Regulation 20 above, provided that the form appointing a proxy has been delivered to the resolution professional as per sub-regulation (3).
- (6) A proxy shall represent more than one creditor only in cases where the proxy is appointed on behalf of employees or workmen in the committee as per Regulation 7(1)(b) or 7(1)(c).

CHAPTER VI

REPAYMENT PLAN

22. Contents of repayment plan

- (1) The matters under Section 105(3)(c) that shall be provided for in a repayment plan include the following -
 - (a) the duration of the repayment plan;
 - (b) implementation schedule for the repayment plan, including the proposed dates of distributions to creditors, with estimates of their amounts;
 - (c) source of funds for the insolvency resolution process costs and their payment in priority to all other payments under the repayment plan;
 - (d) a minimum budget for the survival of the debtor and immediate family for the duration of the repayment plan;

- (e) if the debtor has any business, the manner in which it is proposed to be conducted during the course of the repayment plan, and the role of the resolution professional;
 - (f) the manner in which funds held for the purposes of the repayment plan are to be banked, invested or otherwise dealt with, pending distribution to creditors;
 - (g) a comprehensive list of all the creditors of the debtor;
 - (h) the functions which are undertaken by the resolution professional, including supervision and implementation of the repayment plan;
 - (i) variation of the terms of a contract or transaction involving the debtor;
 - (j) that excluded assets will not be transferred or sold;
 - (k) financing required for the insolvency resolution process; and
 - (l) terms and conditions for the discharge of the debtor
- (2) A repayment plan may provide for the following-
- (a) transfer or sale of all or part of the assets of the debtor, including treatment of excluded assets whose actual value exceeds the prescribed threshold value for excluded assets;
 - (b) administration or disposal of any funds of the debtor;
 - (c) satisfaction or modification of any security interest;
 - (d) reduction in the amount payable to creditors;
 - (e) curing or waiving of any breach of a debt due from the debtor;
 - (f) modification in the terms of payment of any debt due from the debtor;
 - (g) amendment of the partnership deed, if applicable;
 - (h) part of the income of the debtor to be used in the repayment of the debt, and the manner of calculating the income of the debtor;
 - (i) ratification of insolvency resolution costs which do not require approval of the committee of creditors under Regulation 28;
 - (j) the manner in which funds held for the purpose of payment to creditors, and not so paid on the end of the repayment plan, are to be dealt with; and
 - (k) such other matters as may be required by the committee of creditors.

23. Non-cooperation by debtor

In the event the debtor does not co-operate post the first meeting under Regulation 12, the resolution professional shall include a statement to this effect in the report prepared under section 112(1).

24. Procedure following breach of repayment plan by debtor

- (1) If in the opinion of the resolution professional, the debtor is in breach of the repayment plan and such breach has not been rectified, the resolution professional shall, as soon as practicable, issue a notice to the debtor identifying the breach and requiring the debtor within fifteen days of the date of notice to:
 - (a) rectify the breach if it is capable of being rectified, and
 - (b) if the resolution professional thinks necessary, provide an explanation of the breach.
- (2) If, within the period specified by the resolution professional in the notice of breach under sub-regulation (1), the debtor:
 - (a) rectifies the breach of the repayment plan; or
 - (b) if required, provides an explanation for the breach;no further action shall be taken against the debtor, and the breach shall be reported to the creditors by the resolution professional within a reasonable time from the date of the breach.
- (3) If the breach is not rectified by the debtor in the time period specified in the notice of breach under sub-regulation (1) and the resolution professional is of the opinion that such breach will affect the completion of the repayment plan, he may file a report to the Adjudicating Authority in relation to the premature end of the repayment plan as per section 118(2).

25. Filing with the Adjudicating Authority

- (1) The repayment plan as approved by the requisite majority of the creditors, along with the report mentioned in Section 113 shall be filed with the Adjudicating Authority on or before one hundred and twenty days from the insolvency commencement date.
- (2) The information mentioned in sub-regulation (1) shall be provided to the debtor and the committee of creditors, on submission to the Adjudicating Authority.

26. Completion of the repayment plan

- (1) A repayment plan shall be complete when, in the opinion of the resolution professional, the debtor has complied with all obligations under the repayment plan within the duration of the repayment plan, and a notice to that effect has been issued under section 117(1)(a).
- (2) The resolution professional may issue a notice of completion under section 117(1)(a) if the debtor has substantially complied with all obligations under the repayment plan.

- (3) The Adjudicating Authority shall consider the notice and the report under section 117(1) in passing the discharge order.

CHAPTER VII

RESOLUTION PROFESSIONAL

27. Duties of resolution professional

The resolution professional shall perform the following duties, namely -

- (a) assist the debtor in preparing the repayment plan;
- (b) collect information relating to the assets and finances of the debtor, in order to determine the financial position of the debtor, and prepare his statement of affairs;
- (c) receive and collate all claims submitted by creditors to him, pursuant to the public announcement made under section 102;
- (d) constitute a committee of creditors;
- (e) file information collected with the information utility, if necessary;
- (f) submit the reports as required under the insolvency resolution process;
- (g) appoint a valuer for the valuation of the assets of the debtor, if required;
- (h) raise finances for the insolvency resolution process, if necessary; and
- (i) conduct meetings of the committee of creditors.

CHAPTER VIII

INSOLVENCY RESOLUTION PROCESS COSTS

28. Insolvency resolution process costs.

(1) “Insolvency resolution process costs” shall include -

- (a) the fees payable to any person acting as a resolution professional;
- (b) the expenses incurred on and by the resolution professional for carrying out the insolvency resolution process, including the cost of engaging professional advisors, if any;
- (c) finances raised for the insolvency resolution process, and costs incurred in raising such finances;
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

- (e) such other costs directly relatable to the insolvency resolution process which may be ratified by the committee of creditors.
- (2) The committee of creditors shall approve the costs mentioned in sub-regulation (1) (a), (b) and (c).

29. Miscellaneous.

The details and documents required to be submitted as per Section 95(7) shall be as per Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Individuals and Firms) Rules, 2017.

FORM 1

PROOF OF CLAIM BY A CREDITOR

(Under Regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017)

[Date]

To
The Resolution Professional
[Name of the Resolution Professional]
[Address as set out in public announcement]

From
[Name and address of the creditor]

Subject: Submission of proof of claim.

Madam/Sir,

[Name of the creditor], hereby submits this proof of claim in respect of the insolvency resolution process in the case of [name of debtor].

The details for the same are set out below:

PARTICULARS				
1.	Title and full name of creditor			
2.	Identification number of creditor	AADHAR	PAN	CIN
3.	Address	Present	Permanent	Business
4.	Total amount of claim (Including any interest as on the insolvency commencement date)			
5.	Details of documents by reference to which the debt can be substantiated.			

PARTICULARS		
6.	Details of any dispute, as well as the record of such dispute.	
7.	Details of how debt was incurred and the date when such debt was incurred	
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the debtor 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.	List of documents attached to this proof of claim in order to prove the existence and non-payment of claim due to the creditor	
13.	<div>Following information regarding the debtor (to the extent known):</div> <div>Assets of the debtor</div> <div>Business of the debtor</div> <div>Firms in which debtor is a partner</div> <div>Bank account details of the debtor</div> <div>Name, age and address of spouse, children, parents and siblings of the debtor.</div>	
Signature of creditor or person authorised to act on his behalf [Please enclose the authority if this is being submitted on behalf of a creditor]		
Name in block letters		
Position with or in relation to creditor		

PARTICULARS
Address of person signing

AFFIDAVIT

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

1. *[Name of debtor]*, the debtor was, at the insolvency 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 debtor and the creditor which may be set-off against the claim.]

5. The right to file my claim is not barred by limitation as per the applicable law.

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 the best of my knowledge and belief and that no material facts have been concealed therefrom.

Verified at _____ on this _____ day of _____ 201____

Deponent's signature

FORM 2

PROXY FORM

(Under Regulation 21 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017)

Full name of the debtor:

[Insert matter name / application number for the insolvency resolution process]

Full Name of Creditor	
Present address	
Permanent address	
Business address	
Email ID	

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

1.	Full name	
	Present / Permanent / Business Address	
	E-mail id	
	Signature	

or failing him;

2.	Full name	
	Present / Permanent / Business Address	
	E-mail id	
	Signature	

as my proxy to attend and vote for me and on my behalf at the meeting of committee of creditors 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):

Summary of public comments received on the website of IBBI on (i) draft Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Individuals and Firms) Rules, 2017, and (ii) draft Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017.

General Comments

1. There should be a provision to invoke the personal guarantee during insolvency resolution process (for Corporates and for individuals) due to the following facts, (i) If secured financial creditors settle their loan after taking haircut as a resolution then it becomes necessary to invoke the personal guarantee to minimise the haircut of financial creditors, (ii) If no resolution is approved and NCLT orders for liquidation again it becomes necessary to get the maximum value from the borrowers as well as guarantors.
2. In view of section 60(2) and (3) of the Code a consolidated application should be allowed to be filed against the corporate debtor and its personal guarantor before the NCLT. This may require an amendment to section 60(2) of the Insolvency and Bankruptcy Code, 2016.
3. Debt counselling provided under regulation 4 of the draft is vague and not called for, does not appear to serve any purpose but delay the process.
4. Rules and Regulations are silent on attachment and enforcement of the third-party security.
5. Submission of proof of claim should have an indicative list of documents to prove the existence of debt, akin to the provisions of Regulation 7(2) and 8(2) of CIRP Regulations.
6. Cost of Public Announcement - should either be borne by the applicant and reimbursed by the Committee and paid to the AA within 3 days of the PA; a provision for bearing of the cost has to be made as the AA cannot bear the costs. If the AA is to issue the public announcement within 7 days of admission of the application, the cost has to be defrayed ahead of the Public Notice process. The Code / draft regulations do not provide for the reimbursement. Moreover, the expenses on the public announcement shall not form part of insolvency resolution process costs."
7. The CIRP regulations do not permit auditors and lawyers of that company to be Resolution Professional for that company as it may impact independence. The draft Regulations do not contain these restrictions. (these may be added: is not an employee or proprietor or a partner: (i) of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor; or (ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm, in the last three financial years).
8. Some forms require submission of relevant ownership and title documents for all assets. These will be complicated to collect. It should be applicable for all immovable assets only or assets of a certain greater value or else invoices etc., have to be identified.
9. The calculation of threshold value of a dwelling unit should be illustrated by way of examples, one for urban and the other for rural for clarity and better understanding
10. Regulation 15(notice of meeting) should contain an illustrative list of content similar to the one provided in 21(3)(a) of CIRP regulations.
11. The Regulations 2017 must contain the following provision in 17(2):-Conduct of meeting to explicitly provide for details of the person attending the meeting: 'Whether he is attending in the capacity of a member of the committee or any other participant'.

12. The Regulations 20 must incorporate that the member who exercises vote at the meeting of the CoC shall not be eligible to exercise vote through electronic means or through electronic voting system.
13. Since books of accounts may not be available, is the insolvency professional expected to conduct search for jewellery and art work? An Affidavit or statement must be the basis for application and report by Insolvency Professional and later application being accepted must be presented to Committee of Creditors.
14. Rules/regulations are silent about Continuity of business during Interim Moratorium & Post Application till repayment plan is approved. During Interim moratorium - Moratorium must be only on legal proceedings. Business must be continued as usual by individual.
15. A similar provision as that provided in Section 19 of the Code should be applicable to the RP (Personnel to extend cooperation to interim resolution professional.)
16. Insolvency professional should be designated as Officer of Court explicitly in Regulations in discharge of his duties.
17. Where the applicant under sub-rule (1) of rule 4 is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer'.
18. A large number of borrowers are constituted in the form of Trusts and Societies. These do not fall under either the definition of Companies or LLPs or Individuals or Partnership firms - and therefore continue to remain outside the scope of the IBC. There needs to be an inclusion of such entities (Trust and Societies) also.
19. The concept of debt counselling, committee of creditors, constitution of committee of creditors are not envisaged in the Insolvency and Bankruptcy Code, 2016. Modification of the Code through the regulations is ultra-vires.
20. Proviso be added that in case of inconsistency between Code and rules the Code will prevail.

Specific Comments

21. It has been suggested that the rules should define whether a creditor is an OC/FC. Under the individual insolvency, this is not mandated under the Code.
22. It is suggested that there is ambiguity as to how IRP will become RP in the rules, going by the Forms.
23. When an application under section 94(1) in Form 1 is made by the debtor, he must despatch a copy of the application so filed to the creditor/other partners of the firm within a time frame (proposed rule 4(3)(a), (b).
24. It would be advisable to provide a format of demand notice to avoid conflicting interpretation by Adjudicating authorities or by supreme court as happened in the case of Section 138 of NI Act and other acts which provides issuance statutory notices. There were several conflicting judgments/ interpretations by different High courts and supreme court resulting ambiguities. A format on the lines of corporate insolvency may be used.
25. A sub-rule for deemed service may be provided as provided in Rule 5 (3) inter-alia "if the application under sub-rule (3) is not delivered to the debtor, it shall be affixed at the last known address of the debtor and shall be deemed to be delivered".
26. The demand notice shall be delivered to the debtor at the last known address simultaneously by registered post, speed post and courier and in any case through electronic means at the last known e-mail address" be substituted with The demand

notice shall be delivered to the debtor at the last known address by registered post, speed post, courier or through electronic means at the last known e-mail address. Clarity to be provided.

27. DRT Rule 4 (1) provides for separate Form which is completely different from the forms given herein. Thus, making DRT Rule applicable to IBC proceedings will create conflicting Rules & procedures
28. Adjudicating Authority be given powers to withdraw application after admission also in appropriate cases.
29. The committee of creditors under the CIRP process can propose appointment of a resolution professional. But in the personal part, there is no provision for nomination of resolution professional.
30. Appointment is made on suggestion of the Board. This may be too much burden on the board if too many cases are filed.
31. When the application is filed through an RP, that RP is appointed if he does not have disciplinary proceedings against him. It may be problematic that an RP through whom application is filed is appointed on that criteria. Code gives RP wide powers and he may be biased if he filed application for one party.
32. Evidence of affixation of notice in the address of the debtor should be ascertained.
33. Timeline for providing Copy of application by Adjudicating Authority to Resolution Professional (RP) should be suggested as three days (proposed rule 7).
34. Under rule 8(2), format of RP's report on application may be recommended for the purpose of uniformity of Report.
35. The definition of relatives: The relatives mentioned in (a), (b), (c) and (d) shall include relatives other than those included in the definition of immediate family under Section 79(17) of the code. (ii) Wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included This definition is very wide and different from the one in the Companies Act 2013. The context of this Explanation should be more clear and specific (rule 13(p)).
36. There is a conflict of time line in the Code and the Rules, in many cases and they have to be made realistic. Some clauses authorize the RP to obtain information in 7 days, which otherwise is available in 30 days under RTI.
37. Section 99 does not permit extension for submission by RP to AA. It is suggested to consider the same in the Regulations. We suggest to permit extension for 15 days
38. Excluded Assets – Should there be a maximum cap on all unencumbered asset rather than to specify industrial value
39. Clarification regarding calculation for excluded assets need to be provided since the entity is supposed to operate as a going concern.
40. Given that there have been conflicting legal decisions in the context of withdrawal of application after admission, the same may be allowed (rule 11).
41. To add Rule 3(3) stating that if there is any conflict between the provisions contained in the Rules and the Insolvency and Bankruptcy Code, 2016 (the “Code”), the provisions of the code shall prevail over that of the rules/regulations.
42. Why has the exact definition of COC been given? Suppose a firm has eleven creditor of equal value or nine largest creditors and next three creditors have equal value.
43. Committee of Creditors may include assignee of creditors.
44. Need clarity on who will provide the counselling; the insolvency professional or agency? What will be the key areas of counselling should be spelt, counselling framework, Time frame within which the counselling will be completed?
45. The objectives of Debt Counselling shall be (i) To help formulate debt restructuring plans for borrowers in distress and recommend the same to formal financial institutions,

- including cooperatives, for consideration. (ii) To take up any such activity that promotes financial literacy, awareness of the banking services, financial planning and amelioration of debt-related distress of an individual; (Based on Financial Literacy and Credit Counselling Centres (FLCC) guidelines of RBI) The Counselling shall be carried out by persons empanelled by IBBI for this purpose. Banks have set up Counselling Trusts. However, a unified structure is required for such debt counselling and a certification and training program for counsellors. IBBI may serve as the nodal agency.
46. The definition of “Adjudicating Authority” under sub-regulation (i) is referring to National Company Law Tribunal if section 60(2) and 60(3) are applicable. Section 60(2) and 60(3) of the Insolvency and Bankruptcy Code, 2016 (“Act”) restrict the applicability of personal guarantors to applications and proceedings which are pending before the NCLT.
 47. The Act provides under section 109(4) that a creditor not mentioned in the list of creditors under section 104 shall not be entitled to vote. However, it cannot be construed that a creditor is restricted from appointing an unlisted creditor as a proxy to attend and vote in a meeting of creditors. Such unlisted creditor, as proxy, like any other third party would be voting on behalf of the creditor and not on his own. Therefore, the words ‘who shall not be a creditor’ appearing in the sub-regulation may be deleted.
 48. There is no provision reflecting the amount of debt to be payable to workers and employees separately in the repayment plan on the assumption that such debt is also a qualifying debt and such workers or employees to whom the debt is due are creditors. If it is so, it is suggested that the term ‘creditor’ shall include operational creditors such as workers and employees and such clarification may be provided in Regulation 22(1)(g) and 22(2)(d).
 49. It will be very difficult for the IP to manage the inspection process, as the volumes of cases are expected to be high. There should be a provision of the claims received by the IP to be updated in a specific link on the IBBI website or with the IU and should be accessible to lenders /guarantors with appropriate access controls.
 50. The website of an individual may not be there.
 51. An individual debtor should not be required to put on such list on his website or if required it should be clarified that the term “website” does not include social media profiles, personal blogs and websites not used for monetary gain.
 52. Submission of claims should not be prolonged till approval for repayment plan since it would delay the entire process
 53. Regulation 6(2) and 6(3) (Verification of Claims) and Regulation 7 (Committee of Creditors) – suffer from errors and defects: 1. In case of individuals and firms, the constitution of Committee of Creditors, under Section 134 (3) (a) of the Code is to be carried out in a meeting of creditors convened by the Bankruptcy Trustee. Unlike in case of Corporate Insolvency, where proviso to Section 21 (8) of the Code delegates power of making regulations relating to composition and functioning of Committee of Creditors where no financial creditors are present, no such delegation is given to the Board in the case of insolvency and bankruptcy of individuals and firms. The general power to make regulations under Section 196 (t) is in relation to matters of processes and procedures and cannot be stretched to include matters of structure like composition of the committee. 2. Apart from the issue of delegation available to the Board, purely in terms of drafting, the reference to “resolution professional” in the two regulations appears to be erroneous.
 54. The reference to a “committee of creditors” is at the bankruptcy stage and not at the insolvency stage. Once bankruptcy is triggered under Chapter IV, a “bankruptcy trustee” is to be appointed. There is a technical difference between the words “insolvency

professional” on the one hand and “resolution professional” and “bankruptcy trustee” on the other. The former is a type of qualification whereas the latter are statutory functional positions. Hence the regulations mentioned above should use the words “bankruptcy trustee” and not “resolution professional”.

55. The creditor shall bear the costs relating to the proof of claim. It is suggested to provide for details as in CIRP Regulation 10. The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim. It will empower the Resolution Professional to seek clarifications as this provision is not provided in the Code in the relevant Section 103 like in Regulation 10 of CIRP regulations.
56. The resolution professional shall file a report certifying the constitution of a committee of creditors on the preparation of the list of creditors, to the Adjudicating Authority under sub-regulation (1) within 7 days of preparation of the final list of creditors. Time limit for report on Constitution of CoC to the Adjudicating Authority is not specified in the Code.
57. The resolution professional shall file a report certifying the constitution of a committee of creditors on the preparation of the list of creditors, to the Adjudicating Authority under sub-regulation (1) within 7 days of preparation of the final list of creditors. Time limit for report on Constitution of CoC to the Adjudicating Authority is not specified in the Code. Hence, this may be recommended.
58. CoC meeting - thirty-three percent in value and number. If it is by number, grounds for convening a meeting should be specified to avoid misuse.
59. Any decision other than for approval or modification of the repayment plan shall require approval of more than fifty percent in value of the creditors present and voting. In the Code everywhere 75 % is mentioned as a viable acceptance percentage. A simple majority may not be adequate for financial / restructuring decisions. Clarification is sought for decision other than for approval or modification of the repayment plan.
60. The notice shall inform the participants of the venue, the time and date of the meeting and of the option available to them to participate through video conferencing or other audio and visual means, and shall also provide all the necessary information to enable participation through video conferencing or other audio and visual means. Audio visual means should also be permitted in Chapter III. It is very likely that several top creditors may not be in the same location as the debtor. Insisting on physical presence will increase the cost of the process for the creditor who has already suffered a default. If this is acceptable, the corresponding regulations for Audio Visual means should also be added as recommended below.
61. It is suggested that the meeting of the CoC should draw parallel to CIRP regulations A meeting of the committee shall be quorate if members of the committee representing at least thirty three percent of the voting rights are present either in person or by video conferencing or other audio and visual means Provided that the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee Modification by RP in consultation to be changed – Can be done only by CoC resolutions not by a consultative process of the RP and CoC.
62. Filing with the Adjudicating Authority A resolution applicant shall endeavour to submit a resolution plan prepared in accordance with the Code and these Regulations to the resolution professional, sixty days before expiry of the maximum period permitted under section 101 for the completion of the corporate insolvency resolution process. Instead of 120 – from Insolvency Commencement Date. Consider 60 days prior to completion of Insolvency Resolution process period of 180 days.

63. Sections 104, 107, 108 and 109 of the Code seem to indicate that the meeting of creditors shall be attended by all the creditors of the debtor. Section 111 of the Code provides that the repayment plan or any modification to the same shall be approved by a majority of more than 3/4th in value of the creditors present and voting in a creditors' meeting. The Code nowhere provides for the constitution of and/ or decision making by a committee of creditors. It is to be noted that a delegated legislation, i.e. a rule or a regulation, must conform to the provisions of the statute under which it is framed
64. Regulation 7 deals with the composition of the committee of creditors. Section 109(4) of the Code provides that a creditor shall not be entitled to vote in a meeting of the creditors if is in associate of the debtor. Accordingly, it is suggested that it should be specified in Regulation 7 that the committee of creditors will not include a creditor who is an associate of the debtor.
65. To add the following: (a) Verify claims in the manner provided in Rule No. 6 of the Rules; (b) Address all notices under the Rules / Code; (c) Calculate voting shares of creditors constituting the committee of creditors; (d) Appoint any other professionals such as advocates, chartered accounts etc., if required; (e) Ascertain the claims and the amounts receivable by the debtor from third parties.

Summary of views gathered at Roundtables held by IBBI with various stakeholders on (i) draft Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Individuals and Firms) Rules, 2017, and (ii) draft Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017.

IBBI has held nine roundtables with stakeholders. This note summarises the views gathered at these roundtables.

I. Roundtable at Indore held on 23rd October, 2017 (Submitted by [REDACTED])

1. DRT may be made at each district level or Specialized Civil Court may be designated at each district level to deal with the Insolvency & Bankruptcy Code.
2. Bankers, being the backbone of financial industry, should be made aware of the Code. It was also recommended that the Bankers should be provided necessary training and information at the branch level also.

II. Roundtable at Ludhiana held on 24th October, 2017 (Submitted by [REDACTED])

1. Banks often auction such properties to related parties. Does the Code have a provision to ensure that this is not the case?
2. Does the Code have a provision to ensure that sale is not made for the creditor's own benefit without warning or consent?
3. A format of a repayment plan would be useful. A model repayment plan has not been provided in regulations in case it is counter-intuitive to flexibility and independence of parties to draft their own repayment plans.
4. A concern was raised as to how the IRP/RP will be supervised. The supervisory mechanism on the RPs needs to be ensured. How do regulations ensure supervision considering small transactions?
5. Are there safeguards under the provisions in the Code against banks selling personal property of the debtor on default, instead of the hypothecated property.
6. Members were in doubt regarding the amount that may be prescribed for excluded assets in the nature of personal religious ornaments. A concern was raised if there are any safeguards to ensure that the debtor is not unduly pressurised by the creditors or the resolution professional in relation to the plan.
7. Does the Code and regulations make a distinction for wilful default and whether wilful default will be treated as debt under the Code.
8. A corpus fund for one-time settlement under the Code.
9. States could make specific editions to the rules and regulations.
10. Does the Code have a special provision for debtors who are unable to pay debts due to calamities for example, fire and earthquakes and if the Code provide special assistance in such a case.
11. A concern was raised that the Insolvency Resolution Process will affect the CIBIL score of a debtor.

12. A concern was raised that the actual value of a dwelling house will in most cases be above the threshold value. But the insolvent may not be capable of bringing in more funds. Would this mean he would have to actually move out of his household? There was also apprehension that there is a large difference between circle rate and actual rate.
13. There is doubt whether a person who has gone through an insolvency resolution process and has been discharged, avail a loan and is there any time limit for him to be eligible to avail a loan.

III. Roundtable at Vishakhapatnam held on 24th October, 2017 (Submitted by [REDACTED])

1. Under rule 2 the words “Partner of Firm in Individual Capacity” to be added.
2. Notice may be filed only through one means. There is no need to file notice through all means. As such, under rule 4 (3) (a) and (b) and rule 5(2) the word “either” to be replaced with “Simultaneously”.
3. Under rule 5(1) (i) and (ii) the word “total” to be added to words “Debt” and “Debt in Default”.
4. Under rule 6 (3) the word “either” to be replaced with “Simultaneously”.
5. The trigger for default may be increased to Rs.10,000/-.
6. In rule 9(1) the words “In accordance with religious usage” to be removed.
7. Under rule 9(2) the word “Single Dwelling unit” has to be defined and elaborated in view of confusion existing regarding the word.
8. Form should also provide for Individual Guarantee to be included (part 1 point 14).
9. Regulations should provide clarity that creditor includes FC/OC.

IV. Roundtable at Lucknow held on 25th October, 2017 (Submitted by [REDACTED])

1. The repayment plan should be soft to enable the debtor not have difficulty in meeting the obligations.
2. The CoC has a representative each of the workers and the employees. Since the creditors are more powerful, what voice would the workers and employees have and how would the interests of the workers be protected.
3. The threshold for insolvency proceedings is very low.
4. What about debts of persons and how would the issues around insolvency be resolved when the individual who is the debtor is absconding.
5. Form 3 does not require the creditor to file Bank account details. It may be clarified whether the deletion has been done intentionally. Under Form 3, how will the creditor know the PAN, Aadhar and Passport details of the debtor.
6. In case of an MSME, the Government is the customer, at times due to delay in receipt of payments from the Government, the MSME becomes the debtor. Can the MSME get facility in recovery from the Government.
7. Once the debts have been repaid through the repayment plan, what would be the mechanism to ensure that the CIBIL score for the debtor improves.
8. The DRT infrastructure needs improvement.

V. Roundtable at Coimbatore held on 26th October, 2017 (Submitted by [REDACTED])

1. Under rule 4 (3) and rule 5 (2) and Rules 6 (3) as the intention may be to serve the notice, it may not be made mandatory to serve by more than one means. Thus, simultaneously be replaced by “or”.
2. Under rule 5 (3) evidence of affixation of notice in the address of the debtor should be ascertained.
3. 6(3) The rule should be modified to read as follows: *The creditor shall forthwith dispatch a copy of the application filed with the Adjudicating Authority to the last known address of the debtor by registered post or speed post or courier and in any case simultaneously through electronic means at the last known e-mail address.*
4. Under rule 7, timeline for providing copy of application by Adjudicating Authority to Resolution Professional (RP) should be suggested.
5. Rule 8 (2) -Format for RP’s report on application may be recommended.
6. Rule 8 (3), after Banks / FI’s or any other person to be added.
7. Under rule 8 (3)- Report of the Resolution Professional- Will 7 days be needed when time line for report is 10 days? Rule 8(3) states that the resolution professional may request further information or explanations in connection with the application from relevant government departments or banks or financial institutions, which should be furnished within seven days of the receipt of the request. Where the Resolution Professional has not received the information as per rules 8 (3), he has to apply to the Adjudicating Authority for appropriate directions. In such case, RP will not be in a position to submit report within 10 days. The Code specifies under section 99 that the resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within 10 days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application. There is a conflict of time line in the Code and the rules, if all the information is not collected in time will the Resolution Professional be required to submit his report in 10 days?
8. Rule 8 (3) Report of Resolution Professional- Section 99 does not permit extension for submission by RP to Adjudicating Authority. This may be considered in the regulations, with permission for extension of 15 days.
9. Excluded Assets – there be a maximum cap on all unencumbered assets rather than to specify individual value.
10. Personal ornaments of upto 8 grams of gold each for self & spouse at present market for 22 carat purity may be permitted as personal ornaments such as Mangalsutra, wedding ring etc as per customary usage.
11. In rule 11 - Given that there have been conflicting legal decisions in the context of Mother Pride Diary, Parker Hannafin and VA Tech Wabag on withdrawal of application after admission requirement of any rethink may be considered.
12. The definition of relatives is very wide and different from that in the Companies Act, 2013. The definition as the Companies Act, 2013 may be adopted.
13. The address should be changed to Permanent and Present Address instead of last known address as it is the debtor himself who is filing the application. In case of a debtor, there is no question of a Known address, he has a specific address which is why he is able to file the form. A set of modifications have been suggested in the forms.

14. In rule 28, it may not be practicable to collect invoices, for say, all assets contained in the fixed assets register. Thus the words “if” applicable is not required since as maintenance of books of Accounts is compulsory under the law for a business or firm
15. Under regulation 3, the following para may be added - is not an employee or proprietor or a partner: (i) of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor; or (ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm, in the last three financial years. The Corporate Insolvency process regulations do not permit auditors and lawyers of that company to be Resolution Professional for that company as it may impact independence. The draft regulations do not contain these restrictions. It is suggested that the same restrictions as applicable to corporates may be added here.
16. Under regulation 3 (1), an insolvency professional shall be eligible to be appointed as a resolution professional for an insolvency resolution process if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, or the insolvency professional entity of which he is a partner or director, are not associates of the debtor. A comma needs to be added after the word he, else it seems that the restrictions are only for firms.
17. The objectives of Debt Counselling shall be (i) To help formulate debt restructuring plans for borrowers in distress and recommend the same to formal financial institutions, including cooperatives, for consideration, (ii) To take up any such activity that promotes financial literacy, awareness of the banking services, financial planning and amelioration of debt-related distress of an individual; (Based on Financial Literacy and Credit Counselling Centres (FLCC) guidelines of RBI). The Counselling shall be carried out by persons empanelled by IBBI for this purpose. Banks have set up Counselling Trusts. However, a unified structure is may be required for such debt counselling and a certification and training program for counsellors. IBBI may serve as the nodal agency for the debt counsellors.
18. There is need to insert a new regulation before regulation 5. It is suggested that the applicant shall bear the expenses of the public announcement which may be reimbursed by the Committee to the extent it ratifies them. Further, it is suggested that the cost of the Public Announcement shall be paid to the Adjudicating Authority within 3 days of admission of the Application in such manner as may be prescribed.
19. There is need to insert a new regulation before regulation 5 (6). It is suggested to add the following para like in CIRP regulation 10: The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim. It will empower the Resolution Professional to seek clarifications as this provision is not provided in the Code in the relevant Section 103 like in regulation 10 of CIRP.
20. Under regulation 6 (2) The resolution professional shall file a report certifying the constitution of a committee of creditors on the preparation of the list of creditors, to the Adjudicating Authority under sub-regulation (1) within 7 days of preparation of the final list of creditors. Time limit for report on Constitution of CoC to the Adjudicating Authority is not specified in the Code. This may be recommended.
21. Under regulation 6 (3) (c), an individual debtor should not be required to put on such list on his website or if required it should be clarified that the term “website” does not include social media profiles, personal blogs and websites not used for monetary gain.

22. Under regulation 11 (1), instead of thirty-three percent in number of creditors, it shall be thirty-three percent in value and number. If it is by number, grounds for convening a meeting should be specified to avoid misuse.
23. Under regulation 11 (4), any decision other than for approval or modification of the repayment plan shall require approval of more than fifty percent in value of the creditors present and voting.
24. In the Code everywhere 75 % is mentioned as a viable acceptance percentage. A simple majority may not be adequate for financial / restructuring decisions. Clarification is sought for decision other than for approval or modification of the repayment plan.
25. Under regulation 15, the notice shall inform the participants of the venue, the time and date of the meeting and of the option available to them to participate through video conferencing or other audio and visual means, and shall also provide all the necessary information to enable participation through video conferencing or other audio and visual means. Audio visual means should also be permitted in Chapter III. It is very likely that several top creditors may not be in the same location as the debtor. Insisting on physical presence will increase the cost of the process for the creditor who has already suffered a default. If this is acceptable, the corresponding regulations for Audio Visual means should also be added as recommended below.
26. Under regulation 16 (1)- Quorum, instead of thirty-three percent in number, it shall be thirty-three percent in value. It is suggested that VC should be permitted. Quorum by number can vitiate value voting which may not be acceptable. A meeting of the committee shall be quorate if creditors representing thirty three percent in number are present in person or by proxy.
27. Minimum sustenance budget - regulation may be redrafted as “a minimum budget for the survival as per customary standards of living of the debtor and immediate family for the duration of the repayment plan”.
28. Under regulation 25, filing with the Adjudicating Authority, a resolution applicant shall endeavour to submit a resolution plan prepared in accordance with the Code and these regulations to the resolution professional, sixty days before expiry of the maximum period permitted under section 101 for the completion of the corporate insolvency resolution process. Instead of 120 – from Insolvency Commencement Date, consider 60 days prior to completion of Insolvency Resolution process period of 180 days. Under regulation 28 (1), costs incurred at the expense of the government needs to be defined.

VI. Roundtable at Jodhpur held on 30th October, 2017 (Submitted by [REDACTED])

1. Demand Notice by Creditor as per rule 5(2), may be served on (i) mobile linked with Aadhaar (ii) address mentioned in Bank Account linked with Aadhar card.
2. Excluded assets, rule 9(1) for the purposes of section 79(14)(c), unencumbered personal ornament up to INR. 10, 00,000/- of the debtor or his immediate family which cannot be parted with, in accordance with religious usage, shall be excluded assets.
3. Definition of relatives under rule 13, servant and dependent of the applicant can be included in the same
4. Some enforcement provision should be brought to Debt Counseling under regulation 4.

5. Meeting of the CoC: Regulation 11(4) provides for approval of more than 50% in value of creditors present and voting. It should be in line with the provisions of CIRP.
6. First Meeting of the Creditors: Regulation 12 provides that the meeting of CoC be convened by giving not less than 14 days. This should also be in line with provision of CIRP to make uniformity in law.
7. Fee for Assignment should not be on the basis of open tender. Fee needs be on the basis of suitable Classification and fixed by IBBI.
8. Number of Debt Recovery Tribunal be increased and open at each district level otherwise suitable arrangement should be made for opening of DRT Benches.

VII. Roundtable at Mumbai held on 31st October, 2017 (Submitted by [REDACTED])

1. Can the CoC proposed in the regulations, be traced back to any provision in the Code. This needs further deliberation.
2. It is not clear from the regulations as to who will be running the business of the debtor during the IRP.
3. Due to the presumptive taxation scheme under the Income Tax Act, the individuals or firms who adopt this scheme are relieved from maintaining books of accounts. In such cases, how will the relevant financial information be available?
4. Are HUFs are covered under Part III of the Code. Mumbai has large number of HUFs operating businesses.
5. An affidavit may be added to the application by debtor, such that the resolution professional is relieved to some extent from verifying the authenticity of the information provided by the debtor.
6. Whether gold bonds would be within the ambit of excluded assets?
7. How can the rules and regulations provide for limitation period when the Code is silent on this matter.
8. It was discussed whether agricultural property is within the ambit of excluded assets, and whether states could amend the definition of excluded assets
9. Special benches for insolvency cases should be set up to deal with insolvency of individuals and firms.
10. A banker suggested that a circular be issued to banks that they should give loans to discharged persons, as currently banks may be hesitant in extending loans to such persons.
11. The threshold for the minimum default should be raised from Rs.1000 to Rs.50,000.
12. In rule 5(2), there is a simultaneous requirement to send the demand notice by registered post, speed post and courier. It was discussed that there may be areas where speed post or courier may not be available. This may be accounted for in the proposed rules.
13. In relation to assets attached by the Enforcement Directorate, there is an issue that the ED does not release the assets even once an insolvency process starts. They have to go to the court to get the assets released.
14. A query was raised whether a company, which provides a guarantee to an individual, will be dealt in the DRT or the NCLT and whether the DRT will have the sophistication to deal with insolvency of a company needs to be deliberated further.

VIII. Roundtable at Delhi held on 1st November, 2017 (Submitted by [REDACTED])

1. The regulations provide for a minimum budget for the debtor and his family members. Should any guidance be provided by the regulations about the manner of fixing a minimum budget, and whether the standard of 'survival' is too low a standard. It may be considered if the regulations should provide for any guidance regarding the minimum budget, and link it to reasonable expenses rather than to survival.
2. The forms in the processes under the Code should be standardized, and simplified as IBBI may want to collect information from these forms for analysis and dissemination.
3. The present rules and regulations do not provide for a model repayment plan, other than stating the mandatory and optional contents of a repayment plan. It was discussed whether a model repayment plan should be provided. The model plan has not been prescribed in the regulations with a view to provide flexibility and adaptability to different fact situations. It was also discussed that if such a model plan is provided, it may help with very low-income debtors since the process will be easier which may reduce costs.
4. The Code does not contemplate that a CoC will be made under Part III, but instead the Code states that the creditors will vote on a repayment plan. It was questioned whether the regulations have the scope to create a CoC with a cap on members. It was clarified that having a committee with a few members is preferable, and should have been done in the corporate process as well. It was suggested that to ensure that all creditors are represented and thus allowed to vote instead of a committee, it may be efficient to provide a mechanism for groups of creditors to appoint a representative to vote on their behalf. This aspect may be relooked.
5. The statement of affairs of the debtor in the regulations should also include income statement.
6. The regulations presently do not envisage a situation where the debtor or the creditor can make modifications to the plan after its approval in case of change in circumstances. A provision like this may have the benefit of providing for minor modifications without spending the time and cost of getting approval of the adjudicating authority. The regulations provide for rectification of a breach, but the scope of modification of plan may be considered. There was a view that providing such an enabling clause would defeat the purpose of the resolution. It was also suggested that this may be included within the contents of the repayment plan and would therefore have the approval of the adjudicating authority along with the other terms.
7. Lack of an education system for debtors is a concern. Number of individuals and MSMEs are unaware of the ways of debt restructuring and debt management. The regulations provide for the much-needed debt counselling of the debtor. Whether it would be prudent to make counselling mandatory or if it should be made a prerequisite was discussed. The present regulations do not provide it as a mandatory requirement. It was also discussed that it should be kept voluntary at present since it may be an infrastructural challenge and may not be required in each case. Further, it was suggested that it was not possible to have such counselling provided prior to taking a loan, but provided prior to going in for insolvency.
8. The language in other laws should be reviewed and should be altered to remove the stigma on insolvency, for instance indelibility for insolvents under different laws (like from directorship in Companies Act, 2013). This may be taken as a suggestion for future reform, to prevent persons who have gone through insolvency fall out of the credit market.

9. There is no clarity on the treatment of excluded debts and if the repayment plans will include payment of these excluded debts. This may be deliberated.
10. Regarding excluded assets, suggestions related to linking it to the standard of living, the need and size of the family, the value of assets or the debt, or as a percentage (10%) of the threshold value of the dwelling house. The criteria for determining the threshold linked to the threshold value of dwelling house may not work if there is no dwelling house.
11. The look back provisions of the Code may be reviewed since there is no provision for a safeguard against conversion of assets by the debtor to avoid loss in case an IRP is triggered except that contracts can be mandatorily varied under the repayment plan. Such a provision may be outside the scope of present rules and regulations.
12. The manner of the phased implementation of the individual insolvency rules/regulations has to be deliberated. While the Code does not provide expressly for phased repeal. Further, the phased implementation is to be for personal guarantor to companies, firms and individuals with business in the first phase and the rest in the second phase, primarily because the DRTs are not ready to take on the burden of the masses.
13. It may be tough to define 'business' in this approach since the definitions of business in Income Tax Act 1961 and the Indian Partnership Act 1932 are broad and generic. It was suggested that the categories for phased implementation may be created on different criteria like- entities which are MSMEs, or based on GST registration coupled with a minimum turnover (which may be difficult to determine), or based on the number of years of business, or the nature of default (like business debt), based on holding of current or overdraft account. The criteria for differentiation based on GST registration and the turnover may be considered.
14. Concerns relating to the safeguards against misuse of power of the resolution professional were raised. It was discussed that the resolution professional has wide powers that may be overlooked in Individual low value cases and it may be contemplated if some safeguards should be provided against misuse.
15. Whether the discretion of the tribunal should be limited in cases of excluding assets under the regulations, by placing a percentage limit above the actual value. It was stated that placing such a value may lead to more litigation.
16. A query was raised whether cheques under Section 138 can be enforced by the creditor post an IRP.
17. Does the repayment plan adhere to the priorities given in the bankruptcy portion and it was clarified that the priority of debt is limited to in the bankruptcy process and is not mandated in the IRP.
18. Can married couples file jointly under the Code.
19. Does the Code ring-fence family members of the debtor?.
20. The privacy concerns in dissemination were highlighted and it was agreed that it is an additional dimension of the issue.

IX. Roundtable at Kolkata held on 3rd November, 2017 (Submitted by [REDACTED])

1. Was the scope of prescribing 'excluded assets' in the rules necessary since excluded assets would come into play during bankruptcy.
2. The amount of default to trigger an insolvency resolution process under the Code (Rs.1000) may be too low. The disadvantage of keeping a low trigger will lead to frivolous applications. The stakeholders suggested that the trigger could be between Rs.20,000-

50,000 was appropriate. Infact raising of trigger for default from Rs.1 lakh in CIRP was also suggested by most present.

3. Are any safeguards against the disposing of assets by debtor on anticipation of insolvency proceedings being filed against him.
4. Regarding the threshold for personal ornaments mentioned in 'excluded assets', the most efficient threshold may be prescribing the value of a certain amount of gold, as per caratage, which can be valued according to the current rate at the time of IRP. It was also discussed that this amount of gold should be lesser than the gold value thresholds given in income tax exemptions (500 grams). 200 gm of gold was proposed as an appropriate amount by most participants.
5. It was suggested that instead of using the RBI house rate index for valuation of threshold for a single dwelling house (in excluded assets), the housing price index given by NBH (Residex) could be evaluated.
6. It was discussed that some guidance may be provided regarding calculation of the minimum sustenance budget for the debtor, given in the regulation. It was suggested that some essential components of this budget may be prescribed, for example budget for treatment of terminal diseases to debtor or his immediate family members, basic healthcare, school fee for children.
7. Issue of treatment of joint ownership of assets of the debtor was discussed. Concern was raised over the transfer of ownership in a joint property in the event of IRP
8. The qualitative and quantitative infrastructural deficiencies of Debt Recovery Tribunals ("DRTs") was discussed and it was suggested that DRTs may not be the appropriate forum for adjudicating of insolvency disputes. DRTs are already overburdened and have a big back log of cases.
9. It was brought up that the formula for calculation of threshold value must specify if the area of the dwelling unit is carpet area or super-built up area. Besides, the minimum threshold was considered too low.
10. It was asked if the Code envisages a situation where a remedy is given against a debtor who deliberately avoids the proceedings.
11. It was suggested that penal provisions may be included in the Code against wrongful acts of the debtor and the creditor and for collusion between different parties.

Summary of Issues for consideration of the Advisory Committee and its recommendations. These consist of two Parts. Part 1 includes specific issues that require immediate action. Part 2 includes issues that need to be addressed over medium term to improve the framework.

Part 1 : Specific Issues that require immediate action:

I Defining individuals having business

The current ambit of discussions are the draft rules and regulations for individual insolvency as they relate to insolvency of Guarantors to Corporate Debtors and Individuals having business. The rationale for a phased approach was considered necessary in view of the inadequacy of infrastructural capabilities to handle insolvency of all individuals. A phased approach is expected to provide learnings that will provide a better understanding of the regime of individual insolvency by the time the entire population is covered. The Code does not contemplate categories of individuals or partnerships within Part III.

Issues:

How should individuals having business be defined? Should all businesses be covered, or should a class of identifiable business be taken up in the first phase?

An objective definition of business is considered necessary to prevent ambiguity in phased application of the individual insolvency regime and clarity in application of rules/regulations. How should business be defined? The definitions of business in Income Tax Act 1961¹ and the Indian Partnership Act 1932² are broad and generic. Business could also derive their definition from MSMEs, or based on GST registration coupled with a minimum turnover (which may be difficult to determine), or based on the number of years of operation of business, or the nature of default (like business debt), or based on holding of current or overdraft account. It was discussed that the criteria for differentiation based on GST registration and turnover may be the most objective and representative.

Another opinion on the definition was that the principality test may be applied to define individuals having business. According to this, an individual could be considered to be having business under the rules/regulations if more than 50% of her assets and 50% of her income are derived from business.

II Threshold for filing insolvency

A minimum default amount of Rs.1000 mandated under section 78 of the Code for invoking individual insolvency could burden the resources and the system with large number of cases. The Working Group (WG) recommended that this entry bar could be raised to Rs.10000; alternately, for any amount below Rs.10000, the proceedings should be limited to mediation.

¹ Section 2(13) of the IT Act, 1961 has defined the term business as “any trade, commerce, manufacturing or any adventure or concern in the nature of trade, commerce and manufacture”

² According to Section 2(b) of the Partnership Act, 1932 "business" includes every trade, occupation and profession;

Issues:

What threshold amount would be reasonable? Can different amounts be provided for different classes of individuals? If yes, what are the suggested amounts?

An overwhelming opinion is to increase this threshold amount. General inputs across the Roundtables were that this minimum amount should be anywhere between Rs.20,000 to Rs.50,000.³

III. Excluded assets

The excluded assets as defined in section 79(14) the Code relate to certain assets of a debtor that are exempt for the purposes of Part III of the Code. Out of five categories, two require a threshold value to be prescribed, up to which the assets will be exempt from the process.

The Working Group was of the view that excluded assets within the prescribed threshold value cannot be sold or transferred under the repayment plans, and if the actual value is above the prescribed value, some leeway is given in favour of the debtor to retain the asset or get back the differential value, provided in rule 9 of the draft rules. section 105(3)(c) of the Code provides that regulations can specify the mandatory contents of the repayment plan, and it may be noted that section 79(14) has been defined for the purposes of Part III, and not just for the bankruptcy process.

Out of five categories, two require a threshold value to be prescribed, up to which the assets will be exempt from the process.

Issues:

- (i) The first category is the unencumbered personal ornaments used by the debtor and her immediate family of a prescribed value (section 79(14)(c)) which cannot be parted with because of religious restrictions. The working group considered that it was more appropriate to seek comments from the public for the threshold value for unencumbered personal ornaments, instead of prescribing an amount at the outset.

The suggestions included linking it to the standard of living, the needs and size of the family, the value of assets or the debt, or a percentage (10%) of the threshold value of the dwelling house. The criteria for determining the threshold linked to the threshold value of dwelling house may not work if there is no dwelling house.

Gold ornaments have a psychological impact among members of the family. An alternative would be to prescribe the weight of a certain amount of gold as threshold, which can be valued according to the current rate at the time of insolvency resolution process. This amount should be lesser than the gold value thresholds provided by the income tax exemptions (500 gram). 200 gm of gold was considered as an appropriate measure.

Any unencumbered personal ornaments (jewellery), further limited to such value as

³ The threshold for Fresh Start process under the Code is Rs.35,000/-which is not within the ambit of current notification.

may be prescribed, of the debtors, or her immediate family which cannot be parted with, in accordance with 'religious usage'. – this raises a concern as to why 'immediate family' is at all mentioned in this definition. The estate of the bankrupt does not include the estate of her immediate family members. Hence, why this definition seems to suggest that even for immediate family members only ornaments which cannot be parted in accordance with the 'religious usage' will be left behind? Is it creating a basis / ground to include assets of immediate family members as part of the estate of the bankrupt?

- (ii) The second category is an unencumbered single dwelling unit of prescribed value owned by a debtor ((section 79(14)(e) of the Code). The rule 9 of the draft rules provides for the manner of calculation of the excluded assets and details of exclusion value.

An unencumbered single (personal) dwelling unit owned by debtor, the unit having 400 sq. ft. in Urban areas, up to a calculated value, for a family size of up to 4, sounds reasonably low. Honest promoters who may have attempted to set up even a medium size enterprise would have set up a project of over Rs.50-100 crore at the least. It may not be fair to envisage a personal dwelling of only 400 sq. ft. upto a maximum of 1000 sq. ft. for such honest promoters and their immediate families.

The formula for calculation of threshold value must specify if the area of the dwelling unit is carpet area or super-built up area. Besides, the minimum threshold was considered too low.

Is agricultural property within the ambit of excluded assets, and whether states could amend the definition of excluded assets?

Instead of using the RBI house rate index for valuation of threshold for a single dwelling house (in excluded assets), the housing price index given by NBH (Residex) could be evaluated.

The need for including the scope of prescribing 'excluded assets' in rule 9 of the draft rules was questioned since excluded assets would come into play only during bankruptcy.

It also appears that there is no clarity on the treatment of excluded debts (section 79(15) of the Code) and if the repayment plans will include payment of these excluded debts.

Should there be a maximum cap on all unencumbered assets rather than to specify individual value category wise?

Overarching Issues:

Are the excluded assets under section 79(14) of the Code sufficient for protection of the debtor? Is the scope of excluded assets in each class and the principles developed for them sufficient? Further, are the definitions as provided in the regulations for exempted dwelling unit acceptable?

The insolvency resolution process for individuals is aimed to be based on a more humane approach, and thus takes into account the immense non-monetary value that may be attached to items such a dwelling house, or personal ornaments. Further, the 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. Often, ancestral property would

form part of a dwelling unit, and it would cause great mental agony to the debtor if this is taken over in the course of the repayment plan or disposed of as a part of the bankruptcy process. There may be personal ornaments which have sentimental and religious value to a debtor. Since both the issues are so intertwined with the Indian social milieu, they are likely to have a societal rejection of the process altogether.

IV. Definition of relatives

The WG considered that the definition of 'relatives' for the purposes of Explanation (ii) to section 79(2) should *broadly* mirror the Class I and Class II heirs as given in the Hindu Succession Act, without making reference to the statute. The said explanation gives the power to the Central Government to define relatives, and thus, the proposed rule 13 which defines relatives aims to cover a majority of relatives of the debtor is an inclusive definition to give flexibility to the Adjudicating Authority to include other forms of relationships which may be legally recognised with the evolution of the society and the law.

Issues

How is immediate family to be defined and dealt with in the practical world, without creating confusing situations and making implementation cumbersome and prone to litigation? Can the definition of relatives be taken from the Companies Act, 2013?

Why is the Act, read with draft regulations and rules, at all define and use the words “immediate family” and “relative” (which has been given a very broad definition)? Even ‘Form –I’ enclosed with the rules, seeks information about list of assets of the immediate family.

Whether the Code ring-fences family members of the debtor that are included within ‘associates of the debtor’ and are not allowed to be within the Committee of Creditors?

V. Exemption from moratorium:

The Central Government has the power to exempt certain transactions in consultation with any financial sector regulator from interim as well as final moratorium under section 96(3) and section 101(4) respectively. What should these transactions be which may be prescribed in the rules, at this stage?

VI. Minimum Sustenance Budget

Section 105(3)(c) of the Code provides that regulations can specify the mandatory contents of the repayment plan, and in pursuance to this, the draft regulations 22(1)(d) specify the mandatory contents of a repayment plan which include a provision of a minimum budget for the survival of debtor and her family for the period of repayment plan.

Issues:

This ensures that the debtor is guaranteed a minimum portion of her income even during the repayment plan, which will be decided based on the circumstances of each case. The

Working Group considered that flexibility be given to the resolution professional in determining what this budget should be on a case to case basis, and provide the rationale for it.

It may be considered whether the threshold should be ‘survival’ which may be too low, or it should be linked to ‘reasonable’ expenses.

Some guidance may be provided regarding calculation of the minimum sustenance budget for the debtor, in the regulations. It was suggested that some essential components of this budget may be prescribed, for example budget for treatment of terminal diseases to debtor or her immediate family members, basic healthcare, school fee for children etc., as leaving this to the RP would make it a very subjective exercise, leading to failure of repayment plan. Given the humane approach which has been the overarching principle on which the new rules/regulations are based, this may be considered.

VII. Form of Demand Notice

Section 95(7) of the Code provides that details of the notice shall be such as may be specified, proposed rule 5 (and not regulations) provides the essential components of such notice since this is part of an application process.

Issues:

The WG felt that the essential contents of a demand notice be provided, and the form of presentation be left to the individual, to pre-empt any potential litigation.

It was suggested that the forms in the processes under the Code should be standardized, and simplified as IBBI may want to collect information from these forms for analysis and dissemination.

VIII. Debt Counselling

The draft regulations on Insolvency Resolution Process in regulation 4 envisage the definition of debt counselling which provides for debt counselling to be provided to the debtor prior to the commencement of the insolvency resolution process and thereafter by such entities as may be recognised by the Board or the Central Government in this respect.

Issues:

Should counselling be mandatory or optional? Should help desks be set up by IBBI? How would these ensure last mile connectivity? Should this work be outsourced to other agencies that better understand local dynamics and culture? How should this mechanism work?

Concerns were raised about the lack of an education system for debtors. This is especially important since a lot of individuals and owners of MSMEs are unaware about the manner in which debt restructuring, debt counselling and debt management function.

IX. Law of Limitation

The Code does not provide for the definition of law of limitation. Rule 5(1)(v) provides for the demand notice by creditor to include a statement that the right to make an application in respect of the debt is not barred by limitation under the applicable law.

Issue:

A concern was raised whether the rules could provide for limitation when the Code was silent on this matter. This needs further deliberation.

X. Adjudicatory Authority- DRT

The AA for transactions under the IRP are the DRTs (NCLTs for personal guarantors)

Issue:

Whether a company, which provides a guarantee to an individual, will be dealt in the DRT or the NCLT. Are the DRTs equipped to handle cases involving complex companies?

While Districts Courts are more accessible compared to DRTs, are there other favourable factors in relation to district courts as opposed to DRTs in terms of the capacity and suitability? Alternatively, can there be a limited role for adjudicating authority in individual insolvency to reduce its burden? How can this be achieved besides providing role for mediation?

XI. Repayment Plan

Under section 79(20) of the Code, the definition of repayment plan provides for: a plan prepared by the debtor in consultation with the resolution professional under section 105 containing a proposal to the committee of creditors for restructuring of her debts or affairs.

Issues:

The possibility of designing a "model repayment form" for simple IRPs may be considered. This could be offered to the debtor as the default structure of a repayment plan, and might reduce RP costs, and make the process simpler for small debtors. The present rules and regulations do not provide for a model repayment plan, other than stating the mandatory and optional contents of a repayment plan with a view to provide flexibility and adaptability to different situations.

The regulations presently do not envisage a situation where the debtor or the creditor can make modifications to the plan after its approval in case of change in circumstances. A provision like this may have the benefit of providing for minor modifications without spending time and cost of getting approval of the adjudicating authority. It was discussed that the regulations provide for rectification of a breach, but the scope of modification of plan may be considered. It was also suggested that this may be included within the contents

of the repayment plan and would therefore have the approval of the adjudicating authority along with the other terms.

XII. Committee of Creditors:

The definition of 'repayment plan' in section 79(20) of the Code provides that it is a proposal made to a 'committee of creditors'(CoC), and thus the intent of the legislature was for there to be a committee in the insolvency resolution process. The proposed regulation 6(2) provides that the resolution professional is required to file with the Adjudicating Authority the constitution of the CoC regarding the list of creditors. Though the Code specifies in section 109 and 111 that a creditor is entitled to vote on the repayment plan, the proposed regulation 7 provides for a cap on the number of members in the CoC to 10 topmost creditors by value, and one representative each of workmen and employees of the debtor (if applicable). Thus, the voting right is restricted to the 10+2 creditors.

Issue:

The Working Group had recommended such a cap for ensuring efficiency of the process.

Do the regulations have the scope to create a committee and provide a cap on the membership. Having a committee with a few members is preferable.

There was a suggestion in the consultation process to provide representation to the remaining creditors, such that their voting rights are not affected. Alternatively, rather than allow all creditors to be represented to vote instead of a committee, it may be efficient to provide a mechanism for groups of creditors to appoint a representative to vote on their behalf.

Should the regulations provide for a CoC? Is the constitution of the CoC as suggested in the proposed regulations appropriate? Should the constitution be such that all creditors are represented? How should this be ensured?

XIII. Discretion of Adjudicating Authority

As per the Code, the Adjudicating Authority (AA) has discretion in certain aspects of the process. For instance, (i) it can allow dispensation in exclusion of assets from insolvency in case the actual value of unencumbered personal ornaments of debtor or her immediate family for religious usage or the unencumbered dwelling unit owned by the debtor is above the threshold value (proposed rule 9); (ii) it can require modification of the repayment plan once it has received an approved plan from the creditors. In this respect, it can direct the resolution professional to re-convene a meeting of the creditors to consider a modified plan (section 114); (iii) it may pass a discharge order, and such a discharge is not automatic under the Code and will require exercise of discretion in each case, in light of the facts of each case (section 119); (iv) it can exercise discretion in permitting withdrawal of application before admission (proposed rule 11).

Issue:

The Regulations cannot provide for such guidance, as the Board cannot regulate the functioning of the AA, and it may be possible to make rules on the same under the powers of the Central Government under section 239(1). As per this sub-section, the Central Government may make rules for carrying out the provisions of the Code.

Should there be any guidance on how the Adjudicating Authority may exercise such discretion?

XIV. Discretion of resolution professional

The discretion of the resolution professional needs to be monitored since she has a very important role to play (for instance, in summoning meetings etc. under section 106(2)(c). How will this be ensured? The specific sections in Chapter III of Part III of the Code do not provide for such discretion to be laid out. However, the Board may have broad powers to do so under section 240(1) read with section 196(1)(t).

Should principles be outlined for the resolution professional to exercise their discretion under the IRP?

XV. Replacement of resolution professional

A concern was raised as to how the IRP/RP will be supervised?

Issue:

The resolution professional, who is registered with the IBBI, is expected to play an important role not only in the formulation of the plan, but will be responsible for its implementation as well. Any complaints regarding the resolution professional can be filed with the Board, and replacement action can be taken up with the Debt Recovery Tribunal/ NCLT, as the case may be.

The present provisions of the Code provide for replacement of the resolution professional, but the grounds are not hard coded in the law. Individuals may be reckless in removing/replacing resolution professional as they understand their position not being in line with their expectations. Safeguards may have to be built around the professional, since she is an indispensable part of the process.

XVI. Quorum

According to regulation 16 of the draft regulations on Insolvency Resolution Process for Individuals and Firms, the structure of quorum is defined as (i) 16(1)- A meeting of the committee shall be quorate if creditors representing thirty three percent in number are present in person or by proxy. (ii) 16(2)- The quorum requirement may be modified by the resolution professional in consultation with the creditors, for any future meetings of the committee. Moreover, under proposed regulation 11(4), any decision other than for approval or modification of the repayment plan shall require approval of more than fifty percent in value of the creditors present and voting.

Issue:

Quorum by number can vitiate value voting. Instead of thirty-three percent in number, quorum should be thirty-three percent in value.

The Code provides for 75 % voting percentage under CIRP. A simple majority may not be adequate for financial / restructuring decisions.

XVII. Cost of Public Announcement

Chapter III of Part III, provides for the Adjudicating Authority to give the Public Announcement. Hence, there should be a provision for bearing of the cost.

Issue:

The cost of the Public Announcement shall have to be paid to the Adjudicating Authority. This may be done by either (i) providing it within 3 days of admission of the Application in such manner, (ii) the cost has to be defrayed ahead of the Public Notice process.

The Code / draft regulations do not provide for these costs.

Part 2 : Issues that need to be addressed over medium term

XVIII. Ensuring broad uniformity in States

‘Insolvency and bankruptcy’ is a subject on the concurrent list. Thus, the states have the power to amend the Code.

What could be the possible challenges posed to the Code in this respect? Should States be taken on board in terms of consultation and building consensus before implementation? How should it be ensured that the amendments made by the states are not repugnant to the Code?

XIX. Stigma of Insolvency and the need for financial literacy:

Given our cultural and social background, there is stigma and shame attached to public acknowledgement of insolvency. This can dampen entrepreneurship and risk taking. Thus there are three elements of financial literacy in addressing insolvency, viz. (i) prevention of insolvency that address insolvency by avoiding it altogether through training, (ii) handling insolvency if that is inevitable, (iii) preventing recurrence of insolvency. In this connection, the WG recommended that

- (i) an aggressive and persistent systemic campaign of public information to educate citizens about the objectives of the insolvency and bankruptcy law should be launched all over the country to overcome the potential problem of stigma.
- (ii) the citizens should be sensitised and educated through literature and other educational mediums including as part of financial literacy initiatives of the Central and State Governments and Financial Literacy and Credit Counselling Centres;
- (iii) Attitudes about debt and cultural stigma change slowly, and relatively little can be done to affect such an expansive and disperse notion directly, but policymakers can make and have made choices to minimize stigma by avoiding or repealing judgmental language and punitive measures in existing laws, such as by referring to the “debtor” as opposed to the “bankrupt,” or by reducing post-relief restrictions on activity by debtors.
- (iv) delete stigmatizing elements from a number of legislations that subject debtors to a long list of civil disabilities and restrictions following an insolvency, thereby reducing in part the stigma. This would require amendments in many legislations. A separate expert legal group may be constituted to identify such legislations and rules.

Which institutions should IBBI collaborate with to promote financial education. Financial literacy should start from the stage of primary education and upwards in particular when it is also necessary to address the issue of stigma. What steps are required for that? Should a separate group be set up to identify legislations that subject debtors to a long list of civil disabilities and restrictions following an insolvency or should this advisory committee constitute a sub-group to do so?

XX. Mediation

Majority of insolvency and bankruptcy proceedings involving individuals may not involve contentious issues, large volumes of stakeholders or high amount of debt. Insolvency law for individuals and partnership firms should encourage informal negotiation and resolution

to enable the creditors and debtors to bargain in the shadow of insolvency. The WG recommended the following:

- (i) The Code should be amended to provide for time bound mediation in respect of insolvency of individuals and partnership firms
- (ii) Mediators should be recognised as a new cadre of professionals to oversee the individual and partnership insolvency resolution process in place of Adjudicating Authority in prescribed cases. Only cases involving above the prescribed debt may be filed directly before the Adjudicating Authority.
- (iii) The cadre of mediators should be licenced and regulated by the IBBI
- (iv) The IBBI may recognise certain mediation centres to provide mediation facility.

Can mediation framework be provided through regulations without amendment in the Code? If not, what other mechanism can be provided by way of regulations?

XXI. Counselling

Counselling, a prevalent practice in most sophisticated jurisdictions, is considered necessary for further rehabilitative goals of behaviour modification. It helps prevent repeat bankruptcies. There are two kinds of counselling required, namely debt counselling and social counselling. Debt counselling is based on the assumption that bankruptcy is a consequence of imprudent use of credit or the need for individuals to adapt their credit behaviour to more desirable norms. Social counselling is part of the welfare state regime and helps the incumbent to readjust and respond to the society she is surrounded in. The WG recommended the following:

- (i) a cadre of qualified, licensed and trained counsellors be established by making suitable regulations.
- (ii) The cadre of counsellors should be licenced and regulated by the IBBI.
- (iii) The counsellors should be bound by the code of conduct to be prescribed by the IBBI.
- (iv) The counselling should be optional or in pre and post commencement stages of insolvency and bankruptcy although gradually, as adequate capacity is developed, it may be made mandatory in due course.
- (v) The Board should explore the idea of setting up forums or help desks to assist applicants in filing applications and understanding the insolvency resolution process under the Code.

Should counselling be mandatory or optional? Should the help desks be set up by IBBI? How would these ensure last mile connectivity? Should this work be outsourced to other agencies that better understand local dynamics and culture? How should this mechanism work?

XXII. Debt Recovery Tribunals

The insolvency cases related to corporate guarantors will be filed with the NCLTs. Those related to individuals with business will be filed in DRTs. Vesting DRTs with jurisdiction to deal with cases related to individuals having business will impair the quality of their existing jurisdiction. DRTs are over-burdened and suffering from backlog. Besides, DRTs are primarily located in state headquarters. The Code provides for circuit sittings of the DRT in all district

headquarters. The WG recommended that the Central Government may consider amending the Code to designate the head of district judiciary, by whichever other name called, as the Adjudicating Authority in place of Debt Recovery Tribunal. The district judge may designate a judge not below the rank of additional district judge as the Adjudicating Authority for the purposes of the Code.

While Districts Courts are more accessible compared to DRTs, are there other favourable factors in relation to district courts as opposed to DRTs in terms of the capacity and suitability? Alternatively, can there be a limited role for adjudicating authority in individual insolvency to reduce its burden? How can this be achieved besides providing role for mediation?.

XXIII. Meeting the cost of insolvency resolution and bankruptcy

Individuals and partnership firms may not have adequate and readily available resources, including financial resources to meet the cost of insolvency and bankruptcy. The State must support such debtors so that they are not deprived of access to the recourse available under the Code. The assistance and support required in the individual insolvency and bankruptcy process is different from legal aid but may have some common elements such as safeguarding the right to access justice. The objectives of the Insolvency and Bankruptcy Fund (“Fund”) set up under section 224 of the Code is to serve the above purpose. The Fund should be utilised to assist debtors and applicants who may not have the capacity to bear the cost of the insolvency and bankruptcy process, and also possibly the remuneration of the resolution professional and bankruptcy trustee in certain cases. The WG recommended the following:

- (i) the notification of the Insolvency Fund be expedited;
- (ii) the Insolvency and Bankruptcy Fund should be utilised to assist debtors and applicants who may not have the capacity to bear the cost for the process, and also possibly the remuneration of the resolution professional in certain cases.
- (iii) The eligibility of a debtor or applicant to avail benefits from the Fund should be left to the Adjudicating Authority;
- (iv) The utilised fund should be recovered as cost of resolution or bankruptcy, as the case may be.

Should the Fund be an independent entity or an extended arm of IBBI? What should be the sources of revenue of the Fund? Should the eligibility of a debtor or applicant to avail benefits from the Fund be left to the Adjudicating Authority or arrived at more objectively by way of regulations? What are the inherent risks?

The problems posed by poor applicants being unable to afford the resolution costs, and dealing with no assets cases need to be addressed. How should this be done, till the time the Insolvency and Bankruptcy Fund is activated?

XXIV. Legal issue in notification of the rules/regulations

In order to ensure phased application of the individual insolvency regime, it may be necessary that the erstwhile Presidency Town Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, be ‘repealed’ in phases. The WG noted that if the provisions of Chapter III of the Code are made operative and implemented, once provisions of Chapters III to V, Part III of the Code are notified excluding section 179 to 183, the Code would become operational only in respect

of individuals who have given personal guarantees to corporate debtors and in conformity with the legislative intent, are subjected to the jurisdiction of the Adjudicating Authority, namely, NCLT. In order to start proceedings before the Debts Recovery Tribunal with respect to individuals and partnership firms engaged in business activities, sections 179 to 183 of the Code would have to be made operational and implemented excluding their application to the individuals and partnership firms without business activity. Individuals and partnerships without business activity would thus remain out of the applicability of the Code and consequently, the Presidency Town Insolvency Act, 1909 and Provincial Insolvency Act, 1920 may continue to apply to them. This would necessitate the Presidency Town Insolvency Act, 1909 and Provincial Insolvency Act, 1920 to be repealed in phases. Section 243 of the Code does not specifically provide for phased repeal of the Presidency Town Insolvency Act, 1909 and Provincial Insolvency Act, 1920. It provides for repeal with a saving clause that the proceedings presently pending under the aforesaid two statutes shall continue to be governed under the said two statutes and be heard and disposed off by the concerned courts or tribunals, as if the aforementioned Acts have not been repealed.

How should the phased implementation of the regime be ensured? Should there be a separate set of regulations or should distinct provisions be made within the same set of regulations? What should be the implementation plan for application of the Code to the residuary category, i.e. individuals without business? What should be the nature of order of removal of difficulties by the central government?

XXV. Privacy

The Code requires financial information in respect of the debtor to be shared and disclosed. Section 196(1)(k) enjoins upon the Board to collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases.

Issue:

Ensuring privacy and data protection of individuals is important as this will contain information about personal assets and possibly other financially sensitive information.

What are the safeguards to be adopted in this regard in the rules and regulations?

Insolvency and Bankruptcy Board of India

Summary of the discussions at the 1st meeting of the Advisory Committee on Individual Insolvency and Bankruptcy held on 8th November, 2017

The first meeting of the Advisory Committee on Individual Insolvency and Bankruptcy was held at 11 AM on Wednesday, the 8th November, 2017 in the Conference Room, IBBI, New Delhi. The following were present:

Advisory Committee

1. Mr. Justice B. N. Srikrishna, Chairperson
2. Mr. Prithvi Haldea, Member
3. Dr. (Ms.) Poornima Advani, Member
4. Mr. R. V. Verma, Member
5. Mr. Sanjeev Sanyal, Member
6. Mr. Sumant Batra, Member,
7. Ms. Yogini Dinkar Chauhan, Member, and
8. Dr. (Ms.) Mamta Suri, Secretary to the Committee.

By Invitation

9. Mr. A. S. Chandhiok, Sr. Advocate
10. Ms. Alka Kapoor, CEO, IPA of ICSI
11. Mr. J. K. Budhiraja, CEO, IPA of ICAI (Cost)
12. Ms. Shreya Garg, Vidhi Centre for Legal Policy, and
13. Ms. Aishwarya Satija, Vidhi Centre for Legal Policy.

From IBBI

14. Dr. M. S. Sahoo, Chairperson
15. Dr. (Ms.) Mukulita Vijayawargiya, WTM
16. Dr. Navrang Saini, WTM
17. Mr. G. S. Yadav, Member
18. Mrs. Ranjeeta Dubey, DGM, and
19. Ms. Bhawna Gera, RA.

2. Dr. M. S. Sahoo, Chairperson of the IBBI welcomed the Chairperson and other members to the 1st meeting of the Committee and thanked them for accepting the request of the IBBI to serve on the Committee, whose remit touches the lives of over a billion plus citizens.

3. The Committee considered the Report of the Working Group, including draft rules and regulations in respect of Insolvency Resolution Process for Individuals and Firms; summary of public comments received on draft rules and regulations; summary of comments gathered at roundtables on draft rules and regulations; and the list of issues for consideration of the Committee, circulated vide mail dated 5th November, 2017. It also considered suggestions made by Department of Financial Services on the Report of the Working Group vide letter dated 7th November, 2017.

4. The Committee considered various issues dealt in the rules and regulations at length. It's recommendations on these issues are as under:

a. What should be threshold amount of default for initiation of resolution process? Should it be different for different categories of individuals?

Section 78 of the Code applies to fresh start, insolvency and bankruptcy where the amount of default is at least Rs.1000. It, however, empowers the Central Government to specify a higher

minimum amount not exceeding Rs.1 lakh. Considering that fresh start is an entitlement of the debtor under section 80, the upper limit for fresh start is qualifying debt of Rs.35,000, the expenses and processes involved in resolution, the Committee recommended a lower threshold of Rs.5000 for debtors and a higher threshold of Rs.35,000 for creditors for initiation of resolution process.

b. It has been proposed to start with individuals who have business. What should be definition of ‘business’?

The Committee recommended that ‘business’ be defined to include an individual or a partnership firm which is under obligation to have registration under GST as GSTN is most precise and comprehensive.

c. What should be the application fee?

The Committee noted that the draft rules specify a fee Rs.100 for DRTs and Rs.1000 for NCLT and DFS has suggested a higher fee. It felt that the fees envisaged in the Rules are appropriate.

d. Should debt counselling be compulsory before initiation of the process?

The Committee felt that debt counselling (financial and social) are extremely important for individual insolvency and bankruptcy processes. However, neither it is a legal requirement, nor is there a cadre of people who can provide such counselling. It recommended, to start with, such counselling may be optional. As and when a cadre of counsellors is developed and infrastructure is ready, counselling may be made mandatory.

e. Should the law of limitation apply to initiation of proceedings? Should it be dealt in the rules / regulations?

The Committee felt that non-prescription of period of limitation may be lacuna in the Code, but it cannot be provided in the subordinate legislation. It is better to let it be settled through jurisprudence. An amendment to the Code may be considered if the judiciary does not provide a clear discourse on the subject.

f. Should a notice be served on the debtor before initiating an insolvency resolution process?

The Committee recommended that a notice may be served similar to the notice for corporate insolvency resolution process. It further recommended that instead of providing multiple modes of servicing of the notice, options may be given to the creditor to serve by any or all of the modes provided that it receives at least one acknowledgement. It suggested that it is useful to provide a standard format of notice for convenience of creditor and debtors.

g. Who should bear the cost of public notice made by adjudicating authority?

The Code clearly provides that the Adjudicating Authority shall issue a public notice. The cost would be borne by the issuer. The Committee, therefore, suggested that there is no need to provide for this in the subordinate legislation.

h. If an application is rejected, who should pay fees of resolution professional?

The Committee felt that the subordinate legislation need not provide for this. It is a client - professional engagement.

i. Can the Insolvency and Bankruptcy Fund under section 224 of the Code be utilised to assist debtors and applicants who may not have the capacity to bear the cost for the

insolvency and bankruptcy process, and the remuneration of the resolution professional and bankruptcy trustee in certain cases?

The Committee felt that certain individuals need support from the Fund. It suggested that the Central Government may be requested to expedite the establishment and operationalisation of the Fund and enlarge the scope of its utilisation.

j. Should the rules / regulations recognise the reasons for default such as calamity, wilful, honest business failure, insanity, etc. and make some accommodation for them?

The Committee recommended that an enabling provision may be made in the regulations, whereby the Adjudicating Authority may consider these factors. However, the scope of consideration may be left to the Authority and may not be prescribed. As regards insane individuals, the Committee held the view that such persons are represented through their guardians.

k. What transactions should be exempted from interim as well as final moratorium under sections 96(3) and 101(4) respectively?

The Committee noted that these provisions empower the Central Government to exempt certain transactions from moratorium. The Committee was of the view that such powers should lie with the Adjudicating Authority and not the Central Government. It suggested repeal of section 96(3) and 101(4) of the Code.

l. What and how should be 'excluded assets' under the category unencumbered personal ornaments of the debtor and his immediate family members under section 79(14)(c) of the Code? Who should be covered within the definition of immediate family / relative?

The Committee recommended that such personal ornaments not exceeding Rs. 5 lakh in value may be excluded from the estate of the debtor.

The Committee felt that the definition given in section 79(17) of the Code is satisfactory and there was no need for providing any further guidance under the Regulations.

m. What kind and of what value a dwelling unit should be excluded under section 79(14)(e)? How to deal with if debtor is not able or willing to pay the difference between value of the dwelling house and his excluded value?

The Committee considered the formula suggested for exclusion of dwelling unit in the draft rules appropriate. It is for the debtor to arrange to pay the difference. He may arrange it by mortgaging the dwelling itself.

n. Should rules / regulations provide guidance on or a format for or a model minimum sustenance budget?

The Committee felt that the debtor should continue to have a life with dignity and it is not possible to visualise the specific needs of every debtor such as medical needs. In any case, it is to be agreed upon by the debtor and creditors, prepared under professional guidance of an insolvency professional and approved by the adjudicating authority. Nevertheless, since debt is to be repaid, the Committee recommended, the minimum sustenance budget must leave at least 10% of the debtor's income towards repayment.

o. Should rules / regulations provide guidance on or a format for or a model / standard repayment plan? What assets, liabilities, income etc. should be considered while designing a repayment plan?

The Committee felt that it is not necessary to provide a format as every repayment plan will be unique depending on the facts of the case and it cannot be standardised by a model plan/format.

In any case, as required under section 105(3)(a) of the Code, a repayment plan shall provide its justification for the same. At a subsequent date, if required, a model plan may be provided, as part of guidelines or best practices, but not as part of the rules or regulations.

p. Debtor submits a repayment plan. This may not be acceptable to creditor? How to deal with a situation where no agreement is reached between them?

The Committee noted that section 112 of the Code envisages a report of the meeting of the creditors by a resolution professional and the same report states if the repayment plan was approved or rejected. The Code envisages possibility of disagreement and the adjudicating authority has all the powers under section 114 of the Code to give appropriate directions in such cases.

q. What should be the requirement for approval of repayment plan in terms of percentages and whether in terms of value or number?

The Committee recommended that the repayment plan should be approved by 75% of the creditors by value, and not restricted to those '*present in the meeting*'. It felt that wording in section 111 has an obvious mistake, probably by oversight. A similar provision exists in the Companies Act, 2013, where there is a coma before and after the words 'present in person or by proxy' and suggested an order for removal of difficulty or an amendment to section 111 of the Code accordingly.

r. Should repayment plan, once approved, be allowed to be modified in mid-course?

The Committee held a view that there is a provision for the modification under section 114(3) and 116(2) of the Code, with the approval of the Adjudicating Authority. It, however, suggested that regulations may make it clear that one may invoke section 116(2) to seek a modification

s. How should the rules / regulations deal with an absconding debtor?

The Committee recommended that the subordinate legislation for resolution part need not provide for anything in this regard.

t. If the debtor does not maintain records of his assets, liabilities, income and expenditure, where and how can such details be obtained?

The Committee observed that the resolution professional is not an investigating agency. It is left for the Adjudicating Authority to give appropriate directions.

u. Should the estate of immediate family members be covered in the estate of the debtor, as protection is given to family members in respect of dwelling unit, religious jewellery, etc?

The Committee recommended that estate of immediate family members should be included in the estate of the debtor.

v. Should resolution professional have look back provisions?

The Committee felt that look back provisions in respect of past transactions is more pertinent to bankruptcy than to resolution. Detailed provisions may be made at the stage of bankruptcy. The regulations may provide that resolution professional may report any potentially fraudulent transfers in the past 6 months to the Adjudicating Authority.

w. Should there be a Committee of Creditors and who should it comprise?

The Committee noted that the Code provides for a list of creditors under section 104 and lays down meeting and voting of creditors (sections 107 and 111) and does not contemplate a

committee of creditors, unlike the corporate insolvency resolution process. It recommended that the regulations should not provide for a committee of creditors as it would deprive some creditors of their right to decide matters for them.

x. What should be the requirement of quorum for meeting of the Committee of Creditors?

Since the approval requires 75% of voters by value, it is necessary that at least 75% of creditors by value attend the meeting. The Committee, therefore, recommended 75% of voters by value to constitute quorum.

y. How a resolution professional can be supervised? When, how and whether a resolution professional should be replaced?

A resolution professional reports to the AA at all stages and submits reports to IBBI. There is also a code of conduct for him. The Committee, therefore, recommended no further oversight over the resolution professional. IBBI may specify what kind of reports it would like to receive for monitoring conduct of resolution professionals.

The Committee observed that section 98 of the Code provides for a creditor or debtor to approach the AA for replacement of resolution professional. The Committee recommended no further provision in this regard.

z. When can an IP have conflict of interests and should be prevented from acting as resolution professional?

The Committee felt that the Code of Conduct should be adequate. As a general principle, a resolution professional should not have any conflict of interest with any of the parties to the resolution process. However, a resolution professional, having a conflict of interest, may take up a transaction with consent of all parties to it.

5. The Committee considered other suggestions made by the working group for improvement in the framework for individual insolvency and bankruptcy. Its views are as under:

- a. A national level campaign in a concerted manner by the Central Government and State Governments is necessary to create awareness and benefits of individual insolvency and bankruptcy regime.
- b. A concerted effort to impart financial literacy all over the country is necessary.
- c. An organised structure and a trained cadre may be created for debt counselling.
- d. Non-disputed insolvencies below a threshold may be handled outside court / tribunal process. This could be entrusted to insolvency professionals who may use mediation to arrive at repayment plans.
- e. DRTs have recovery focus. The capacity of DRTs is limited. In case court process is to be used, district courts may be better forum.
- f. It is necessary to develop privacy norms for handling of data received in proceedings under the Code.

6. Implementation of the individual insolvency regime

- a) It has been proposed to implement individual insolvency in three phases: guarantor to corporates first, followed by individuals with businesses and then the balance population. The Committee felt that this makes sense as one can learn in the initial stages before embarking on the entire population while the efforts can be made to develop DRT infrastructure and prepare individuals to use the new regime to their advantage. It noted that the Code envisages commencement of different provisions of the Code on different dates and clauses (a) to (d) of

section 2 (except with regard to voluntary liquidation or Bankruptcy) were brought into force on one date and those provisions in respect of voluntary liquidation were brought into force on a subsequent date.

b) The Committee, however, felt that the Code does not envisage classes of individuals, except for the guarantors who need to approach NCLT as the Adjudicating Authority in cases where a corporate insolvency resolution process has been commenced against the corporate debtor of personal guarantor. After detailed deliberation, it felt that it should be permissible to implement individual insolvency provisions in respect of guarantors to corporates separately. Implementation in respect of other categories of individuals in phases may pose legal difficulty. Further, it may be difficult to repeal the Presidency Town Insolvency Act, 1909 and Provincial Insolvency Act, 1920 in phases for different categories of individuals. Thus, carving out different categories of individuals and phased implementation based on such categorization may be exposed to legal challenge. Therefore, the categorization and phased implementation based on categories of individuals, except to the extent they relate to personal guarantors of corporate debtors, may be considered by the Government keeping in mind the inherent legal issues.

7. The meeting ended with vote of thanks to the Chairperson of the Committee.