INSOLVENCY & BANKRUPTCY BOARD OF INDIA

Subject: Corporate Insolvency Resolution Process: Improving timelines and enhancing dissemination of information

Part A of this Board note proposes certain amendments to Regulations to facilitate adherence to timelines and enhance dissemination of information in respect of corporate insolvency resolution process (CIRP).

PART A

1. Specifying other evidence of default for financial creditors

1.1 Section 7 of the Code enables a financial creditor to initiate CIRP against a corporate debtor before the Adjudicating Authority (AA) when a default has occurred. Clause (a) under sub-section (3) provides that the financial creditor shall along with the application furnish "record of the default recorded with the information utility or such other record **or evidence of default as may be specified".**

1.2 Further, Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides that the application by a financial creditor shall be in Form 1, accompanied with documents and records required therein and as specified in the CIRP Regulations.

1.3 The CIRP Regulations do not specify any other record or evidence of default for the purpose of section 7(3)(a) of the Code. However, for the purpose of proving claims by financial creditors in a CIRP, certain documents have been specified under regulation 8 (2) of the CIRP Regulations, which include the following:

a. records available with IU, if any;
b. financial contract supported by financial statement as evidence of debt;
c. record evidencing that amount committed by financial creditor to the CD under a facility has been drawn by CD;
d. financial statement showing that debt has not been paid; or
e. an order of court, tribunal that has adjudicated upon non-payment of debt.

1.4 As stated above, while no documents and records to accompany application has been specified in the CIRP Regulations, few such documents have been listed in the Rules in Form 1 at Part V, which include the following:

i. Particulars of security held, if any
ii. Particulars of an order of court, tribunal or arbitral panel adjudicating on the default, if any
iii. Record of default with IU, if any
iv. 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
v. Copy of financial contract reflecting all amendments and waivers to date
vi. Record of default as available with any credit information company
vii. Copy of entry in bankers' book as per Banker Book Evidence Act,1891
viii. Other documents to prove financial debt and default

1.5 The NCLT, vide administrative order No. 25/02/2020-NCLT dated 12th May, 2020, had mandated filing of default record from IU along with new applications filed under section 7 by financial creditors. This was insisted even with respect to applications pending for admission. However, this order of NCLT was set aside by the High Court of Calcutta in the matter of *Univalue Projects Pvt. Ltd. Vs. The Union of India & Ors.,* vide judgement dated 18th August, 202, holding it to be beyond the jurisdiction of NCLT under section 424 of the Companies Act, 2013. The Court held:

" 46. Clause (a) of sub-section 3 of Section 7 clearly states that the financial creditor shall furnish along with the application record of the default recorded with the information utility or such other record or evidence of default as may be specified. .... The three categories of evidence that can be provided are as follows: (a) record of the default recorded with the information utility; (b) such other record; (c) evidence of default as may be specified. The disjunctive use of the above makes it clear that either of the three may be provided by the financial creditor to the adjudicating authority. .... In my view, if the intention of the legislature was to make the term applicable to all three categories a comma would have been inserted after the word "default". .... In conclusion, on a plain reading of the above provision, it is immanent that three different categories of documents are available to a financial creditor to prove proof of default by a corporate debtor. .....

67 Therefore, to summarize my conclusions:
a) ....
b) I am of the view that financial creditors can rely on either of the modes of evidences at hand to showcase a financial debt, that is, either a record of default from the IU OR any other document as specified which showcases the existence of a financial debt. Such other documents may belong to any of the four classes of documents stated in sub-regulation 2(b) of Regulation 8 of the CIRP, 2016 or as the Supreme Court has observed in Swiss Ribbons (P) Ltd. (supra), all the eight classes of documents stated in Part-V to Form-1 appended with the AA Rules, 2016."

1.6 Thus, even though the CIRP Regulations have not specified other record or evidence of default for the purpose of section 7(3)(a), the jurisprudence evolving tend to rely upon documents which the Board has specified for the purpose of proving claims (under Regulation 8) and those listed in the application form prescribed under the Rules (Form 1 – Part V). In the light of the requirement under section 7(3)(a) to specify the record of default, and taking cue from the list of documents under regulation 8 of the CIRP Regulations and Form 1 in the Rules, it is proposed to specify certain records of default under section 7(3)(a). However, given the consequences of such record that a CIRP commences based on such records, it is proposed to specify only those records which are as good as or more or less close to record of default with an IU. It is, therefore, proposed to insert a new regulation 2A to specify the following evidence of default for the purpose of section 7(3)(a):

a. an order of a court or tribunal that has adjudicated upon the non-payment of a debt, or
b. certified copy of entries in the relevant account in a bankers' book in accordance with the Bankers Books Evidence Act, 1891.

1.7 *Regulatory Impact Assessment (RIA)*:

S.No.	RIA Methodology	Statement
1.	Statement of Problem and Policy Context	The Code provides for filing record of default with IU or "other record or evidence of default" to be specified by the Board, along with an application by financial creditor for initiation of CIRP. However, the regulations currently do not specify any such record or evidence. This has led to some ambiguity and avoidable litigation, as courts tend to rely upon few documents indicated in the AA Rules and CIRP Regulations (for the purpose of claim verification).
2.	Objective of Policy Action	To facilitate quicker initiation of CIRP by FCs
3.	Identification of Feasible Options	A. Option I: Status Quo - No Intervention B. Option II: Identifying and specifying other evidences of default
4.	Preferred Option	Based on the Cost-Benefit Analysis of both Options I and II – set out at **Annexure**-I to this note - the benefits accruing on account of implementation of Option II outweigh the costs involved. It also outweighs over the benefits of Option I. Therefore, the preferred option is Option II i.e. identifying and specifying other evidences of default
5.	Strategy to implement preferred option	Insertion of new regulation by amending CIRP Regulations.

2. Information dissemination of commencement of CIRP

2.1 Section 15 (2) of the Code provides that public announcement of the CIRP shall be made in such manner as may be specified. Accordingly, Regulation 6(1) of the CIRP Regulations requires an IP to publish public announcement within three days of his appointment, (i) in two newspapers; (ii) on the website of CD, if any; and (iii) on the website, designated by the Board. Regulation 6(2)(c) requires that the last date for submission of proof of claim, shall be fourteen days from the date of appointment of IRP in the public announcement.

2.2. However, it is noted that often claimants do not file claims within the stipulated timeline and end up filing within the 90 days window provided under regulation 12(2) or even later. One of the reasons stated by the claimants is lack of knowledge of the public announcement, as they might not have noticed such announcement in the newspaper or may not visit the website of CD or IBBI. This contributes to delay and disputes in the process.

2.3 This can be addressed to a large extent with the help of Information Utilities (IUs). Regulation 22(4) of the IBBI (Information Utility) Regulations, 2017 mandates an IU to communicate the status of authentication of default to the registered users who are creditors of the debtor who has defaulted and parties and sureties to the debt. To facilitate collection of claims, the IRP may be mandated to forward a copy of public announcement, as soon as it is made, to Information Utilities, who shall, in turn, inform commencement of CIRP to all the creditors of the CD as available in its records. This shall facilitate early submission of claims

by creditors in response to the public announcement and expedite the process and encourage the creditors to submit information to an IU.

2.4 Accordingly, it is proposed to amend regulation 6 of the CIRP Regulations to require the IRP to send a copy of the public announcement to the IUs. It is also proposed to amend regulation 21 of IU Regulations to require the IU to disseminate public announcement forthwith to the registered users who are creditors of the debtor who has defaulted and parties and sureties to the debt.

2.5 *RIA*:

S.No.	RIA Methodology	Statement
1.	Statement of Problem and Policy Context	Claimants of CDs are often unaware of commencement of CIRPs and they delay in submission of claims. This impacts the time boundedness of the process, apart from leading to disputes relating to claims.
2.	Objectives of Policy Action	To increase awareness of commencement of CIRP against a CD to its stakeholders.
3.	Identification of Feasible Options	A. Option I: Status Quo - No Intervention B. Option II: IP may identify claimants and inform individually C. Option III: Use of IU to provide notification to claimants
4.	Preferred Option	Based on the Cost-Benefit Analysis of Options I to III - set out at Annexure-I to this note - the benefits accruing on account of implementation of Option III outweigh the costs involved. It also outweighs over the benefits of Options I and II. Therefore, the preferred option is Option III i.e. use of IU to provide notification creditors of the CD and parties and sureties to the debt.
5.	Strategy to implement preferred option	Amendment of CIRP Regulations and IU Regulations in this regard.

3. Dissemination of Details of claims of creditors on the website of the Board

3.1 The Code enumerates the duties of the IRP and RP. Section 18(1)(b) requires the IRP to receive and collate all the claims submitted by creditors pursuant to public announcement made under sections 13 and 15. Section 21(1) states that the IRP shall after collation of all claims received against the CD and determination of financial position of the CD, constitute a committee of creditors (CoC). Section 25(2)(e) states that the RP shall maintain an updated list of claims.

3.2 Regulation 13 of the CIRP Regulations provides that the IRP or the RP, as the case may be, shall verify every claim received by him as on the date of commencement of insolvency within seven days from the last date of receipt of claims and thereupon make a list of creditors so verified and update the same. The list of creditors is further required to be filed with the AA and displayed on the website of the CD, if any.

3.3. The Board has been receiving numerous complaints from stakeholders relating to their claims, highlighting that they are not aware of the status of their claims post verification by IRP/RP, whether the same has been accepted, rejected, under verification or partially admitted and partly rejected. The difficulties are aggravated when the CD does not have any website, as the Regulation 13(2) currently does not provide for any alternative mode for display of list of creditors. Further, there is also no standard format in which IRP/RP has to maintain and update the list of creditors.

3.4. In order to address such issues faced by the stakeholders and in the interest of larger dissemination of relevant information to them, it is proposed to introduce a standard format for the list of creditors, which shall be maintained, updated and submitted to AA, as required under Regulation 13(2), and also be uploaded on the web site of the Board. The format will contain a summary of the list of creditors, category wise, with details of their claims and status along with details of guarantees, if any, in relation to such claims. This will be supplemented by a detailed list of claims of all creditors. The IRP/RP shall update this list from time to time. The list of creditors shall be maintained for all CDs and uploaded on the website of the Board irrespective of whether a website of CD is in place or not. It will improve transparency and instil faith amongst stakeholders.

3.5 The IT module for uploading such list by IPs has been put in place by the Board. The format for list of creditors will be provided to IPs by a circular.

3.6 It is, therefore, proposed to amend regulation 13 of the CIRP Regulations to require IRP/RP to upload the list of creditors and updates thereon, in the format to be provided by a circular, on the website of the Board.

3.7 *RIA*:

S.No.	RIA Methodology	Statement
1.	Statement of Problem and Policy Context	Claimants face difficulties to know the status of their claims during CIRP, when website of CD does not exist. No standardisation in the format of list of creditors to be prepared and updated by IPs.
2.	Objectives of Policy Action	Bring about consistency in the list of creditors prepared by IPs and to enhance dissemination of status of claims.
3.	Identification of Feasible Options	1. Option I: Status Quo- No intervention 2. Option II: IP to put details of claims on website maintained by the Board
4.	Preferred Option	Based on the Cost-Benefit Analysis of both Options I and II - set out at Annexure -I to this note - the benefits accruing on account of implementation of Option II outweigh the costs involved. It also outweighs over the benefits of Option I. Therefore, the preferred option is Option III i.e. standardising the list of creditors and publishing it on website of IBBI.
5.	Strategy to implement preferred option	Amendment to CIRP Regulations, issuance of circular for circulating the format and enabling IT module.

4. Monthly reporting of status of ongoing CIRPs beyond 180 days

4.1 The Preamble to the Code states that it is *"An Act to consolidate and amend the law relating to re-organisation and insolvency resolution of corporate persons……**in a time bound manner** for maximisation of value of assets….. to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders……"*. The 'time bound' feature of the Code distinguishes it from the erstwhile legislations in the matter.

4.2 Section 12 of the Code provides that the CIRP must be completed within a period of 180 days from the insolvency commencement date, with one-time extension not exceeding ninety days as may be granted by the Adjudicating Authority (AA). Section 12 further provides that the maximum period for completion of CIRP, including the time taken in legal proceedings, shall not exceed 330 days. The Hon'ble Supreme Court in the matter of *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67/2019 and other petitions]*, while striking down the expression 'mandatorily' from section 12, held that:

> *" ....ordinarily the time taken in relation to the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. If the delay or a large part thereof is attributable to the tardy process of the AA and/or the NCLAT itself, it may be open in such cases for the AA and/or NCLAT to extend time beyond 330 days."*

4.3 Regulation 40A of the CIRP Regulations is based on the assumption that the time available is 180 days from the insolvency commencement date. However, the data of CIRPs as on 30th September, 2020 indicate that the maximum time-limit of 180/270/330 have not been met in many cases. The table below highlight an analysis of CIRPs which have yielded in resolution, liquidation orders and ongoing and their respective timelines:

No. of days	277 CIRPs yielding resolution	1025 CIRPs yielding liquidation order	1942 ongoing CIRPs
0-180 days	6	110	151
181-270 days	34	302	349
270+ days	237	613	1442
Avg days	**432**	**318**	**NA**

4.4 Thus the average time taken for resolution is exceeding the maximum time permitted under the Code. Of the ongoing CIRPs, more than fifty percent have exceeded 270 days and more than seventy five percent have exceeded 180 days. Thus, though the intent of the Code has been that 180 days' timeline shall be the rule, with extensions up to 270/330 being exceptions, the time taken for processes are not consistent with the legislative intent.

4.5 For the purpose of monitoring CIRPs from commencement till conclusion, regulation 40B provides for a set of Forms, based on certain triggers, to be filed by IPs as per the timelines stipulated in each Form. Form CIRP 4 is required to be filled by RP within seven days of issue

of Request for Resolution Plan (RFRP) and Form CIRP 5 within seven days of approval or rejection of resolution plan or upon order for commencement of liquidation by AA as the case maybe. Thus, there exists a significant time gap between Form CIRP 4 and Form CIRP 5 and it is observed that often the timelines are being breached during this stage, namely, receipt of resolution plans from prospective resolution applicant, due diligence of resolution applicants, consideration of plans received by CoC, approval of CoC approved plans by AA, etc. Failure to adhere to timelines is causing increasing concern. This may require efforts both from the perspective of augmenting infrastructural capacity of the AA and closer monitoring of processes which have the potential to breach the timelines.

4.6 Therefore, to have better monitoring of ongoing CIRPs which have completed 180 days from ICD, a new **Form No. CIRP 4A** is proposed, by way of amendment to Regulation 40B. The RP will be required to file this Form every 30 days from ICD, till closure of process and filing of CIRP-5. A brief overview of Form No. CIRP 4A proposed is as under:

Form No.	**Period Covered and Scope**	**To be filed by**	**Timeline**
(1)	(2)	(3)	(4)
CIRP 4A	**To be filed on 180th day from ICD and every 30th day thereafter till Form 5 is filed:** This will indicate the stage of CIRP and what is contributing to delay.	RP	Every 30th day after 180 days of ICD i.e., 180th, 210th, 240th, 270th day and so on.

4.7 *RIA*:

S.No.	**RIA Methodology**	**Statement**
1.	Statement of Problem and Policy Context	Time boundness of process is an intrinsic feature of the Code. Though timelines are laid down under the Code and regulations, several ongoing processes are delayed. Focussed attention of processes which are beyond 180 days timeline is required. Otherwise, the stakeholders may lose faith in the sacrosanct process provided under the Code.
2.	Objectives of Policy Action	• Increased monitoring of CIRPs which have exceeded timelines • To identify underlying issues causing delays and make course corrections
3.	Identification of Feasible Options	A. Option I: Status Quo- No intervention B. Option II: Periodic reporting through IT system and regular monitoring. There is an existing mechanism for event-based filing of CIRP Forms by IPs. A separate CIRP Form may be devised for such purposes which may be filled monthly upon exceeding timeline.
4.	Preferred Option	Based on the Cost-Benefit Analysis of both Options I and II - set out at Annexure -I to this note - the benefits accruing on account of implementation of Option II outweigh the costs involved. It also outweighs over the benefits of Option I. Therefore, the preferred option is Option II i.e. introducing new Form in IT Portal for

		submission on monthly basis, for CIRPs which exceed timeline.
5.	Strategy to implement preferred option	Amendment to CIRP Regulations and enabling new Form filing in IT Module.

5. Dissemination of information relating to entitlements to stakeholders under the approved resolution plan

5.1 Section 30(3) of the Code requires the RP to present before the CoC resolution plans which comply with the conditions referred to in sub-section (2). The CoC may approve a resolution plan under section 30(4) with the requisite majority and thereafter, RP submits such approved resolution plan to the AA under section 30(6). Once the resolution plan is approved by the AA, in terms of section 31(1), such plan is binding on CD and its employees, members, creditors including Central Government, any State Government or any local authority, guarantors and other stakeholders involved in the resolution plan.

5.2 While submitting the resolution plan approved by the CoC before the AA, the RP is required to submit a compliance certificate in Form H under regulation 39(4) of the CIRP Regulations. This Form at Point 7 requires the RP to disclose the details of the amount claimed, admitted and provided under the resolution plan in respect of each category of creditors. However, once the plan is approved by the AA, there is no explicit requirement on the RP to disclose the same to the stakeholders as to how their claims have been dealt with in the resolution plan.

5.3 The Board has received several complaints from stakeholders enquiring about their entitlements under the approved resolution plan. Considering the technical and confidential details that may be involved in the resolution plan, such plans are often not available in public domain. This adds to the difficulties to the stakeholders.

5.4 Therefore, to improve transparency and to facilitate the stakeholders easy access to information relating to their claims under the approved resolution plan, it is proposed to amend regulation 39 to require the RP to intimate each of the claimants their entitlements under the approved resolution plan within fifteen days from the date of approval of the resolution plan. The RP shall also upload such information on the register of claims hosted on the website of the Board.

5.5 *RIA*:

S.No.	RIA Methodology	Statement
1.	Statement of Problem and Policy Context	In terms of section 31(1) of the Code, the resolution plan approved by AA is binding on all stakeholders. However, stakeholders often do not know the treatment given to their claims in the resolution plan.
2.	Objectives of Policy Action	Enhance transparency to stakeholders.
3.	Identification of Feasible Options	1. Option I: Status Quo- No intervention 2. Option II: IP intimate claimants of their entitlement under resolution plan and uploading on website maintained by the Board
4.	Preferred Option	Based on the Cost-Benefit Analysis of both Options I and II - set out at Annexure - I to this note - the benefits

		accruing on account of implementation of Option II outweigh the costs involved. It also outweighs over the benefits of Option I. Therefore, the preferred option is Option II i.e. requiring IP to intimate all claimants and also uploading on website of IBBI.
5.	Strategy to implement preferred option	Amendment to CIRP Regulations and enabling IT Module to upload on website of IBBI.

6. It is submitted that the proposed amendments address the problems of stakeholders reported in various fora and may be implemented on urgent basis. The Governing Board may consider exempting these from public consultation under regulation 8 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018.

7. The draft of the notification to amend CIRP Regulations and IU Regulations are placed at Annexures II and III respectively to this note.

PART B

8. This Part of the Board note enumerates issues in relation to appointment of professionals under CIRP which are sought to be addressed through appropriate modifications in the Regulations.

8.1. The IP is a key supporting institution under the Code. An IP, when acting as an Interim Resolution Professional (IRP) or Resolution Professional (RP), is vested with an array of statutory and legal duties and powers. In a normal CIRP, an IP exercises the powers of the Board of Directors of the CD and has been cast with the duty of management of operations of the CD as a going concern and to make every endeavour to protect and preserve the value of the property of the CD. He is also entrusted with the task of compliance with all the applicable laws on behalf of the CD. An IP is the driving force and the nerve-centre in an insolvency proceeding who is responsible for getting the best possible outcome in each case. Section 17 of the Code *inter alia* provides that from the date of his appointment, the management of the affairs of the CD vest in the IRP. The powers of the Board of Directors or the partners of CD stands suspended and are exercised by IRP.

8.2. Section 20 of the Code requires the IRP to make every endeavour to protect and preserve the value of the property of CD and manage the operations of the CD as a going concern. Section 20(2)(a) further authorises IRP to appoint accountants, legal or other professionals as may be necessary. Similarly, Section 25(2)(d) of the Code permits RP to appoint accountants, legal or other professionals in the manner **as specified by Board**. Further, Section 240(2)(s) of the Code empowers IBBI to make regulations to provide for manner of such appointment.

8.3. However, the term "professional' has not been defined in the Code. This is causing some ambiguity and potential misuse. It has been observed by the Board in various instances that in place of professionals, institutions which are not subject to any conduct regulations of the regulator have been appointed by the IP to seek support during CIRP.

8.4. In common parlance, a professional is a person, who has been enrolled or registered with the regulator of the profession and is practising the profession under the oversight of the said

regulator. A profession is a disciplined group of individuals who possess special knowledge and skills as a recognised body of learning, adhere to ethical and professional standards and render services under the oversight of the regulator.

8.5. In order to understand the meaning of '*professionals*' as conceptualised by the Bankruptcy Law Reforms Committee (BLRC), following extract from its report may be relevant:

> ***'4.4.1 Mandates for IPs***
>
> *In the case of insolvency resolution, a failure of the process may result from two main sources: collusion between the parties involved and poor quality of execution of the process itself. Hence, it is important that the professionals responsible for implementing the insolvency resolution process adhere to certain minimum standards so as to prevent failures of the process and enhance credibility of the system as a whole.*
>
> *In India today,* ***there are professionals*** *and intermediaries that offer services to resolve financial distress of both registered entities as well as individuals.* ***These include lawyers, accountants and auditors, valuers and specialist resolution managers.*** *However, given the critical role that the Code envisages for these entities in the resolution process, the Committee believes that the Board should set minimum standards for the selection of these professionals, along with their licensing, appointment, functioning and conduct under the Code.*
> *....*'
>
> *'**Box 5.7: Drafting instructions for appointing the interim RP at the start of the IRP***
> *....*
> *6. The interim RP is given the power to do all the things that are necessary for the entity to continue as a going concern. This includes taking over the management of the business and the assets of the entity,* ***appointing accountants and legal staff to verify liabilities and assets and issue legal notices if required***
> ***....***'

8.6. From the above, it may thus be construed that the term 'other professionals/other advisors' used by the BLRC was intended to mean independent professionals like lawyer, accountant, auditor, valuer, etc. and not entities such as partnership firms, entities formed by a group of lawyers, group of accountants, etc.

8.7. In this connection, it is also pertinent to note that the original text of legislation as was introduced in Lok Sabha had the following text:

"

> **Section 25 -**
> '*(d) appoint accountants, lawyers and other advisors in the manner as specified by the Board;*'
> *..*
>
> **Section 236 -**
> *'(t) the manner of appointing accountants, lawyers and other advisors under clause (d) of sub-section (2) of section 25;*'

"

8.8. The terms 'lawyers and other advisors' in Section 25 was substituted for 'legal or other professionals' in Report of the Joint Committee on the Insolvency and Bankruptcy Code, 2015[1] of April 2016 due to 'drafting correction/language improvement' and accordingly, it

can be inferred that there was no change in the intention of the legislature behind such language change.

8.9. In the matter of ***Ms. Subasri Realty Private Limited Vs. Mr. N. Subramanian & Anr. [Company Appeal (AT) (Insolvency) No. 290 of 2017)***, the Hon'ble NCLAT clarified that after appointment of the RP and declaration of moratorium, the Board of Director of a CD stands suspended, but that does not amount to suspension of Managing Director (MD) or any of the directors or officers or employees of the CD. To ensure that the CD remains a going concern, all the directors and employees are required to function and assist the RP who manages the affairs of the CD during the CIRP. This makes it clear that the IRP or RP, as the case may be, shall endeavour to make use of managerial resources available within the CD and he may appoint professionals from outside when the situation warrants for the same.

8.10. In the matter of ***'Chairman, M.P. Electric Board Vs Shiv Narayan - Appeal (Civil) No 1065 of 2000),'*** the Hon'ble Supreme Court observed that there is a fundamental distinction between a professional activity and an activity of a commercial character. Professional activity must be an activity carried on by an individual by his personal skill and intelligence.

8.11. Thus, it can be said that a professional, means a person who is admitted as an advocate with a Bar Council, enrolled as a chartered accountant with the Institute of Chartered Accountants of India (ICAI), enrolled as a company secretary with the Institute of Company Secretaries of India (ICSI), enrolled as a cost accountant with the Institute of Cost Accountants of India (ICAI-Cost), registered as registered valuer with IBBI and similar professionals etc.; and it does not include an advisory or consultancy firm. However, some professions allow individual professionals to form a partnership entity or a company or LLP and practise the profession through that entity. There are professions where the concerned profession regulations do not explicitly contain the provisions to take any disciplinary action against such entities such as ICAI, whereas, in the profession of valuation, an individual valuer as well as an entity comprising a group of individual valuers are both regulated. Thus, a professional means a person who is enrolled or registered with the regulator of the profession and authorised to render professional services and is subject to conduct regulations of the regulator of the profession concerned.

8.12. As per Black's Law Dictionary, 10th Edition,

a. Professional is defined as: *'Someone who belongs to a learned profession or whose occupation requires a high level of training and proficiency. [Refer. Page 1403]'*
b. Professional association is defined as: *'1. A group of professionals organized to practice their profession together. though not necessarily in corporate or partnership*

[1] Para 68 of Report of the Joint Committee on the Insolvency and Bankruptcy Code, 2015

form. 2. A group of professionals organized for education, social activity. or lobbying, such as a bar association. [Refer. Page 148]'

c. Professional Corporation is defined as – *'A corporation providing services of a type requiring a professional license. A professional corporation may be made up of architects, accountants, lawyers, physicians, veterinarians, or the like [Refer. Page 418']*

8.13. From the above, it is clear that the term 'professional' has to be understood in the context of a person authorised to render professional services and is subject to conduct regulations and not a firm/corporation/entity/association/group of individuals whose members may be professionals in their individual capacity.

8.14. The principle of *ejusdem generis* is well recognised in statutory interpretation. It is the latin term for '*of the same kind'*. It states that when general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.

8.15. The terms 'other professionals/other advisors' in the aforementioned provisions of the Code needs to be construed in the light of preceding terms 'accountants', 'legal professionals' and 'lawyers'. Accordingly, the intent of legislature can be inferred to refer to independent professionals like that of lawyer, accountant, auditor, etc. and not to include professional associations/corporation/entities.

8.16. In the light of the above, the following points emerges:

i. The Code allows IPs to appoint professionals only.
ii. The Code does not explicitly allow or reject appointment of firms (engaged in the respective profession of accountancy, audit, law etc.) by IPs
iii. The Board has observed that due to lack of clarity in engagement of professionals, in few instances IPs have appointed firms engaged in the profession of accountancy, audit, law etc. rather than regulated professionals practicing as accountant, auditor, advocate etc.
iv. The Board has also observed that such an engagement of firms is done at exorbitant cost although such costs are ratified by the Committee of Creditors (CoC) thereby inflating the IRPC.

8.17. In view of the above, a need has arisen to explicitly clarify in CIRP Regulations that a "*professional"* who could be engaged by an IRP/RP shall be " *a person, who practises a profession, having been enrolled or registered with the regulator of the profession concerned and is subject to conduct regulations of that regulator'*. Further, the invoice for any professional service availed by IRP / RP should be raised by a professional in its own name, and fee shall be paid directly to the bank account of the professional. It is also proposed to clarify that an IRP or RP, as the case may be, shall make use of services of the professionals already available with the CD, and may appoint a professional from outside only where a professional of the required competence and expertise is not available with the CD.

8.18. The proposed amendment would remove ambiguity prevailing with respect to engagement of *'professionals under CIRP'*. This will instill stakeholder confidence as they

would be empowered to raise objections regarding conduct of such professionals with the respective regulator. This would also ensure that the CIRP remains cost efficient.

8.19. The approval of the Governing Board is sought for placing a discussion paper on the above lines for public consultation in accordance with the IBBI (Mechanism for Issuing Regulations) Regulations, 2018, suggesting amendment to CIRP Regulations.

Annexure -I

Regulatory Impact Assessment- Cost Benefit Analysis

1. **Specifying other evidence of default for financial creditors**

Cost-Benefit Analysis		
Option-I- Status Quo - No Intervention		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	No intervention	Ambiguity in initiation, delay in admission, frivolous litigation.
Debtor	No benefit-though a perverse incentive to remain in management due to delay in admission	No cost
Creditors	May rely on any document for admission	Delayed admission due to ambiguity
Society & Economy as a whole	No benefit	Adverse impact on time-boundness of process and stakeholder confidence
Option II: Identifying and specifying other evidence of default		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	Ensure time-bound admission and avoid litigation	Cost of framing new regulations
Debtor	Clarity on ex-ante basis	No cost
Creditors	Clarity in initiation of process, saving of time and costs of litigations	No cost
Society & Economy as a whole	Improved stakeholder confidence in process	No cost

2. Information dissemination of commencement of CIRP

Cost-Benefit Analysis		
Option-I- Status Quo - No Intervention		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	No intervention	Delay in process, frivolous litigation
Debtor	No benefit	Diminution of value due to process delay
Creditors	No benefit	Opportunity to file claims may be lost for lack of information
Society & Economy as a whole	No benefit	Adverse impact on time-boundness of process and stakeholder confidence
Option II: IP may identify claimants and inform individually		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	Meeting claim submission timelines. Facilitating process with larger participation.	Cost of framing new regulations. Increased monitoring of compliances.
Debtor	Increased stakeholder participation in process	Details of correspondence of all stakeholders to be submitted to RP. Increased IRPC due to individual correspondence by RP and higher compliance cost particularly where records are not available
Creditors	Early participation in process	The RP may not be able to identify all claimants
Society & Economy as a whole	Improved stakeholder participation	Increased IRPC may impact resolvability.
Option III: Use of IU to provide notification to claimants		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	Meeting claim submission timelines. Facilitating process with larger participation. Early constitution of complete CoC. Larger repository of debt in IU.	Cost of framing new regulations. Costs associated with additional responsibilities of IU.

Debtor	Increased stakeholder participation in process	No cost
Creditors	Early participation in process. Incentive for registration of debt with IU. Immediate notice of commencement.	Cost of registration with the IU.
IU	The creditors get incentive to file debt data	Additional responsibility
Society & Economy as a whole	Improved stakeholder participation. Improvement of creditor awareness and rights.	No cost

3. Dissemination of Details of claims of creditors on the website of the Board

Cost-Benefit Analysis		
Option-I- Status Quo - No Intervention		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	No intervention	• Less stakeholder confidence • Lack of transparency in process • Frivolous litigation • Increased monitoring cost due to creditor grievances
IP	No benefit	Increased correspondence relating to claim related grievances.
Creditors	No benefit	• Lack of knowledge of status of claims • Increased correspondence and grievances
Society & Economy as a whole	No benefit	Adverse impact on transparency and stakeholder confidence
Option II: IP to put details of claims website maintained by the Board		
Stakeholder	**Benefit**	**Cost**

Government/Regulator	• Consolidation and larger access to claim status at unified location. • Reduced grievances on claims and optimal utilisation of human resources. • Improved monitoring of claim verification process.	In terms of framing new regulations and cost of creation and maintenance of IT platform.
IP	• Reduced grievances of claimants. • Ease of compliance. • CDs not having own websites can also disseminate.	Marginal compliance cost
Creditors	Increased awareness of status of claims Reduced need for raising grievances	No cost
Society & Economy as a whole	Improved transparency in the process and increase in accountability of IPs	No cost

4. Monthly reporting of status of ongoing CIRPs beyond 180 days

Cost-Benefit Analysis		
Option-I- Status Quo - No Intervention		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	No intervention	• Delay in meeting timeline • Loss of stakeholders' confidence in process • Increase in administrative effort of each case due to delay in process
Debtor	No benefit	• Diminution in value of CD

		• Increased costs due to fees and other expenses of IPs • Possibility of perverse incentive of RP to continue in management of CD • Reduced chances of resolution
Creditors	No benefit	• Lesser realisations • Risks associated with elongated control over CD
Society & Economy as a whole	No benefit	Adverse impact on time-boundness of process, resolvability of CD and stakeholder confidence
Option II: Periodic reporting through IT system and monitoring		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	• Improved monitoring of RP and process • Early detection of adverse market practices and making timely course corrections	In terms of framing new regulations and cost of creation and maintenance of IT module.
Debtor	• Course corrections may enhance resolvability • Value maximization by early resolution	No cost
RP	No benefit	Marginal compliance cost for RP
Creditors	• Enhanced chances of resolution and early realisation	No cost
Society & Economy as a whole	Improved time-boundness and improving stakeholder confidence in the process	No cost

5. Dissemination of information relating to entitlements to stakeholders under the approved resolution plan

Cost-Benefit Analysis		
Option-I- Status Quo - No Intervention		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	No intervention	• Ambiguity regarding rights of creditors when plan is binding on them • Frivolous litigation
Debtor	No benefit	Continuing correspondence and litigation from claimants against CD even after resolution.
Creditors	No benefit	Non-transparency of treatment of claims under resolution plan
Society & Economy as a whole	No benefit	Adverse impact on creditor rights and transparency
Option II: RP to put details relating to entitlements to stakeholders under the approved resolution plan on website maintained by the Board		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	• Enhancing stakeholder confidence in process • Consolidation of data • Improved transparency • Reduction in creditor related grievances	In terms of framing new regulations and cost of creation and maintenance of IT portal.
Debtor	Reduced correspondence from claimants post resolution	No cost
RP	Reduced correspondence from claimants post resolution	Compliance cost for RP to correspond with claimants and upload on website
Creditors	• Awareness of treatment of rights under approved resolution plan • Increase in confidence in the process	No cost
Society & Economy as a whole	Improved transparency	No cost

Annexure II

GAZETTE OF INDIA

EXTRAORDINARY

PART III, SECTION 4

PUBLISHED BY AUTHORITY

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION

New Delhi, the _____ , 2020

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020.

No. IBBI/2020-21/GN/_____.—In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely: -

(1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020.

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

2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations), after regulation 2, the following regulation shall be inserted, namely:-

"**2A. Record or evidence of default by financial creditor.**
For the purposes of clause (a) of sub-section (3) of section 7 of the Code, a financial creditor shall, along with the application furnish, any of the following records or evidence of default, namely:-

a. an order of a court or tribunal that has adjudicated upon the non-payment of a debt, or
b. certified copy of entries in the relevant account in a bankers' book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891).

3. In the principal regulations, in regulation 6, in sub-regulation (2), after clause (a), the following shall be inserted, namely: -
"(aa) be made available to the information utilities;".

4. In the principal regulations, in regulation 13, in sub-regulation (2), after clause (c), the following shall be inserted, namely: -

"(ca) displayed on the website, if any, designated for the purpose by the Board;".

5. In the principal regulations, in regulation 39, after sub-regulation (5), the following sub-regulation shall be inserted, namely: -

"(5A) The resolution professional shall within fifteen days of the order of the Adjudicating Authority approving a resolution plan, intimate each of the stakeholders the amounts provided in respect of their claims under the resolution plan and shall also submit such information to the Board on electronic platform, for display on the website designated for the purpose.".

6. In the principal regulations, in regulation 40B, in the Table, after Form No. CIRP 4, the following shall be inserted, namely: -

Form No.	**Period covered and scope**	**To be filed by**	**Timeline**
(1)	(2)	(3)	(4)
"CIRP 4A	**Post completion of 180 days from ICD:** This includes details of litigation, reasons for delay, orders from various Courts including NCLT, NCLAT and Supreme Court, order from other Government authorities, stage of CIRP, action being taken by RP to expedite the process, extension granted by NCLT, etc.	RP	Every 30th day after 180 days of ICD i.e. 180th, 210th, 240th, 270th day and so on.".

Dr. M. S. SAHOO
Chairperson
[ADVT.- _____]

Note: The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were published vide notification No. IBBI/2016-17/GN/REG004, dated 30th November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 432 on 30th November, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2020 published *vide* notification No. IBBI/2020-21/GN/REG064, dated the 7th August, 2020 in the Gazette of India, Extraordinary, Part III, Section 4, No. 317 on 7th August, 2020.

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Annexure III

GAZETTE OF INDIA

EXTRAORDINARY

PART III, SECTION 4

PUBLISHED BY AUTHORITY

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION

New Delhi, the _____ , 2020

Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2020.

No. IBBI/2020-21/GN/_____. In exercise of the powers conferred by section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, namely:-

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2020.

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

2. In the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, after regulation 21, the following regulation shall be inserted, namely: -

"**21A. Information of commencement of corporate insolvency resolution process.**

An information utility shall accept information regarding public announcement of the corporate insolvency resolution process of a corporate debtor from the insolvency professional and shall forthwith notify the creditors of that debtor, registered with the information utility, intimating them of such announcement.".

Dr. M. S. SAHOO, Chairperson
[ADVT.- _____]

Note: The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 were published *vide* notification No. IBBI/2016-17/GN/REG009 dated 31st March, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 129 on 31st March, 2017 and were last amended by the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2019 published *vide* notification No. IBBI/2019-20/GN/REG046, dated the 25th July, 2019 in the Gazette of India, Extraordinary, Part III, Section 4, No.266 on 25th July, 2019.