

## Insolvency and Bankruptcy Board of India

### **Subject: Regulations for Bankruptcy Process for Personal Guarantors to Corporate Debtors**

#### **Background**

The Governing Board in its meeting held on 27<sup>th</sup> March, 2019 had considered the report of the Working Group on Individual Insolvency (WG) on 'Bankruptcy Processes for Personal Guarantors to Corporate Debtors (BPPGCD)' and directed that public comments be sought on a discussion paper (**Annexure A**), along with draft Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and the IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 [BPPGCD Regulations]. However, it was later decided that the public comments on draft Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 would be sought by the Ministry of Corporate Affairs.

2. Accordingly, a modified discussion paper carrying only draft BPPGCD Regulations was approved by Members of the Governing Board, by circulation. The IBBI placed the said discussion paper along with draft BPPGCD Regulations on its website seeking public comments in accordance with IBBI's Mechanism for Issuing Regulations, 2018. Further, the members of the WG also had some suggestions/remarks after the report was submitted by the WG. The discussion paper and draft Regulations were considered by IBBI's Advisory Committee on Individual Insolvency (AC) at its meeting held on 16<sup>th</sup> May, 2019. A summary of recommendations of the AC, suggestions of the members of the WG and comments received from the public on the draft BPPGCD Regulations, along with Division's response on each of them, is presented in Parts I, II and III respectively of **Annexure B**.

3. The draft BPPCGD Regulations have been modified to incorporate the recommendations, suggestions and comments on the lines of the response of the Division as per Annexure A. Further, certain drafting suggestions have been accepted to bring in more clarity to the intentions of the regulations. Some of the recommendations which were not accepted are those that would require amendments to the Code and are not relevant to the immediate purpose.

4. Based on the above, revised Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 are placed at **Annexure C** for consideration and approval of the Governing Board.

## Insolvency and Bankruptcy Board of India

26th April 2019

### **Invitation of Public Comments: Bankruptcy Process for Personal Guarantors to Corporate Debtors along with Draft Regulations**

The Insolvency and Bankruptcy Code, 2016 (Code) envisages reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all stakeholders. In the two years since the enactment of the Code, the provisions relating to corporate insolvency resolution, including fast track resolution, corporate liquidation and voluntary liquidation of corporate debtors (CDs) have been operationalised.

2. The CD often has guarantors. For comprehensive corporate insolvency resolution and liquidation, it is necessary that insolvency of the CD as well as its guarantors are considered together to the extent possible. Section 128 of the Indian Contract Act, 1872 enables a creditor to pursue remedy against both the principal borrower and the guarantor, as liability of a guarantor is co-extensive with that of the principal borrower, unless the contract provides otherwise. Thus, if the principal borrower defaults in repayment of debt to a creditor, the creditor may choose to pursue remedy against the guarantor for repayment of debt. In effect, insolvency proceedings of a CD and its guarantors are closely linked to each other.

3. Sub-section (2) of section 60 of the Code, was amended by the Insolvency and Bankruptcy (Second Amendment) Act, 2018, to provide that where a corporate insolvency resolution process (CIRP) or liquidation proceeding of a CD is pending before a National Company Law Tribunal (NCLT), an application for insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such CD shall be filed before the NCLT. Sub-section (3), as amended by the said Amendment Act provides that an insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of a CD pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such CD.

4. In the matter of *Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd.*, the National Company Law Appellate Tribunal (NCLAT), vide order dated 8<sup>th</sup> January, 2019, held that it is not necessary to initiate CIRP against the principal borrower before initiating CIRP against the corporate guarantors. Without initiating any CIRP against the principal borrower, it is always open to the financial creditor to initiate CIRP under section 7 against the corporate guarantors, as the creditor is also the financial creditor qua corporate guarantor. The Supreme Court, vide its order dated 11<sup>th</sup> February, 2019, upheld the aforesaid order of the NCLAT on appeal.

5. Guarantors could be individuals (personal guarantors to CDs) or corporates (corporate guarantors to CDs). The mechanism for insolvency resolution of corporate guarantor, being CDs, is already in place. Resolution of insolvency of personal guarantors complements corporate insolvency regime, particularly when there is high incidence of applications being filed in respect of preferential, fraudulent, undervalued and extortionate transactions. It also

puts personal guarantors and corporate guarantors at the same level playing field. Absence of a regime for resolution of insolvency of personal guarantors distorts the choice of borrowers and lenders.

6. It is, however, important to note that personal guarantors are individuals. The insolvency resolution process under the Code provides certain minimum protection to them. Resolution of both corporate insolvency and individual insolvency have certain common objectives, such as increasing the supply of credit by increasing lenders' expected returns, discourage creditors from racing to be first to collect when debtor is in financial distress. Resolution of individual insolvency has few other additional objectives, such as, provision of partial consumption insurance for debtors, fresh start which incentivises the debtors to work after filing for bankruptcy. Thus, while operationalising insolvency resolution of personal guarantors, it is necessary to ensure that the individual has the minimum protection available under the law.

7. The Working Group on Individual Insolvency (WG)<sup>1</sup> holds the view that a phased implementation of individual insolvency and bankruptcy is the intention of legislature and a practical necessity and suggested that the provisions of the Code may first be notified for personal guarantors to CDs. The remaining provisions of Part III of the Code applicable to individuals with business and to individuals without business may be notified in subsequent phases. It is necessary to have separate rules and regulations for each of the three classes of individuals (personal guarantors to corporate debtors, partnership and proprietorship firms, and other individuals).

8. Based on recommendations of the WG, followed by public consultation and advice of the Advisory Committee on Individual Insolvency, and keeping in view the amendment to the Code enabling phased implementation of individual insolvency, the Board is working on regulations on insolvency resolution of personal guarantors to CDs.

9. Chapter III of Part III of the Code provides for insolvency resolution process in which the creditors enter into a repayment plan for the repayment of debts of the debtor. It is not a debt recovery process by one creditor, but a collective process where all creditors of a debtor sit across the table to negotiate a plan according to which all debts of the debtor are to be repaid.<sup>2</sup> However, a failure in the resolution process may result in triggering of bankruptcy process. The next logical steps, therefore, is to notify rules and regulations for bankruptcy of personal guarantors to CDs.

## **Bankruptcy**

10. There is a saying: 'Bankruptcy is a creditor's remedy as well as debtor's right'. This very well summarises that a nation's legal system should have a bankruptcy law framework that is creditor-friendly in the ex-ante sense and debtor friendly in the ex-post sense.<sup>3</sup>

11. The Bankruptcy Law Reforms Committee noted the following as the goals of the provisions of Part III of the Code:

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<sup>1</sup> A Working Group constituted by IBBI to recommend the strategy and approach for implementation of the provisions of the Insolvency and Bankruptcy Code, 2016 dealing with insolvency and bankruptcy in respect of (i) guarantors to corporate debtors i.e. personal guarantors, and (ii) individuals having business, and submit a report along with the draft rules and regulations.

<sup>2</sup> The Report of the Bankruptcy Law Reforms Committee Report, Volume 1: Rationale and Design, (November 2015), Paragraph 3.2.1.

<sup>3</sup> Richard A. Posner, "Corporations, Secured and Unsecured Financing, Bankruptcy", in Economic Analysis of Law, 2011.

- *Providing a fair and orderly process for dealing with the financial affairs of insolvent individuals.*
- *Providing effective relief or release from the financial liabilities and obligations of the insolvent.*
- *Providing mechanisms that enable both debtor and creditor to participate with the least possible delay and expense.*
- *Providing the correct ex-ante incentives so that individuals are not able to unfairly strategise during the process of bankruptcy.*

12. Globally, bankruptcy laws in relation to individuals have been noted to be a contract between the debtor, the creditor and the society.<sup>4</sup> The key driving concern for a society in a bankruptcy law is ameliorating the negative systemic effects of unregulated distressed debt.<sup>5</sup> However, bankruptcy laws may also benefit the debtors and creditors involved in the process. For instance, from the debtor's standpoint, bankruptcy relieves the burden of debts and offers the prospect of rehabilitation. On the other hand, for a creditor, bankruptcy is a collection device designed to substitute an orderly collective procedure for a disorderly race in which creditors are free to pursue their claims individually.<sup>6</sup>

13. Additionally, a bankruptcy law occupies a prime position in the economic regulatory landscape of a country due to the sheer magnitude of people it affects. In India, large parts of the credit market consists of loans to individuals, and to small and medium enterprises (SMEs) which may be in the form of sole proprietorships.<sup>7</sup> As per a report of the International Finance Corporation of the World Bank Group, "*Proprietorship is the most commonly adopted ownership structure (94.5 percent of all MSMEs)*" among SMEs<sup>8</sup>. Therefore, insolvency procedures for most SMEs will be covered by Part III of the Code.

### **Report of Working Group**

14. The bankruptcy process, as provided in Chapters IV and V of Part III of the Code, involves realisation and distribution of the estate of the debtor. On failure of insolvency resolution process, an application for bankruptcy may be made by a creditor individually or jointly with other creditors or by a debtor, in accordance with section 121 of the Code. The WG deliberated on bankruptcy process for personal guarantors to CDs and has submitted its report on the subject, along with draft bankruptcy rules and the draft bankruptcy regulations. While the bankruptcy rules provide the process and forms of applications for initiating bankruptcy proceedings, the regulations provide the details of the bankruptcy procedure.

15. The WG has made the following recommendations in respect of bankruptcy of personal guarantors to CDs:

- a. The application may be made in the prescribed form by the debtor or the creditor, along with a fee of five thousand rupees. The form may provide the details relating to the

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<sup>4</sup> Insolvency Law and Practice, '*Report of the Insolvency Law Review Committee*', Cmnd 8558 (1982), paragraph 192.

<sup>5</sup> The World Bank, '*Report on Treatment of Insolvency of Natural Persons*', (2013), Paragraph 77

<sup>6</sup> *Ibid*, paragraph 78.

<sup>7</sup> *The Report of the Bankruptcy Law Reforms Committee Report, Volume 1: Rationale and Design*, (November 2015), paragraph 6.

<sup>8</sup> The World Bank, IFC Research Study on '*Micro, Small and Medium Enterprise Finance in India, A Research Study on Needs, Gaps and Way Forward*', (November 2012).

- contract of guarantee and a disclosure to specify that the application has not been filed in respect of 'excluded debts'.
- b. Unlike CIRP, past auditors or accountants may not be disqualified from being appointed as a bankruptcy trustee. Such persons may know the accounts of the debtor better and may help build trust with the creditors. For appointment as a bankruptcy trustee, an insolvency professional (IP) must not be an associate of the debtor and should not represent any other stakeholder in the same bankruptcy process. An IP, who is a related party of CD or who has been appointed as a resolution professional or liquidator of such CD, may not be eligible to be a bankruptcy trustee. This disqualification should extend to the partners or directors of the insolvency professional entity in which the IP is a partner or director.
  - c. The fee of the bankruptcy trustee may be decided by the committee of creditors (CoC). It may be advisable to allow flexibility in fixing the fee of the bankruptcy trustee instead of mandating a specific rate. A table similar to the one provided in regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations) may be provided in the bankruptcy regulations as well detailing a fee structure. The CoC may choose to rely on this for calculation of fee of the bankruptcy trustee.
  - d. The bankruptcy trustee should provide regular reports to the Adjudicating Authority and the CoC. He shall provide:
    - i. a preliminary report within 90 days of the bankruptcy commencement date;
    - ii. a first progress report within 180 days of the bankruptcy commencement date;
    - iii. a second progress report within 270 days of the bankruptcy commencement date;
    - iv. subsequent progress reports within ten days from the end of every quarter, as may be required; and
    - v. a final report as provided in section 137 of the Code.
  - e. The WG noted that the CoC comprises only financial creditors in CIRP. In the UK, a CoC in bankruptcy has a minimum of 3 and maximum of 5 creditors. The WG felt that it may not be advisable for the rules or regulations to put a cap on the number of creditors in the CoC, though it may not be efficient to have meetings and voting by all creditors in complex cases with multiple creditors. The WG suggested that the MCA may consider amending the Code to put a cap on the number of creditors in the CoC, if the need is felt, based on some experience after the provisions of Part III of the Code are notified.
  - f. Section 135(4) of the Code provides that the voting share of creditors shall be determined by the bankruptcy trustee, as per the regulations. Section 24(6) of the Code provides that, in CIRP, the voting share of creditors in the CoC is determined based on the debt owed to them by the CD. The WG favoured the CIRP approach, that is, voting share based on the debt owed and recommended that the bankruptcy regulations may provide that the creditors shall have a voting share based on the amount of debt owed to them by the debtor.
  - g. Section 172 of the Code allows the secured creditors to step outside the bankruptcy process and realise their security outside. However, they may choose to surrender their security to the bankruptcy trustee for general benefit of creditors too. The WG suggested that the bankruptcy regulations should provide that the voting share of secured creditors shall only be for the unsecured part of their debt, if any, if they realise their security outside the bankruptcy process. A similar provision exists in the Code in sections 110, in relation to IRP.

- h. The WG recommends that, in order to reflect the threshold given in CIRP in section 21(8), threshold for approval of various decisions by creditors during bankruptcy may be fixed at fifty-one percent of their voting share. However, this may only apply to those decisions for which an approval threshold has not been provided in the Code.
- i. The WG recommends that the threshold value for personal ornaments in section 79(14)(c) of the Code may be fixed at five lakh rupees.
- j. The WG noted that the purpose of section 79(14)(e) of the Code is to exempt a dwelling unit used as a consumption asset, necessary for the sustenance of the debtor and his family. Prescription of a uniform or single value for a dwelling unit may not be appropriate. Various factors may affect the value of a house which should be exempted, such as number of family members of the debtor, the area in which the house is, etc. The WG has, therefore, proposed an all-encompassing formula which considers the size of the debtor's family, minimum area required for each family member and the circle rate of the area.
- k. On the lines of regulation 33 of the Liquidation Regulations, it has been recommended that assets in the estate shall be sold through auction. However, private sale may be permitted if- (i) the asset is perishable, (ii) value of asset is likely to deteriorate if the sale is delayed; or (iii) the selling price of the asset is higher than the reserve price of a failed auction. Further, a schedule, similar to Schedule I to the Liquidation Regulations, may be provided in the bankruptcy regulations providing details of the manner of sale.
- l. The WG contemplated sale of the bankrupt's assets through auctions and private sale. It suggested that permission of the AA shall be taken by the bankruptcy trustee before any private sale of any immovable property of the bankrupt is made to the following persons: (i) a creditor of the bankrupt (ii) a professional appointed by the bankruptcy trustee (iii) an associate of the bankrupt (iv) the bankruptcy trustee or (v) any company where the bankrupt or any of her creditors is a promoter. Further, if any private sale of movable property above Rs.10 lakh is made to such persons, then prior permission should be taken from the AA.
- m. The WG recommended that the bankruptcy trustee shall not proceed with a sale and shall submit a report to the AA for appropriate orders, if he believes that there is any collusion amongst one or more of the following persons: (i) the buyers (ii) the bankrupt (iii) the creditors (iv) associates of the bankrupt (v) corporate debtor for whom the bankrupt has given a personal guarantee or (vi) any related parties of such corporate debtor.

16. While on the recommendations of the WG, the Ministry of Corporate Affairs will be making the rules, the IBBI will be framing regulations for bankruptcy process for personal guarantors to corporate debtors. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. The Board accordingly solicits comments on the following by **17<sup>th</sup> May, 2019**:

- a. the specific para in this discussion paper
- b. the specific regulations in the draft Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, placed at **Annexure - A**.

17. Comments may be submitted electronically by **17<sup>th</sup> May, 2019**. For providing comments, please follow the process as under:

- (i) Visit IBBI website, [www.ibbi.gov.in](http://www.ibbi.gov.in)
- (ii) Select 'Public Comments'

- (iii) Provide your Name, and Email ID
- (iv) Select the stakeholder category, namely,-
  - a) Corporate Debtor
  - b) Personal Guarantor to a Corporate Debtor
  - c) Proprietorship firms
  - d) Partnership firms
  - e) Creditor to a Corporate Debtor
  - f) Insolvency Professional
  - g) Insolvency Professional Agency
  - h) Insolvency Professional Entity
  - i) Academics
  - j) Investor
  - k) Others.
- (v) Select the discussion paper on Bankruptcy Process for Personal Guarantors to Corporate Debtors along with Draft Regulations  
 Kindly note that the selected discussion paper can be found by clicking the pdf icon right next to the 'select discussion paper option.
- (vi) Select the kind of comments you wish to make, namely:
  - a) General Comments
  - b) Specific Comments.
- (vii) If you have selected 'General Comments', please select one of the following options:
  - a) Inconsistency, if any, between the provisions within the regulations (intra regulations)
  - b) Inconsistency, if any, between the provisions in different regulations (inter regulations)
  - c) Inconsistency, if any, between the provisions in the regulations with those in the Code
  - d) Inconsistency, if any, between the provisions in the regulations with those in any other law
  - e) Any difficulty in implementation of any of the provisions in the regulations
  - f) Any provision that should have been provided in the regulations, but has not been provided
  - g) Any provision that has been provided in the regulations, but should not have been provided.

And then, write comments under the selected option.

- (viii) If you have selected 'Specific Comments', please select para / regulation number and then sub-para/ sub-regulation number and write comments under the selected para/sub-para, or regulation/sub-regulation number.
- (ix) You can make comments on more than one para/sub-para, or regulation / sub-regulation number, by clicking on more comments and repeating the process outlined above from point 17 (v) onwards.
- (x) Click 'Submit', if you have no more comments to make.

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## Annexure B

### I. RECOMMENDATIONS OF ADVISORY COMMITTEE AND RESPONSE

Sl. No.	Reference	Recommendations	Views of the Division
1	Reg. 3 (2)	In case of CIRP, past auditors of the CD are disqualified from being as RP. This principle may not apply to a bankruptcy trustee. However, if during a bankruptcy process any conflict of interest between the bankruptcy trustee and his past auditors/accountants arises, the same may be appropriately disclosed.	The recommendations may be accepted.
2	Reg. 29 (2)	The members of the CoC may have the option to vote either in person in the meeting or electronically by e-mail. The voting through an electronic portal may be optional.	
3	Reg. 31 (2)	The permission of the AA may not be necessary for private sale of perishable goods. Such permission will delay the sale and good would fetch no value. Further, the bankruptcy trustee, professionals appointed by the bankruptcy trustee for the bankruptcy process and their associates may not be allowed to purchase assets through private sale.	
4	Reg. 4	Fee of bankruptcy trustee may be fixed in the manner fixed for liquidators under liquidation regulations. It may be fixed by the applicant, debtor or creditor. If it is not fixed, it shall be in accordance with the table (proposed in the draft regulations) which links fee to the amount realised and distributed with reference to time. Early realisation and distribution will entitle a higher fee.	
5	Reg. 21 (2)	Either the minimum notice period of 48 hours for meetings of the CoC or time for submission of the proxy form may be tweaked so that proxy forms can be submitted in time before the meeting but after notice has been circulated.	

### II. COMMENTS FROM WORKING GROUP MEMBERS AND RESPONSE

Sl. No.	Reference	Suggestions	Views of the Division
1	General	The WG has not dealt about the resolution of debts of small loanees especially the small and marginal farmers, SHG members, JLG members, small trader vendors etc.	The proposed regulations relate to personal guarantors to corporate debtors.
2	Section 154 of Code	It is unclear what happens at the onset of the bankruptcy proceeding in regard to the financial and physical assets of the bankrupt. Does the bankrupt maintain operational control over the assets, are funds diverted to escrow, or is an automatic Power of Attorney is granted to the Bankruptcy Trustee for their operation? Clarifying this may help explain the rationale as to why the bankruptcy trustee is mandated to open a new bank account in the name of the bankrupt (Sub regulation 37 of the Annexure III).	This has been provided in section 154 of the Code.
3	General	In the regulations, certain communicate are mandatory to be transmitted in electronic form, irrespective of the mode of physical delivery. Harmonising such provisions may be looked into where all communicate are mandatorily transmitted in electronic form to allow for better record keeping.	Mandating a particular form could inconvenience stakeholders. Flexibility in the initial days is desirable.



Sl. No.	Reference	Suggestions	Views of the Division
4	General	Given the possibility of small value bankruptcies entering the process in large numbers, it may be examined whether the creditors' committee could consider aggregating similar cases with a predetermined cap to improve process viability after approval by the Adjudicating Authority.	The proposed regulations relate to personal guarantors to corporate debtors only.
5	General	<p>The rules and regulations pertaining to individual insolvency &amp; personal guarantors for corporate debtors have broadly captured the major aspects of personal bankruptcy. An additional clarity on the following aspects will be helpful:</p> <ul style="list-style-type: none"> <li>(i) Legal Stance on personal guarantees by more than one person. They could be relatives or non-relatives.</li> <li>(ii) How will the individual claims be decided in case of two or more personal guarantors?</li> <li>(iii) In case of relatives being guarantors, say husband and wife, what will be treatment of jointly owned assets like house/property? In calculation of personal assets, will individual shares be considered? How will the values be reckoned?</li> <li>(iv) In case of house property owned by the corporate debtor but used by the personal guarantor and his family members as a residence (the promoter's residence and relative's residences), what will be the treatment accorded? Whether they will be treated on par with a personal asset, since these properties are used for residential purposes of promoter and his family members?</li> <li>(v) How will be claims be decided if the personal guarantor is a guarantor to more than one corporate debtor i.e. 3 companies, and insolvency resolution proceedings have been initiated against 2 companies? How will the assets of the personal guarantor be allocated across these two corporate debtors?</li> </ul>	<ul style="list-style-type: none"> <li>(i) The proceedings of each personal guarantor is separate. However, as per section 60, they will be in the same forum.</li> <li>(ii) The procedural coordination, when simultaneous proceedings against more than one guarantor in respect of the same guarantee are going on, will be developed through practice.</li> <li>(iii) Jointly owned property will fall within the estate of the debtor undergoing insolvency proceedings to the extent that it is owned by her.</li> <li>(iv) If the property is not owned by the debtor, as per the wording of the provisions of the Code, this will not fall within her estate.</li> <li>(v) These proceedings will go on as separate proceedings. However, if the forum for all these proceedings is different, then the forum for the proceedings of personal guarantors may need to be clarified by the AA.</li> </ul>

### III. PUBLIC COMMENTS/SUGGESIONS AND REMARKS

Sl. No.	Reference	Suggestions / Comments	Views of the Division
1	General	The individuals extending guarantee to corporate debtor are generally of the following category: a. High Net worth Individual b. Highly influential person (political influence) c. Beneficiary of a private trust. We need to have provisions to deal with these types of guarantors.	All these individuals are currently included within the definition of personal guarantors.
2	General	The fee for application made by operational creditor or small financial creditors (not being institutional creditors) may be Rs. 2000/-	Relevant for Rule, not regulation.
3	General	Considering conflict of interest issue related matters, past auditors or accountants may be disqualified.	<b>May be accepted</b>
4	General	The fee should be prescribed through guidelines and should not be left with the committee of creditors.	<b>May be accepted</b>
5	General	The COC may consist of top 5 creditors in value and also should have representations for other creditors. (i.e. other than top 5 creditors)	The Code does not permit limiting the number of creditors in the committee of creditors.
6	General	The wordings stated in Section 79(14)(c) is “such Value as may be specified”. Further section 239(2)(i) specifies section 79(14) authorising Central Government to prescribe through Rules. Accordingly, this may not be specified through Regulations.	Incorrect comment. Section 79(14)(c) uses the word “prescribed”.
7	General	E Auction may be made mandatory for assets beyond Rs 5 lakhs., to ensure transparency.	<b>May be accepted</b>
8	General	It is stated that the sale of movable property above Rs.10 lakh is made to such persons, then prior permission should be taken from the AA. Timelines for AA in granting permission may be prescribed. This power may otherwise be delegated to COC instead of AA. Bankruptcy Trustee/spouse/children/parent should be prohibited from participating in private sale.	Prescribing timelines for AA should follow from the Code and not from Subordinate legislation.
9	Reg. 3(2)	IP appointed as IRP/ RP/ or Liquidator of a Corporate Debtor for whom the bankrupt is a personal guarantor- shall not be eligible to be appointed as Bankruptcy Trustee of the said personal guarantor. The same does not seem reasonable. It is better that the bankruptcy proceeding against the guarantor is handled on a consolidated basis along with the corporate debtor.	The CIRP of CD is a separate process. If CIRP fails liquidation commences. Insolvency resolution process of a personal guarantor and failing which, bankruptcy process, are linear processes.
10	Reg. 3(3)	When the debtor ( u/s 122 (2) ) / or creditor ( u/s 123 (4) ) applies for bankruptcy, along with other documents / papers, they can also submit written consent in Form A from the proposed insolvency professional (IP) for acting as bankruptcy trustee.	Relevant for Rules not regulations

		As the creditor(s) or debtors making the application do have the knowledge, capacity and resources to identify a suitable IP to act as their bankruptcy trustee.	
11	Reg. 7	Submission of Preliminary Report to Bankrupt should not be mandatory. The Bankruptcy Trustee may refuse to share the same with reasons to be recorded in writing - as the information provided therein may be of confidential nature.	This is important to maintain transparency.
12	Reg. 24	Total number of members required to quorate the meeting – missing. The following may be inserted in regulation 24: i. A meeting of the committee shall be quorate if creditors representing fifty percent of voting share are present in person or by authorized person. ii. The quorum requirement may be modified through a creditors’ resolution, for any future meetings of creditors.	Section 134(2) of the Code provides that the quorum will be decided by the bankruptcy trustee.
13	Reg. 13	Like liquidation regulations, manner of submitting claim should be specified in the regulations, for ease of the stakeholders and uniformity in details. Notably, there might be different classes of categories of creditors in case of individuals too.	Relevant for Rules not regulations
14	Reg. 29	Votes of members present and voted should be counted for the purpose of approval of the resolution. That is, absent and abstaining creditors should not be considered in the numerator as well as denominator.	<b>May be accepted</b>
15	Reg. 37	Opening of new bank account should be optional. The regulation may also provide that the bankruptcy Trustee may change the name of the existing bank account of the bankrupt, if any followed by the words “in bankruptcy process” for the receipt of all the money due to the bankrupt. This will ensure operational convenience to the bankruptcy trustee.	This is required to ensure accountability, easy monitoring and transparency.
16	Reg. 35	Appointment of registered valuer should be mandatory as it is more important to determine the value of excluded assets; Circumstance under which the bankruptcy trustee is required to appoint additional registered valuer – should be prescribed.	Valuation may not be mandated to account for possible small value cases.
17	Reg. 35(1)	Regulation 35 (1) may be amended as follows: “The bankruptcy trustee shall appoint a registered valuer to value the assets which may or may not form part of the bankrupt’s estate. Time limit of appointment of valuers- should be provided; Bankruptcy Trustee may also be entitled to reduce the reserve price upto 25% of the reserve price determined by the valuer, in consultation with the committee of creditors, if after all the possible	<b>May be accepted</b>

		efforts the assets could not be sold at a reserve price determined by the valuer; For reducing reserve price beyond 25% of the reserve price, approval of fifty-one percent of the committee of creditors shall be mandated. Reserve price should not be more than 6 months old- this requirement should be deleted to keep parity with the proposed amendments in Liquidation process regulations.	
18	General	While the Draft Regulations contain provisions pertaining to committee of creditors, there is no stipulation in respect of how the committee is to be constituted accordingly, please consider including provisions that prescribe the manner in which the committee of creditors is to be constituted	The manner of constitution of the COC is mentioned in Section 133 of the Code and Regulation 20-21.
19	General	As recommended in the Report of the Working Group on Individual Insolvency circulated in October of 2018, a copy of the application filed against a personal guarantor to a corporate debtor may be sent to the resolution professional or the liquidator, as the case may be, appointed in relation thereto.	Related to individual insolvency regulations not to bankruptcy process.
20	General	As initiation of bankruptcy process would have followed an attempt at insolvency resolution for the personal guarantor to corporate debtor, the information collected in respect of his affairs during insolvency resolution may be utilized instead of undertaking the activity again upon commencement of bankruptcy, in preparation of preliminary report	Regulation 5, bankruptcy trustee is required to call for information of books of accounts only if the information is incomplete. This is thus not a mandate currently.
21	General	Regulations for insolvency resolution phase of Personal Guarantors need to be issued before or simultaneously with bankruptcy phase regulations	IRP and bankruptcy regulations will be issued simultaneously
22	Reg. 36 (4)	Regulation needs to be modified slightly to clarify intent. Suggested -"If an asset is sold as per sub-regulation (2), the secured creditor shall realise the asset at least at the proposed price and shall bear the cost for identification of the buyer."	<b>May be accepted .</b>
23	General	To consider modifying the language in Explanation (c) to Regulation 33 as per Section 163(1) (c) of the Insolvency and Bankruptcy Code, 2016, which provides that, where the disclaimed property is a dwelling house, any person who on the date of application for bankruptcy was in occupation of or entitled to occupy that dwelling house.	<b>May be accepted</b>
24	General	There may be an inconsistency between Regulation 31(2) and Regulation 34(2) (b) as private sale is contemplated only in respect of an asset that is perishable in nature, the value of which is likely to deteriorate significantly in the event of a delayed sale or for which selling price is higher than the reserve price of a failed auction, which are not likely to be applicable to an immovable property accordingly, please consider removing Regulation 34(2) (b) 2. There seems to be an inconsistency in	(i) Regulation 31(2) is related to sale of perishable assets and 34(2)(b) is regarding immovable property. There is thus no inconsistency in these provisions.  (ii) Purpose of Reg 7(2) is to draw up the financial position of the bankrupt and Schedule

		point 5 in Schedule II (a) which provides that, the reserve price shall be the value of the asset arrived at in accordance with regulation 35 and such valuation shall not be more than six months old as Regulation 7(3) (d) provides that the preliminary report may, when specifying the details of assets of the bankrupt, rely upon & valuation undertaken during insolvency resolution process of the bankrupt which may possibly be older than six months. Accordingly, please consider if the stipulation in point 5 in Schedule II (a) should be deleted.	is about valuation of assets at the time of same, which requires latest valuation.
25	Reg.31	to consider if the bankruptcy trustee should be permitted to undertake a subsequent auction at reduced price in the event that the first auction fails (as provided in Schedule I to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations)) (ii) in point 8, to consider if the bankruptcy trustee should be enabled to seek the assistance of qualified professional auctioneers, akin to the corresponding provision under the Liquidation Regulations and (iii) to consider if a timeline should be stipulated within which the balance consideration is discharged, as provided under the Liquidation Regulations.	Allowing bankruptcy trustee to appoint auctioneer: <b>May be accepted</b>  Providing timeline for payment of balance: This may not be necessary since discharge is mandated in a year for the bankrupt.
26	Reg.42(1)(c)	Given the ambiguity in the expression, to consider modifying the provision to read as: any costs incurred to facilitate the bankruptcy process & by removing the reference to the expenses incurred by the Government.	<b>May be accepted</b> . Reg.42(1)(c) deleted.
27	Reg.34	For the sake of clarity, please consider if the regulation should provide that the permission of the Adjudicating Authority to transfer the asset to persons mentioned in sub-regulation (1) would not be required if the value of the asset is lower than the specified value. Accordingly, please consider if the regulation should read as follows: (2) Permission under sub-regulation (1) shall not be required if, from the bankruptcy estate: (a) A movable property valued below 10 lakh rupees is being transferred through private sale"	Present draft serves the purpose. No change required
28	Reg.16	To consider aligning with analogous provision in Regulation 24 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and modifying the sub-regulation to & is not precise due to any contingency or any other reason.	Issue does not seem clear.
29	Reg.13	There appears to be a repetition in the draft regulation and it is proposed that it should provide instead that, & to the interest that has become due till the bankruptcy commencement date along with the outstanding principal amount owed however, please consider if the regulation should be modified altogether to provide for the same method for	Regulation 13(2) seems to serve the purpose,.

		reduction of admitted claim, not due as of the bankruptcy commencement date, as provided under Regulation 28 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	
30	Reg.9	To consider including the obligation to provide particulars of the terms of appointment of professionals appointed by the bankruptcy trustee, in the progress report.	<b>May be accepted</b>
31	Reg.3	To consider if an insolvency professional entity involved in the insolvency resolution process of the corporate debtor to which the bankrupt is personal guarantor, should also be excluded and this regulation should be modified to read: does not represent any other stakeholders in the same bankruptcy process or the corporate insolvency resolution process of the corporate debtor.	Regulation require that the insolvency professional entity also has to be independent of the bankrupt.
32	General	Section 135 of the Code bars creditors who are associates of the bankrupt from voting. In this regard, it may be pertinent to note that regulation 3(2) provides that a person shall be considered independent of the bankrupt (for the purposes of being appointed as a bankruptcy trustee), inter alia, if it is not a related party of the corporate debtor for whom the bankrupt has given a personal guarantee. Practically, in most cases, the personal guarantor is a promoter of the corporate debtor and the related parties of the corporate debtor will also have some level of connection with the bankrupt and may be biased. Accordingly, it is suggested that the Draft Regulations provide that the related parties of the corporate debtor for whom the bankrupt has given a personal guarantee will also be prohibited from voting in a meeting of the committee of creditors.	The same is covered under Section 79(2)(g) of the Code
33	General	The Banking Law Reforms Committee in its report dated November 4, 2015 reasoned that members of the creditors committee have to be creditors both with the capability to assess viability, as well as to be willing to modify terms of existing liabilities in negotiations. Typically, operational creditors are neither able to decide on matters regarding the insolvency of the entity, nor willing to take the risk of postponing payments for better future prospects for the entity. The Banking Law Reforms Committee concluded that, for the process to be rapid and efficient, the Code will provide that the creditors committee should be restricted to only the financial creditors. In view of this, it is recommended that operational creditors be excluded from the definition of committee under Regulation 2(d) of the Draft Regulations. Alternatively, it is suggested that only certain operational creditors having an exposure of a	This would require amendment to the Code.

		certain threshold be permitted to be part of the committee of creditors.	
34	General	<p>Section 60(2) of the Code provides that where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal. However, in the case of Dr. Vishnu Kumar Agrawal v M/s Piramal Enterprise Ltd (Company Appeal (AT) (Insolvency) No. 347 of 2018), the NCLAT held as follows: Once for the same claim the Corporate Insolvency Resolution Process is initiated against one of the corporate debtor, after such initiation the Financial Creditor cannot trigger Corporate Insolvency Resolution Process against other Corporate Debtor(s), for the same claim amount (debt). There is no bar in the I&amp;B Code for filing simultaneously two applications under Section 7 against the Principal Borrower as well as the Corporate Guarantor(s) or against both the Guarantors. However, once for same set of claim application under Section 7 filed by the Financial Creditor is admitted against one of the Corporate Debtor(Principal Borrower or Corporate Guarantor(s)), second application by the same Financial Creditor for same set of claim and default cannot be admitted against the other Corporate Debtor (the Corporate Guarantor(s) or the Principal Borrower). Further, though there is a provision to file joint application under Section 7 by the Financial Creditors, no application can be filed by the Financial Creditor against two or more Corporate Debtors on the ground of joint liability (Principal Borrower and one Corporate Guarantor, or Principal Borrower or two Corporate Guarantors or one Corporate Guarantor and other Corporate Guarantor), till it is shown that the Corporate Debtors combinedly are joint venture company. In view of the above, it is suggested that clarity be provided on the following two points: (a) Whether two applications can be made simultaneously against the corporate debtor as well as the personal guarantor of such corporate debtor and (b) If the corporate debtor is undergoing a corporate insolvency resolution process or a liquidation process and the personal guarantor is similarly undergoing an insolvency resolution process or a bankruptcy process, whether a proof of claims can be filed in respect of both the processes simultaneously.</p>	Section 60(2) of the Code takes care of the suggestion.

35	General	Section 124 of the Code provides for implementation of an interim moratorium the moment an application is filed under section 122 or 123 of the Code, which ceases to have an effect on the date of admission of such applications. During the interim moratorium period all legal actions or proceeds in respect of any debt are deemed to be stayed, and creditors of debtor are prohibited from initiating any legal action or proceedings in respect of such debt. However, the interim moratorium imposes no restriction on the corporate debtor from disposing of any of its assets or encumbering/ creating a charge on them during this period. It is suggested that on a case to case basis, the Adjudicating Authority should be empowered to restrict the debtor from disposing of/ creating a charge on/ encumbering its assets without obtaining a prior permission of the Adjudicating Authority.	Code has no such provision. Cannot be provided in regulations.
36	General	Regulations have been made for a Bankrupt under Chapter IV of Part III of the code for Bankruptcy process. Similar detailed regulations are needed for Chapter III which is insolvency resolution process for individuals; 2.Neither the code or regulations provide for moratorium with regards to business and essential services as provided in CIRP; 3.The regulations provide for sale of assets, what if the Bankrupt has a running business? Regulations similar to that of CIRP for liquidation as going concern to be considered and drafted.	1. Will be done. 2.. Any change in this regard may not be permissible through regulations. 3. Any change in this regard may not be permissible through regulations, as the Code only provides sale of assets.
37	Reg.36(5)	Regulation 36(5) provides that the cost for identification of a buyer shall be borne by the secured creditor only in the event the buyer identified (by the liquidator) purchases the asset of the secured creditor. It is suggested that a clarification should be provided in Regulation 36(5) that in the event the secured asset is realised not by sale to a buyer identified by the bankruptcy trustee, the cost for identification of a buyer shall be borne by the bankruptcy trustee and shall form part of the bankruptcy process costs. A similar provision has been incorporated in Regulation 37(6) of the Liquidation Regulations.	<b>May be accepted</b>
38	Reg.36(3)	Regulation 36(3) does not provide any timeline within which the bankruptcy trustee has to intimate the secured creditor if it has identified a buyer willing to purchase the security at a price higher than the price intimated by the secured creditor. In this regard, it may be pertinent to note that Regulation 37(2) of the Liquidation Regulations provides that the liquidator has to intimate the secured creditor if it has identified a buyer willing to purchase the security at a price higher than the price intimated by the secured creditor, within a period of 21 days from the date of intimation by the	Detailed timelines may not be necessary as the bankrupt will automatically be discharged in a year.



		<p>secured creditor to the liquidator of its intent to realise its security. Further, as per Regulation 37(2) such identified buyer has to purchase the asset within a period of 30 days from the date of the aforesaid intimation by the secured creditor to the liquidator. Further, it should be clarified that if the secured creditor does not realise its security interest as per Regulation 36(3) i.e. by sale to a buyer identified by the bankruptcy trustee, the secured creditor may realize the secured asset in the manner it deems fit, but at least at the price intimated under sub-regulation (2). Further, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provide for a timeline within which the liquidator shall inform the secured creditor if a person is willing to buy the secured asset, at a price higher than the price intimated by the secured creditor. Accordingly, it is suggested that Regulation 36(3) be substituted as follows: The bankruptcy trustee shall attempt to identify a buyer willing to purchase the security at a price higher than the price intimated under sub-regulation (2), and shall inform the secured creditor within twenty one days of receipt of the intimation under sub-regulation (2) of such buyer who is willing to buy the secured asset before the expiry of thirty days from the date of intimation under sub-regulation (2), at a price higher than the price intimated under sub-regulation (2) and the asset shall then be sold to such buyer, if any, at the higher price by the secured creditor. Further, it is suggested that after Regulation 36(3), the following sub-regulation be inserted: If the bankruptcy trustee does not inform the secured creditor in accordance with sub-regulation (3), or the person does not buy the secured asset in accordance with sub-regulation (3), the secured creditor may realize the secured asset in the manner it deems fit, but at least at the price intimated under sub-regulation (2).</p>	
39	Reg.34(1)	<p>A plain reading of Regulation 34(1) suggests that any purchase or acquisition of interest in any asset comprised in the bankruptcy estate, if conditions in sub-regulation (2) are met, may only be made by the specified persons with prior permission of the Adjudicating Authority. It is suggested that the initial part of Regulation 34(1) be modified as follows: Any purchase or acquisition of interest in any asset comprised in the bankruptcy estate, if conditions in sub-regulation (2) are met, may be made by the following persons only with prior permission of the Adjudicating Authority:</p>	<b>May be accepted</b>
40	Reg.34	<p>Regulation 34 of the Draft Regulations allow the assets of the bankrupt to be sold to any person, including, with prior permission of the Adjudicating Authority, to creditors, professionals</p>	The bankruptcy trustee should have the right to stop a sale in case of collusion.

		appointed by the bankruptcy trustee under the Draft Regulations, associates of the bankrupt, the bankruptcy trustee or companies where the bankrupt or the creditor is a promoter or a director or partner. Given that the sale of assets is allowed to be made to the aforesaid persons with the permission of the Adjudicating Authority, in our view, the provisions of regulation 31(3) requiring the bankruptcy trustee not to proceed with a sale if he has reason to believe that there is any collusion, may not be necessary. Further, it may be noted that such a provision may give rise to numerous frivolous litigations, especially by unsuccessful bidders on grounds of alleged collusion. Accordingly, it is suggested that regulation 31(3) is done away with in its entirety.	
41	General	Regulation 22 provides no means for participating in meetings of committee via video conferencing or audio and visual means. In this regard, it may be pertinent to note that the CIRP Regulations (Regulation 23) provide for participating in meetings through video conferencing or other audio and visual means. Accordingly, it is suggested that means for attending meetings through video conferencing or other audio and visual means may be included in this Regulation as well. Further, it is suggested that a sub-regulation may be included that provides that in the event a member of the committee fails to provide or update its email address to the resolution professional, the non-receipt of any notice by such a member shall not invalidate the decisions taken at such meeting. In this regard, it is pertinent to note that the CIRP Regulations (Regulation 20(7)) contain a similar provision as aforesaid.	<b>May be accepted</b>
42	Reg.21(4)	Regulation 21(4) provides that any resolution or decision of the committee under the Code shall require approval of more than fifty percent in value of the creditors. However, section 145(2) of the Code provides that the committee of creditors may, at a meeting, by vote of seventy five percent of voting share, propose to replace the bankruptcy trustee appointed under section 125 of the Code with another bankruptcy trustee. In view of the aforesaid inconsistency, it is suggested that regulation 21(4) of the Draft Regulations be substituted as follows: Any resolution or decision of the committee under the code shall require approval of more than fifty percent in value of the creditors, unless otherwise provided in the Code.	<b>May be accepted</b>
43	Reg.18(1)	The discussion paper published by the Board on Corporate Liquidation Process provides that in order to expedite the liquidation process, some stakeholders suggest that it may not be necessary to	Bankruptcy has fresh applications and hence will require fresh claims being filed. Further, there may be

		invite claims afresh during the liquidation process, as this exercise has been undertaken during CIRP. Accordingly, it has been proposed that stakeholders either submit fresh claims or update the claims which were submitted during the CIRP of the corporate debtor, as on the liquidation commencement date. Similarly, keeping in line with the suggested amendments to the liquidation process, it is suggested that Regulation 18(1) of the Draft Regulations be modified to provide as follows: The bankruptcy trustee shall send a notice to the creditors mentioned in the list prepared under section 132, for submission of the complete proof of debt in respect of their claims or update the claims which were submitted during the insolvency resolution process of the bankrupt. Consequently, it is also suggested that, Regulation 18 should specifically provide that where a stakeholder does not submit a fresh claim or update the claim submitted during the insolvency resolution process, it shall be deemed that the claim of such stakeholder in the bankruptcy process shall be the same as that submitted during the insolvency resolution process.	claims that have not been filed in IRP.
44	General	Section 131 of the Code provides that the creditors of the bankrupt shall register claims with the bankruptcy trustee by sending details of the claims to the bankruptcy trustee in such manner as may be prescribed. However, the Draft Regulations do not provide for a manner in which such claims may be registered. Accordingly, it is suggested that a format be provided enlisting details of the claims to be provided by the creditors to the bankruptcy trustee.	This has been provided in the rules.
45	Reg.35	Valuation to be precisely defined and clarified is it Liquidation Value or fair value.	Valuation is of assets in the estate and not a business concern. Hence, it may not be necessary to provide liquidation and fair value.
46	Reg.13(2)	A plain reading of the last line of Regulation 13(2) suggests that the creditor is entitled to the principal amount and the interest due till the bankruptcy commencement date along with the outstanding principal amount is owed to the creditor. Given that outstanding principal amount would include principal amount due till the bankruptcy commencement date, for the sake of clarity, it is suggested that the last line in Regulation 13(2), be modified to read & the bankruptcy commencement date along with the balance principal amount owed.	<b>May be accepted</b>
47	Reg.27	Why is a physical delivery of notice to Bankrupt necessary. Electronic means should suffice.	It is necessary to provide all options for the sake for fairness.

48	Reg.3	A Liquidator / IRP/ RP of a corporate debtor may have better knowledge of the personal guarantor when compared to independent person. Disqualifying such persons may not be fair.	It may not be prudent to have common professionals due to the possibility of conflict of interest involved.
49	Reg.3	May not be fair to disqualify an IP if his partner is ongoing disciplinary proceedings. It should be applied to that IP only	
50	Reg.3	(1) A common insolvency professional acting as the resolution professional for the corporate debtor and bankruptcy trustee for the personal guarantor in certain cases may aid in avoiding unnecessary delay and making the entire process more efficient. It may be noted that the written consent to act as bankruptcy trustee, which is to be provided in Form A to the Draft Regulations, contains a declaration from the insolvency professional of the details of the corporate insolvency resolution processes where it is acting as a resolution professional. Further, section 145 of the Code empowers the committee of creditors to replace the bankruptcy trustee. In view of the above, the independence of such an insolvency professional will in any event be the subject matter of assessment by the Adjudicating Authority as well as the committee of creditors. In light of the same, it is suggested that regulation 3(2)(ii) of the Draft Regulations be done away with. We note that the Working Group has made an observation that unlike CIRP, past auditors or accountants may not be disqualified from being appointed as a bankruptcy trustee as such persons may know the accounts of the debtor better and may help build trust with the creditors. It may be noted that in CIRP also, it may be argued that the past auditors or accountants of the corporate debtor know the accounts of the corporate debtor better and may help build trust with the creditors. Accordingly, it is suggested that distinguishing between the eligibility criteria for appointment of resolution professionals/ bankruptcy trustee in a CIRP as opposed to a bankruptcy process based on the aforesaid rationale may not be advisable. In view of this, it is suggested that similar to the criteria provided in the CIRP Regulations and the Liquidation Process Regulations, the following criteria also be added to determine the independence of the bankruptcy trustee: (& ) has not been an employee or proprietor or a partner: (a) of a firm of auditors of the debtor or (b) of a legal or a consulting firm, that has or had any transaction with the debtor contributing ten per cent or more of the gross turnover of such firm	Unlike corporates, accounts of individuals may not be fully maintained. Familiarity with past accounts of debtors may be beneficial in personal insolvency. Further, common professionals for corporate debtor and guarantor may involve conflict of interest.
51	Reg.37	Opening of new bank account should be optional. The regulation may also provide that the bankruptcy Trustee may change the name of the	Necessary to have separate account.

		existing bank account of the bankrupt, if any followed by the words in bankruptcy process for the receipt of all the money due to the bankrupt. This will ensure operational convenience to the bankruptcy trustee.	
52	General	Bankruptcy Trustees remuneration is not stipulated in the regulations and who will bear the same. Also, frequency of payment is to be decided. Whether BT should be paid only out of sale proceeds or by the committee. We propose that BTs remuneration should be linked to the liquidation proceeds and it should be paid only upon realisation.	Provided in Regulation 4.
53	General	The Code and Regulations do not provide for any travel restriction on the debtor i.e. personal guarantor. We propose that on filing of application under section 121, there should be automatic travel restriction levied on the personal guarantors and his immediate family members and Adjudicating Authority should be empowered to intimate the passport authorities and police administrations to effectively impose travel restrictions on them, by impounding their passports and by issuing look out notices if required. we have seen some cases where the family members of the promoters have Canadian passport and they have absconded despite informing the passport authorities about an order of travel restriction passed by DRT. A mere piece of paper would not effectively have any major impact on ground. Passport act should be amended or else IBC should provide for the above.	Would require amendment to the Code.
54	General	Private Sale should be allowed only when the first round of public auction fails completely. Also, once the private sale is concluded, the regulations should provide immunity to the parties involved from any challenges on valuation or transparency etc.	Current regulations have been framed keeping in mind consistency with liquidation.
55	General	(i) List of assets and liabilities of the bankrupt should also include assets of his / her immediate family members. No personal guarantor would hold onto his assets or acquire assets in his own name. In India as mentioned in my earlier comments, that personal guarantors do buy properties in the name of their family members or through benami transactions. Further, they also find ways to acquire properties outside India. Currently, there are no provisions in the regulations to take care of such situations. We propose that the Regulations should permit BT to acquire assets of the personal guarantors immediate family members. (ii) Further, Regulations should also provide for cross-border bankruptcy cases, where assets of the bankrupt are in other countries.	<b>(i)</b> Presently not feasible, since it required the amendment in the Code. <b>(ii)</b> This is currently governed by Section 234 and 235 of the Code and will thus depend on the agreement India has with the foreign country in question.
56	General	Forensic audit should be made mandatory in order to track the diversion of funds. In India, most of the promoters or personal guarantor do not have	There is currently no bar from hiring professionals in this regard.

		sufficient net worth by the time lenders take enforcement actions. Personal guarantors do dispose of their properties or enter into benami transactions or parks their money in the name of their close relatives. In order to track these diversions, we propose that forensic audits should be made mandatory and such fraudulent transactions should be unearthed and should be declared void ab initio.	Such type of transactions is covered under Sec.164 and Sec.165 of the Code.
57	General	Regulation 28 till 30, does not clearly stipulate the calculation of voting share of the committee members. As the committee is comprised of all the creditors and not just financial creditors, i.e. creditors to whom the debtor has given personal guarantee, the issues of most of the people abstaining from voting would arise as in the case of homebuyers in CIRP process. In order to avoid such issues in case of bankruptcy, we propose that the voting share should be determined on the basis of present and voting concept. This may not require amendment to the Code, as the Code is silent on this aspect.	<b>May be accepted</b>
58	Reg.2	Debtor should also include such personal guarantors who have given guarantee for a loan of the corporate debtor against whom CIRP has not been initiated. Currently, the definition only covers guarantors to a corporate debtor who is undergoing CIRP. Our recommendations are in line with Indian Contract Act, that a lender can proceed against the guarantor without first taking recourse to against the company/ borrower. Lenders should be allowed to initiate insolvency and bankruptcy process against personal guarantor without being required to initiate CIRP against the borrower company.	<b>May be accepted</b>
59	Reg.3	When the debtor ( u/s 122 (2) ) / or creditor ( u/s 123 (4) ) applies for bankruptcy, along with other documents / papers, they can also submit written consent in Form A from the proposed insolvency professional (IP) for acting as bankruptcy trustee. Rationale : (1) To obviate the avoidable time lag. (2) To lessen the workload of AA. (3) To prevent dragging of the case only on account of identifying a suitable IP. Comment :Generally, the creditors are banks / big financial institutions, and, debtors are promoters / directors / their close relatives and friends. Hence, the creditors or debtors making the application do have the knowledge, capacity and resources to identify a suitable IP to act as their bankruptcy trustee.	Relevant for Rules.
60	Reg.12	Following to be included:" Banks and financial institutions holding account of the bankrupt and " Co-dwellers" and Joint asset holders	Rationale for suggestion is unclear.
61	Reg.13	Notably, there might be different classes of categories of creditors in case of individuals too,	Suggestion is unclear.

		e.g. (i) to whom the individual owes debt pursuant to a guarantee contract, (ii) employees/workmen of the individual, (iii) liability of the individual as a partner of a partnership firm, etc.	
62	Reg.35 (1)	Regulation 35 (1) may be amended as follows: The bankruptcy trustee shall appoint a registered valuer to value the assets which may or may not form part of the bankrupts estate, when he is of the opinion that it is necessary or when a resolution to that effect has been passed by the committee.	The drafting change is not clear. This is the same language as the current draft.
63	Reg.13	Like liquidation regulations, manner of submitting claim should be specified in the regulations, for ease of the stakeholders and uniformity in details.	Relevant for rules.
64	General	Debt payable at future time: Reg. 13 (2) is not clear the same may be modified in line with regulation 28 (2) of the Liquidation Regulations.	The current regulation is clear.
65	Reg.35	Appointment of registered valuer should be mandatory as it is more important to determine the value of excluded assets	This may not be necessary in small value cases.
66	Reg.35	Circumstance under which the bankruptcy trustee is required to appoint additional registered valuer should be prescribed.	Bankruptcy trustee may take a decision based on different circumstances involved in the case.
67	Reg.7	Submission of Preliminary Report to Bankrupt should not be mandatory. The Bankruptcy Trustee may refuse to share the same with reasons to be recorded in writing - as the information provided therein may be of confidential nature.	To maintain transparency and ensure fairness, such reports should be circulated to the bankrupt.
68	General	Any difficulty in implementation of any of the provisions in the regulations Option given to debtor for keeping the personnel ornament by paying the amount in excess of threshold value of personnel ornament to the creditors is creating ambiguity.	The suggestion does not seem clear
69	General	1. Status of 138 notices 2. What about the outcome of preferential audit application filed by RP. 3. Some times in individual insolvency convening coc meeting may be difficult or unviable to go for e-voting, hence voting by circulation may be allowed in certain cases/decisions	1. Governed by moratorium provisions in the Code. 2. No specific provisions on this were deemed necessary. Part of investigation functions of the bankruptcy trustee. 3. Voting by circulation includes post and email. While email is already included, posting and other such means have not been provided as a means of voting due to additional time and costs involved.
70	General	Preliminary report access is not available to any person unless AA permit. The bankrupt is allowed to see the report and what about the financial creditors	Provided in Regulation 6(1) already.
71	General	Time period for completing books of bankrupt is very less i.e. 90 days considering the fact that an	Time seems reasonable.

		individual generally do not maintain books of accounts	
72	Reg.36	Regulation needs to be modified slightly to clarify intent. Suggested –“If an asset is sold as per sub-regulation (2), the secured creditor shall realise the asset at least at the proposed price and shall bear the cost for identification of the buyer.”	<b>May be accepted</b>
73	General	A separate regulation in respect of constitution of committee of creditors is to be framed to avoid non-inclusion problem to be created by creditors	Already provided in the Code.
74	General	A regulation to prescribe value u/s 141(d) is necessary	Relevant for Rules
75	General	Statutory compliances applicable to CD are to be done by RP/Liquidator. However many such compliances cannot be done if past ones are not paid/filed (GST,TDS etc). For CD which has no funds, how RP/liquidator should do that, esp in case of liquidation? Further, the logins are also not made available to RP/liquidator	Unlike Corporate insolvency, business is not taken over by the insolvency professional. This may not be necessary.
76	General	The bankruptcy process cannot be implemented alone for personal guarantors, it have to be implemented by notifying the part iii as a whole otherwise the purpose will not be served. Supposing if a personal guarantor is also defaulter to any financial institution how can the process will be implemented.my suggestion notify part iii, then only code can be implemented in effective way.	Being done.
77	Reg.30	In my opinion, one creditor should not be barred to vote as proxy of another creditor. Their rights are generally similar. They can always work together to save costs.	<b>May be accepted</b>
78	Reg.9	Progress report is to be submitted within 10 days from the end of every quarter. Audit report under Income Tax Act is generally not ready within 10 days from March Quarter. So, practically it may not be possible to enclose audit report with March Quarter, if fixed quarterly progress reports are submitted.	Details which have not been made available may be submitted in the next progress report.
79	General	1) The Notice of proof of debt mentioned in clause 18, mentions preparation under section 132, but there may be a situation wherein the Charge holders in ROC may be missed out. No mention of reasonable care and due diligence to be exercised by Bankruptcy trustee is mentioned either in the main clause or any explanatory note. Many financial creditors are suffering as CD did not fulfil his obligation under the law to perfect the charge and account became NPA even before Consortium could take the lender as secured creditor or charge could be modified in ROC. 2) I also found that there is no provision for a mandatory declaration by the bankruptcy trustee who needs to be held accountable	<b>1)</b> This is covered by the code of conduct for insolvency professionals. <b>2).</b> Unclear suggestion.



80	General	Judicial interpretation has resulted in nullifying sanctity of pre-IBC security. It needs to be appreciated that creditors with different security are differently placed - and therefore should be treated differently	Similarly placed creditors cannot be distinguished.
81	Reg.31	Word or is to be added so it will be clear that if any of the conditions mentioned in sub-regulation (2) is fulfilled, the trustee can sell the asset by private sale.	May not be necessary as intent seems clear from present draft.
82	Reg.19	In sub-regulation (2) it is mentioned that Bankruptcy Trustee shall intimate the AA about the constitution of COC within 3 days of First Meeting and in sub-regulation (4) time of 15 days from the last date of receipt of claim is mentioned.	Claims may be received even after committee has been constituted.
83	Reg.5	An individual need not maintain any books of account statutorily. As such completeness of the books of account does not arise. How a bankruptcy trustee can complete the books of accounts?	This is to be based on records available.
84	Reg.2 (e)	2(e): "Debtor" covers personal guarantors to a corporate debtor which is already under CIRP or under liquidation. Here, the scenario where Bankruptcy process has been started before CIRP of principal corporate debtor should be covered.	Covered by present definition.

## ANNEXURE C

### INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (BANKRUPTCY PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) REGULATIONS, 2019

IBBI/2019-20/GN/[●]. - In exercise of the powers conferred under clause (t) of sub-section (1) of section 196, and clauses (zr) and (zs) of sub-section (1) of section 240 read with clause (e) of section 2 and sub-section (2) and (3) of section 60 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

##### **Short title and commencement.**

- (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
- (2) These regulations shall come into force on [●] 2019.
- (3) These regulations shall apply to the bankruptcy process for personal guarantors to corporate debtors under Part III of the Code.

##### **1. Definitions.**

In these regulations, unless the context otherwise requires-

- (a) “bankrupt” means a debtor within the meaning of clause (a) of sub-section (3) of section 79;
- (b) “bankruptcy process period” means the period beginning from the bankruptcy commencement date until the date of completion of administration of the estate as per section 137 or until date of discharge order under section 138, whichever is earlier;
- (c) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
- (d) “committee” means the committee of creditors constituted by the bankruptcy trustee as defined in sub-section (11) of section 79;
- (e) “debtor” means a personal guarantor to a corporate debtor in respect of whom guarantee has been invoked by the creditor and the debt remains unpaid in full or part;
- (f) “electronic form” shall have the meaning assigned to it in clause (r) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (g) “electronic means” means an authorised and secured computer programme which is capable of producing confirmation of sending communication to the member entitled to receive such communication at the last electronic mail address provided by such member and keeping record of such communication;
- (h) “Form” means a form appended to these regulations;
- (i) “Schedule” means a schedule appended to these regulations;

- (j) “registered valuer” means a person registered as such in accordance with the Companies Act, 2013 (18 of 2013) and rules made thereunder;
- (k) “related party of the corporate debtor” shall have the meaning assigned to it in sub-section (24) of section 5;
- (l) “section” means a section of the Code;
- (m) 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** **BANKRUPTCY TRUSTEE**

### **2. Eligibility of bankruptcy trustee.**

- (1) An insolvency professional shall be eligible to be appointed as a bankruptcy trustee for a bankruptcy process if he, and all partners and directors of the insolvency professional entity of which he is a partner or director,
  - (a) are independent of the bankrupt, and if the insolvency professional entity of which he is a partner or director is independent of the bankrupt.
  - (b) are not subject to any ongoing disciplinary proceedings by the Board or to a restraint order issued by the Board.
- (2) A person shall be considered independent of the bankrupt in sub-regulation (1), if he:
  - (i) is not an associate of the debtor;
  - (ii) is not a related party of the corporate debtor for whom the bankrupt has given a personal guarantee;
  - (iii) has not been appointed as an interim resolution professional or resolution professional or liquidator in respect of a corporate debtor for whom the bankrupt is a personal guarantor;
  - (iv) does not represent any other stakeholders in the same bankruptcy process or in the insolvency resolution process or liquidation of the corporate debtor for whom the bankrupt is a personal guarantor.
- (3) A bankruptcy trustee shall make disclosure as to conflict of interest, if any arises, between him and his past auditors or accountants during the bankruptcy process.
- (4) Where an insolvency professional is to be appointed as a bankruptcy trustee, and the application under section 122 or 123 does not propose the name of such insolvency professional to act as bankruptcy trustee, he shall provide written consent to the Adjudicating Authority under Form A.

### **3. Fees of bankruptcy trustee.**

- (1) The bankruptcy trustee shall be entitled to a fee as a percentage of the amount realised net of bankruptcy costs, and of the amount distributed, in the manner provided in **Schedule I**.
- (2) The bankruptcy trustee shall be entitled to such fee and is payable in such manner as decided by the committee before a bankruptcy order is passed under section 126.
- (3) The fee payable to the bankruptcy trustee shall form part of the bankruptcy process cost.

### **4. Registers and books of bankrupt.**

- (1) Where the books of account of the bankrupt are incomplete on the bankruptcy commencement date, the bankruptcy trustee shall get them completed and brought up-to-date within ninety days of the bankruptcy commencement date.

- (2) The bankruptcy trustee shall maintain a cash book, and such other ledgers, registers and books, as may be required to account for the administration of the estate in the bankruptcy process, and shall preserve them for a period of eight years after the completion of administration of the estate.
- (3) Where the bankruptcy trustee is authorised to carry on the business of the bankrupt, he shall keep separate books of account in respect of such business and such books shall, as far as possible, be in conformity with the books already kept by the bankrupt in the course of its business.
- (4) The bankruptcy trustee shall keep receipts for all payments made or expenses incurred by him in relation to the bankruptcy process.

## **5. Reporting requirements.**

- (1) The bankruptcy trustee shall prepare and submit the following reports to the Adjudicating Authority and the committee in the manner specified under these regulations -
  - (a) a preliminary report;
  - (b) progress reports;
  - (c) a final report.
- (2) The bankruptcy trustee shall preserve a physical or an electronic copy of the reports referred to in sub-regulation (1) for eight years after the completion of the administration of the estate.

## **6. Preliminary report.**

- (1) The bankruptcy trustee shall submit a preliminary report to the Adjudicating Authority and the committee within ninety days of the bankruptcy commencement date.
- (2) The bankruptcy trustee shall send a copy of the preliminary report to the bankrupt at the time of submission of the report under sub-regulation (1).
- (3) The preliminary report referred to in sub-regulation (1) shall include the following details-
  - (a) a list of the assets and liabilities of the bankrupt as on the bankruptcy commencement date based on the available reliable data and records;
  - (b) the proposed plan of action in relation to administration of the estate, including the timeline in which it is proposed to be carried out and the estimated costs;
  - (c) any further inquiry to be made in respect of the assets, business or affairs of the debtor;
  - (d) details of the assets which are intended to be realised, including the following-
    - (i) value of the assets, valued either in accordance with regulation 36 or as per valuation undertaken during insolvency resolution process of the bankrupt;
    - (ii) method of realisation of the assets;
    - (iii) reasons for choice of the method under (ii);
    - (iv) expected amount from realisation;
    - (v) any other information that may be relevant for the realisation of the assets;
  - (e) details of the assets which do not form part of the bankrupt's estate, reasons for the same, and the proposed plan of action in respect of such assets, if any.
- (4) The preliminary report shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it on specified terms and conditions.

## **7. Early completion of administration.**

At the time of the preparation of the preliminary report or any time after, if the bankruptcy trustee is of the opinion that –

- (a) the realisable assets of the bankrupt are insufficient to cover the costs of bankruptcy process, and
  - (b) the affairs of the bankrupt do not require further investigation,
- he may prepare a report under sub-section (2) of section 137 and present it to the committee for its approval.

## **8. Progress Reports.**

- (1) The bankruptcy trustee shall submit progress reports to the Adjudicating Authority and committee in accordance with the following timeline-
  - (a) the first progress report within one hundred and eighty days of the bankruptcy commencement date;
  - (b) the second progress report within two hundred and seventy days of the bankruptcy commencement date; and
  - (c) subsequent progress reports within ten days from the end of every quarter, as may be required.
- (2) The bankruptcy trustee shall also send a copy of the progress report to the bankrupt at the time of submission of the report under sub-regulation (1).
- (3) The progress report prepared under sub-regulation (1) shall include the following, namely:-
  - (a) a statement indicating the progress in the bankruptcy process including:
    - (i) settlement of list of creditors;
    - (ii) distribution of dividend made to the creditors, including interim dividend;
    - (iii) a significant change in the expected realisation for any asset and basis for such change;
    - (iv) a significant change in the value of assets or liabilities of the bankrupt, with reasons for such change;
    - (v) distribution of unsold property made to the creditors;
    - (vi) details of any property that remains to be realised;
    - (vii) any other relevant information;
  - (b) An asset sale report containing the following details of the assets realised including–
    - (i) realised value;
    - (ii) cost of realisation;
    - (iii) manner and mode of realisation, including details as per Schedule II;
    - (iv) reasons for any reduction in the realisable value compared to the value mentioned in the preliminary report;
    - (v) person in favour of whom the property has been realised.
  - (c) details of remuneration due to and received by the bankruptcy trustee along with a description of the activities carried out by him;
  - (d) terms of appointment and remuneration paid to professionals appointed by the bankruptcy trustee along with a description of activities carried out by them;

- (e) other expenses incurred by the bankruptcy trustee in relation to the bankruptcy process;
  - (f) developments in relation to any material litigation by or against the bankrupt;
  - (g) filing of and developments in relation to disclaimer of certain properties, or avoidance of transactions under Chapter V of Part III of the Code;
  - (h) accounts maintained by the bankruptcy trustee showing the receipts and payments made during the period of the report, as well as cumulative receipts and payments made since the bankruptcy commencement date; and
  - (i) any other relevant aspect of the bankruptcy process.
- (4) The progress report prepared by the bankruptcy trustee closest to the end of the financial year shall enclose audited accounts of the bankruptcy trustee's receipts and payments for the financial year, if auditing of such accounts would have been mandated by section 44AB of the Income Tax Act, 1961 (43 of 1961) for the bankrupt.
- (5) The progress reports shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it on specified terms and conditions.

## **9. Final Report.**

- (1) The final report prepared by the bankruptcy trustee under section 137 shall contain an account of the completion of the administration and distribution of the bankruptcy estate, including the following -
- (a) manner of realisation of the assets of the bankrupt;
  - (b) manner of distribution of the dividends amongst the creditors;
  - (c) details regarding the discharge of the bankrupt, if applicable;
  - (d) unclaimed dividend, if any;
  - (e) surplus dividend, if any; and
  - (f) if the bankruptcy process cost exceeds the estimated cost provided in the preliminary report, along with reasons for the same.
- (2) In the event the application for discharge is filed under clause (a) of sub-section (1) of section 138, the bankruptcy trustee shall file a final report with the Adjudicating Authority under section 137, within fifteen days of the approval of the report by the committee.
- (3) In the event the application for discharge is filed under clause (b) of sub-section (1) of section 138, the final report shall be a part of such application.

## **10. Appointment of professionals.**

- (1) A bankruptcy trustee may appoint accountants, legal or other professionals, as may be necessary, to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the bankruptcy process cost.
- (2) The bankruptcy trustee shall not appoint a professional under sub-regulation (1) who:
- (a) is a relative of the bankruptcy trustee;
  - (b) is an associate of the bankrupt;
  - (c) is a related party of the corporate debtor for whom the bankrupt has given a personal guarantee; or

- (d) has been appointed as an interim resolution professional or a resolution professional or a liquidator in respect of the corporate debtor for whom the bankrupt has given a personal guarantee.
- (3) A professional appointed or proposed to be appointed under sub-regulation (1) shall disclose the existence of any pecuniary or personal relationship with any of the creditors, the bankruptcy trustee, the corporate debtor for whom the bankrupt has given a personal guarantee or the concerned bankrupt within three days after he becomes aware of it, to the bankruptcy trustee.

#### **11. Persons to extend cooperation.**

- (1) The following persons shall extend all assistance and cooperation to the bankruptcy trustee to complete the bankruptcy process:-
  - (a) the bankrupt;
  - (b) creditors of the bankrupt;
  - (c) employees and workmen of the bankrupt, if any;
  - (d) partners of the bankrupt, if any;
  - (e) auditors of the bankrupt, if any; and
  - (f) any other professional appointed by the bankruptcy trustee under regulation 11, if any.
- (2) The bankruptcy trustee shall document and maintain the particulars of any consultation with the persons mentioned in sub-regulation (1).
- (3) The bankruptcy trustee may make an application to the Adjudicating Authority for a direction that a person, who-
  - (a) is covered under sub-regulation (1);
  - (b) was the resolution professional or the previous bankruptcy trustee of the bankrupt;
  - (c) has possession of any of the properties of the bankrupt;
  - (d) has been appointed as an interim resolution professional or a resolution professional or a liquidator in respect of the corporate debtor for whom the bankrupt has given a personal guarantee; or
  - (e) any other person deemed necessary,shall cooperate with him in the collection of information or any other action necessary for the conduct of the bankruptcy process.
- (4) An application may be made under sub-regulation (3) only after the bankruptcy trustee has made reasonable efforts to obtain the information or cooperation from such person and failed to obtain it.

### **CHAPTER -III**

#### **CLAIMS**

#### **12. Debt payable at future time.**

- (1) A person may prove for a claim whose payment was not yet due on the bankruptcy commencement date and is entitled to distribution in the same manner as any other creditor.
- (2) Subject to any contract to the contrary, where a creditor has proved for a claim under sub-regulation (1), and the debt has not fallen due before distribution, he is entitled to the principal amount along with the interest that has become due till the bankruptcy commencement date.

### **13. Negotiable instruments.**

Where a person seeks to prove a debt under a bill of exchange, promissory note or other negotiable instrument or security of a like nature, such bill of exchange, note, instrument or security, as the case may be, or its certified true copy shall accompany the proof of claim.

### **14. Periodical Payments.**

In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the bankruptcy commencement date.

### **15. Determination of quantum of claim.**

Where the amount claimed by a claimant is not precise due to any reason, the bankruptcy trustee shall make the best estimate of the amount of the claim based on the information available with him.

### **16. Debt in foreign currency.**

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

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

### **17. Notice for proof of debt.**

- (1) The bankruptcy trustee shall send a notice to the creditors mentioned in the list prepared under section 132, for submission of the complete proof of debt in respect of their claims.
- (2) The notice under sub-regulation (1) shall be sent within the time mentioned in sub-section (1) of section 171, and the submission by creditors shall be within thirty days from the date of the notice.

### **18. Verification of claims.**

- (1) The bankruptcy trustee shall verify the claims submitted and shall prepare a list of creditors within the time-period specified in section 132, including the following information in respect of each creditor, –
  - (a) the name;
  - (b) the amount of total debt;
  - (c) the amount of debt in default;
  - (d) the amount of debt under (c) that is admitted;
  - (e) the proofs admitted or rejected in part, and the proofs wholly rejected;
  - (f) security interest in respect of the claims, if any.
- (2) The bankruptcy trustee shall certify the constitution of a committee to the Adjudicating Authority within three days post the first meeting of the creditors under regulation 20.
- (3) A revised list of creditors, if required, shall be prepared by the bankruptcy trustee on the basis of the information received under sub-section (1) of section 171, and the committee may be modified, if required.
- (4) The list of creditors, and any modification to the committee, mentioned in sub-regulation (3) shall be filed with the Adjudicating Authority within fifteen days from the last date for receipt of proofs of debt, and simultaneously, the remaining members of the committee shall be intimated.



- (5) The inclusion of a creditor under sub-regulation (3) shall not affect the validity of any decision taken in any meeting of the committee prior to such inclusion.
- (6) The revised list of creditors, as modified from time to time and filed with the Adjudicating Authority, shall be –
  - (a) available for inspection by the persons who submitted claims with proof;
  - (b) available for inspection by partners and guarantors of the bankrupt;
  - (c) displayed on the website, if any, of the bankrupt.

## **CHAPTER IV**

### **MEETINGS OF COMMITTEE**

#### **19. First meeting of the creditors.**

- (1) The notice under sub-section (1) of section 133 calling the first meeting of the creditors shall be served on the creditors at the addresses provided to the bankruptcy trustee by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with regulation 22.
- (2) A notice under this regulation shall comply with the requirements under regulation 23.

#### **20. Meetings of the committee.**

- (1) A bankruptcy trustee may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting on a request by not less than thirty-three percent in value of creditors.
- (2) A meeting of the committee, other than the meeting mentioned in regulation 20, shall be called by giving notice to every member in such period as decided by the committee, provided that such notice shall not be given less than forty-eight hours prior to the meeting.
- (3) The notice under sub-regulation (2) shall be served on the members at the address they have provided to the bankruptcy trustee, by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with regulation 22.
- (4) Unless otherwise provided in the Code, any resolution or decision of the committee under the Code 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 23.

#### **21. Service of notice by electronic means.**

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

## **22. Contents of the notice for a meeting.**

- (1) The notice shall inform the members of the venue, 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 video conferencing or other audio and visual means, in accordance with regulation 25, or through a proxy in accordance with regulation 31.
- (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.

## **23. Quorum.**

- (1) Where a meeting of the committee is held for want of quorum, unless the creditors have previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.
- (2) In the event a meeting of the committee is adjourned in accordance with sub-regulation (1), the adjourned meeting shall be quorate with the creditors attending the meeting.

## **25. Participation through video conferencing.**

- (1) The notice convening the meetings of the committee shall provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with this regulation.
- (2) The bankruptcy trustee shall make necessary arrangements to ensure uninterrupted and clear video or audio and visual connection.
- (3) The bankruptcy trustee shall take due and reasonable care-
  - (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
  - (b) to ensure availability of proper video conferencing or other audio and visual equipment or facilities for providing transmission of the communications for effective participation of the participants at the meeting;
  - (c) to store for safekeeping and marking the physical recording(s) or other electronic recording mechanism as part of the records of the corporate debtor;
  - (d) to ensure that no person other than the intended participants attends or has access to the proceedings of the meeting through video conferencing or other audio and visual means; and

(e) to ensure that participants attending the meeting through audio and visual means are able to hear and see, if applicable, the other participants clearly during the course of the meeting:

*Provided* that the persons, who are differently abled, may make request to the bankruptcy trustee to allow a person to accompany him at the meeting.

(4) Where a meeting is conducted through video conferencing or other audio and visual means, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

## **26. Conduct of meeting.**

- (1) The bankruptcy trustee shall act as the chairperson of meetings of the committee.
- (2) At the commencement of a meeting, the bankruptcy trustee shall take a roll call when every creditor, 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 bankruptcy trustee shall inform the creditors of the names of all persons who are present for the meeting and confirm if the required quorum is complete.
- (4) The bankruptcy trustee 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 creditors and any other person whose presence is required by the bankruptcy trustee shall be allowed access to the place where meeting is held without the permission of the bankruptcy trustee.
- (6) The bankruptcy trustee shall ensure that minutes are made in relation to each meeting of the committee and such minutes disclose the particulars of the creditors who attended the meeting by proxy.
- (7) The bankruptcy trustee shall circulate the minutes of the meeting to all creditors in the committee by electronic means within forty-eight hours of the said meeting.

## **27. 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 bankruptcy process period, both parties shall provide the bankruptcy trustee the terms of such assignment or transfer and the identity of the assignee or transferee.
- (2) The bankruptcy trustee shall notify each creditor and the Adjudicating Authority of any resultant change in the committee within two days of such change.

## **28. Attendance of bankrupt.**

- (1) The bankrupt shall attend any meeting which the bankruptcy trustee may, by notice, require him to attend and any adjournment thereof.
- (2) The notice specified in sub-regulation (1) shall be delivered to the bankrupt before the date of the meeting, by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with regulation 22.

- (3) The notice specified in sub-regulation (1) shall be given to the bankrupt in such time prior to the meeting as is decided for notice to creditors under sub-regulation (2) of regulation 21.
- (4) The bankruptcy trustee shall circulate the minutes to the bankrupt, along with the creditors, of the meetings attended by the bankrupt as per this regulation.

## **CHAPTER V** **VOTING BY COMMITTEE**

### **29. Calculation of voting share.**

- (1) In the event a creditor has opted to enforce its security interest and participate only in relation to the unsecured part of their debt, their voting share shall be calculated with respect to the unsecured part of the debt.
- (2) The voting share for a creditor who has opted to relinquish its security interest shall be calculated with respect to the amount of debt relinquished.
- (3) The voting share for each creditor shall be calculated by the bankruptcy trustee based on the amount of debt owed to such creditor.
- (4) For the purposes of sub-section (3) of section 135, an unliquidated debt shall mean a debt to which a value cannot be assigned by the bankruptcy trustee.

### **30. Voting by the committee.**

- (1) The bankruptcy trustee shall, at the meeting, take a vote of the members of the committee who are participating in the meeting on any item listed for voting after discussion on the same.
- (2) The bankruptcy trustee may provide each member of the committee the means to exercise its vote either at the meeting or by electronic means or through electronic voting system in accordance with the provisions of this regulation.
- (3) The bankruptcy trustee 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, which shall include 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; and
  - (b) seek a vote on the matters listed for voting in the meeting from the creditors who were not present in the meeting or did not vote at the meeting, by electronic means or through an electronic voting system, where the voting shall be kept open for a minimum of twenty-four hours from the circulation of the minutes in accordance with clause (a).
- (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 circulation of minutes relating to matters under clause (b) to all participants of the meeting, shall be made by electronic means within twenty-four hours of the conclusion of the voting.

*Explanation- For the purposes of this regulation-*

- (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.*

### **31. 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.
- (2) The appointment of a proxy shall be in Form B.
- (3) Form B shall be completed and delivered by the creditor to the bankruptcy trustee at least twenty-four 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 30, provided that the form appointing a proxy has been delivered to the bankruptcy trustee as per sub-regulation (3).

## **CHAPTER VI** **REALISATION OF ASSETS**

### **32. Mode of sale.**

- (1) The bankruptcy trustee shall ordinarily sell the assets of the bankrupt through an auction process as specified in Schedule II(a).
- (2) The bankruptcy trustee may sell the assets by private sale without permission of the Adjudicating Authority, in the manner specified in Schedule II(b) when-
  - (a) the asset is perishable in nature;
  - (b) the value of the asset is likely to deteriorate significantly if the sale is delayed;
  - (c) the selling price of the asset is higher than the reserve price of a failed auction.
- (3) The bankruptcy trustee shall not proceed with a sale if he has reason to believe that there is any collusion amongst any one or more of the following:-
  - (a) the buyers;
  - (b) the bankrupt;
  - (c) the creditors;
  - (d) associates of the bankrupt or creditors;
  - (e) the corporate debtor for whom the bankrupt has given a personal guarantee; or
  - (f) related party of the corporate debtor for whom the bankrupt has given a personal guarantee,

and shall submit a report to the Adjudicating Authority for appropriate orders.

*Explanation: For the purposes of this regulation: the term “associate” will apply mutatis mutandis to the creditor, as under sub-section (2) of section 79.*

### **33. After acquired property.**

- (1) If the bankrupt serves a notice in respect of an after acquired property under sub-section (2) of section 150, or otherwise, he shall not dispose of such property without the prior permission of the Adjudicating Authority.
- (2) If the bankrupt disposes of property before giving the notice under sub-section (2) of section 150, he shall within seven days from such disposal, disclose to the bankruptcy trustee the relevant details of the person to whom the property has been transferred, and shall also provide any other information which may be necessary to enable the bankruptcy trustee to trace the property and recover it for the estate.
- (3) Any expenses incurred by the bankruptcy trustee in acquiring title to such after-acquired property shall form part of the bankruptcy process costs.

#### **34. Disclaimer of onerous property.**

- (1) The bankruptcy trustee shall notify the bankrupt and the persons interested in the onerous property in respect of the proposed disclaimer, at least seven days prior to serving the notice of disclaimer under sub-section (1) of section 160.
- (2) The notification under sub-regulation (1) shall contain the intention of the bankruptcy trustee to disclaim the property, particulars of the property intended to be disclaimed, and details of the interested persons in such property.
- (3) The notice under sub-section (1) of section 160 shall be filed with the Adjudicating Authority within three days of giving such notice to the persons mentioned therein.
- (4) An application under sub-section (1) of section 163 shall be made within thirty days of the applicant becoming aware of the disclaimer or from the date of the notice of disclaimer under sub-section (1) of section 160, whichever is earlier.

*Explanation: For the purposes of section 160, 161 and 162 and this regulation, a person interested in onerous property shall be –*

- (a) *any person who claims an interest in the disclaimed property; or*
- (b) *any person who is under any liability in respect of the onerous property; or*
- (c) *where the disclaimed property is a dwelling house, any person who on the date of the application for bankruptcy was in occupation of or entitled to occupy that dwelling house.*

#### **35. Purchase of assets by certain persons.**

- (1) Any purchase or acquisition of interest in any asset comprised in the bankruptcy estate, if conditions in sub-regulation (2) are met, may be made by the following persons only with prior permission of the Adjudicating Authority:
  - (a) any creditor of the bankrupt;
  - (b) any associate of the bankrupt;
  - (c) any company where the bankrupt or the creditor is a promoter or a director or partner.
- (2) Permission under sub-regulation (1) shall be obtained if, from the bankruptcy estate,
  - (a) a movable property valued above ten lakh rupees is being transferred through private sale;
  - (b) any immovable property is being transferred through private sale.
- (3) Any realisation made contrary to the provisions of this regulation may be set aside by the Adjudication Authority, and it may make such order as it may deem fit.
- (4) The following persons shall not be permitted to purchase assets through private sale:
  - (a) the bankruptcy trustee;
  - (b) associates of the bankruptcy trustee;

- (c) any professional appointed by the bankruptcy trustee under regulation 11, or their associates.

*Explanation: The term “associate” in this regulation will apply mutatis mutandis to the bankruptcy trustee, professionals appointed under regulation 11 and creditors, as under sub-section (2) of section 79 of the Code.*

### **36. Valuation of assets.**

- (1) The bankruptcy trustee shall appoint a registered valuer to value the assets which may or may not form part of the bankrupt’s estate, when he is of the opinion that it is necessary or when a resolution to that effect has been passed by the committee.
- (2) The provisions of regulation 11 shall apply *mutatis mutandis* to registered valuers appointed under sub-regulation (1).
- (3) The registered valuer appointed under sub-regulation (1) shall submit to the bankruptcy trustee the estimates of the realisable value of the asset(s) computed in accordance with internationally accepted valuation standards, after physical verification of the assets of the bankrupt.
- (4) The bankruptcy trustee may appoint an additional registered valuer for valuing the assets of the bankrupt if required in the circumstances of the case, who shall independently submit his estimate as per sub-regulation (3).
- (5) In the event an additional registered valuer is appointed under sub-regulation (4), the average of the estimates received from both valuers will be considered to be the value of the assets.

### **37. Realisation of security interest by secured creditor.**

- (1) Where a secured creditor realises his security and the amount realised is in excess of the debts due to the secured creditor, such creditor shall tender such surplus funds to the bankruptcy trustee.
- (2) A secured creditor who seeks to realise his security under the bankruptcy process shall intimate the bankruptcy trustee of the price at which he proposes to realise the secured asset.
- (3) The bankruptcy trustee shall attempt to identify a buyer willing to purchase the security at a price higher than the price intimated under sub-regulation (2), and the asset shall then be sold to such buyer, if any, at the higher price by the secured creditor.
- (4) If an asset is sold as per sub-regulation (2), the secured creditor shall realise the asset at least at the proposed price and shall bear the cost for identification of the buyer.
- (5) The cost for identification of a buyer under sub-regulation (3) shall be borne by the secured creditor, only in the event such identified buyer purchases the asset of the secured creditor, and shall otherwise be borne by the bankruptcy trustee and form part of bankruptcy process costs.

## **CHAPTER VII**

### **PROCEEDS OF BANKRUPTCY PROCESS AND DISTRIBUTION OF PROCEEDS**

### **38. All money to be paid in to bank account.**

- (1) The bankruptcy trustee shall open a bank account in the name of the bankrupt followed by the words ‘in bankruptcy process’, in a scheduled bank, for the receipt of all moneys due to the bankrupt.

- (2) The bankruptcy trustee shall deposit in the bank account opened under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the bankruptcy trustee of the bankrupt, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day.
- (3) The bankruptcy trustee may maintain cash of one lakh rupees or such higher amount as may be permitted by the Adjudicating Authority to meet bankruptcy process costs.
- (4) All payments out of the account by the bankruptcy trustee above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

### **39. Distribution to claimant of deceased creditor.**

- (1) In the event an application is made by a claimant or heir of a deceased creditor for receiving dividend payable to such deceased creditor, the bankruptcy trustee shall satisfy himself as to the claimant's right and title to receive the dividend, and may call for evidence regarding such right or title.
- (2) Once the bankruptcy trustee has satisfied himself on the veracity of the claim as per sub-regulation (1), he may apply to the Adjudicating Authority for sanctioning the payment of such dividend or return to the claimant.

### **40. Distribution.**

- (1) Subject to the provisions of section 174 and 178, the bankruptcy trustee shall not commence distribution unless a preliminary report is filed with the Adjudicating Authority.
- (2) The bankruptcy process cost shall be deducted before any dividend distribution is made.

### **41. Return of money.**

A creditor shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.

### **42. Unclaimed proceeds of bankruptcy or undistributed assets.**

- (1) After the approval of the final report but before its filing with the Adjudicating Authority under regulation 10, the bankruptcy trustee shall apply to the Adjudicating Authority for an order to pay into the Insolvency and Bankruptcy Fund any unclaimed dividends of bankruptcy process or undistributed asset or any other balance payable to the creditors in his hands.
- (2) Any bankruptcy trustee who retains any money which should have been paid by him into the Insolvency and Bankruptcy Fund under this regulation shall pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be determined by the Board.
- (3) The bankruptcy trustee shall, when making any payment referred to in sub-regulation (1), furnish to the Board, a statement setting forth the following :—
  - (a) the names and last known address of the creditors entitled to the unclaimed dividend or undistributed asset or any other balance;
  - (b) the amount of the unclaimed dividend or any other balance for each creditor under clause (a);
  - (c) the value of the undistributed assets.



- (4) The bankruptcy trustee shall be entitled to a receipt from the Board for any money paid by him under sub-regulation (2), and such receipt shall be an effectual discharge of the bankruptcy trustee in this respect.
- (5) A person claiming to be entitled to any money paid into the Insolvency and Bankruptcy Fund may apply to the Board for an order for payment of the money claimed.
- (6) The Board may, if satisfied that such person under sub-regulation (5) is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.
- (7) Any money paid into the Insolvency and Bankruptcy Fund under sub-regulation (1), which remains unclaimed for a period of fifteen years, shall be liable to be utilised for the purposes of the Insolvency and Bankruptcy Fund.

**43. Bankruptcy process costs.**

- (1) “bankruptcy process costs” shall mean -
  - (a) the fees payable to any person acting as a bankruptcy trustee;
  - (b) costs mentioned in regulation 5(4), regulation 9(3)(b)(ii), regulation 11(1), regulation 33(3);
  - (c) costs mentioned in regulation 37(5) if they are to be borne by the bankruptcy trustee; and
  - (d) such other costs directly relatable to the bankruptcy process which may be ratified by the committee.
- (2) The committee shall approve all the costs referred to in sub-regulation (1).

## FORM A

### WRITTEN CONSENT TO ACT AS BANKRUPTCY TRUSTEE

*(Under regulation 3(4) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)*

[Date]

To

The Adjudicating Authority

[Name of Bench]

From

[Name of the Insolvency Professional]

[Registration number of the Insolvency Professional]

[Address of the Insolvency Professional registered with the Board]

#### **Subject: Written consent to act as bankruptcy trustee**

1. I, [name], an insolvency professional enrolled with [name of insolvency professional agency] and registered with the Board, note that I have been proposed to be appointed as bankruptcy trustee for the bankruptcy process of [name of the bankrupt].

2. In accordance with Regulation 3(4) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, I hereby give consent to the proposed appointment.

3. I declare and affirm as under: -

(a) I am registered with the Board as an insolvency professional.

(b) I am not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency.

(c) I do not suffer from any disability to act as a bankruptcy trustee.

(d) I am eligible to be appointed as bankruptcy trustee of the bankrupt under regulation 3 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 and other applicable provisions of the Code and regulations.

(e) I shall make the 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;

(f) I have the following processes in hand:

Sl. No.	Role as	No. of Processes on date of Consent
1.	Interim Resolution Professional	
2.	Resolution Professional of: a. Corporate debtors	

	b. Personal guarantors or individuals or partnership firms	
3.	Liquidator of: a. Liquidation Process b. Voluntary Liquidation Process	
4.	Bankruptcy Trustee	
5.	Authorised Representative	
6.	Any other (please state)	

Date:

Place:

(Signature of Insolvency Professional)  
Registration No.....

## FORM B

### Proxy Form

(Under regulation 31 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)

Full name of the bankrupt:

[Insert matter name / application number for the bankruptcy process]

<b>Full Name of Creditor</b>				
<b>Address</b>	Present	Permanent	Business	
<b>Identification number</b>	Aadhar Number	PAN	CIN	GSTIN
<b>Email ID</b>				

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

1.	Full name				
	Address	Present	Permanent	Business	
	Identification Number	Aadhar Number	PAN	CIN	GSTIN
	E-mail id				
	Signature				

or failing him;

2.	Full name				
	Address	Present	Permanent	Business	
	Identification Number	Aadhar Number	PAN	CIN	GSTIN

	E-mail id				
	Signature				

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

**SCHEDULE I**  
**FEES OF BANKRUPTCY TRUSTEE**

[Under regulation 4(1)]

Amount of realisation in rupees (less bankruptcy process cost)	Percentage of fee on the amount realised			
	In the first six months	In the next three months	In the next three months	Thereafter
On the first 50 lakh	10.00	7.50	5.00	3.75
On the next 75 lakh	7.5	5.00	3.75	2.80
On the next 1 crore	5.00	3.75	2.50	1.88
On the next 9 crores	3.75	2.80	1.88	1.41
On the next 40 crores	2.50	1.88	1.25	0.94
On the next 50 crores	1.25	0.94	0.68	0.51
On further sums realised	0.25	0.19	0.13	0.10
Amount of distribution in rupees	Percentage of fee on the amount distributed			
On the first 50 lakh	5.00	3.75	3.00	1.88
On the next 75 lakh	3.75	3.00	1.88	1.41
On the next 1 crore	2.50	1.88	1.25	0.94
On the next 9 crores	1.88	1.40	0.94	0.71
On the next 40 crores	1.25	0.94	0.63	0.47
On the next 50 crores	0.63	0.48	0.34	0.25
On further sums distributed	0.13	0.10	0.06	0.05

## SCHEDULE II

### MODE OF SALE

[Under regulation 32]

#### (a) AUCTION

- (1) Where an asset is to be sold through auction, the bankruptcy trustee shall do so in the manner specified herein.
- (2) The bankruptcy trustee shall prepare a marketing strategy in writing for the sale of the asset and may take help of marketing professionals if it is required, which shall be submitted to the Adjudicating Authority under regulation 9 as a part of the progress report.
- (3) The marketing strategy may include-
  - (a) releasing advertisements for auction of the asset;
  - (b) preparing information sheets for the asset;
  - (c) preparing a notice of sale; and
  - (d) liaising with agents.
- (4) The bankruptcy trustee shall prepare terms and conditions of sale, including reserve price, earnest money deposit, pre-bid qualification, and time period for full payment.
- (5) The reserve price shall be the value of the asset arrived at in accordance with regulation 36 and such valuation shall not be more than six months old.

Provided that, in the event an auction fails at such price, the bankruptcy trustee may, in consultation with the committee, reduce such reserve price up to seventy-five per cent of such value to conduct subsequent auctions.

Provided further that in the event of an auction failing in spite of reducing the price upto seventy-five per cent, the price may further be reduced with the approval of fifty-one percent of the committee, present and voting.

- (6) The bankruptcy trustee shall provide any assistance, if necessary, for the conduct of due diligence by interested buyers.
- (7) The bankruptcy trustee shall sell the assets, valued more than five lakh rupees, through an electronic auction on an online portal, or on a portal designated by the Board (if any), where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.
- (8) The bankruptcy trustee may sell assets through a physical auction , with prior permission of the Adjudicating Authority, if he is of the opinion that it will maximize the realization from the sale of the assets and is in the best interest of the creditors.
- (9) The bankruptcy trustee may engage the services of qualified professional auctioneers specialising in auctioning such assets for this purpose, as long as such auctioneer fulfils the requirements in regulation 11(2).

- (10) An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders unless the bankruptcy trustee has received permission from the Adjudicating Authority allowing otherwise regarding the visibility of the bid price.
- (11) If required, the bankruptcy trustee may conduct multiple rounds of auctions with a view to maximize the realization from the sale of assets, and to promote the best interests of the creditors.
- (12) On the close of the auction, the payment schedule shall be communicated to the highest bidder. On payment of the full amount, the bankruptcy trustee shall execute the sale and the asset will be transferred in the manner specified in the terms of the sale.

**(b) PRIVATE SALE**

- (1) Where an asset is to be sold through private sale, the bankruptcy trustee shall conduct the sale in the manner specified herein.
- (2) The bankruptcy trustee shall prepare a strategy in writing to approach interested buyers for assets to be sold by private sale, which shall be submitted to the Adjudicating Authority under regulation 9 as a part of the progress report.
- (3) Private sale may be conducted through directly liaising with potential buyers or their agents, through retail shops, or through any other means that is likely to maximize the realizations from the sale of assets.
- (4) The completion of sale, and the delivery of the assets shall be as per the terms of sale.