INSOLVENCY & BANKRUPTCY BOARD OF INDIA

Subject: Amendments to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

This Board Note makes three proposals.

1. Reporting of status of ongoing CIRPs

1.1 For monitoring corporate insolvency resolution processes (CIRPs) from commencement till its closure, regulation 40B provides for filing of a set of Forms by the IP, based on competition of specified tasks, as presented in table 1.

Table 1: Filing of CIRP Forms

Form	To be filed, under regulation 40B, within seven days of	Latest timeline for filing if timeline under regulation 40A is adhered*
CIRP-1	making Public Announcement	T_0 + 10 days
CIRP-2	replacement of Interim Resolution Professional (IRP)	T_0 + 37 days
CIRP-3	issue of Information Memorandum (IM) to members of Committee of Creditors (CoC)	T_0 + 61 days
CIRP-4	issue of Request for Resolution Plans (RFRP)	T_0 + 112 days
CIRP-5	closure of CIRP	T_0 + 187 days
CIRP-6	occurrence of a specific event	Within 7 days of occurrence of the event

*Includes 7 days for filling the form

1.2 In terms of regulation 40A, RFRP should be issued by T+105 day. In terms of regulation 40B, Form CIRP 4 should be filed by the RP within seven days of issue of RFRP. Therefore, Form CIRP 4 should be filed by T+112 day. Further, Form CIRP 5 is required to be filed within 7 days of closure of CIRP, which may happen on 180^{th} / 270^{th} / 330^{th} / N^{th} day, as may be seen from table 2. A significant time gap exists between filings of Form CIRP 4 and Form CIRP 5. The stakeholders may be using this time to work out a resolution plan and may be seeking extension of time, if required, but one does know as to what is happening to CIRP after filing of Form 4 for 200-300 days in many cases.

Table 2: Time taken by CIRPs, as on 30th September, 2020

No. of days taken by CIRPs	No. of CIRPs that closed with resolution plans	No. of CIRPs that closed with liquidation order	Ongoing CIRPs
0 - 180	6	110	151
181 - 270	34	302	349
270 +	237	613	1442
Total	277	1025	1942

1.3 In this background, a new **Form No. CIRP 4A** was proposed, by way of amendment to Regulation 40B, to be filed every 30 days after expiry of 180 days from ICD, till closure of process and filing of CIRP-5. The Governing Board, in its meeting dated 16th October, 2020, while considered the proposal (Board Note No. 58/2020) and advised as under:

"3.4 2 The Governing Board advised that the proposal regarding monthly reporting of CIRP status beyond 90 days, after due examination of the nuances as discussed in the meeting, shall be placed for consideration of the Governing Board in its next meeting."

1.4 It is observed that delay may happen at any stage. For example, CIRP form related to task A may have been filed after Task A is completed, but Form B is not getting filed because Task B is not getting completed. It may be advisable to track delay at every stage. Let us assume, Task A should have been completed by T+ 10th day and Form A should be filed by T+17th day. If Task A happens in time, Task B should be complete by T+20th day and Form B should be filed by T+27th day. Delay can happen either at the stage of completion of Task A or Task B or at both stages. If Task A is not completed by T+10th day, Form 7 (a new Form) should be filed every 30th day till Form A is filed. If Task A happens on T+60th day, Task B cannot happen by T+20th day. If the time gap between Task A and Task B is ten days, as per model timeline, Task B should get completed by T+70th day and Form B should be filed by T+77th day. If Task A is completed on T+60th day and Task B is not completed by T+70th day, Form 7 should be filed every 30th day till Form B is filed to facilitate monitoring of delay in completion of process associated with the event. It is, therefore, proposed to introduce a Form 7 to be filed every thirty days from the event as per model timeline till the actual filing of the said Form.

1.5 Table 3 attempts regulatory impact assessment (RIA) of the proposal.

Table 3: Regulatory Impact Assessment

Sl.	RIA Methodology	Statement
1.	Statement of Problem and Policy Context	Time is essence of the Code. Various tasks in a CIRP should be completed as per model timeline. However, the tasks are not getting performed in time. Monitoring completion of tasks vis-à-vis timeline may help improve faster closure of CIRPs. This will bring up what causes delay and appropriate intervention may address the same
2.	Objectives of Policy Action	Identify sources of delay and take corrective measures.
3.	Identification of Feasible Options	A. Option I: Status Quo- No monitoring of each task. B. Option II: Monitoring through additional reporting.
4.	Preferred Option	Based on the Cost-Benefit Analysis of both Options I and II, as set out at **Annexure-I** to this note, the benefits accruing on account of implementation of Option II outweigh the costs involved. It also outweighs over the

		benefits of Option I. Therefore, the preferred option is Option II.
5.	Strategy to implement preferred option	Amendment to CIRP Regulations and enabling filing of the new Form on the IT Platform.

2. Fee for IRP/RP

2.1 The Governing Board, in its 15th meeting, while considering the Board Note No. 41 /2019, had approved the proposal to place a discussion paper on *'Fee Payable to IRP/RP during* CIRP' seeking comments. Accordingly, a discussion paper was placed which highlighted: "*The Board has been receiving specific directions from the AA seeking its assistance in the matter of fixation of fee payable to IRP/RP in cases inter-alia involving: (i) disputes between IRP and applicant regarding fee, (ii) disputes between RP and CoC regarding fee, and (iii) exorbitant fees claimed as IRPC."* Some of the observations of the AA referring the issue of fixation of IRP/RP fees to the Board were also presented in the Discussion Paper.

2.2 The public comments and the recommendations of the Advisory Committee were submitted, vide Board Note No. 54/2019, to the Governing Board for consideration in its meeting on 17th December, 2019. It was proposed that 50% of the emolument drawn by the highest paying official of the CD prior to insolvency commencement date may eb paid as fee of IRP/RP, where the fee is not fixed/ratified by the CoC. After deliberating the proposal, the Governing Board decided as under:

"(b) IRP/RP fees: The Governing Board considered the need for providing a default option for fixation of fee for IPs, while reiterating that there is no substitute for market determined fee. The creditor, CoC and the IP are better placed to decide on the fee on case-to-case basis. Therefore, the regulations may expressly place obligations on them to decide the fee of IRP and RP, as the case may be, at the time of engagement of the IP. The regulations may consider a default option only for the IRP, where the operational creditor has not brought in an IP. However, a view on this will be taken along with other proposals in the next round of amendment."

2.3 The matter was again placed up before the Governing Board in its 19th meeting held on 24th July, 2020 proposing amendments to Regulations to expressly place obligations on the applicant /CoC to decide the fee of IRP and RP at the time of engagement of the IP and provide a default option. The Government Board reiterated that the fee of an IP must be market determined. It directed that the IBBI should continue with the current practice of fixation of fee of an IRP on a case-by-case basis upon receipt of any reference from the Adjudicating Authority.

2.4 The Board continues to receive references from the AA and the NCLAT for fixation of IRP/RP fees. Table 4 presents gist of a few recent orders.

Table 4: References from the Adjudicating Authority and the NCLAT

Date of Order	Case Details	Passed by	Gist of Order
29.10.2020	Gulshan Gaba Vs. Surinder Juneja & Anr.	NCLAT	Vide order dated 7.1.2019, AA directed that that CoC to resolve the matter related to fees of IRP. It also directed that the matter may be referred to IBBI in case of a deadlock. The deadlock continued and later vide its order dated 21.09.2020, the AA went ahead to fix the fees of IRP. Setting aside the AA's order terming it as contrary to its earlier order, NCLAT confirmed the earlier order dated 7.1.2019 of AA and held that the aggrieved party may refer the matter to IBBI for deciding the quantum of fees payable to the erstwhile IRP. The IRP has referred the matter to IBBI in accordance with the order of NCLAT.
09.11.2020	Integrated Batteries India Pvt. Ltd. Vs. Mainframe Energy Solution Pvt. Ltd.	NCLT, New Delhi	There was dispute between CoC and erstwhile IRP with respect to CIRP cost inclusive of his fees. NCLT held that this requires detailed analysis of the amount of work done vis a vis the charges and expenses claimed by IRP and referred it to IBBI for detailed enquiry and findings. The NCLT asked IBBI to quantify the CIRP cost including fees in the matter.
30.09.2020	Rahul Mittal vs. BR Kohli Buildtech Pvt. Ltd.	NCLT, New Delhi	NCLT observed that the issue of deciding the fee of IPs is coming time and again before it. This is to be settled by the supervisory body of IPs. It recommended that such issues should be referred to IBBI for appropriate quantification with respect to the work and fees to be charged by IRP/RP. It also asked IBBI to frame guidelines for fees of IRP/RP to be charged in proportion to the work done.

2.5 The issues of fixing fees being raised with AA on several occasions contributes to the already burdened AA. The Board also has to institute necessary institutional arrangements to examine the issue on a case-by-case basis in order to fix the fees of the IRP/RP in case the same is referred to IBBI. With increasing number of cases and such instances time and resources with the Board would also be stretched. In the light of above, it is proposed that the regulations may provide that the IP must ensure that he gets his fee fixed by the applicant/CoC before he accepts his appointment. If he fails to get his fee fixed, he shall be entitled to a fee at the rate of 50% of remuneration of the highest paid employee of the CD, on pro-rata basis for the number of days

of his assignment. The remuneration for this purpose shall mean the 'taxable salary' of the highest paid employee of the month preceding commencement of CIRP.

2.6 Table 5 attempts regulatory impact assessment (RIA) of the proposal.

Table 5: Regulatory Impact Assessment

Sl.	RIA Methodology	Statement
1.	Statement of Problem and Policy Context	There are disputes about fee and the IBBI is called upon to decide it, while it is not equipped to so.
2.	Objectives of Policy Action	Market must be insisted to decide matters for itself.
3.	Identification of Feasible Options	A. Option I: Status Quo- No intervention B. Option II: Propose a fee structure which shall be binding in cases where applicant/CoC has not fixed a fee
4.	Preferred Option	Based on the Cost-Benefit Analysis of both Options I and II, a set out at **Annexure-I** to this note, the benefits accruing on account of implementation of Option II outweigh the costs involved. It also outweighs over the benefits of Option I. Therefore, the preferred option is Option II.
5.	Strategy to implement preferred option	Amendment to CIRP Regulations.

3. Claim Form submitted by Financial Creditors

3.1 According to the Indian Contract Act, 1872, liability of the principal borrower and the guarantor is co-extensive, and the creditor is entitled to proceed against either or both and in any sequence. The Code enables initiation of CIRP against the CD and its corporate guarantor as well as against the CD and its personal guarantors. In the matter of *State Bank of India vs. Athena Energy Ventures Pvt. Ltd.,* the NCLAT, vide order dated 24th November, 2020, held that simultaneous initiation of CIRP against the principal borrower and its corporate guarantor is permissible under the Code.

3.2 Regulation 8 of the CIRP Regulations requires a person claiming to be a financial creditor (FC), other than a financial creditor belonging to a class of creditors, to submit claim with proof to the IRP in Form C of the Schedule.

3.3 An FC may submit claim against a principal borrower as well as against a corporate guarantor. The Form C needs to be modified to enable submission of claims with adequate details. Further, where a FC realises some debt from either principal borrower or corporate / personal guarantor through insolvency proceedings, it must update its claims, where the proceeding is yet to be completed. This will bring transparency, and consideration of the claim

in entirety, while avoiding undue benefits for a creditor. It is proposed to amend regulations to cast an obligation on a FC to update his claim as and when any change happens on account of any other proceeding and to modify Form C to require submission of details of guarantee.

3.4 Table 6 attempts regulatory impact assessment (RIA) of the proposal.

Table 6: Regulatory Impact Assessment

Sl.	RIA Methodology	Statement
1.	Statement of Problem and Policy Context	The Regulations provide for filing of claim by financial creditors in 'Form C'. The Form presently does not provide for filing by claimants against CD where claim is secured by a corporate guarantee and a claim on the corporate guarantor is also made concurrently.
2.	Objective of Policy Action	To enable claimants to disclose information regarding claims against the corporate guarantor while filing of claim against the principal borrower modifying Form C
3.	Identification of Feasible Options	A. Option I: Status Quo - No Intervention Option II: Amending Form C
4.	Preferred Option	Based on the Cost-Benefit Analysis of both Options I and II – set out at **Annexure-I** to this note - the benefits accruing on account of implementation of Option II outweigh the costs involved. It also outweighs over the benefits of Option I. Therefore, the preferred option is Option II i.e., amending Form C
5.	Strategy to implement preferred option	Amendment in CIRP Regulations by modifying Form C.

4. Approval sought

4.1 The approval of the Governing Board is sought to amend CIRP Regulations to carry out the proposals mentioned in Paras 1.4, 2.5, and 3.3.

4.2 As the proposals in Paras 1.4 and 2.5 were considered earlier, after consultation with public. Proposal in para 3.3 is only a technical change to address a difficulty. Therefore, the Governing Board may exempt it from regulation 4 and 5 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018 in terms of the regulation 8 of the said regulations.

4.3 The draft amendment Regulations are placed at **Annexure II.**

Annexure -I

Regulatory Impact Assessment- Cost Benefit Analysis

1. Monthly reporting of status of ongoing CIRPs beyond 90 days

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

Creditors	• Enhanced chances of resolution and early realisation	No cost
Society & Economy as a whole	Improved time-boundness and improving stakeholder confidence in the process	No cost

2. Fixation of IRP/RP Fee

Cost-Benefit Analysis		
Option-I- Status Quo - No Intervention		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	No benefit	No streamlined policy. Analysis on case to case basis.
Debtor	No benefit	No cost
Creditors	No benefit	Seeking relief from Board and time spent on petition, appearance etc.
Society & Economy as a whole	No benefit	Less uniformity.
Option II: Fixing Fee		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	Streamlined and uniform position	Cost of framing new regulations
Debtor	No benefit	No cost
Creditors	Pre-existing provision in case of dispute. May prevent disputes also.	No cost
Society & Economy as a whole	Transparency and uniformity. Lesser disputes in turn leads to lesser disruptions in processes.	No cost

3. Modifying Form C (Claim form for financial creditors)

Cost-Benefit Analysis		
Option-I- Status Quo - No Intervention		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	No benefit	No cost.
Debtor	No benefit	No cost
Creditors	No benefit	Cost of filing the claim. No standardized form for filing claim against corporate guarantor.
Society & Economy as a whole	No benefit	Information asymmetry. Cost of unknown multiple proceedings and lack of transparency.

Option II: Modifying Form C		
Stakeholder	**Benefit**	**Cost**
Government/Regulator	Conformity with legal position. Clarity in procedure for market participants.	Cost of framing new regulations
Debtor	Availability of full information enables rationalisation of resources if settlement is attempted.	No cost.
Creditors	Improved filing of claims	No additional cost in filing of claim. Additional cost involved in collating and updating status of proceedings to the IP.
Society & Economy as a whole	Information asymmetry removed. Improved transparency.	No cost

Annexure-II

GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION

New Delhi, the__ day of December, 2020

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

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

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

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

2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations);-

(i) in regulation 33, sub-regulation (2) shall be omitted;

(ii) after regulation 34, the following sub-regulation shall be inserted, namely: -

"34A. Fixation of fees.

(1) The interim resolution professional or the resolution professional, as the case may be, shall make best endeavors for fixation of their fee by the applicant or committee respectively.

(2) Where the fee has not been fixed under sub-regulation (1), the interim resolution professional or the resolution professional, as the case may be, shall be entitled to a fee at the rate of fifty percent of the remuneration of the highest paid employee of the corporate debtor during the financial year immediately preceding the insolvency commencement date, on pro-rata basis depending on the number of days of his assignment.

Explanation: For the purpose of this regulation, "remuneration" shall mean income chargeable to income tax under the head 'salaries' under the Income Tax Act, 1961(43 of 1961)."

(iv) regulation 34A shall be re-numbered as regulation 34B.

3. In the principal regulations, in regulation 40B, under sub-regulation (1), the following shall be inserted after the row of CIRP-4, namely: -

Form No.	Period Covered and Scope	To be filed by	Timeline
(1)	(2)	(3)	(4)
CIRP 4A	**To be filed on 90th day from ICD or from the date the CIRP fails to meet the model timelines, whichever is later and every 30th day thereafter till Form 5 is filed:** This will indicate the stage of CIRP and what is contributing to delay.	RP	If a process fails to meet the timeline on 135th day, then 135th, 165th, 195th, 210th day and so on

4. In the schedule to the principal regulations, the following Form C shall be substituted:

FORM C

SUBMISSION OF CLAIM BY FINANCIAL CREDITORS

(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

[Date]

From
[Name and address of the financial creditor, including address of its registered office and principal office]

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

Subject: **Submission of claim and proof of claim.**

Madam/Sir,

[Name of the financial creditor], hereby submits this claim in respect of the corporate insolvency resolution process of [name of corporate debtor]. The details for the same are set out below:

Relevant Particulars		
1.	Name of the financial creditor	
2.	Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual)	
3.	Address and email address of the financial creditor for correspondence	

Relevant Particulars		
4.	Is the claim secured by a Corporate Guarantee – Yes / No	
5.	If "Yes" to '4' above - Capacity in which Corporate Debtor is liable for claim – (a) Principal Borrower; or (b) Guarantor	
6.	Total amount of claim (including any interest as at the insolvency commencement date)	
7.	Details of documents by reference to which the debt can be substantiated	
8.	Details of how and when debt incurred	
9.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	
10.	Details of any security held, the value of the security, and the date it was given	
11.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	
12.	List of documents attached to this claim in order to prove the existence and non-payment of claim due to the financial creditor	
13.	If "Yes" to '4' above – Has claim been filed against the Principal Borrower or Guarantor, as applicable, under any provisions of the Code or under any other applicable law? – Yes / No	
14.	If "Yes" to '13' above – attach copies of such claims filed and details of claim amount/s admitted and amounts realised	
(Signature of financial creditor or person authorised to act on his behalf) [Please enclose the authority if this is being submitted on behalf of the financial creditor]		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		

*PAN number, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

DECLARATION

I, [Name of claimant], currently residing at [insert address], do hereby declare and state as follows: -

1. [Name of corporate debtor], the corporate debtor was, at the insolvency commencement date, being the……..day of……..20……., actually indebted to me for a sum of Rs. [insert amount of claim].
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: [Please list the documents relied on as evidence of claim].
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim].

5. I am filing the claim against the Corporate Debtor in his capacity as Principal Borrower / Guarantor and I undertake to provide the documents as required under item '14' and the information under item '15'of the table above, as and when I file a claim against the Guarantor / Principal Borrower concerned and the same gets admitted and settled in any manner. [Strike off if not applicable]
6. I am filing the claim against the Corporate Debtor in his capacity as Principal Borrower / Guarantor and have also filed claim against the Guarantor / Principal Borrower concerned [insert name and CIN] and I undertake to provide information on the status of its admission and settlement in any manner. [Strike off if not applicable]
7. I am / I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
8. I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.

Date:
Place:

(Signature of the claimant)

VERIFICATION

I, [Name] the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at … on this …… day of ……., 20…

(Signature of claimant)

[Note: In the case of company or limited liability partnership, the declaration and verification shall be made by the director/manager/secretary/designated partner and in the case of other entities, an officer authorised for the purpose by the entity.]

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

Note: The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were published *vide* notification No. IBBI/2016-17/GN/REG004, dated 30th November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 432 on 30th November, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020 published *vide* notification No. IBBI/2020-21/GN/REG066, dated the 13th November, 2020 in the Gazette of India, Extraordinary, Part III, Section 4, No. 489 on 13th November, 2020.

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