**Insolvency and Bankruptcy Board of India**

**Subject: Amendments to the IBBI (Liquidation Process) Regulations, 2016**

**Introduction**

Section 35 of the Code provides for the powers and duties of the liquidator. Clause (a) and (j) of sub-section (1) provides that the liquidator shall verify claims of all the creditors, and invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of the Code, respectively. Sections 38 to 41 of the Code provide for consolidation, verification and adjudication of claims by the liquidator. Section 40(2) of the Code mandates the liquidator to communicate his decision of admission or rejection of claims to the creditor and corporate debtor (CD) within seven days of his decision.

2. Regulation 30 read with regulation 31 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) mandates the liquidator to verify every claim submitted within thirty days from the last date of receipt of claims and thereupon prepare a list of stakeholders, category-wise, with specified details. Further, the regulation provides that the liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of claims, and that the filing of the list shall be announced to the public in the manner specified in Regulation 12(3). Regulation 12(3) provides for public announcement in (a) one English and one regional language newspaper, (b) on the website of the corporate debtor, if any, and (c) on the website, if any, designated by the Board. The list of stakeholders, as modified from time to time, shall be available for inspection and displayed on the website, if any, of the corporate debtor.

**Issue**

3. While a creditor knows the status of his claims in terms of section 40(2) of the Code, other stakeholders may not get to know the status. Further, one understands the implication of his admitted claim only when he knows the admitted claims of every other stakeholder. That is why the law envisages the list of stakeholders be available in public domain. There are two stages of the list. The first stage is when the list of stakeholders prepared for the first time. The filing of the list with the AA needs to announced (a) in one English and one regional language newspaper, (b) on the website of the CD, if any, and (c) on the website, if any, designated by

the Board. The CDs undergoing liquidation process are mostly defunct entities. Most of them may not have resources to meet the costs of publication in newspapers. All of them may not have any functional website. Even if the CD has resources and a website, what is available is the fact that list of stakeholders has been filed. The second stage is when the list of stakeholders is modified. There is no requirement of publishing modification of the list of stakeholders. However, the list as well as changes in the list of stakeholders are available for inspection and on the website of the CD. Inspection may not be a convenient option for many stakeholders. If the CD does not have a website, the stakeholders have difficulty in ascertaining the details in list of stakeholders.

**Proposal**

4. In the interest of transparency and information symmetry and reduce costs associated with publication, it is proposed to introduce a standard format for the list of stakeholders, which shall be maintained, updated and submitted to AA, as required under Regulation 31, and also be uploaded on the website of the Board. The format will contain a summary of the list of stakeholders, category-wise, with details of their claims and status, if any, in relation to such claims. This will be supplemented by a detailed list of claims of all stakeholders. The liquidators shall update this list from time to time. The list of stakeholders shall be maintained for all CDs and uploaded on the website of the Board irrespective of whether a website of CD is in place or not. The announcement of filing of list of stakeholders in newspapers may be discontinued. This is similar to what has been done recently for uploading the list of creditors on the website of the IBBI, through an amendment to the CIRP Regulations. The IT module for uploading list of stakeholders by IPs shall be put in place by the Board. The format for list of stakeholders will be provided to IPs by a circular. The draft amendment regulations are placed at Annexure A.

5. **Regulatory Impact Assessment (RIA)**

| S. No. | RIA Methodology | Statement |
|---|---|---|
| 1. | Statement of Problem and Policy Context | Stakeholders do not know the details of claims against the CD, and at times, the status of their claims and consequently the value of their rights in the CD, while they have right to their dues under the waterfall under section 53. |

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|---|---|---|
| | | Announcement of the filing of list of stakeholders through publication in newspaper adds to cost. |
| 2. | Objectives of Policy Action | Ensure information symmetry and transparency of liquidation process. |
| 3. | Identification of Feasible Options | 1.Option I: Status Quo-No intervention<br>2.Option II: IP to put details of claims on website maintained by the Board |
| 4. | Preferred Option | Based on the Cost-Benefit Analysis of both Options I and II -set out at Annexure-B to this note -the benefits accruing on account of implementation of Option II outweigh the costs involved. It also outweighs the benefits of Option I. Therefore, the preferred option is Option II, i.e., standardising the list of stakeholders and publishing it on website of IBBI. |
| 5. | Strategy to implement preferred option | Amendment to Liquidation Regulations, issuance of circular for circulating the format, and enabling IT module. |

**Approval sought**

6. The approval of the Governing Board is sought for the proposal mentioned in **Para 4 above** through the amendments in Liquidation Regulations. As the amendments proposed addresses a difficulty, 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.

**Annexure A**

**TO BE PUBLISHED IN THE GAZETTE OF INDIA**
**EXTRAORDINARY**
**PART III, SECTION 4**
**PUBLISHED BY AUTHORITY**
**NEW DELHI, DECEMBER, 2020**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**
**NOTIFICATION**
New Delhi, the December, 2020

**Insolvency and Bankruptcy Board of India (Liquidation Process) (Fifth Amendment) Regulations, 2020**

**No. IBBI/2020-21/GN/REG060.-** 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 (Liquidation Process) Regulations, 2016, namely: -

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Liquidation Process) (Fifth Amendment) Regulations, 2020.
   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as the principal regulations), in regulation 31, for sub-regulation (2), the following sub-regulation shall be substituted, namely: -
"The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of claims."

3. In the principal regulations, in regulation 31, in sub-regulation (5), after clause (c), the following clause shall be inserted, namely:
"(d) filed on the electronic platform of the Board for dissemination on its website:
Provided that this clause shall apply to every liquidation process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Fifth Amendment) Regulations, 2020;".

(Dr. M. S. Sahoo)
Chairperson
[ADVT.- III/4/Exty./…./20]

Note: The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 were published *vide* notification No. IBBI/2016-17/GN/REG005 dated 15th December, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, *vide* No. 460 on 15th December, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Liquidation Process) (Fourth Amendment) Regulations, 2020 *vide* notification No. IBBI/2020-21/GN/REG067, dated the 13th November, 2020 in the Gazette of India, Extraordinary, Part III, Section 4, No. 6 on 13th November, 2020.

**Annexure B**

**Cost Benefit Analysis**

**Option I: Status Quo – No intervention**

| Stakeholder | Benefit | Cost |
|---|---|---|
| **Insolvency Professional** | No additional compliance | Increased correspondence relating to claim related grievances<br><br>Higher liquidation cost due to publishing of filing of list of stakeholders in the newspapers |
| **Government/Regulator** | No intervention | Less stakeholder confidence<br><br>Lack of transparency and information symmetry in process<br><br>Frivolous litigation<br><br>Increased monitoring cost due to stakeholder's grievances |
| **Creditors** | No benefit | Lack of knowledge of status of claims<br><br>Increased correspondence and grievances |
| **Society & Economy as a whole** | No benefit | Adverse impact on transparency and stakeholder confidence, and prevalence of information asymmetry |

**Option II: IP to put details of claims on website maintained by the Board**

| Stakeholder | Benefit | Cost |
|---|---|---|
| **Insolvency Professional** | Reduced grievances of claimants<br><br>Ease of compliance<br><br>CDs not having own websites can also disseminate | Marginal additional compliance cost |
| **Government/Regulator** | Consolidation and larger access to claim status at unified location<br><br>Reduced grievances on claims and optimal | In terms of framing new regulations and cost of creation and maintenance of IT platform |

| | | |
|---|---|---|
| | utilisation of human resources<br><br>Improved monitoring of claim verification process. | |
| **Creditors** | Reduced liquidation process cost due to non-requirement of publishing of filing of list of stakeholders in newspapers<br><br>Increased awareness of status of claims<br><br>Reduced need for raising grievances | No cost |
| **Society & Economy as a whole** | Reduced liquidation process cost due to non-requirement of publishing of filing of list of stakeholders in newspapers<br><br>Improved transparency and information symmetry in the process and increase in accountability of IPs | No cost |