

Insolvency and Bankruptcy Board of India

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Press Release

The IBBI amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019 and the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 today.

2. The salient amendments affected by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019 are:

(a) The amendments specify the process for withdrawal of applications before constitution of committee of creditors (CoC), after constitution of CoC but before issue of invitation for expression of interest, and after issue of invitation for expression of interest.

(b) The amendments require that while approving a resolution plan or deciding to liquidate the corporate debtor, the CoC may:

(i) approve a plan providing for contribution for meeting the liquidation costs,

(ii) recommend sale of the corporate debtor or sale of business of the corporate debtor as a going concern, and

(iii) fix, in consultation with the RP, the fee payable to the liquidator, if an order for liquidation is passed by the Adjudicating Authority.

3. The salient amendments affected by the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 are:

(i) The amendments specify the process for (a) sale of corporate debtor as going concern, and (b) sale of business of corporate debtor as going concern under liquidation. These also provide that where a corporate debtor is sold as a going concern, the liquidation process shall be closed without dissolution of the corporate debtor.

(ii) The amendments require completion of liquidation process within one year of its commencement, notwithstanding pendency of applications for avoidance transactions. These provide a model timeline for each task in the liquidation process. It also specifies a maximum time of 90 days from the order of liquidation for completion of compromise or arrangement, if any, proposed by the stakeholders under section 230 of the Companies Act, 2013. These will ensure that liquidation process is closed at the earliest.

(iii) The amendments require the financial creditors, who are financial institutions, to contribute towards the liquidation cost, where the corporate debtor does not have adequate liquid resources to complete liquidation, in proportion to the financial debts owed to them by the corporate debtor, in case the CoC did not approve a plan for such contribution during corporate insolvency resolution process. However, such contribution along with interest at bank rate thereon shall form part of liquidation cost, which is paid in priority.

(iv) The amendments provide for constitution of a Stakeholders' Consultation Committee having representation from secured financial creditors, unsecured financial creditors, workmen and employees, government, other operational creditors, and shareholder/partners to advise the liquidator on matters relating to sale. However, the advice of this committee is not binding on the liquidator.

(v) The amendments require that a stakeholder may submit its claim or update its claim submitted during the corporate insolvency resolution process, as on the liquidation commencement date. Along with submission of claim, a secured creditor shall inform the liquidator of its decision to relinquish its security interest to liquidation estate or to realise its security interest.

(vi) The amendments have introduced a comprehensive compliance certificate to be submitted along with the final report to the Adjudicating Authority.

4. The amendment Regulations are effective from today. These are available at www.mca.gov.in and www.ibbi.gov.in.