

**Gist of public comments on consultation paper on issues related to reducing delays in the corporate insolvency resolution process and views of the Division thereon**

**Number of comments received on the portal: 24**

Comments received during the roundtable conducted on 26<sup>th</sup> April, 2022 have also been considered.

<b>Gist of Comments / Suggestions</b>	<b>Comments of the Division</b>
<p><b>Part 1- Substantiating default in admitting applications by operational creditors:</b> CIRP Regulations to provide for filing copies of GSTR-1 and GSTR-3B returns filed by the operational creditors along with e-way bill as additional documentary evidence and also as part of the claim documents submitted to the IRP for easier verification and admission of claims.</p> <p><b>Comments in favour: 3 included concerns and suggestions</b> <b>Comments against: 0</b></p> <p>Default is not established by GST returns as currently GSTR 1 return is filed under CGST by the supplier of goods along with the e-way bill if value of goods exceeds Rs 50,000/-. However, there is no mechanism in GST act for acknowledgement of invoice and receipt of goods by the buyer. Further, under CGST act, ITC claimed on purchase of goods needs to be reversed if the payment is not made within 180 days. However, currently there is no mechanism in GST Act in which supplier of goods acknowledge the receipt of payment.</p> <p>During the roundtable, the following concerns were indicated:</p> <ul style="list-style-type: none"> <li>Suppliers attempt to legalise the supply of goods/services without actual supply through payment of GST and thus, GSTR-1 and GSTR-3B return may not reflect a true picture regarding the actual supply of goods/ services by the recipient.</li> </ul>	<p>Default may not be directly substantiated through the GST filings, however, the existence of a transaction, the supply of goods and liability of payment by the corporate debtor can be established.</p> <p>Concerns regarding rise of further disputes inherent to the GSTR filing and spill-over from disputed filings into the proceedings under the Code.</p> <p>However, it is felt that the benefits of inclusion of such information, if included in majority of cases would help reduce delays for them while disputes may happen in a few. Clearly the benefit outweigh the cost.</p>

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<ul style="list-style-type: none"> <li>• Transactions in GSTR returns may be a subject matter of dispute which the CD may argue during the course of hearings and further, delay the admission process.</li> <li>• An unacceptable addition and would become a non-starter as operational creditors would not like to share GSTR-3B.</li> <li>• There is no mechanism of acknowledgment of transactions of supply of goods/services by the CD under the GST Act</li> </ul> <p><b>Suggestions:</b></p> <p>(i) Information utility can also be enabled to capture all goods and payments transactions by operational creditors</p> <p>(ii) Where the CD has not filed the Financial Statements along with its Annexures with MCA as per law within the time frame fixed by the Companies Act 2013 (Without Penalty), it should be treated as DEEMED DEFAULT by the CD for any application filed by the Operational Creditor. The CD should be given the option to file the financial statements along with its annexures with MCA within a period of 30/45 days or the Onus should be shifted to the CD to prove that there exists a dispute or the CD has made the payment and there is no default on his part.</p>	<p>Regarding the IU in capturing details of each transaction done by the OC line item wise, the same does not appear to be feasible.</p> <p>Regarding non-submission of financial statement by CD before MCA may be considered as deemed default situation may not be a feasible option and would be prone to further litigation.</p>
<p><b>Part 2: Facilitating information availability for the preparation of information memorandum and preparation of avoidance applications</b></p> <p>Comments in favour: 6 included suggestions</p> <p>Comments against: 1</p> <p>(i) Currently, in most CIRPs, Section 19(2) application is getting filed by the IRP/RP due to non-cooperation of promoters and directors of the CD. There should be penal provisions which will act as deterrent in the code.</p> <p>(ii) No timelines mentioned for document submission: The proposed amendments do not define the timelines within which the financial creditors need to submit proposed valuation reports, financial statements and forensic</p>	<p>(i) NCLT order in <i>Vikram Puri and Anr. v. Universal Buildwell Private Limited and Anr.</i> wherein AA issued non-bailable warrants against suspended directors for their failure to cooperate with the RP. The same has also been upheld by NCLAT. No penal may be further needed.</p>

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<p>reports to the IRP/RP. It is suggested that the financial creditors should submit these documents within 10 days of request made by the IRP/RP or the 1st meeting of COC whichever is earlier.</p> <p>(iii) More reports to be included: The financial creditors should provide below reports also to the IRP/RP for timely conducting CIRP, if available with them:(1).Stock statements /Receivable Statements (2).Quarterly Information System Reports (3).Monthly / Quarterly / Annual Inspection Reports of Movable / Immovable properties conducted by Financial Creditors (4).Stock Audit Reports (5).Financial Statements and Projections submitted by the CD (6).Title Search Reports of the properties (7).Technical Officers Reports (8).Bank account statement for previous 24 months from the date of commencement of CIRP.</p> <p>(iv) Statutory Auditor, banks and also government authorities have a lot of relevant information. It should be particularly obligatory for Statutory Auditors past and present to provide the information and non-cooperation should result into disciplinary proceedings against them under the IBC.</p> <p>(v) During the pendency of admission application, the CIRP regulations shall levy a duty on the CD to submit the latest audited financial accounts and provisional accounts with trial balance duly attested by Directors of the CD with the Information utility.</p> <p><b>Suggestions:</b></p> <ul style="list-style-type: none"> <li>• During the roundtable it was suggested that the ‘latest reports’ be sought and shared. While, comparing with valuation reports available with creditors, the reports obtained within 2 year from the date of insolvency commencement date may only be considered.</li> <li>• Other records such as stock statement and list of receivables may be included in the list of information to be provided by the creditors.</li> </ul>	<p>(ii) Provision for time - window for providing information already exists in the proposed regulation 4C.</p> <p>(iii) The proposed regulation 4C already enables the same wherein the information is to be sought in a format and the service provider may seek all necessary information which is required for conducting the CIRP. The sharing of certain documents have also been incorporated.</p> <p>(iv) The regulation includes the persons as indicated in Section 19 (1) of the Code and gives a broad scope for all persons associated with the CD.</p> <p>(v) CIRP Regulations come into operation only after initiation of CIR process by AA. A pre-requisite of adding more information before admission may lead to further delays in admissions.</p> <p>The latest reports would be the most relevant. The proposed regulation enables the last reports and latest available information be provided and, in the format and time prescribed by the IP.</p>
<p><b>Part 3: Dealing with avoidance applications after closure of a CIRP</b>  Comments in favour: 7  Comments against: 0</p>	<p>(i) The proposal already provided that a resolution plan shall provide for the manner in which avoidance proceedings will</p>

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<p><b>Suggestions:</b> (i) Mode and manner of treatment of the functus officio costs incurred by the RP after approval of the Resolution plan in regard to such avoidance applications may also be specified in the Regulations.</p> <p>(ii) There is lack of clarity regarding the ownership of amount recovered from avoidance applications and proceedings after CIRP. Accordingly, it is suggested that the resolution plan submitted by resolution applicant should clearly cover the following points also:</p> <p>(a) Who will have the ownership of amount recovered from such avoidance applications and proceedings post approval of resolution plan by AA?</p> <p>(b) Whether the CoC can sell these transactions to a third party other than the RA.</p> <p>(c) If RP is given the power to pursue these transactions, what will be terms of employment including remuneration.</p> <p>(iii) The detailed schedule for all the PUFEE transactions must form part of the resolution plan with clear endorsement of the AA for its effective implementation after the CIRP process has come to an end. Such detailed schedule must ensure clear provision of passing on the benefits to the creditors since such avoidance is clearly aimed at benefiting the creditors.</p>	<p>be pursued after the approval of the resolution plan, which includes the how the costs will be met.</p> <p>(ii) and (iii) The proposal has been amended to include that the CoC while approving the resolution plan address the question of how the distribution of the proceeds from these proceedings will be dealt with. The decision to assign the avoidance applications to a third party is left to the CoC, the proposed regulation does not place any restriction on this count.</p>
<p><b>Part 4: Significant difference in valuations during a CIRP and appointment of a third valuer</b></p> <p>Comments in favour: 5 included suggestions Comments against: 0</p> <p><b>Suggestions:</b></p> <p>(i) A difference of 25% in valuation could be very high in absolute terms for large CD. If the value of property is more than Rs. 10 crores, a difference of 15% in valuation by two valuers to be treated as significant.</p> <p>(ii) Difference of 25% may be considered as 25% of higher valuation. Such difference of 25 per cent to be looked at asset class level (instead of overall valuation level) and liquidation value level. Issue of difference - the higher value is to be considered in denominator or the lower value for calculating percentage of difference.</p>	<p>(i) The use of Rs. 10 crore as the threshold is arbitrary. May not be accepted.</p> <p>(ii) The difference of 25% on higher valuation of the liquidation value may be accepted.</p> <p>(iii) The comparison of reports across different times and made for different purposes may not be favourable for clarity. The need for making remarks may lead to further litigation.</p>

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<p>(iii) Registered valuers may also be given responsibility to include a statement of remarks on the significant difference. In addition, the proposed amendment lack the clarity on the responsibility for making statement of remarks i.e. Resolution Professional or Valuers. As such, drafting may clarify the responsibility.</p> <p>(iv) During the roundtable it was suggested that one RV should not be required to give remarks about the report of another or earlier valuation reports commissioned by the creditors as it would affect the independence of valuers.</p>	<p>(iv) The earlier reports are included in order to provide the RP and the RV the list of assets and other information regarding title, measurements of the assets etc., based on such earlier reports. The need for statement of remarks has been removed.</p>