

## **INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

### **Subject: Amendments to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2019**

With the approval of Governing Board, a discussion paper proposing amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2019 along with the draft amendment regulation was put up on the website of IBBI on 1<sup>st</sup> November, 2023, thereby, inviting the stakeholders to submit their comments on the same.

2. Till last date of receiving comments i.e., 22<sup>nd</sup> November 2023, 223 comments were received. In addition, the division has also received comments from IPAs, IPs, IPEs, MCA, CII etc. The proposals and the comments of the stakeholders thereon, along with the draft amendment regulations were discussed by the Governing Board at its meetings on 28<sup>th</sup> December 2023. In pursuance to the decision of the Governing Board, IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024 was notified by the Board on 15<sup>th</sup> February 2024.

3. Regulation 4(3) of the IBBI (Mechanism for Issuing Regulations) Regulations, 2018 require the Board to upload on its website the public comments received on the draft regulations along with a general statement of its response on the same. In compliance with this requirement, the public comments received on the proposed amendments along with the general statement of response of the Board is placed at Annexure.

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## Gist of public comments on Discussion Paper on CIRP

Sl. No.	Proposal	No. of Comments	Gist of Comments / Suggestions	Comments of the Division
A.	<p><b>Approval of CoC for insolvency resolution process cost</b></p> <p><b>Proposal:</b> It is proposed the insolvency professional (IP) should seek approval of all components of the insolvency resolution process cost, including the expenditure incurred for ongoing operations of the CD.</p>	41	<p><b>Favour:</b></p> <p>(i) Embraced the suggestion that acknowledging its potential to enhance the insolvency resolution process by empowering the CoC through a clarification with rights over costs.</p> <p><b>Suggestions:</b></p> <p>(i) Clarification sought on whether CoC approvals for expenses should be sought before or after they are incurred, with suggestions to include such details in Regulation 34 itself.</p> <p>(ii) Practical concerns about the number of approvals required, particularly for a going concern with a full range of activities. Suggestions include setting a financial limit for expenses that require</p>	<p>(i) This process does not necessarily impede the RP; rather, it can provide a clear framework within which the RP must operate based on CoC's recommendations. The fear of stakeholders is unfounded as the CoC may in its first meeting decide upon a threshold limit granting approval of expenses till that limit.</p> <p>(ii) Same as above.</p>

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			<p>prior approval, allowing ratification or post facto approval.</p> <p>(iii) Suggestion that the RP should provide a detailed breakdown of operational expenses.</p> <p>(iv) Recommended that the RP present monthly cash flows to the CoC, providing a comprehensive view of the financials.</p> <p><b>Against:</b></p> <p>(v) The regulations should not be too prescriptive.</p> <p>(vi) Requirement for CoC approval for all expenses might impede the ability of the RP to maintain the corporate debtor as a going concern.</p> <p>(vii) It will result in delay in process.</p>	<p>(iii) Approval for all costs, which are part of insolvency resolution process costs is needed which states that there has to be a breakdown of such expenses.</p> <p>(iv) Same as above.</p> <p>(v) Amendment to the Regulations is aimed to streamline the process.</p> <p>(vi) The concern about delays similarly can be mitigated by implementing a streamlined approval process, such as expedited or batch approvals for routine or low-value expenses.</p> <p>(vii) Same as above.</p>

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B.	<p><b>Monthly CoC meetings</b></p> <p><b>Proposal:</b> To review the work/progress of the CIRP by CoC, RP be mandated to conduct the meetings of CoC every month.</p>	30	<p><b>Favour:</b></p> <p>(i) Will help in timely resolution.</p> <p>(ii) Regular meetings make the whole insolvency process clearer and more trustworthy for everyone involved.</p> <p>(iii) Monthly CoC meetings help keep track of the resolution process regularly.</p> <p><b>Suggestions:</b></p> <p>(i) The CoC should be allowed to skip the monthly meeting requirement, if necessary, after a resolution with recorded reasons.</p> <p>(ii) Need for clarification on whether monthly meetings are required after the submission of a resolution plan for approval.</p> <p>(iii) There can be one meeting in every calendar month in place of 30 days.</p>	<p>(i) The suggestion has been accepted and provided in the regulations that the CoC may extend the time interval between two meetings, subject to one meeting in a quarter.</p> <p>(ii) Monthly meeting after the submission of resolution plan for the approval of the AA is envisaged. However, CoC may extend the time interval between two meetings.</p> <p>(iii) Adhering to a 30-day interval between meetings rather than a rigid monthly schedule offers greater flexibility and ensures consistent intervals for meetings.</p>

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			<p><b>Against:</b>            (iv) Concerns about holding CoC meetings when there are no significant developments or agendas, suggesting an extension of the period to 60 days.</p>	<p>(iv) Comments as given at sl. no. (i) above.</p>
C.	<p><b>Discussion of valuation methodology and report with CoC:</b></p> <p><b>Proposal:</b> It is proposed that before finalisation of valuation report, valuers shall explain the valuation methodology to the members of the committee in a meeting facilitated by the RP.</p>	26	<p><b>Favour:</b></p> <p>(i) Talking about how valuations are done with the CoC before final reports can cut down on disagreements later.</p> <p>(ii) Clear discussions upfront can help CoC members understand and trust the valuation process.</p> <p><b>Suggestions:</b></p> <p>(i) The words 'before computation of estimates' must be removed and words "before finalization of the valuation report" may be considered.</p> <p>(ii) mechanisms should be in place to handle disagreements without causing delays.</p> <p>(iii) prescribe a timeline for valuers to resolve any queries raised by the CoC to expedite the process.</p>	<p>(i) The phrase 'before computation of estimates' is integral because it ensures that the CoC is informed about the valuation methodology at an early stage and independence of valuation is maintained.</p> <p>(ii) The suggestion is over prescriptive in nature and may be avoided.</p> <p>(iii) Same as above.</p>

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			<p><b>Against:</b></p> <p>(iv) Concerns are raised that the CoC might seek to influence valuations.</p> <p>(v) Concerns that prior discussions might bias their reports. The suggestion is to allow valuers to address discrepancies post-report submission instead.</p>	<p>(iv) Prior discussions with the CoC about valuation methodologies can provide crucial context and information, and not to allow influence the valuation process. It enables valuers to consider all relevant factors from the outset and can reduce the likelihood of significant discrepancies arising later and independence of valuation is maintained.</p> <p>(v) Same as above.</p>
D.	<p><b>Disclosure of fair value in the Information Memorandum</b></p> <p><b>Proposal:</b> Given the advantages associated with the disclosure of fair value with resolution applicant, it is proposed that fair value should be made part of Information Memorandum.</p>	27	<p><b>Favour:</b></p> <p>(i) Early talks can clear up any questions CoC members might have about how the company is valued.</p> <p>(ii) This can help prevent arguments and make the resolution process go more smoothly.</p>	

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			<p><b>Suggestions:</b></p> <p>(i) Fair value be included only if the valuation process is complete and has been deliberated by the CoC.</p> <p>(ii) A range or benchmark multiple range could be disclosed instead of exact fair value to maintain a balance between transparency and flexibility.</p> <p>(iii)It could lead to bids closer to the fair value.</p> <p>(iv)Instead of just the sharing of the Fair Value, it may be contemplated to provide the valuation report as an addendum to the IM. The advantage of providing the full Report is that the PRA has the option to explore alternate value propositions for the business.</p> <p><b>Against:</b></p> <p>(v) Concern that including fair value could lead to undervaluation in the resolution plans submitted by prospective resolution applicants (PRAs). PRAs</p>	<p>(i) The recommendation with modifications has been accepted.</p> <p>(ii) Including fair value in the IM can enhance the transparency of the process and provide a benchmark for bids encouraging competitive plans.</p> <p>(iii)The intent is to discover more value for the stakeholders. A value closer to fair value in aggregate across CIRP cases is reasonable.</p> <p>(iv)The suggestion needs further examination.</p> <p>(v) The suggestion has been accepted to accommodate that CoC may not include fair value in the IM where</p>

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			<p>should be encouraged to conduct their own independent valuations.</p> <p>(vi)The timeline for publishing the IM might not allow enough time to receive the valuation report, which could delay the entire process.</p>	<p>in it's considered view such a disclosure is not beneficial for the resolution by recording the reasons for the same in writing.</p> <p>(vi)Addendum to IM maybe given where delay is occurring due to inclusion of fair value.</p>
E.	<p><b>Continuation of process activities pending disposal of extension application by the AA</b></p> <p><b>Proposal:</b> In order to bring clarity on the continuation of the process when the application filed with the AA is pending for the extension orders and to enable the RP to fulfil his responsibilities, an amendment to regulation 40 of the CIRP Regulations is proposed.</p>	20	<p><b>Favour:</b></p> <p>(i) Proposal is appreciated for attempting to streamline the CIRP by reducing uncertainty during the extension application period.</p> <p><b>Against:</b></p> <p>(i) The stakeholder has marked against this proposal. However, no remark has been given.</p>	(i) No comment required.
F.	<p><b>Clarity in minimum entitlement to dissenting financial creditors:</b></p> <p><b>Proposal:</b> In view of the foregoing discussion, the following is proposed:</p> <p>1. To provide clarity with regard to entitlement of dissenting financial creditors, which shall be lower of the:</p>	32	<p><b>Favour:</b></p> <p>(i) This change is helpful as it minimises scope of any dispute between dissenting and assenting financial creditors in respect of the distributable amount and the timing of amount payable.</p>	The proposal has been held for further examination.

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	<p>(i) amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53; or</p> <p>(ii) the liquidation value as defined under these regulations been distributed in accordance with the order of priority in sub-section (1) of section 53.</p> <p>2. Further, regulation 38(1) may be amended to provide that the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid ‘amount due in the event of liquidation’ in priority over financial creditors who voted in favour of the plan.</p> <p>3. Further, an illustration may be added to clarify the extent of priority.</p>		<p><b>Against:</b></p> <p>(ii) The importance of safeguarding the value and ranking of the security for dissenting financial creditors is emphasized, with comparisons made to bankruptcy laws in the US and UK. The amendment should provide for treatment of such dissenting financial creditors based on the value of their security and not on a pari passu basis.</p> <p>(iii) Proposed regulation contradicts the Insolvency and Bankruptcy Code (IBC) and that the IBC should be amended to align with the proposed regulation.</p> <p>(iv) Proposed regulations lack clarity and will create difficulties. As payment to a secured financial creditor cannot be at par with unsecured financial creditor, the proposal will create further complications.</p>	
G.	<p><b>Mandatory contents of resolution plan</b></p> <p>To streamline the resolutions and prevent delay in the implementation of the resolution plan, it is proposed that the resolution plan may be structured in two parts. Part A of the resolution plan shall</p>	27	<p><b>Favour:</b></p> <p>(i) The division of the resolution plan into two parts is considered a good approach.</p> <p><b>Suggestions:</b></p> <p>(ii) It is suggested that providing for an escrow account should not be mandatory</p>	The proposal has been held for further examination.

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	deal with the inflow i.e., payment under the resolution plan (total value of the resolution plan), payment of insolvency resolution process cost, payment schedule, feasibility and viability of the resolution plan etc. while Part B will deal with distribution to the various stakeholders.		<p>and should be in consultation with the CoC.</p> <p>(iii) Clarification is needed on when the CIRP period ends (approval of Part A or B) and who will bear litigation costs related to approval of Part B.</p> <p>(iv) Questions are raised about when an IP should demit office if there is litigation regarding distribution.</p> <p><b>Against:</b></p> <p>(v) Concerns are raised about the proposal of having a two-part resolution plan and separate approvals, suggesting it might lead to delays in CIRP.</p>	
Total	(including general comments and suggestions)	223		

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