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

In addition to the comments received on the portal, the division has received comments from IBA, IPAs, IPs, MCA, PHD Chamber of Commerce & Industry etc and such comments have also been considered.

Gist of Comments / Suggestions	Comments of the Division
Part 1: Change in timelines for activities under CIRP with respect to EOI, IM and avoidance transactions. **Comments in favour incl. concerns and suggestions: 17** **Comments against: 3** • The eligibility criteria cannot be determined without placing the Information Memorandum before the CoC. Current timeline may be continued. • Clarification may be brought in the CIRP Regulations providing that if a prospective resolution applicant wants to submit a resolution plan any time before the release of final list of resolution applicants, the said prospective resolution applicant should be allowed subject to the approval of the CoC • Timeline for issue of Form G may be kept on 50 days from the commencement of CIRP and minimum time of 30 days be given for submission of EOI as it will help in contacting large number of PRAs to evince interest in submission of EOI. A time of minimum 5 days be provided to issue Provisional list, another 5 days for objections if any and next 5 days to release Final List. Time line for submission of IM be linked to the release of Provisional List. PRAs	• The eligibility criteria would be the broad and does not require detailed information about assets of the CD. • The timelines for submission of resolution plans as prescribed by the CoC in the EoI and RFRP will be final. • The suggestion on including more details of the CD in Form G is proposed to be accepted. So that the PRAs have more information regarding the CD. This also does away with the need for a provisional IM. • In case of change of IRP to another RP or even becoming a deemed RP it is required to happen by 40th day. The timelines for issuance of EOI by 60th day may not be a challenge as the EoI requires only minimum details. • The suggestion regarding participation of prospective resolution applicants in the CIRP is outside the scope of this proposal. • 15 days timeline for submission of any EOI is reasonable as more time is allowed at time of submission of resolution plan. • The change in EoI and subsequent activities related to the receipt of resolution plans provide the asset more time in the market.

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will have to be provided IM and the date of submission of IM be 80th day from CIRP. • Change of IRP to RP is the only challenge. In case, COC decides to replace IRP with another IP, then the timeline may be contravened as the outgoing IRP may not get cooperation for all the steps • Prospective resolution applicants may hesitate in submission of EOI along with EMD without having information about assets, operations, capacity, past losses, etc. EOI should have this sort of information. The EOI format needs to be changed. • Regarding the submission of IM, it is suggested that a provisional/preliminary IM may be prepared and submitted to CoC at 54th day and the final IM may be shared with PRAs by 95th day. Accordingly, the IM may be split into two stages (Advisory Committee) • The RP is already occupied with so many other tasks and the timeline prior to the proposal, which is T+135, itself is not sufficient for the RP to gather evidence on avoidance transactions. Reduction of just 5 days may not yield the desired results as it is insignificant number • Amendment should rather provide that the avoidance applications shall be filed before the resolution plans are put to vote before the committee of creditors, which may help PRAs factor the value of the assets in their final submitted resolution plan • The timeline for Final List of Resolution Applicants shall be T +100 and not 105 as specified.	• The advancing of the timeline for filing of avoidance application is to enable the prospective resolution applicants to take into account such applications filed while proposing the resolution plan. **The proposal has been largely supported. Proposal has been considered with necessary changes. In enabling further improvements and incorporating relevant suggestions received, it is further proposed that Form G in the Schedule to CIRP Regulations be amended to provide for basic details of the CD.**
Part 2: Marketing of assets by the resolution professional **Comments in favour incl. concerns and suggestions: 20** **Comments against: 1** • Marketing of assets of the CD would require outsourcing and would also entail additional cost, a provision should be	• The various measures that can form part of the marketing strategy have been left open to the RP and CoC to enable them to address the case specific requirements.

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accompanied with a mandate on the CoC to consider and approve the additional cost. • Marketing strategies may also include hiring of advertisement and marketing agencies, social media activities e.g. bulk sms, bulk emails, portals for stressed assets, hiring of agencies who are engaged in M&A practice etc • The RP in consultation with CoC may decide on marketing strategy, which should preferably be confined to wide publicity through newspapers, industry journals and social media. • The proposal for preparing a marketing strategy should rather be based on the total asset value, as per the last audited balance sheet than the total claims or the liquidation value. • The Regulation should clarify if the preparation of marketing plan can be outsourced to another professional / advisory firm which is a specialized agency for the task. Further, in such case the cost of services of such firm should be specified as being part of CIRP costs.	• It has been accepted that the need for a strategy should be linked to the asset value instead of the value of claims. The revised proposal incorporates this suggestion, as it addresses situations where there is limited value of assets. However using the liquidation value is not workable as the same is available much later in the CIRP. **The proposal has been largely supported. Proposal has been considered with necessary changes.**
Part 3: Efforts for resolution of functional / operating parts of the CD **Comments in favour incl. concerns and suggestions: 13** **Comments against: 2** • The proposed amendment may be enacted by way of amendment to the Code and not Regulations. • The proposed formulation does not address the situations where EOI has come for few businesses while there is no resolution applicant for the other businesses or resolution plan submitted for any business is not compliant/acceptable to the CoC members. In such cases, what will happen to the assets/business for which there is no resolution applicant/ plan is not acceptable to CoC members	• The proposed amendment applies only to cases where an effort to resolve the CD as a whole has failed. The CoC has to re-issue the request for resolution plan to operationalise this provision. However, the timeline of the process remains unaltered. • The proposed formulation of regulation explicitly provides for resolution of assets of a CD in parts. However, it is also provided that the treatment for all the assets of the CD should be provided in the resolution plan to ensure that no part of the CD goes unaddressed. • In cases where there is more than one resolution applicant the specific allocation of shares, assets, tax concessions, relief between resolution applicants should be decided by the CoC.

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and whether such business will be pushed to liquidation. Further, whether status of the CD can be considered as 'resolved'. • How will the liabilities, tax concessions and reliefs will be distributed for the resolved business and unresolved business • How will this impact the real estate projects where some towers are acquired while others are not. Whether the assets may be sold through e-auction? • It may be clarified that even for resolving part assets, the voting of entire CoC would be required. If some assets or undertakings of the CD do not receive adequate interest from bidders, the RP and the CoC should have the liberty of liquidating such assets/undertakings if it leads to a higher overall realization of the assets/undertakings of the CD. • In cases where the committee decides to resolve part of the assets of the CD, extension of timeline of CIRP will be required as the entire process will have to be started afresh • It is suggested that such part resolution may be considered in the beginning itself at EOI stage so as to save time and the mechanism regarding the same should be captured in the initial request for resolution plan itself rather than having to wait. This proposal would also require an amendment to the definition of 'resolution plan' as the present definition requires the CD to be resolved as 'a going concern' only • If separate resolution plans are being invited for different assets/ business of the CD then the liability of the resolution applicant shall be several and restricted to obligations under their own resolution plan only.	• The different measures that can form part of such part resolutions has not been prescribed for in order to ensure that the market commercial wisdom is not restricted. • The proposal does not change the decision making of the CoC or the voting threshold or the timeline for approval of resolution plans. **The proposal has been largely supported. Proposal has been considered with necessary changes.**
Part 4: Guiding factors for the CoC to decide on early liquidation **Comments in favour incl. concerns and suggestions: 7** **Comments against: 1**	• The proposed amendment provides few factors that may be used by the CoC as guidance for making the decision of early decision.

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• Section 33(2) of the Code empowers the CoC to resolve for liquidation of the CD at any time after its formation but before the confirmation of resolution plan. Legally there is no challenge. • Instead of adding regulation, IBBI may consider introducing the factors as general guidelines • CoC may record the reasons for early liquidation • Adding regulation may increase chances of a CIRP where though the CD is defunct or non-operational but a viable resolution plan has been received which has been approved by the CoC being challenged. • Lack of tangible assets should also be one of the parameters for deciding on early liquidation. • An account which is a non-performing asset for more than one year; an account where banks have provided for more than 50% provisioning in terms of the RBI's master circular on income recognition, asset classification, provisioning and other related matters may be included. • Will help NCLT to take informed decisions and avoid delays on account of lack of information	• The application of this provision is not mandatory in any situation and is left to the commercial decision of the CoC. • Parameters like lack of tangible assets have been incorporated while those related to measures from the banks NPA status have not been considered as they are not relevant under the CIRP. • The proposed amendment provides that the CoC record the reasons for deciding on early liquidation in the application to the Adjudicating Authority. **The proposal has been largely supported. Proposal has been considered with necessary changes.**
Part 5: Exploring compromise or arrangement after CoC approves liquidation **Comments in favour incl. concerns and suggestions: 10** **Comments against: 1** • Duty is cast on RP to explore proposal of compromise or arrangement, the fee of the RP of earlier tenure should continue during the period when the application is pending before the AA for approval for liquidation order and the fee needs to be specified in the Regulation.	• The RP and the CoC will explore the option of a compromise/arrangement during the period they await the order for liquidation. • This does not affect the period of CIRP or the fee applicable to the RP during the CIRP. • The amendment only enables the RP and CoC to explore the option, while the actual compromise/arrangement can be implemented only in the Liquidation process • This is guided by the Liquidation Regulations which are subject to Section 29A. Hence the question of allowing

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• The intermediate time is an uncertain time and thus will have different situation in different cases. It may not be possible to maintain uniformity. The regulations should be discretionary. • Activities relating to sale of company as going concern (such as floating EoI, Valuation exercise, diligence by prospective interested parties etc) can be also initiated during the period when approval on the Liquidation is pending approval of the NCLT. • It may be noted that the compromise or arrangement with existing promoters of the CD is not permitted and persons ineligible to propose a resolution plan under section 29A of the Code. • The actual process of comprise/arrangement under section 230 takes place only after the liquidation order is passed by NCLT. Persons ineligible to propose a resolution plan under section 29A of the Code cannot offer a compromise or arrangement deal under section 230. • A compromise or arrangement may be proposed either by the creditors of the company or the members of the company. However, the recent trend has been to invite a scheme of compromise/arrangement in respect of a company under liquidation, from third parties also by publishing an announcement to this effect in the newspaper. Clarity is needed on whether such a move is permissible.	section 29A ineligible parties through this route does not arise. • The matter of allowing third party proposals under the Companies Act is beyond the ambit of this proposal. **The proposal has been largely supported. Proposal has been considered with necessary changes.**
Part 6: Contents of Information Memorandum (IM) **Comments in favour incl. concerns and suggestions: 11** **Comments against: 1**	• The proposed amendment improves the quality of the IM by including information that is relevant to the market. • There is no prescription with regards to the use of external/expert assistance in preparation of the IM in the proposed amendment, since it would depend on the case specific condition and hence may be decided by the CoC and RP.

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• RP may not have expertise to evaluate the proposed parameters and thus, need to engage suitable external experts for assistance. This further increases the CIRP costs. • The IM ought to contain all the details based on available records and documents. Projected business plans are forward -looking assumptions based on various factors and may be quite subjective and may result in lot of litigations. • A sub-regulation must be added to the effect that the RP must circulate the IM to the members of the CoC for the purpose of obtaining their inputs before finalising the IM • It is suggested that the words wherever possible be added in the Regulation. • The contingent liabilities of the corporate debtor may also be included.	• The suggestion that any information that may be of a subjective nature or involve projections/estimates for the future, prone to litigation should not be mandated as part of the IM. • The details of the contingent liabilities may be included as part of IM, as this will give better picture of all liabilities to the prospective resolution applicant. **The proposal has been largely supported. Proposal has been considered with necessary changes.**
Part 7: Dealing with asset provided through a personal guarantor as part of the CIRP of the CD **Comments in favour incl. concerns and suggestions: 9** **Comments against: 4** • Related party might be a separate legal entity and the land might carry a second charge (subordinate charge) for the loans acquired by the related party entity. In case of initiation of insolvency proceedings against such related party, the legal entity would not be left with any assets, and this might hamper the prospects of successful resolution of the entity. • Assets provided through a personal guarantor should be kept separate from the CIRP Process of the CD	**The concerns raised by stakeholders indicate both legal and operational challenges to implementing such an amendment in the Regulation, which may require further examination. The proposal will be taken up for further examination.**

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• The asset belonging to the promoters/guarantors is a 3rd party asset vis-à-vis the CD and does not form part of the liquidation estate under Section 36 of the IBC. • Relinquishment of the asset or the mortgage by the mortgagee / charge holder by itself will not vest the property in the CD and such relinquishment would only result in the rights over the said asset being vested again with the promoters / guarantors. This would resultantly require the mortgagor i.e. the promoter / guarantor's consent for transfer of the property to the CD. • If issue is addressed then major obstacles to obtaining resolutions are sorted but there are issues in obtaining consent (stage at which consent is obtained etc.) • In real world transfer of the right to use is a subject of litigation in many on-going cases and should not be legislated upon. • The term "resolution estate" used in the proposed Regulation 36(2)(fa) has not been used anywhere in the Code or the regulations. • It is suggested that the scope may be widened to include all Group Companies of the CD so that meaningful resolution of CD takes place. • If the asset provided by the personal guarantor is securing debt availed by two separate CDs or is used to secure the debt of the CD along with certain other debt availed by the personal guarantor, then how will such asset be dealt with.	
Part 8: Geo-tagging of immovable assets **Comments in favour incl. concerns and suggestions: 6** **Comments against: 0**	Geo-tagging of immovable assets will enable easier location of the immovable assets for the benefit of the all stakeholders including prospective resolution applicants.

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• The words wherever possible is not mentioned in the proposed Regulation. The same needs to be suitably included in the Regulation. • It should be responsibility of the promoters / Board of directors of the CD to provide first level base Fixed Assets register to the RP within 14 days of the commencement of the CIRP.	Regarding fixing the responsibility of providing information by directors/promoters, the same is already provided under the 'Code'. **The proposal has been unanimously supported. Proposal has been considered with necessary changes.**
Part 9: Discussion of valuation report with CoC **Comments in favour incl. concerns and suggestions: 11 Comments against: 2** • Possibility of unfair advantage to the members of CoC who intend to be a resolution applicant. • Allowing access of the valuation reports to the CoC before the resolution plan is submitted could lead to misuse of liquidation value and breach confidentiality. • Regulation 35(2) is still proposed to continue as such which starts with the words "after the receipt of resolution plans in accordance with the Code and the regulations". Therefore, there may be confusion about the time when the actual value of the assets would be shared with CoC members. • The meeting of CoC is also attended by the representatives of CD, hence any discussion of the valuation ought to be confidential and members of CD ought not to attend such meeting. • The proposed regulation is based on an erroneous consideration that the CIRP Regulations expressly provide for valuation report to be shared with the CoC, when the resolution plans have been received. However, it is only the fair value and liquidation value	**The concerns raised by stakeholders indicate several operational challenges and possibility of contradictions within the provisions of the regulations. The proposal will be taken up for further examination.**

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which is required to be shared with CoC but not the valuation report. • The CoC would not have the technical expertise to provide any value addition to the same. In fact, the requirement to present draft report to the CoC would cause unwarranted delay in the CIRP.	
Part 10: Need for repeating the valuation exercise **Comments in favour incl. concerns and suggestions: 6** **Comments against: 0** • The recommendation must be placed before the COC and voted upon. • It may be specified that the calculation of such period includes the excluded time of CIRP granted by the AA. • The CoC may be given the option to repeat valuation exercise if the period exceeds one year • It may be noted that there are 3 timelines (180/270/330 days) provided under Section 12 of the Code, therefore, clarity is needed as to which timeline is being referred to.	**Concerns raised by stakeholders indicate operational challenges to implementing such an amendment in the Regulation, which may require further examination. The proposal will be taken up for further examination.**
Part 11: Status of the CoC after approval of the resolution plan by the CoC **Comments in favour incl. concerns and suggestions: 8** **Comments against: 0** • The purposes for which a meeting of the CoC can be convened after approval of the resolution plan by the CoC and before the approval by Adjudicating Authority, should be limited and should be specifically enumerated. • There are instances where certain dissenting financial creditors litigate against the RP and the rest of the CoC and thus, such	The proposed amendment attempts to clarify the requirement already placed by the Regulation that CoC meetings shall be conducted during the period between approval of resolution plan by the CoC and approval by the AA. Other provisions relating to CoC meetings remain unaffected. **The proposal has been unanimously supported. Clearly the benefits outweigh the costs.**

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dissenting financial creditors should be kept out of the CoC after the approval of the plan by the CoC.	
Part 12: Minimum entitlement for dissenting financial creditors **Comments in favour incl. concerns and suggestions: 8** **Comments against: 2** • The Board should consider the value, priority and exclusivity of the security held by the dissenting financial creditors while proposing a formula for determination of amounts to be paid such creditors. • The proposed changes are not clear and difficult to implement. • One way to deal with the issue is to conclude that the Resolution Amount in the Resolution Plan for FCs be deemed the amount it could get maximum during Liquidation, since actual liquidation will add further costs, on account of liquidator and legal fees, depreciation of assets etc. Hence, in the Resolution plan which is approved with minimum of 66% of members in the Voting share, the dissenting FCs should get the same amount as assenting FCs. • Recommendation that the minimum amount payable to the dissenting financial creditors should be based on the lower of the resolution amount or the liquidation value.	**The concerns raised by stakeholders indicate both legal and operational challenges to implementing such an amendment in the Regulation, which may require further examination. The proposal will be taken up for further examination.**
Part 13: Process email **Comments in favour incl. concerns and suggestions: 7** **Comments against: 1** • Handing over credentials of the email account would not be operationally feasible given organizational privacy rights to domain names. In case, it is used then the control on the domain	The proposed amendment enables smooth transition and transfer of information between insolvency professionals who handle different roles in a CIRP and liquidation. The IPs may use such emails and technologies that permit such transfer. **The proposal has been largely supported. Proposal has been considered.**

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name would remain with the erstwhile RP and the information can be compromised. • The IRP/RP may be mandated to auto-forward such mails at the time of replacement to the RP/Liquidator.	
Part 14: Need for IRP /RP to communicate to call creditors to submit claims **Comments in favour incl. concerns and suggestions: 10** **Comments against: 1** • Promoters of the CD should be directed to provide information regarding creditors within a certain timeline to enable the IRP to communicate with Creditors for submission of claims. • Possibility of litigation may increase if RP fails to send notice to any creditor due to lack of records or any other reason. • The IRP/RP/Liquidator may check with the IU for the list of creditors with the CD to communicate with them regarding the submission of claims • Alternatively, an amendment which allows the RP to admit claims as per the latest audited books of accounts of the CD may be done. • The words "or information received from any other source as the case maybe" appearing in the explanation to the proposed Regulation 6A may be omitted as the same may lead to filing of multiple false/fake claims.	• The amendment enables the IP to communicate to creditors where information is available. If communication is not possible then the public announcement serves as such the notice. • Regarding the suggestion for inclusion of claims based on audited financial statements, such amendment might not cater the circumstances where the books of accounts is not available or where there is any updation of claim. **The proposal has been largely supported. Proposal has been considered incorporating relevant suggestions.**