INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

Discussion Paper

Subject – Strengthening safeguards in the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors

Chapter III of Part III of the Insolvency and Bankruptcy Code, 2016 (**IBC** / **Code**) provides for the insolvency resolution process of personal guarantors to corporate debtors, implemented through the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (**IRP Rules**) and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (**IRP Regulations**).

2. A review of this framework alongside the corresponding framework for corporate insolvency resolution process (CIRP) under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), and, in the case of valuation, the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and the IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (PGB Regulations), shows four specific respects in which the safeguards available to creditors of a corporate debtor in CIRP have no counterpart in the insolvency resolution process of a personal guarantor, even though the underlying concern in each case is identical regardless of whether the debtor is a company or an individual. This discussion paper accordingly proposes calibrated amendments to the IRP Regulations, on the following four matters:

(a) Exclusion of related parties of the guarantor from voting on the repayment plan

(b) Identification and reporting of avoidance transactions (preferential, undervalued, fraudulent, and extortionate credit transactions) in the insolvency resolution process of the debtor

(c) Valuation of assets of the personal guarantor in the resolution process

(d) Recording of creditors' deliberations on the repayment plan

3. Public comments: The Board accordingly solicits comments on the proposals and the draft regulations proposed in this Discussion Paper. After considering the comments, the Board proposes to make regulations under section 196 read with section 240 of the Code. The process for submission of comments is provided at Page 9.

4. The last date for submission of comments is **3rd October, 2026.**

Proposal 1 – Exclusion of related parties of the personal guarantor from voting on the repayment plan

Statement of Problem

Under CIRP, a "related party" of the corporate debtor has no right of voting in the committee of creditors. Similarly, an "associate" of the personal guarantor is barred from voting under the insolvency resolution process of personal guarantors. However, the definition of "associate" is much narrower compared to the definition of "related party". For instance, a company that habitually acts on the guarantor's advice or instructions, without the guarantor holding any shares in it or otherwise controlling its board, would qualify as a "related party" even though it would fall outside the definition of "associate".

2. A related party may accordingly vote on the repayment plan notwithstanding that the very plan on which it votes determines the extent to which the guarantor is discharged from his debts. The underlying concern—that a party connected to the debtor should not be permitted to influence a vote on a matter from which its connected debtor stands to benefit—is equally applicable in both contexts. This proposal seeks to rectify this anomaly.

Proposed Solution

3. Section 109(2) of the Code itself provides that the voting share of each creditor shall be determined "in the manner specified by the Board", and clause (zq) of sub-section (2) of section 240 of the Code specifically empowers the Board to make regulations on this manner. Accordingly, it is proposed that the Board specify that a related party of the guarantor, as defined in section 5(24A) of the Code, shall be assigned a "Nil" voting share. It is further proposed that the list of creditors prepared by the resolution professional separately indicate whether a creditor is a related party of the guarantor.

Draft Amendment

5. Accordingly, it is proposed to amend the IRP Regulations as under:

(a) In regulation 9, in sub-regulation (1), after the words "amount claimed, amount admitted and security interest, if any, in respect of such claims", the words ", and shall separately indicate against each creditor whether such creditor is a related party of the guarantor as defined in clause (24A) of section 5 of the Code" shall be inserted.

(b) In regulation 11, in sub-regulation (2), the following proviso shall be inserted, namely:- "Provided that the voting share of a creditor who is a related party of the guarantor, as defined in clause (24A) of section 5 of the Code, shall be Nil."

Proposal 2 – Identification and reporting of avoidance transactions (preferential, undervalued and extortionate credit transactions) in the insolvency resolution process of the debtor

Statement of Problem

Sections 164, 165 and 167 of the Code enable a bankruptcy trustee to apply to the Adjudicating Authority for orders in respect of avoidance transactions – namely, undervalued transactions, transactions giving preference, and extortionate credit transactions – entered into by a bankrupt within specified look-back periods. Section 164A further empowers the Adjudicating Authority to reverse an undervalued transaction, and protect the interests of victims, where it is satisfied that the transaction was deliberately entered into by the debtor to defraud his creditors.

2. During the insolvency resolution process that precedes bankruptcy, the stage at which the guarantor's repayment plan is formulated, disclosed to creditors, and put to a vote, the resolution professional is under no corresponding obligation to examine whether any such transaction has taken place, even though the existence of such a transaction bears directly on the value actually available to creditors and on whether the guarantor has made full and honest disclosure of his affairs.

3. By contrast, under CIRP, the CIRP Regulations require the resolution professional, while presenting a resolution plan to the committee of creditors, to also place before it the details of any preferential transactions (section 43), undervalued transactions (section 45), extortionate credit transactions (section 50) and fraudulent transactions (section 66) observed, found or determined by him, so that the committee's vote is an informed one. No equivalent requirement presently exists for the insolvency resolution process of personal guarantors, even though the risk that value is eroded through such transactions shortly before insolvency is no different merely because the debtor is an individual rather than a company.

Proposed Solution

4. Accordingly, it is proposed that the resolution professional be required, during the insolvency resolution process of a personal guarantor as well, to examine whether the guarantor has been party to a transaction of the nature referred to in section 164 (undervalued transactions), section 164A (transactions defrauding creditors), section 165 (preference transactions) or section 167 (extortionate credit transactions) of the Code, and to record his findings, along with supporting particulars, for consideration by creditors before they vote on the repayment plan. It is further proposed that the resolution professional be enabled, with the approval of the creditors, to take such action in respect of any such transaction as a bankruptcy trustee could take under the corresponding section – bringing this power forward to the stage at which it can still meaningfully affect the value available to creditors under the repayment plan, instead of only after a bankruptcy order has been passed.

Draft Amendment

5. In the IRP Regulations, after regulation 10, the following regulation shall be inserted, namely:-

> *"**10A. Identification and reporting of avoidance transactions**.*
> *(1) The resolution professional shall examine and record whether the guarantor has been a party to a transaction referred to in section 164, section 164A, section 165 or section 167 of the Code, and shall place his findings, along with supporting particulars, before the meeting of creditors.*
>
> *(2) For the purposes of sub-regulation (1), sections 164, 164A, 165 and 167 of the Code shall apply as if references therein to "bankruptcy", "the bankruptcy process", "the application for bankruptcy" and "the bankruptcy commencement date" were references, respectively, to "the resolution process", the application under section 94 or section 95 of the Code, and "the resolution process commencement date".*
>
> *(3) Where the resolution professional identifies a transaction referred to in sub-regulation (1), he shall take such action as is provided under section 164, section 164A, section 165 or section 167 of the Code, as applicable, in relation to such transaction, as he would have been entitled to take had a bankruptcy order been passed in respect of the guarantor."*

Proposal 3 – Valuation of assets of the personal guarantor in the resolution process

Statement of Problem

The IRP Regulations do not presently provide for valuation of the assets or properties of the personal guarantor (guarantor) as part of the insolvency resolution process. Valuation is, however, an integral component of insolvency proceedings under the Code, and is specifically contemplated under the frameworks applicable to CIRP, liquidation proceedings, and also the bankruptcy process for personal guarantors to corporate debtors.

2. Under regulation 27 read with regulation 35 of the CIRP Regulations, the resolution professional is required to appoint registered valuers, within specified timelines, to determine the fair value and the liquidation value of the corporate debtor, which are placed before the committee of creditors for evaluation of resolution plans.

3. No equivalent requirement exists at the resolution process stage of a personal guarantor.In the absence of an independent valuation, creditors may not have latest objective basis on which to assess the adequacy of the security offered, the reasonableness of the repayment proposed, or the recovery that would alternatively be available to them in a bankruptcy process.

Proposed Solution

4. Accordingly, it is proposed that the resolution professional be required to appoint a registered valuer to determine the fair value and the realisable value of the assets of the guarantor, in accordance with such valuation standards as may be notified by the Board. The fair value, the realisable value and the valuation report should be placed before the creditors, along with the repayment plan, for their consideration. This would enable creditors to make an informed and commercially prudent assessment of the adequacy of the proposed security, the overall viability of the repayment plan, and the potential recovery available from the assets of the guarantor, and would furnish an objective basis for the reasoned assessment proposed under Proposal 4 below.

Draft Amendment

5. In the IRP Regulations, after regulation 10A, the following regulation shall be inserted, namely:-

> *"**10B. Valuation of assets of the guarantor**.*
> *(1) The resolution professional shall appoint a registered valuer to determine the fair value and the realisable value of the assets of the guarantor, in accordance with such valuation standards as may be notified by the Board through circular.*
>
> *(2) The registered valuer appointed under sub-regulation (1) shallsubmit to the resolution professional the fair value and the realisable value of such assets, along with a valuation report, within such time as may be specified by the resolution professional, and in any event before the repayment plan is placed before the meeting of creditors under regulation 17A.*

3) The resolution professional shall place the fair value, the realisable value and the valuation report before the meeting of creditors convened for consideration of the repayment plan under regulation 17A."

Proposal 4 – Recording of creditors' deliberations on the repayment plan

Statement of Problem

Under regulation 15 of the IRP Regulations, the resolution professional takes a vote of creditors on the repayment plan and prepares minutes recording the names of creditors who voted for, against, or abstained. As present, there is no specific requirement that the substance of the creditors' own assessment of the plan – as to (i) whether they consider it feasible and viable, and (ii) where it offers a very limited recovery, why they nonetheless consider it preferable over a bankruptcy process, be mandatorily recorded in the minutes of meeting.

2. This requirement is mandated under regulation 39(3)(b) of the CIRP Regulations. However, no equivalent requirement exists for the vote of creditors on a repayment plan under the IRP Regulations.

3. The repayment plan of a personal guarantor has a direct bearing on the extent of recovery available to creditors. Approval of the plan should be supported by a reasoned commercial assessment by the creditors of the plan on its merits.

Proposed Solution

4. Accordingly, it is proposed that the resolution professional be required to record, in the minutes of the meeting of creditors, the deliberations of the creditors and the reasons for their decision on the repayment plan. In arriving at such reasons, creditors should have regard, inter alia, to the amount of claims admitted and the amount proposed to be paid under the repayment plan; the duration of the repayment plan and the certainty of the payments proposed thereunder; the assets and liabilities of the guarantor, including the fair value and the realisable value of his assets as determined under Proposal 3 above; the income and future repayment capacity of the guarantor; and any transaction or conduct of the guarantor bearing on the recovery available to creditors, including diversion, concealment or dissipation of assets, and any transaction identified under regulation 10A (Proposal 2 above).

5. Where the amount proposed to be paid to creditors under the repayment plan is significantly lower than the amount of their admitted claims or the estimated realisable value of the assets of the guarantor, the creditors should specifically record the commercial rationale for considering approval of the repayment plan as a better alternative to the decision of initiation of a bankruptcy process. This requirement would promote transparency, accountability and informed decision-making by creditors, and would ensure that approval of a repayment plan rests on an objective assessment of the recovery prospects reasonably available to them.

Draft Amendment

6. It is proposed to insert the following sub-regulation in regulation 15 of the IRP Regulations, after sub-regulation (2):

> *"(2A) The resolution professional shall record the deliberations of the creditors and the reasons for their decision, in the minutes of the meeting prepared under sub-regulation (2), having regard, inter alia, to –*

(a) the amount of claims admitted and the amount proposed to be paid to creditors under the repayment plan;

(b) the duration of the repayment plan and the certainty of the payments proposed thereunder;

(c) the assets and liabilities of the guarantor, including the fair value and the realisable value of his assets as determined under regulation 10B;

(d) the income and future repayment capacity of the guarantor;

(e) any transaction or conduct of the guarantor having a bearing on the recovery available to creditors, including any transaction referred to in regulation 10A; and

(f) the feasibility and viability of the repayment plan:

Provided that where the amount proposed to be paid to creditors under the repayment plan is significantly lower than the amount of their admitted claims or the estimated realisable value of the assets of the guarantor, the resolution professional shall specifically record the reasons of the creditors for considering the repayment plan preferable to a bankruptcy process."

*****

Process for submission of Public Comments

The comments may be submitted electronically by **3rd October, 2026**. For providing comments, please follow the process as under:

i. Visit IBBI website at www.ibbi.gov.in ;

ii. Select '**Public Comments**', then select '**Strengthening safeguards in the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors**'

iii. Provide your Name and Email-ID;

iv. Select the stakeholder category, namely, -

a. Corporate Debtor;
b. Personal Guarantor to a Corporate Debtor;
c. Proprietorship firms;
d. Partnership firms;
e. Creditor to a Corporate Debtor;
f. Insolvency Professional;
g. Insolvency Professional Agency;
h. Insolvency Professional Entity;
i. Academics;
j. Investor; or
k. Others.

v. Select the kind of comments you wish to make, namely,

a. General Comments; or
b. Specific Comments.

vi. If you have selected 'General Comments', please select one of the following options:

a. Inconsistency, if any, between the provisions within the regulations (intra regulations);
b. Inconsistency, if any, between the provisions in different regulations (inter regulations);
c. Inconsistency, if any, between the provisions in the regulations with those in the rules;

d. Inconsistency, if any, between the provisions in the regulations with those in the Code;
e. Inconsistency, if any, between the provisions in the regulations with those in any other law;
f. Any difficulty in implementation of any of the provisions in the regulations;
g. Any provision that should have been provided in the regulations, but has not been provided; or
h. Any provision that has been provided in the regulations but should not have been provided.

And then write comments under the selected option.

vii. If you have selected 'Specific Comments', please select Proposal No. on which you want to give the comment, and write comments under the selected Proposal No.

viii. You can make comments on more than one Proposal, by clicking on more comments and repeating the process outlined above from point (v) onwards.

ix. Click 'Submit' if you have no more comments to make.

******