

Discussion Paper on “Review of Redressal and Enforcement Mechanism”

This paper seeks to review the grievance redressal and enforcement mechanism for the service providers registered with the Insolvency and Bankruptcy Board of India (IBBI/Board). The present mechanism of complaint/grievance redressal and subsequent enforcement action is resulting in the delay of enforcement process. In addition, the mechanism puts undue burden on the service providers, as they need to submit responses multiple times on a single issue. Therefore, it is imperative to redesign the framework to make it effective in terms of grievance redressal and efficient in terms of time taken. The proposed framework seeks to achieve the objective of an effective and time bound redressal of the complaint/grievance filed by the stakeholders.

2. Present Enforcement Mechanism in IBBI

2.1 Section 217 of the Insolvency and Bankruptcy Code, 2016 (Code) allows any person, aggrieved with any compelling issue, to file a complaint against the service provider(s), which *inter-alia* includes insolvency professionals (IPs), insolvency professional agencies (IPAs), and information utilities (IUs). In furtherance of same, IBBI notified the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 [GCHP Regulations] which provides procedure/manner of filing and disposal of complaints and grievances with IBBI.

2.2 Sources of Complaints & Grievances: In terms of the GCHP Regulations, a complaint may be filed with a payment of Rs. 2500 in Form-A provided under the said regulation. The GCHP Regulations also allow for filing of a grievance without any fee. IBBI has developed a fully online portal enabling the stakeholders to file and then track the status of their complaints/grievances. Other sources of complaints/grievances are: (a) CPGRAMS Portal; (b) references received from other authorities; and (c) emails/letters from stakeholders.

2.3 Process for Handling Grievances/Complaint: A few grievances are being forwarded to the concerned IPA for appropriate redressal. For other grievances and complaints, the Board seeks clarification and reply from the concerned service provider on the allegations levied, for his para wise inputs. Based on the reply of the service provider, allegations raised in the complaint/grievance are examined. After the examination of the complaint/grievance, a prima facie opinion is formed whether there exists a prima facie case against the service provider. The fee of Rs. 2500 is refunded to the complainant if the complaint is not frivolous. The outcome of the complaint is also communicated to the complainant. In case, the complainant is not satisfied with the outcome of the complaint or decision of the Board, the complainant may also prefer review of the decision of the Board. The said review is required to be disposed of with a reasoned order within 30 days.

2.4 Inspection and Show-Cause Notice: In case, Board observes prima-facie contravention by the service provider, it conducts inspection of the service provider for detailed scrutiny. Board has also notified Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 [Inspection Regulations] for conducting inspections and investigations. These processes are generally very exhaustive and cover all the compliances with applicable provisions of law. The draft report of inspection is shared both with the service provider and the Board before finalization to mitigate any chances of mistakes/omissions. After considering

the findings of the inspection/investigation, Board issues a show cause notice (SCN) to the service provider, if any violation of the provisions of the law has been found. In cases, where no adverse observations are made in the inspection/investigation report, the Board closes the said inspection/investigation. When a SCN is issued to an IP, he is barred from undertaking any fresh assignment.

2.5 Disciplinary Committee: In case, a show cause notice is issued, the service provider is asked to make a written submission in his defense. The matter is then referred to the Disciplinary Committee (DC) of the Board. The DC after considering the show cause notice and representation made by the service provider, disposes the show cause notice within 180 days through a reasoned order after providing an opportunity of a personal hearing to the service provider. The order passed by the DC may provide for cancellation/suspension of registration, imposing monetary penalty or any other penalty, issue warning, or any other action deemed appropriate. DC also has the option to dispose of the matter without any directions.

3. Issues in the present Mechanism:

3.1 Inconvenience to Service Provider: Present mechanism mandates a service provider to submit reply/clarifications on the following stages:

- i. At the stage of examining the complaint/grievance;
- ii. To the Inspecting/Investigating Authority during the Inspection;
- iii. At the time of reply to Draft Inspection Report;
- iv. Reply to SCN; and
- v. During personal hearing before DC.

This process of repetitive submissions, results in the inconvenience to the service provider, since the entire process largely involves submissions of replies to the allegation levelled at various stages and could be an additional cost on the service provider. Also, in case of an IP, it is highly probable that the stakeholders make complaint to both the Board and the concerned IPA, and the IP is made to respond to both the regulators, which further enhances the inconvenience and cost.

3.2 Non-effective participation of IPAs in regulating IPs: The insolvency profession has a two-tier regulatory architecture, IBBI as the principal regulator, and the IPAs as frontline regulators. IPAs monitor the conduct and performance of their members, i.e., IPs and also initiate appropriate action against their members who do not comply with the provisions of the Code/regulations. Presently, enforcement mechanism of IPAs is not yielding as envisaged by the framers of Code. Accordingly, there is a need to further develop and strengthen the enforcement mechanism in line with anticipated framework.

3.3 Delay in enforcement mechanism: At present, enforcement mechanism of handling complaint/grievance is time consuming and therefore slow. Delays in the enforcement action is detrimental to the interest of stakeholders, leaves the stakeholders unsatisfied, and deprives the other service providers of a chance to observe the contraventions held and actions taken by the Board and learn from mistakes committed by fellow service providers.

3.4 Continuation of assignment after the DC order: In present mechanism, in most cases, the service provider continues its current assignments, despite the adverse penalty imposed by the DC. Even, in the cases where the DC suspends or cancels the registration of the service provider, it may, if it considers fit, require the service provider to continue its function till such time as may be directed. This provision may in a way annul the effect of the stringent action taken and potentially result in contradictory messaging among the stakeholders.

4. As per the principle of proportionality, a public authority ought to maintain a sense of proportion between its intended goals and the means it employs to achieve those goals, so that its action impinges on the individual rights to the minimum extent to preserve the public interest. With the emergence of new issues, need is felt to further strengthen the enforcement framework of service providers in terms of accountability of IP. In order for balancing the interest of all the stakeholders, there is a requirement to incorporate a much efficient and prompt mechanism specifically for the IPs. In view of the same, the discussion paper proposes the following four amendments to the enforcement mechanism:

A: Enabling Provisions in Regulations for enlarging the scope of Insolvency Professional Agencies (IPAs) with respect to enforcement of IPs.

5. The insolvency profession has a two-tier regulatory architecture; IBBI as the principal regulator, and the Insolvency Professional Agencies as frontline regulators. IPAs monitor the conduct and performance of their members and also initiate appropriate action against their members who do not comply with the provisions of the Code. The Board has mandated that an insolvency professional (IP) shall obtain Authorisation for Assignment (AFA) from the IPA before accepting or undertaking any assignment as interim resolution professional, resolution professional, liquidator, bankruptcy trustee, authorised representative or in any other role under the Code. The provisions of the Code read with the relevant regulations, empower the IPAs to initiate the disciplinary proceedings and even impose monetary penalties. Under the following provisions IPAs are already taking such actions.

Provision in Code and Regulations:

6. IPA is a front-line regulator for insolvency professionals. As per section 204 of the Code, primary function of the IPA is as follows:

- a) Granting membership to insolvency professionals.
- b) **Lay down standards of professional conduct to its members.**
- c) **Monitor performance of members.**
- d) Safeguard rights, privileges, and interests of insolvency professionals.
- e) **suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws.**
- f) **redress the grievances of consumers against insolvency professionals who are its members, and.**
- g) Publish information about its functions, list of members, and performance of its members.

7. For the effective implementation of the above provisions, IBBI has framed Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 which *inter-alia* have provisions for monitoring of members, grievance redressal mechanism and disciplinary proceedings against the members.

8. Therefore, the IPAs have the prime responsibility for monitoring the conduct and performance of their members, and they are empowered to take appropriate action against their members who do not comply with the provisions of the Law. The legal framework suggests that complaints against the IPs are to be handled by the IBBI, while the grievances of the stakeholders, should be addressed by the IPAs. To streamline this process, it is proposed that:

- i. The Complaints may be handled by the IBBI. The reviews arising out of such complaints may also be handled by the Board; provided the review is preferred by the complainant within 30 days of disposal of the complaint.

- ii. As the Primary responsibility of handling grievances rest with the IPAs, therefore, Board, may forward such grievances, as it feels deemed necessary, to the concerned IPA for appropriate disposal. Nevertheless, the Board in the course of its monitoring, may dispose such grievances directly, which relate to gross violation of the provisions of the Code/regulations.
- iii. Such grievances falling in the nature of suggestions for amendment in the Code/regulations may also be disposed by the IBBI.
- iv. The Board shall monitor the disposal by the IPAs. Any reference arising out of dissatisfaction from disposal by IPA shall also be handled by the Board.

B: Considering the examination of a complaint/ grievance on the basis of clarifications/ records as investigation:

9. The complaints and grievances contain certain facts about the conduct of service provider. To discover the veracity of the facts, Board seeks clarifications/records from the service provider. Thereafter, Board examines the facts provided by the complainant as well as clarifications/records provided by the service providers to establish the truth behind the allegations. There are instances where the contravention is established on the basis of material already available on record. Conducting a further inspection/investigation in such cases results in the delay of enforcement action. In addition, this also puts additional burden and inconvenience to the service provider.

10. It is proposed that the said examination of a complaint/grievance on the basis of clarifications/records from the service provider may be akin to investigation for initiating further action. Board will investigate the complaints or grievances by examining the allegations raised by the complainant as well as the clarifications/records from the service provider. In case the:

- a. Board is in position to form an opinion that there exist a *prima facie* case and the contraventions are *prima-facie* established, Board will issue a SCN to the service provider.
- b. Board has formed an opinion that there exists a *prima facie* case, however, the act or omissions are not supported by the documents, Board shall constitute an investigating authority to conduct an investigation and submit its report within 30 days. The Board shall consider the investigation report and issue SCN, if *prima-facie* contraventions are observed against the service provider.

C: Intimation to members of the CoC/Adjudicating Authority about the outcome of DC order.

11. The IP is appointed to the process with the approval of committee of creditors (CoC)/AA, and the decision to remove him or retain him after the order of DC should generally rest with it only. However, it will be in the interest of stakeholders, if the order is brought to the notice of AA and / or the members of the CoC by the Board, so that they may take an informed decision either to retain the IP /or replace him considering *inter-alia* the graveness of violations, and stage of that process.

D: Revision in various timelines related to enforcement provided in the regulations:

12. The Board has reviewed the various timelines with some update in the internal mechanism for handling of the matters in the interest of timely completion of the enforcement actions. The following revisions in timelines are hereby proposed in the regulations:

Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017:

S. No.	Regulation Number	Activity	Present Timeline	Proposed Timeline
1.	6(2)	Aggrieved and the service provider shall submit the information and records sought for disposal of grievance	15 days	7 days
2.	6(3), 6(4) and 7(3)	Time period for disposal of grievance/complaint by the Board	45 days	30 days
3.	7(2)	Complainant and the service provider shall submit the information and records sought for disposal of complaint	15 days	7 days
4.	7(5)	Request for review by complainant in the event of non-satisfaction with decision of Board	NA	30 days

Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017:

S. No.	Regulation Number	Activity	Present Timeline	Proposed Timeline
1.	12(3)	Time provided in show-cause notice to Noticee to make written submission	21 days	15 days
2.	13(2)	Disposal of show-cause notice by Disciplinary Committee	180 days	35 days

Rationale

13. A draft of both the amendment regulations is given as **Annexure-A** and **Annexure-B** respectively. A time bound enforcement mechanism will have a positive impact on transparency of the institution and stakeholder confidence. Further, a delay in enforcement mechanism may sometimes result in litigation which involves an additional cost on the service provider as well as the Board. Therefore, an effective enforcement mechanism will reduce the said litigation. Further an effective and time bound enforcement mechanism will also strengthen trust of the stakeholders in the process and the same may also result in increased stakeholder participation in the process. This may also have a positive impact on awareness of stakeholder about their rights.

Public Comments

14. The proposals in the preceding paragraphs aim at achieving the objectives of the Code by expediting the enforcement process and balancing the interest of all stakeholders. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. The Board accordingly solicits comments on the following points:

- i. Should the Board go for amendment in the enforcement mechanism?
- ii. Any observations on the proposal to forward the grievances to the IPA.

- iii. Should the Board do away with investigations in cases where the violation is established on the basis of material available on record, in the process of disposal of complaint/grievance?
- iv. Should the Board intimate to AA/members of CoC about the DC order?
- v. Any general observations on the proposed amendment in the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017.
- vi. Any general observations on the proposed amendment in the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

15. Comments may be submitted electronically by 21st April 2022. For providing comments, please follow the process as under:

- (i) Visit IBBI website, www.ibbi.gov.in;
- (ii) Select 'Public Comments'; and then select – 'Discussion Paper on "Enforcement Mechanism"';
- (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; and
 - 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 para/regulation number and then sub-para/sub-regulation number and write comments under the selected para/sub-para or regulation/sub-regulation number.

(viii) You can make comments on more than one para/sub-para or regulation / sub-regulation number, by clicking on **More Comments** and repeating the process outlined above from point 15(v) onwards.

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

THE GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, _____, 2022

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, the _____, 2022

Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) (Amendment) Regulations, 2022

No. IBBI/2022-23/GN/REG. _____. - In exercise of the powers conferred under section 196, 217 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations to amend the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017, namely: -

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) (Amendment) Regulations, 2022.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 (hereinafter referred to as ‘the principal regulations’), in regulation 6,
 - i. for the heading “Disposal of grievance”, the heading “Disposal of grievance by Board” shall be substituted.
 - ii. in sub-regulation (2), for the word “fifteen”, the word “seven” shall be substituted.
 - iii. In sub-regulation (3), for the words “forty-five” the word “thirty” shall be substituted.
 - iv. In sub-regulation (4), for the words “forty-five” the word “thirty” shall be substituted.
3. In the principal regulations, after regulation 6, the following regulation shall be inserted, namely:-

“6A. Disposal of grievance by Insolvency Professional Agency.

 1. Notwithstanding anything contained in regulation 6, the Board may forward a grievance against an Insolvency Professional to the Insolvency Professional Agency with which the said Insolvency Professional is enrolled, for disposal.
 2. The Insolvency Professional Agency shall dispose the grievance and intimate to the Board within thirty days of forwarding of the grievance mentioned in sub-regulation (1).”
 3. In the principal regulations, in regulation 7,
 - i. in sub-regulation (2), for the word “fifteen”, the word “seven” shall be substituted.
 - ii. For the sub-regulation (3), the following sub-regulation shall be substituted:

- “(3) The Board shall investigate the information and records and form an opinion whether there exists a prima facie case within thirty days of the receipt of the complaint.”
- iii. in sub-regulation (5), after the words “of such decision”, the following words “within thirty days” shall be inserted.
 - iv. for the sub-regulation (7), the following sub-regulation shall be substituted, namely: -
“Where the Board is of the opinion under this regulation that there exists a prima facie case, it may issue a show cause notice under regulation 11 of Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 or order an investigation under Chapter III of Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

Ravi Mital
Chairperson
[ADVT]

Note: The Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 were published *vide* notification No. IBBI/2017-18/GN/REG/21 on 07th December, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 461 dated 07th December, 2017.

THE GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, ____, 2022

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, the ____, 2022

Insolvency and Bankruptcy Board of India (Inspection and Investigation) (Amendment) Regulations, 2022

No. IBBI/2022-23/GN/REG. ____ . - In exercise of the powers conferred under sections 196, 217, 218, 219, 220 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations to amend the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, namely: -

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Inspection and Investigation) (Amendment) Regulations, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (hereinafter referred to as ‘the principal regulations’), the sub-regulation (2) of regulation 3 shall be omitted.

3. In the principal regulations, in regulation 10, the word “draft” shall be omitted.

4. In the principal regulations, after CHAPTER III, the following chapter shall be inserted, namely: -

**“CHAPTER IIIA:
INVESTIGATION DURING DISPOSAL OF COMPLAINT OR GRIEVANCE**

10A. Investigation during disposal of complaint or grievance:

Notwithstanding anything contained in Chapter III, the processing of a complaint or grievance under the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017, shall mean investigation under this regulation and in such case the processing papers shall mean the investigation report under regulation 10:

Provided that this shall not restrict the Board in appointment of an investigating authority under Chapter-III.”

5. In the principal regulations, in regulation 12, in sub-regulation (3), for the words and figures “at least 21”, the word “fifteen” shall be substituted.

6. In the principal regulations, in regulation 13,

(i) in sub-regulation (2), for the figure “180”, the words “thirty-five” shall be substituted.

(ii) for the sub-regulation (6), the following sub-regulation shall be substituted, namely: –

“The Disciplinary Committee shall in the order passed under sub-regulation (1) require the service provider to -

- (a) discharge pending obligations, if any;
- (b) continue its functions till such time as may be directed, only to enable clients to shift to another service provider;
- (c) comply with any other directions; and
- (d) intimate the order to all the members of Committee of Creditors of the insolvency resolution processes in which service provider is acting as an Interim Resolution Professional or Resolution Professional, as the case may be, and to the Adjudicating Authority.”

Ravi Mital
Chairperson

[ADVT]

Note: The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 were published *vide* notification No. IBBI/2017-18/GN/REG011 on 12th June, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 239 dated 12th June, 2017.