

Discussion Paper on measures for increasing the possibility of resolution, value of resolution plan and enabling timely resolution

7th June, 2023

Introduction

Insolvency and Bankruptcy Code, 2016 (Code) was enacted with the primary objective of time bound resolution and maximisation of value of assets. The Code provides for the stakeholders to revive a viable company and only if it is not feasible then proceed for liquidation.

However, two major criticisms against the resolution process under the Code are that fewer companies are being resolved with lesser value realisation and the time taken for such resolution is longer than the what the law prescribes. Challenges exist in both the market related activities to be carried out by the insolvency professional (IP) and the committee of creditors (CoC) and activities under the Adjudicating Authority's (AA's) mandate.

This paper analyses resolution processes that have been completed and are ongoing, presents the understanding of issues that are adversely affecting the efficiency and effectiveness of the resolution process. The issues are of a wide spectrum and proposals have been made to resolve the same.

1. Timeline for providing information for assignment of debt

Regulation 28 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) addresses the procedure and obligations when a debt owed to a creditor is assigned or transferred during the insolvency resolution process period.

Under clause (1) of Regulation 28, if a creditor decides to assign or transfer the debt owed to them to another person during the insolvency resolution process period, both the original creditor and the assignee or transferee are required to inform the interim resolution professional (IRP) or resolution professional (RP), as the case may be, about the terms of such assignment or transfer and the identity of the assignee or transferee. This obligation ensures transparency and enables the IRP or RP to maintain accurate records of the debt obligations of the corporate debtor (CD). Further, clause (2) of Regulation 28 mandates the RP to notify each participant and the AA of any resultant change in the committee within two days of such change. However, unlike clause (2), there is no timeline for clause (1). As such, there is a need to insert a timeline in the same.

Proposed Regulation: Regulation 28(1) of CIRP Regulations is to be amended as follows:

*(1) In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the identity of the assignee or transferee **within seven days of such assignment or transfer.***

2. Seeking information from personnel of the corporate debtor

Regulation 4(2) of the CIRP Regulations stipulates that the personnel of the CD, its promoters or any other person associated with the management of the CD shall provide the information within such time and in such format as sought by the IRP or the RP, as the case may be.

The current regulation sets a precedent of cooperation from the corporate debtor's side to provide necessary information. The cooperation and timely communication of such information is crucial for the smooth conduct of the CIRP. However, there are instances where such information is not provided in a timely or efficient manner. Further, the regulations do not lay down how the control and custody of assets and records will be taken over.

Proposal: It is proposed that the CIRP Regulations be amended to mandate that the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor (collectively referred as CD) hands over the assets as per the balance sheet of the CD or in any other records referred in Section 18(1)(f). If such list of assets as per the balance sheet or in any other records is not readily available, CD should prepare a list of assets and documents being handed over to the RP. In case the assets are not handed over or the list of documents is not prepared by CD, the same may be prepared by the RP at the time of taking custody of assets and records. Such list will be signed by concerned parties and witnesses. The RP shall requisition from the CD, the assets which are recorded in the balance sheet or in any other records referred in Section 18(1)(f) and whose custody has not been handed over. The RP shall requisition from the CD, information relating to the assets, finances and operations of the corporate debtor referred in Section 18(1)(a) and which were required to be maintained by the corporate debtor but have not yet been handed over. Any application made under Section 19(2) of the Code by the RP, in respect of failure to provide such assets or records as requisitioned shall be filed with the notice of such requisition. The application shall also demonstrate the absence of such asset and record in the list of assets and records (whose custody has been taken).

Proposed Regulation: The following regulation is proposed to be added under CIRP Regulations:

3A. Handing over and taking over of assets and records.

(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall provide a list of all assets and records while handing over the control and custody of assets and records to the interim resolution professional or resolution professional, as the case maybe.

(2) Where such asset or record has not been handed over or such list has not been provided as laid down under sub-section (1), the resolution professional shall prepare a list of assets and records while taking control and custody of assets and records.

(3) The list of assets and records shall be signed by the parties present and by at least two individuals who have witnessed the act of taking control and custody over such assets and records.

(4) The RP shall requisition from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case maybe, the assets which are recorded in the balance sheet or in any other records referred in Section 18(1)(f) and whose custody has not been handed over.

(5) The RP shall requisition from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case maybe, the information relating to the assets, finances and operations of the corporate debtor referred in Section 18(1)(a) and which were required to be maintained by the corporate debtor but have not yet been handed over.

(6) Any application made under Section 19(2) of the Code by the interim resolution professional or the resolution professional, as the case may be, in respect of failure to provide such assets or records as requisitioned under sub-regulation (4) & (5) shall be accompanied with the notice of such requisition and demonstrating the absence of such asset and record in the list of assets and records referred in sub-regulation (3).

3. Modification of Timelines for Submission and Consolidation of Claims

Regulation 12 of the CIRP Regulations provides the framework for submission and proof of claims by creditors. As per the current stipulation, creditors are required to submit claims with proof on or before the last date mentioned in the public announcement, or no later than the 90th day of the insolvency commencement date in case of delayed submissions. However, the current timeline may pose constraints for certain creditors, particularly in complex insolvency cases with numerous stakeholders. In many cases, the creditors file their claims after 90th day after obtaining permission from the AA. This increases burden of the AA leaving them less time to deal with more important matters.

It must be stated that the determination of the timeline for claim submission is not a reflection on the competence of the Resolution Professional (RP) but rather a practical consideration to ensure a smooth and unobstructed CIRP. Since, the RP handles claims up to 90 days period, he is capable of handling claims beyond the 90-days period. Limitation of 90 days for acceptance of claims had been laid down for the reason that the acceptance of late claims can potentially interfere with other crucial processes involved in the insolvency resolution. Late claim submissions can introduce uncertainty and delays into the process, as they require additional time and resources to be evaluated and incorporated into the resolution plan. Moreover, claims that are not accepted by the RP within the prescribed timeline often result in litigations, adding an additional layer of complexity and potential delay to the resolution process.

Despite the legal avenue available to creditors for late claim submissions, it is preferable to encourage the timely filing of claims to ensure a streamlined process. Therefore, a more beneficial proposal would be to establish a system that incentivizes prompt claim submission while also introducing disincentives for late submissions. This approach promotes efficiency and reduces the possibility of unnecessary interruptions or conflicts during the CIRP.

Proposal: It is proposed to make the following amendments to enhance the comprehensiveness and inclusiveness of the claim gathering process, and to increase transparency in the management of claims. The revisions would also ensure that the insolvency resolution process is more adaptive to the realities of complex insolvency cases, and that it reduces the burden of the AA:

- Extend the timeline for claim submission until 90 days from the insolvency commencement date, or up to the date of issue of latest RFRP under Regulation 36B whichever is later. This extension will provide greater flexibility for creditors, especially in complex cases, allowing for a more thorough and inclusive claim gathering process. As per model timeline, both translate to the same timeline. However, in several cases, the process is delayed and, in such cases, extended time will be available to the claimants to file claims and for the RP to consider the claims.
- While considering the claims filed by the creditors after the due date of 90 days from Insolvency Commencement Date (ICD), the RP shall prima facie make a decision on acceptance or rejection of the claims. Where the RP decides the acceptance of the claims, he shall make a list of such claims and file application on behalf of such creditors for condonation of delay. On the other hand, where the RP decides not to accept the claims, he shall intimate the creditors about the same and if the creditor is not satisfied with the reason provided by the RP, he can approach the AA. This will ensure that no creditor is unfairly excluded from the process due to delays in submission of their claims. A single application filed for condonation of delay reduce the burden of AA in hearing and deciding the claims application.
- Mandate the RP to provide reasons for the rejection of any claim. This will enhance the transparency of the process and provide clarity to creditors whose claims have been rejected. Further, it is required that the list of creditors is filed on the website of the Board under clause (ca) of sub-regulation (2) of Regulation 13 of the CIRP Regulations in terms of Circular No. IBBI/CIRP/47/2021 dated 24th November, 2021. The IRP/RP is to ensure that wherever claims are not admitted then reasons for non-admission is provided in the stated circular.

Pros and cons of the proposal:

Pros:

1. **Enhanced Flexibility:** Extending the timeline for claim submission and consolidating claims gives creditors, especially in complex cases, greater flexibility. This allows for a more comprehensive and inclusive claim gathering process.
2. **Reduced Burden on AA:** The proposal also lessens the load on the AA by streamlining the process of dealing with late claims. By allowing the IRP/RP to file applications on behalf of creditors for condonation of delay, multiple claims can be handled in one application, which can lead to faster and more efficient hearings and decisions.
3. **Improved Transparency:** Mandating explicit reasons for the rejection of claims will also enhance transparency and provide clarity to creditors whose claims have been rejected.

Cons:

1. **Potential for Delays:** While flexibility is a clear benefit, there's a risk that extended deadlines may encourage some creditors to delay submission of their claims, which could potentially slow down the resolution process.
2. **Added Responsibility for IRP/RP:** The IRP/RP will be shouldered with additional responsibility of filing applications on behalf of creditors for condonation of delay. This

could increase their workload and potentially divert resources from other areas of the CIRP.

Proposed Amendment: *In Regulation 12 of the principal regulations, the following amendments are proposed:*

In sub-regulation (2), it shall read as follows: “A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, not later than the date of issue of request for resolution plans under Regulation 36B or ninety days from the insolvency commencement date, whichever is later.

(2A) In the event that claims are received after the specified period under sub-regulation (2) and up to the time of filing an application for the approval of the resolution plan or the initiation of liquidation, as the case may be, the IRP/RP shall verify all such claims and categorise them as acceptable or non-acceptable.

(2B) The claims categorised under sub-regulation (2A) shall be submitted in an application to the AA on behalf of the creditors. The application for consolidated claims filed before AA shall be presented in two parts – one part containing claims that are acceptable for condonation of delay of AA, and another set containing claims deemed unacceptable by the RP and contested by the claimant before RP, for adjudication by the AA.

Explanation: It is clarified that the application filed under this sub-regulation does not take away the right of claimants to present their case individually before AA in any manner.

In Regulation 13 of the principal regulations, the following amendment is proposed:

Introduce a new sub-regulation (2C) as follows: *“The interim resolution professional or the resolution professional, as the case may be, shall provide reasons for the rejection of any claim. The RP shall also provide reasons where the claim has been deemed unacceptable under sub-regulation (2A).”*

A row may be added in the format of invitation for expression of interest issued in ‘Form G’ to provide for date of the issue of request for resolution plans.

4. A. Increase of duties of AR

Section 25A of the Insolvency and Bankruptcy Code outlines the rights and obligations of Authorized Representatives (ARs) of financial creditors (FCs) within a given class. The AR, acting as an intermediary between the Committee of Creditors (CoC) and the Corporate Debtor (CD), is charged with safeguarding the interests of the FCs he represents during the Corporate Insolvency Resolution Process (CIRP). Further, Section 25A(3) explicitly prohibits an AR from acting in contradiction to the interests of the FCs he represents, requiring him to follow their instructions. This provision implies that the AR's duties extend beyond merely representing the FCs to actively acting in their best interests.

While the Code stipulates that the AR should represent the interests of the FCs, the nature and extent of his duties are contingent on a myriad of factors, such as the stage of the CIRP, the specific requirements of the CD, and the particular creditor he represents within the CoC.

Therefore, an AR has a dual role: he is responsible for ensuring that the CoC fulfills all its obligations in terms of his professional expertise, and he has an explicit responsibility to protect the interests of the FCs he represents. However, there has been continuous demand from the homebuyers that the duties of the AR should be increased so that he can be a catalyst in removing the difficulties being faced by them in understanding the matters related to CoC, in making decision, in getting relevant information for matters related to CoC meetings and their interactions with NCLT and NCLAT.

Proposal: As regarding these responsibilities, it is proposed to add certain duties that an AR must perform during CIRP. Regulation 16A of CIRP Regulations may be amended to add the following responsibilities of AR during CIRP:

- a) Help the members represented by him in understanding the issues discussed in CoC meetings and help them in taking a considered decision. This duty ensures that the creditors in a class fully understand the discussions and considerations happening in the Committee of Creditors (CoC) meetings, leading to more informed decision-making. This is crucial because FCs might not be familiar with the technical details and jargon of the insolvency process. The AR shall also review the contents of minutes prepared by the RP to ensure correctness and completeness.
- b) Helping the RP to increase the marketability of the assets of the CD. An AR's involvement can be valuable in enhancing the marketability of the CD's assets. This is especially relevant where the members of the committee have taken measures for marketing of the assets of the corporate debtor.
- c) Helping the members represented by him to evaluate the resolution plans submitted by the resolution applicants. Given the complexity of resolution plans, this duty helps the creditor in a class make informed decisions about the plans.
- d) Communicating with the RP and providing members represented by him with any information or documents required for taking a considered view on the issues in CoC meetings. This duty is necessary to bridge any communication gap between the RP and the FCs, facilitating timely information exchange and decision-making.
- e) Providing updates on the status of the CIRP to the members represented by him as regular updates ensure transparency and keep creditors informed about the progress of the resolution process, contributing to trust and efficiency in the process.
- f) Representing the members represented by him in their interactions with the National Company Law Tribunal, National Company Law Appellate Tribunal and other regulatory authorities. This role is vital because the creditors in a class might lack the necessary understanding of legal and regulatory matters. This duty simplifies their interactions with adjudicatory and regulatory bodies.
- g) Recording minutes of such meetings with the creditors in class by AR. Recording of minutes and obtaining approval of the creditors in class on such minutes will ensure record keeping about the items discussed in such meetings.
- h) Helping in modification of resolution plan as desired by the members of CoC he is representing. Given their close involvement in the CIRP, ARs can assist in adapting the resolution plan to better suit the needs and preferences, leading to a more acceptable and successful resolution plan for the creditors in a class he represents.

It is also worth noting that the specific duties of an AR may vary depending on the stage of the CIRP and the specific needs of the corporate debtor and the CoC. As such, the FC may propose any other responsibility upon the AR in its interest and the same shall be recorded in the minutes of the meeting of CoC.

Proposed Regulations

Regulation 16A of the Corporate Insolvency Resolution Process (CIRP) Regulations is to be amended by the insertion of the following sub-regulations:

(10) The Authorised Representative (AR) shall assist the creditors in a class he represents in understanding the discussions and considerations of the Committee of Creditors (CoC) meetings and facilitate informed decision-making.

(11) The AR shall review the contents of minutes prepared by the RP to ensure correctness and completeness.

(12) The AR shall work collaboratively with the creditors in a class he represents to enhance the marketability of the assets of the Corporate Debtor (CD).

(13) The AR shall provide assistance to the creditors in a class he represents in evaluating the resolution plans submitted by resolution applicants.

(14) The AR shall maintain open and frequent communication with the RP, ensuring that the creditors in a class he represents have access to any information or documents required to form an educated perspective on issues discussed in the CoC meetings.

(15) The AR shall regularly update the creditors in a class he represents on the progress of the CIRP.

(16) The AR shall act as a representative for the creditors in a class he represents in interactions with the National Company Law Tribunal, National Company Law Appellate Tribunal, and other regulatory authorities.

(17) The AR shall assist in modifications of the resolution plan as may be required by the creditors in class he represents.

(18) The AR shall take due and reasonable care to record proceedings and prepare the minutes of the meeting with the creditors in a class he represents. The provisions regarding minutes of meetings in the CIRP Regulations shall apply mutatis mutandis for this sub-regulation.

(19) The creditors in a class may propose any additional responsibilities upon the AR, keeping in mind its interests. Such responsibilities shall be recorded in the minutes of the CoC meeting.

B. Increase of fee of Authorised Representative

Section 21(6A)(b) of the Code read with Regulation 16A of the CIRP Regulations provide for a simplified mechanism of representation of FCs through authorised representatives. Section 21(6B)(ii) of the Code states that the remuneration payable to the AR under clause (b) of sub-section (6A) shall be as specified which shall be form part of the insolvency resolution process costs. The Board has vide Regulation 16A(8) of CIRP Regulations specified the entitlement of

an AR which states that he shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely:-

Number of creditors in the class	Fee per meeting of the committee (Rs.)
10-100	15,000
101-1000	20,000
More than 1000	25,000

The above fee was proposed in the year 2018 and the same has not been reviewed since then. Further, there has been feedback from the market that above remuneration is not commensurate with the work involved.

Proposal: The AR's role in the CIRP should be evolved to be more demanding and crucial to its success. It is proposed to increase the fee of the AR to be commensurate with the increased duties. It is also proposed to provide a fee separately for meeting of creditors in class with the AR. The proposed fee adjustment for meetings convened specifically for a particular class of creditors with the AR also acknowledges this increased responsibility and the enhanced value the AR provides in such CIRPs.

In such meetings, the AR shall carry out numerous critical functions that directly benefit the financial creditors he represents. The AR will assist the creditors in a class in understanding complex issues to be discussed in the CoC meetings, help evaluate resolution plans and keep creditors informed about the progress of the CIRP amongst other duties. Thus, this additional effort and expertise should warrant a separate fee.

The proposed fee for the AR is designed to be incorporated within the overall cost of the CIRP. This fee structure is preferable given the potential administrative burden and inefficiencies that could arise from attempting to collect these fees directly from the represented members. There also exists a risk that if this structure is not chosen then some fees may not be paid in a timely manner, if this responsibility is shifted onto the individual creditors. Such non-payment or delay could impair the AR's ability to effectively carry out their crucial duties in the CIRP. Hence, integrating the AR's fees into the CIRP cost ensures their fair compensation without hindering the process's effectiveness.

Proposed Regulation: *The following Table shall be replaced under Regulation 16A(8):*

<i>Number of creditors in the class</i>	<i>Fee per meeting of the committee (Rs.)</i>
<i>10-100</i>	<i>30,000</i>
<i>101-1000</i>	<i>40,000</i>
<i>More than 1000</i>	<i>50,000</i>

Where a meeting of creditors is convened for a particular class of creditors with the authorized representative, a separate fee shall be levied for such meeting, the fee for which shall be as follows:

<i>Number of creditors in the class</i>	<i>Fee per meeting of creditors in class with AR (Rs.)</i>
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10-100	10,000
101-1000	12,000
More than 1000	15,000

C. Replacement of authorised representative:

Section 21(6A)(b) of the Code read with Regulation 16A(1) of the CIRP Regulations provide that where the CD has at least ten financial creditors (FCs) in a class, the IRP shall offer a choice of three IPs and a creditor in the class may indicate his choice of an IP, amongst the three, to act as its authorised representative (AR). The IP, who is the choice of the highest number of creditors in the class, is selected as the authorised representative of the creditors of the respective class by the IRP and such AR is appointed by the AA prior to the first meeting of the CoC on an application by the IRP. The AR collects voting instructions from the respective class of creditors, attends the meetings of the CoC and casts vote in respect of the said class in accordance with the instructions he receives from the class of creditors.

Section 21(6A)(b) of the Code read with Regulation 16A of the CIRP Regulations provide for mechanism of representation of financial creditors through ARs, as detailed above, and are, therefore, matters of procedure. It is necessary that in an ongoing CIRP, creditors belonging to a class are represented by an AR, irrespective of the stage of the process. The IRP/ RP, who exercises the powers and performs the duties as vested or conferred on the IRP under section 23(2) of the Code, shall facilitate representation through ARs.

Presently, there is no express provision for replacement of an AR after his appointment by the AA. A class of creditors may not be satisfied with the performance of an AR. The creditors may therefore seek an alternate AR to represent them and to deal with their issues and grievances.

Proposal: It is proposed that the CIRP Regulations may enable the creditors in a class to replace an AR. The creditors in a class with 10% voting powers may seek replacement of the AR by making a request to the RP and may choose to give a choice of insolvency professional who shall act as an AR in the matter. The RP will then offer a choice of three IPs to act as the AR including the IP(s) suggested if any by such creditors in class. He will apply to the AA for appointment of the AR who is the choice of the highest number of creditors in the class.

Proposed Regulation: In the principal regulations, in regulation 16A, after sub-regulation (3), the following shall be inserted, namely: -

(3A) Where the financial creditors in the class, representing not less than ten percent voting share, seek replacement of the authorised representative by making a request to the interim resolution professional or resolution professional, as the case may be, along with their choice of insolvency professional; the interim resolution professional or resolution professional, as the case may be, shall circulate such request to the creditors in that class and announce a voting window open for at least twenty four hours from such circulation.

(3B) Subject to sub-regulation (2A) and (2B) of regulation 4A, the interim resolution professional or resolution professional, as the case may be, shall offer choice of at least three insolvency professionals to the financial creditors in the class including such insolvency professional(s) proposed under sub-regulation (3A) and shall apply to the Adjudicating

Authority for appointment of the authorised representative who is the choice of highest number of financial creditors in that class.

5. Inclusion of Relevant Minutes in Form H

Regulation 39(4) of the CIRP Regulations mandates the RP to submit the resolution plan approved by the CoC to the AA along with the compliance certificate in Form H and the evidence of receipt of performance security.

Form H, serves as a compliance certificate, primarily encapsulates the details of the CIRP. It is observed that the inclusion of relevant minutes pertaining to the discussions and decisions of the CoC about resolution plan could provide transparency and context to the resolution process.

Proposal: It is proposed to amend the existing structure of Form H to include relevant minutes of the CoC meetings, thus ensuring a comprehensive record of the deliberations leading to the decision on the resolution plan.

Proposed Amendment: *In the Schedule I of the principal regulations, under the section pertaining to Form H, the following amendment is proposed:*

Insert a new clause in the Table to include: "Minutes of the Committee of Creditors meeting concerning discussion and decisions about resolution plan."

6. Addressing the Aspect of Limitation in Applications for initiation of insolvency resolution proceedings

Regulation 2A to 2C of the CIRP Regulations lays down the procedure and requirements for the submission of records or evidence of default by financial and operational creditors. The current regulations, however, do not explicitly account for the aspect of limitation.

In light of various judicial precedents, it is crucial to address the aspect of limitation at the very inception of the insolvency proceedings.

Proposal: It is proposed to incorporate the aspect of limitation into the application process by requiring the creditor to submit an affidavit or a similar document, detailing the chronology of the debt and default, and explaining why the application is not barred by limitation. This proposed amendment aims to ensure that the issue of limitation is addressed at the inception of the insolvency proceedings, potentially avoiding protracted litigation on this issue at a later stage.

Proposed Amendment: *In the principal regulations, it is proposed to insert a new regulation 2D as follows:*

“2D. Addressing the Aspect of Limitation in an application for initiation of CIRP:

(a) Along with the application under sections 7 or 9, as the case may be, for the initiation of corporate insolvency resolution process, the financial creditor or the operational creditor shall also submit an affidavit, providing a detailed chronology of the debt and default, and explaining why the application is not barred by the limitation.

(b) The affidavit should detail the date when the debt became due, any subsequent acknowledgments of debt or part payments, if any, and the period of limitation applicable to the debt.”

7. Favourable voting on more than one resolution plan

Section 30(3) of the Code envisages that a resolution professional (RP) shall present to the CoC for its approval such resolution plans which confirm the conditions referred to in sub-section (2) of section 30. Therefore, the Code provides that all eligible resolution plans are to be placed before the CoC for its approval. Further, Section 30(4) states that the CoC may approve a resolution plan by a vote of not less than sixty-six per cent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

Regulation 39(3) of the CIRP Regulations provides that where more than one compliant resolution plans are available, all the plans are put to vote simultaneously. Further Regulation 39(3B) provides that the plan that receives the highest affirmative votes, subject to receiving the requisite 66%, is regarded as approved by the CoC. In an unlikely event of two or more resolution plans securing equal number of votes, the committee approves any one of them, as per the tie-breaker formula announced before voting. Where none of the resolution plans receives requisite votes, the committee again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

Hence, it is observed that the creditors vote in favour of all available compliant resolution plans to avoid being a dissenting creditor. The situation commonly occurs in several real estate cases where the real estate allottees vote in favour of all available plans in order to ensure that they are not dissenting creditor and the CD does not end in liquidation, as liquidation leaves the real estate allottees with no relief. The current voting framework does not offer a system for creditors to elicit their preferences on these plans.

Proposal: In order to ensure that preference of plan is captured, and creditors are able to vote freely, it is proposed to use system of voting with preference.

Note: All plans are considered based on first preference accorded to them. If no plan achieves the 66% required votes, the plan with least first preference votes is eliminated and its first preference is allotted to the second preference. It proceeds on the basis of a process of elimination and exclusion, whereby the plans with lowest number of preference votes are excluded. In case no plan is able to secure the requisite 66% votes, then it may be taken that the committee of creditors has not approved any resolution plan. Similar preference voting may be adopted to elicit the preference of class of creditors with 51% threshold of voting. The illustration of the same is given below.

Voter	Resolution Plan A	Resolution Plan B	Resolution Plan C
1	1	2	3
2	2	1	3
3	-	1	2
4	1	-	2

5	2	1	3
6	2	3	1
7	1	2	3
8	3	1	2
9	2	1	-
10	-	1	2

First Preference Votes	3	6	1
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Here no plan has achieved 66% first preference votes. So, the Plan C is eliminated and its first preference is allocated to second preference.

Voter	Resolution Plan A	Resolution Plan B	Resolution Plan C
1	1	2	3
2	2	1	3
3	-	1	2
4	1	-	2
5	2	1	3
6	1	2	1
7	1	2	3
8	3	1	2
9	2	1	-
10	-	1	2

First Preference Votes	4	6	
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Again, as no plan has achieved 66% first preference votes. So, the Plan A is eliminated and its first preference is allocated to second preference.

Voter	Resolution Plan A	Resolution Plan B	Resolution Plan C
1	1	1	3
2	2	1	3
3	-	1	2
4	1	-	2
5	2	1	3
6	1	1	1
7	1	1	3
8	3	1	2
9	2	1	-
10	-	1	2

First Preference Votes	4	9	
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Ans, as the Plan-B is getting 90% votes, it shall be treated as resolution plan approved by the CoC.

Voting in the class of creditors

Suppose the same 3 plans are put to a class of 10 creditors. And they vote as below:

Voter	Resolution Plan A	Resolution Plan B	Resolution Plan C
1	1	2	-
2	2	1	-
3	-	-	1
4	1	-	2
5	2	1	-
6	2	3	1
7	1	2	-
8	3	1	2
9	2	1	-
10	1	-	-

First Preference Votes	4	4	2
Second Preference Votes	4	2	2
Third Preference Votes	1	1	-
Total Affirmative Vote Count	9	7	4

In such case, the class as a whole as given more than 50% affirmative votes to plan-A and B. The plan-A and B both got 4 first preference votes, while Plan-A got more Second preference Votes. It can be taken as that the class as a whole has selected Plan-A and Plan-B in the order of preference. While the class has rejected Plan-C. (So, the voting by class of creditor is Plan-A – first preference, and Plan-B second preference)

Proposed Regulation: Regulation 39(3B) shall be substituted as follows:

*(3B) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes **as per single transferable vote**, but not less than requisite votes, shall be considered as approved:*

Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting:

Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

Explanation: “Single transferable vote” is a voting system in which voters cast a single vote in the form of a ranked-choice ballot. Voters have the option to rank plans, and their vote may be transferred according to marked back-up preferences if their preferred plan is eliminated, so that their vote is used to select a plan they prefer over others.

The Illustration under the Regulation shall be substituted as follows:

Illustration. - *The committee is voting on two resolution plans, namely, A and B, simultaneously. The voting outcome is as under:*

Voting outcome	% of votes in favour of		Status of approval
	Plan A	Plan B	
1	55	60	No Plan is approved, as neither of the Plans received requisite votes. The committee shall vote again on Plan B, which received the higher votes, subject to the timelines under the Code.
2	70	75	Plan B is approved, as it received higher votes as per single transferable vote , which is not less than requisite votes.
3	75	75	The committee shall approve either Plan A or Plan B, as per the tie-breaker formula announced before voting.]

(Stakeholders to seek detailed Illustration from Discussion Paper. No insertion in CIRP Regulations).

8. Changes in timelines

Under CIRP Regulations 36(1) and 36A(10), RP should submit the information memorandum to CoC by T+95 days and issue a provisional list of prospective resolution applicants by T+85 days. However, an apparent typographical error requires the RP to issue relevant documents to prospective applicants by T+105 days, preceding submission to CoC. Proposed changes include correcting the timeline to T+90 days, reducing the IM submission to T+80 days, and changing the resolution plan receipt to 45 days, thus keeping the total timeline at T+135 days.

Proposal: It is proposed to rectify the typographical error as stated above.

Proposed Regulation: The revised timelines under Regulation 40A shall appear as under:

Section / Regulation	Description of Activity	Present Norm	Present Timeline	Proposed Norm	Proposed Timeline
Regulation 36(1)	Submission of IM to CoC	Within 95 days of commencement	T+95	Within 95 days of commencement	T+95
Regulation 36A	Provisional List of RAs by RP	Within 10 days from the last day of receipt of EoI	T+85	Within 10 days from the last day of receipt of EoI	T+85
	Submission of objections to provisional list	For 5 days of the receipt of provisional list	T+90	For 5 days from the date of provisional list	T+90

	Final List of Resolution Applicants	Within 10 days of the receipt of objections	T+100	Within 10 days of the receipt of objections	T+100
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105	Within 5 days of the issue of the provisional list	T+90
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135	Within 35 days of the issue of final list of Resolution applicants	T+135

Regulation 36B(1) may be amended as follows:

36B. Request for resolution plans.

(1) The resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans, within five days of the date of issue of the provisional list under sub-regulation (10) of regulation 36A, if the same are as to –

(a) every prospective resolution applicant in the provisional list; and

(b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.

If the Information Memorandum is not available within such time as specified in this sub-regulation, the resolution professional is obligated to disseminate it to the persons mentioned above as promptly as possible.

9. Audit Requirement for Insolvency Resolution Process Cost (IRPC) in certain CIRPs

CIRP is a complex procedure with numerous financial transactions, sometimes necessitating meticulous scrutiny. This is particularly true for CIRPs involving CDs of a significant asset size, where the transactions and associated costs, known as the Insolvency Resolution Process Cost (IRPC), can become considerable and intricate. IRPC, as defined under Section 5(13) of the Insolvency and Bankruptcy Code (IBC), comprises various costs, including the remuneration of the Resolution Professional (RP), expenses incurred by the RP in running the business of the CD as a going concern, and costs specified under Regulation 31 of the CIRP Regulations, among others.

Given the substantial implications of these costs in larger CIRPs, the proper management and verification of IRPC is paramount for maintaining transparency and accountability, as well as for ensuring the financial soundness of the process.

Proposal: The existing CIRP Regulations provide what constitutes IRPC but they do not necessitate an audit of these costs. However, considering the significant bearing these costs can

have on the overall resolution process, it becomes crucial to assure their veracity. Therefore, it is proposed to introduce an audit requirement for CIRPs involving CDs of a certain asset size within the CIRP Regulations. This additional measure is intended to bolster financial accountability and enhance confidence among all stakeholders involved in such CIRPs.

Inclusion of Audit Cost within IRPC: The expenses incurred towards the audit of Insolvency Resolution Process Cost (IRPC) shall be included as part of the IRPC. The Resolution Professional (RP) shall ensure that the audit cost is appropriately budgeted and included in the overall IRPC. The following is also proposed for conducting the audit:

- **Audit Timing:** The RP shall get the audit of IRPC conducted after finalisation of the cost of IRPC for the financial year.
- **Auditor Eligibility and Disqualification:** The audit of IRPC shall be conducted by a Chartered Accountant who is also recognized as an insolvency professional. The following conditions shall also apply:
 - (a) Any Chartered Accountant who is disqualified under Section 141 of the Companies Act, 2013, from being appointed as an auditor of a company, shall also be deemed to be disqualified from conducting an audit of IRPC.
 - (b) In addition, any Chartered Accountant who has been involved in the same CIRP as an Insolvency Professional, a consultant, an advisor, or in any other capacity, shall also be disqualified from conducting the audit of IRPC to avoid any conflict of interest.

Proposed Regulation:

The following sub-regulation is proposed to be added under Regulation 31 of CIRP Regulations:

(f) Wherever the total assets of the CD as per the last available financial statements exceed one hundred crore rupees, the RP shall get the audit of IRPC conducted after finalisation of the cost of the IRPC for the financial year. The audit shall be conducted by a Chartered Accountant who is also recognized as an insolvency professional. The following conditions shall also apply:

- (i) Any Chartered Accountant who is disqualified under Section 141 of the Companies Act, 2013, from being appointed as an auditor of a company, shall also be deemed to be disqualified from conducting an audit of IRPC.*
- (ii) In addition, any Chartered Accountant who has been involved in the same CIRP as an Insolvency Professional, a consultant, an advisor, or in any other capacity, shall also be disqualified from conducting the audit of IRPC.*

10. Public comments: The Board accordingly solicits comments on the proposals discussed above and the draft regulations placed in the Annexure. After considering the comments, the Board proposesto make regulations under clauses (aa) and (t) of subsection (1) of section 196 of the Code.

11. Submission of comments: Comments may be submitted electronically by 27th June, 2023. For providing comments, please follow the process as under:

- (i) Visit IBBI website, www.ibbi.gov.in;
- (ii) Select 'Public Comments';
- (iii) Select '**Discussion paper – CIRP June 23**'
- (iv) Provide your Name, and Email ID;
- (v) 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.
- (vi) Select the kind of comments you wish to make, namely, a) General Comments; or b) Specific Comments.
- (vii) 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.
- (viii) And then write comments under the selected option.

12. If you have selected 'Specific Comments', please select para number and write comments under the selected para number.

13. You can make comments on more than one para, by clicking on more comments and repeating the process outlined above from point 17 (vi) onwards.

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