



**India's Largest  
Insolvency Professional  
Entity (IPE) under IBC**

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# **VARIOUS DISCUSSIONS PAPERS RELEASED BY IBBI**



**PREPARED AND PRESENTED BY  
AAA INSOLVENCY PROFESSIONALS LLP**

# **VARIOUS DISCUSSIONS PAPERS** **RELEASED BY IBBI**



**CA. & IP. ANIL GOEL**



## DISCUSSION PAPERS COVERED:

1. Discussion Paper on Remuneration of an Insolvency Professional dated 09<sup>th</sup> June 2022
2. Discussion Paper on enabling entities to become insolvency professional dated 14<sup>th</sup> June 2022
3. Discussion Paper on Liquidation Process dated 14<sup>th</sup> June 2022
4. Discussion Paper on Financial Self-Sufficiency of the Insolvency and Bankruptcy Board of India dated 24<sup>th</sup> June, 2022
5. Discussion paper on changes in the corporate insolvency resolution process to reduce delays and improve the resolution value dated 27<sup>th</sup> June, 2022



# **DISCUSSION PAPER ON REMUNERATION OF AN INSOLVENCY PROFESSIONAL**

**(DATED 09<sup>TH</sup> JUNE 2022)**



# Statement of Problem

Unlike fees of liquidator, the IBBI has not specified an indicative table of fees linked to any parameter, which would determine the fees payable to IRP/RP in CIRP.

The fiduciary duties of fixation of remuneration of IP acting as an IRP/RP in CIRP, lies with applicant, the AA or CoC, as the case may be



# Issues:

**Issue I:** Components of fee of an IP in CIRP i.e.,

Fixed Fee Structure and

Performance-linked Incentive Fee

- for timely resolution
- for value maximisation

**Issue II:** Having an escrow account mechanism for payment of fee to the IP.





# Minimum Fixed Fee Structure

## ***Suggested Proposals/ Amendments:***

- It is proposed that the fixed fee structure, as given below, be considered as reasonable fee of an IP acting as IRP/RP, in CIRP for the period from his appointment till submission of CoC approved resolution plan before AA.
- This would be the minimum (floor) fees payable to the IP, and applicants/CoC shall remain free to consider higher amount of fees for IP, depending on the merits of the case.

**Table 2: Fee of IP in CIRP –Fixed Fee (Minimum) Per Month**

Quantum of Claims Admitted	^Fee (Rs. Lakh)
(i) $\leq$ Rs. 50 crore	1.50
(ii) $>$ Rs.50 crore $\leq$ Rs.100 crore	2.00
(iii) $>$ Rs.100 crore $\leq$ Rs.500 crore	2.50
(iv) $>$ Rs.500 crore $\leq$ Rs.1,000 crore	3.00
(v) $>$ Rs.1,000 crore $\leq$ Rs.2,500 crore	3.50
(vi) $>$ Rs.2,500 crore $\leq$ Rs.10,000 crore	5.00
(vii) $>$ Rs.10,000 crore	7.50

*Payable from his appointment till submission of CoC approved resolution plan to AA. CoC may also decide fee of an IP for period from submission of CoC approved resolution plan to AA till approval of the resolution plan by the AA or passing of an order for liquidation by AA.*



# *Observations and Feedback on Suggested Proposals*

- The proposed minimum fee should be payable only to insolvency professional and should not be allowed to be shared with IPE or any other support service providers. The COC would have tendency to merge this fee with the fee of IPE and that will cause de-motivation to IP. However, engaging the services of IPE and approval of IPE fee should be based on the decision of COC.
- The IP should not be permitted to offer any discount on this fee as presently practiced in the market for liquidator's fee as provided in regulation 4 of Liquidation Process Regulations.
- The minimum fee for the period from the date of submission of resolution plan or liquidation application to AA should also be fixed at 50% of the IP Fee as per admitted claims. However, in case of running operations, the COC may decide higher fee.





## *Observations and Feedback on Suggested Proposals... CONTD...*

- The definition of 'Claim Admitted' may be provided and should include contingent claims, disputed claims, belated claims, admitted claim challenged by other parties, etc. The fee should be decided based on the final amount of claims after adjudication by AA, if any. The final fee as per final admitted claims should be applicable to the IRP and RP for all the months they worked. Any medication in the claim should be applicable from the inception of the case for the purpose of IP fee. The fee of IP should not change based on the claims admitted from month on month.



# Performance Linked fee structure for timely completion of CIRP

## ***Suggested Proposals/ Amendments:***

- It is proposed that the variable fee structure as given in below, be considered as reasonable for IP who has completed CIRP on time.

**Table 5: Performance Linked fee structure for timely completion of CIRP**

<b>^^Timelines</b>	<b>Fee as % of actual realisable value*</b>
(i) $\leq 180$ days	1.00
(ii) $> 180$ days $\leq 270$ days	0.75
(iii) $> 270$ days $\leq 330$ days	0.50
(iv) $> 330$ days	0.00

*^^Covering the period from Commencement of CIRP and appointment of IRP [u/s 16(1) of the Code] till submission of CoC approved Resolution Plan to AA [under regulation 39(4) of CIRP Regulations] \*Subject to maximum amount not exceeding to Rs.5 crore, and actual payment to be made only upon approval of resolution plan by AA [u/s 31(1) of the Code].*



# *Observations and Feedback on Suggested Proposals*

- 'Realisable Value' in a resolution plan be defined and should not include following:-
  - Amount provided in the resolution plan for additional capital expenditure to run the operations of the CD
  - Amount provided in the resolution plan for future working capital
- 'Realisable Value' in a resolution plan be defined and should include following:-
  - Amount proposed in the resolution plan for completion of construction in the case of real estate project or for any incomplete project of Hotel, etc.
  - Value of asset which is excluded from resolution plan.
- The performance linked incentive should be automatic and no approval should be required from COC. This being the minimum incentive, the COC may have power to increase this incentive. In Schedule II, para 2, the word 'may' be replaced with 'shall'



# Performance Linked fee structure relating to Value Maximisation

## ***Suggested Proposals/ Amendments:***

- Variable fee calculated at the rate of **1% of the positive difference between the actual realisable value and fair value** subject to maximum amount not exceeding to Rs.5 crore, be considered as reasonable amount for incentivising IPs who have facilitated the value maximisation.
- However, said performance-linked fee is indicative in nature, and CoC may devise any other incentive structure, or it may decide not to give such incentive.
- The fiduciary duties of fixation of fee of IP lies with applicant / CoC. Similarly, in addition to fixation of fees, the applicant/CoC, being the beneficiaries of the services of IP are also bound to ensure that amounts payable to IP are in fact paid.



# *Observations and Feedback on Suggested Proposals*

- All the observation on 'Realisable Value' are valid for this clause as well
- The performance linked fee for Value Maximisation should be automatic and no approval should be required from COC. This being the minimum incentive, the COC may have power to increase this incentive. In Schedule II, para 3, the word 'may' be replaced with 'shall'.
- The committee may devise any other incentive structure, or it may decide not to give such incentive which is higher than this calculations.





# Escrow Account Mechanism

## **Suggested Proposals/ Amendments:**

- IP shall in the first meeting of CoC give estimate of fixed fee and expenditure on hiring of other professionals / support service etc. to the CoC.
- For the said estimate of fees and expenses pertaining to the first six months period, CoC shall either contribute to an escrow account or obtain the interim finance, towards the same.

## **Observations and Feedback on Suggested Proposals**

- Opening a new Escrow account would need substantial time and would delay the process. The existing process of replacement of signatures of IRP on all the existing accounts of corporate debtor has been streamlined and any one bank account of the corporate debtor can be used for receiving contribution or interim finance from COC and for making payment of CIRP cost.
- Raising Interim Finance from COC members may be a good option as they would be getting interest on their contribution. The banks and financial institutions are considering contribution as expense for their books and hesitate in contribution because of this. The interim finance would be an asset for their books and that asset will earn interest also.





## ***Suggested Proposals/ Amendments:***

In the principal regulations, after Regulation 34, following regulation shall be inserted, namely:-

### **“34A. Fee to be paid to interim resolution professional and resolution professional**

- The applicant, the Adjudicating Authority and the committee shall fix the fee to be paid to interim resolution professional or the resolution professional, as the case may be, under regulation 33 and 34, respectively, in accordance with the Schedule II.
- The committee may ratify an amount higher than the amount fixed under clause (1) of Schedule II, as may be necessary.



## *Suggested Proposals/ Amendments... CONTD...*

An insolvency professional shall submit a statement towards estimate of his fee and fee of the resolution professional in the following manner:

- a) to the applicant immediately on his appointment as an interim resolution professional;
- b) to the committee at its first meeting and thereafter till the appointment of the resolution professional; or
- c) to the committee in the first meeting conducted immediately after his appointment as resolution professional.”



# *Observations and Feedback on Suggested Proposals*

## Proposed Regulation 34A(3): needs some clarity

An insolvency professional shall submit a statement towards estimate of his fee and fee of the resolution professional in the following manner:

- to the applicant immediately on his appointment as an interim resolution professional; (would the estimate be restricted to fee and expenses to be incurred by IRP till COC is constituted)
- to the committee at its first meeting and thereafter till the appointment of the resolution professional; or (would the estimate be restricted to fee and expenses to be incurred till the appointment of RP)
- to the committee in the first meeting conducted immediately after his appointment as resolution professional.” (would the estimate be restricted to fee and expenses to be incurred from the date of appointment of RP to completion of 6 months of CIRP)



# DISCUSSION PAPER ON ENABLING ENTITIES TO BECOME INSOLVENCY PROFESSIONAL

DATED 14<sup>TH</sup> JUNE 2022



# Statement of Problem:

- *Whether a person defined under section 3(23) of the Insolvency and Bankruptcy Code, 2016 (Code), including a company, limited liability partnership or registered partnership firm, can be registered as an insolvency professional as defined under section 3(19) read with section 206 and 207 of the Code?*
- *Whether the insolvency professional entity (IPE) recognised by the Insolvency and Bankruptcy Board of India (IBBI/ the Board) under the IBBI (Insolvency Professionals) Regulations, 2016 can be registered as an insolvency professional under Chapter IV of the Insolvency and Bankruptcy Code, 2016?*



## ***Suggested Proposals/ Amendments:***

- (a) To allow the existing IPEs to become IPs, since they have the infrastructure and requisite exposure in providing support services to IPs.
- (b) Existing IPEs, after seeking registration as IP, may also continue to provide support services to IPs.

Amend Model Bye-law Regulations and IP Regulations to specify that the entities, which are presently recognised as IPE, shall be eligible to get enrolment as professional member of IPA, and registration as an IP with IBBI, respectively.

### ***Observations and Feedback on Suggested Proposals***

- It is not clear if only the existing IPEs would be allowed to enrol as IP or even the new IPE formed in future under the existing regulations would also be eligible for enrolment as IP.





# **DISCUSSION PAPER ON FINANCIAL SELF-SUFFICIENCY OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

**24<sup>th</sup> June 2022**



# Fee Structure – Existing Rate vis-à-vis Proposed Rate

Sr. No.	Particulars	Existing Rate	Proposed Rate		
1.	Insolvency Professionals – Individuals				
(i)	Registration Fees (One-time)	Rs.10,000/-	Rs.20,000/-		
(ii)	Registration Fees (5 yearly)	Rs.10,000/-	Rs.20,000/-		
(iii)	Annual Professional Fee	0.25% p.a. of professional fee earned in preceding financial year.	2.00% p.a. of professional fee earned in preceding financial year.		
2.	Insolvency Professional Entities				
(i)	Recognition Fees (One-time)	Rs.50,000/-	Rs.2,00,000/-		
(iii)	Annual Turnover Fee	0.25% p.a. of turnover from the services rendered in preceding financial year.	2.00% p.a. of turnover from the services rendered in preceding financial year.		
3.	Other Professionals appointed by IPs				
(i)	Fees	None	2.00% of fees paid to professionals appointed by IP for the processes undertaken during preceding financial year.		
4.	Information Utility				
(i)	Application Fee for Registration (One-time)	Rs.5,00,000/-	Rs.10,00,000/-		
(ii)	Application Fee for Renewal (5 yearly)	Rs.5,00,000/-	Rs.10,00,000/-		
(iii)	Renewal Fee (5 yearly)	Rs.50,00,000/-	Rs.1,00,00,000/-		
(iv)	Annual Fee  (Refer Note below)	Rs.50,00,000/-	<div>The slab-based structure for annual fee is being proposed as per table given below.<table><tr><td>Revenue from Operations (in Rs.) (Reported in the audited financial</td><td>% of fee</td></tr></table></div>	Revenue from Operations (in Rs.) (Reported in the audited financial	% of fee
Revenue from Operations (in Rs.) (Reported in the audited financial	% of fee				



# Fee Structure – Existing Rate vis-à-vis Proposed Rate... CONTD...

<b>5.</b>	<b>Enrolment Fee for Examinations</b>		
(i)	Enrolment Fee for Limited Insolvency Examination (One-time)	Rs.1,500/-	Rs.5,000/-
(ii)	Enrolment Fee for Valuation Examination (One-time)	Rs.1,500/-	Rs.5,000/-
<b>6</b>	<b>Regulation Fee on Resolution in CIRP</b>		
(i)	Regulation Fee on resolution in CIRP	None	0.25% on the aggregate amounts or its equivalent provided in the resolution plan, where such amount is more than the liquidation value.

**Note-**The following illustration may be noted for the annual fee applicable on an IU:

Rates		Scenario-I	Scenario-II
<i>*Revenue from Operations (in Rs.)</i>	<i>Fee on Revenue from Operations (in %)</i>	Rs.120 crore	Rs.90 crore
<i>Upto Rs.100 crore</i>	20	Rs.20 crore	Rs.18 crore
<i>Beyond Rs.100 crore</i>	10	Rs. 2 crore	-
<b>Fee payable to Board</b>		<b>Rs.22 crore</b>	<b>Rs.18 crore</b>

*\*as reported in the audited financial statements of the preceding financial year.*



# **DISCUSSION PAPER ON STREAMLINING THE LIQUIDATION PROCESS**

**14<sup>TH</sup> JUNE 2022**



# Stakeholders' Consultation Committee (SCC)

## Existing Laws:

- The IBC, 2016 does not envisage any mechanism for oversight and monitoring of liquidation process.
- Sub-section (2) of section 35 of the Code only provides that, “The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53”
- Regulation 31A of the Liquidation Regulations, therefore in this regard, provides that a SCC shall be constituted within 60 days from LCD
- The SCC therefore serves as a formal monitoring mechanism
- The decision(s) taken by the liquidator prior to the constitution of SCC shall be placed before SCC in its first meeting





# Issues:

- The liquidator takes significant decisions related to appointment and sale of assets in the first 60 and mandating such decisions to be placed before the committee on ex-post basis weakens the accountability of liquidator.
- The present composition of SCC includes representatives of all classes of stakeholders, irrespective of the amount of their claims.
- Though the regulation provides that the liquidator shall record the reasons in writing, the same is not considered adequate to ensure accountability of liquidator.

## Proposal:

**The CoC as constituted during CIRP on the basis of admitted claims shall function as SCC during liquidation process with the voting share of members of SCC being same as that in the CoC. The stakeholders who are part of CoC without voting rights will be part of SCC without voting rights. The liquidator shall convene first meeting of SCC within seven days of liquidation commencement date.**





# Advice of SCC

## Present Laws:

- Section 33(5) of the Code empowers the liquidator to consult any of the stakeholders entitled to distribution of proceeds under liquidation.
- Regulation 31A (9) of the Liquidation Regulations specifies voting percentage.
- The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting

## Issue:

- Though the regulation provides that the liquidator shall record the reasons in writing, the same is not considered adequate to ensure accountability of liquidator.
- There is absence of adequate monitoring of the Liquidation Process
- The present arrangement needs to be strengthened to provide for strong checks and balances



# Proposal :

**The liquidator shall put the agendas for deciding on remuneration of professionals, sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy, need for fresh valuation, etc. before the SCC.**

**The SCC shall advise the liquidator by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting. In cases where the liquidator takes a decision contrary to the advice of the SCC, he shall record the reasons for the same in writing and forward the records relating to the said decision in a separate Form (prescribed by the Board), to the Adjudicating Authority and the Board within five days of the said decision.**



# Replacement of Liquidator

## Existing laws:

- **Section 34(1)** of the Code provides that under normal circumstances, the resolution professional (RP) shall continue as the liquidator.
- **Sub-section (4)** provides the circumstances in which the AA shall by order replace the RP.
- The conduct of the RP if is not up to its satisfaction, even replace the RP under section 27 of the Code.

## Issues:

- There is no provision like section 27 to provide for replacement of liquidator during the liquidation process.

## Proposal:

**To further empower the stakeholders during liquidation process, it is proposed that the SCC may, by a majority vote of not less sixty-six per cent, present and voting, propose replacement of the liquidator and it shall file an application before the Adjudicating Authority for appointment of the proposed liquidator.**



# Fee of the Liquidator

## Existing legal framework:

- Considerable time generally passes between the application filed for seeking liquidation and the liquidation order by the AA, thus, the fees of the liquidator fixed by CoC may no longer be relevant.

## Issue:

- CoC may not decide to fix this fee while deciding to liquidate the CD
- Therefore, there is need to fix/ review the fees of the liquidator in the initial phase of the liquidation process

## Proposal:

**SCC will fix/ review the fees of the liquidator in its first meeting. In cases where fee structure under regulation 4(2)(b) of the Liquidation Regulations is applicable, there will be an opportunity for stakeholders to review the same.**



# Compromise or Arrangement

## Existing framework:

- The Code provides for a market mechanism for rescuing failing but viable CDs and liquidating failing and unviable ones
- Section 230 of Companies Act thereof, as amended by the Code, enables compromise or arrangement on the application by a liquidator appointed under the Code.
- Regulation 2B of the Liquidation Regulations provides an upper threshold of ninety days for the completion of process under section 230 of the Act.



# Compromise or Arrangement... CONTD

## Issues:

- It has been observed that the process under section 230, in majority of the cases where it is explored, is continued beyond the specified period of ninety days.
- Such delay has a cascading effect on the timely conclusion of liquidation process as the liquidator cannot proceed with the auction of assets of the CD when the process under section 230 is underway.
- As on 31st May 2022, only eight liquidation processes have been closed by way of compromise or arrangement under section 230 of the Act has realised only 87% of the liquidation value





# Compromise or Arrangement... CONTD

## Proposal:

**It is proposed that in case COC decides during CIRP process to explore the process under section 230 of the Companies Act, 2013, the liquidator shall complete such process within thirty days from the liquidation commencement date. Regulation 39C of CIRP Regulations will be suitably amended in this regard.**

**Since this time will also be available with the members of CoC who are also members of the initial SCC, time of 90 days given for concluding compromise or arrangement is proposed to be reduced to 30 days.**



# Valuation

## Existing Laws:

- **Regulation 35** of the Liquidation Regulations provides that the liquidator shall either consider the valuation as conducted during the CIRP or appoint valuers for fresh valuation if required under the circumstances, within seven days of the LCD

## Issues:

- The liquidators are opting for fresh valuation in majority of liquidation cases.
- Valuation conducted during the CIRP do not represent the current value of assets of the CD. However, such fresh valuation results in additional cost.
- The actual realisation from sale depends more on the marketing efforts by the liquidator.
- An option for appointing valuers should be available without any specific timeline to provide requisite flexibility to liquidator to get valuation done anytime during the process.



# Valuation... CONTD...

## Proposal:

In this regard, it is proposed that the liquidator shall consider the valuation report as arrived at during the CIRP for conducting auction. However, where the liquidator is of the opinion that fresh valuation is required, he shall seek advice of SCC for the same and such valuation may be considered for subsequent auctions.



# Submission of Progress Reports and SCC Minutes

## Existing Law:

- **Regulation 15** of the Liquidation Regulations provides that the liquidator shall submit Progress Reports to the AA, within 15 days after the end of every quarter.
- **Section 208(2)(d)** of the Code provides that every insolvency professional (IP) shall abide by the code of conduct “to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member”.

## Issues;

- Several liquidators do not submit copies of such records of proceeding 6 filed with the AA, to the Board.
- The Format for the progress reports have not been specified
- Only the broad aspects to be covered in the Report have been specified in Regulation 15.



# Submission of Progress Reports and SCC Minutes... CONTD...

## **Proposal:**

The Liquidation Regulations may be amended to provide that the liquidator shall submit the copy of progress reports, along with the minutes of the SCC, with the Board as and when the same is filed with AA. Further, the format of Progress report, along with its contents, may be provided in detail by way of a Circular.



# Auction Framework

## Events-based timelines of Auction

### Existing Legal Framework:

- **Regulations 33(1)** of Liquidation Regulations stipulates that the liquidator shall ordinarily sell the assets of the CD through an auction in the manner specified in Schedule I
- **Schedule I**, inter alia, mentions detailed mechanism for auction.

### Issues:

- Schedule I of the Liquidation regulations, however, does not specify any timelines from the issue of public notice of auction to date of auction.
- Taking unfair advantage of this regulatory gap, liquidators in some processes have conducted e-auction within an unreasonably short period of 5-6 days.





# Auction Framework

## Events-based timelines of Auction... CONTD...

S. No.	Event	Timeline
1.	Public Notice of E-Auction	T = 0 day
2.	Submission of Eligibility Documents by Prospective Bidder	Minimum 14 days
3.	Declaration of Qualified Bidder by Liquidator	1 to 3 days
4.	Data Room Access, Site Visits and Discussion Meeting	Min. 7 days
5.	Submission of Earnest Money Deposit	Minimum 2 days
6.	Submission of Bids on E-auction Date	T+35 day



# Timeline for successive auction

## Existing setup:

- Due to the specific nature of assets (including their status as stressed assets), it often takes more than one auction to sell all assets of the company.

## Issue:

- In some cases, it has been noticed that the liquidator conducts successive auction at large interval of 3-4 months.
- The whole liquidation process is delayed, which invariably adversely impacts the realization by the stakeholders.

## Proposal:

**It is proposed that in the event of failure of an auction, the successive auction notice shall be issued within the next 15 days of a failed auction (while following the foregoing events-based timeline) unless the SCC agrees to extension of this timeline, on specific ground(s).**



# Designating Auction Portal

## Existing Laws:

- **Clause 1(7) of Schedule I** of Liquidation Regulations provides that “The liquidator shall sell the assets through an electronic auction on an online portal, if any, designated by the Board, where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.”

## Issues:

- At present, there exist plethora of online auction platforms in the market, however, the security of information / data collected / hosted by them is not up to the desired level.
- Board has empanelled two Platforms for Distressed Assets (PDAs) after carefully evaluating them.
- Such designation would result in ensuring greater confidentiality (about bidders) and transparency in the process.

## Proposal:

The Liquidation Regulations may provide that the auction platforms of PDAs as empanelled from time to time may be exclusively designated for offering auction services.



# Preparation of Asset Memorandum

## Present Laws:

- **Regulation 34** of the Liquidation Regulations mandates the liquidator to prepare an asset memorandum within 75 days from LCD and only after its preparation, the sale process of assets is undertaken.
- Large amount of information which is required to be presented in the Asset Memorandum is already covered in the Information Memorandum (IM) and valuation conducted during CIRP.
- Regulation 34(5) provides 8 that the asset memorandum shall not be accessible to any person during liquidation.

## Issue:

- Sharing of the asset memorandum with the SCC may be permitted to arrive at better decision for sale of the assets of the CD.



# Preparation of Asset Memorandum... CONTD...

## Proposal:

**The Liquidator shall use the information provided in IM and valuation conducted during CIRP for preparation of Asset Memorandum and submit the same to AA within 30 days. Further, the liquidator shall share the asset memorandum with the SCC after receiving confidentiality undertaking from the members of the SCC.**



# Interim Finance availed during CIRP

## Existing Law:

- The Code provides that a resolution professional during CIRP may raise interim finance and such interim finance shall form part of the insolvency resolution process costs.
- The Liquidation Regulations provide that, *“interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;”* shall form part of the liquidation cost.
- Liquidation cost covers maximum twelve months of interest on interim finance.

## Issue:

- The liquidation cost covers maximum twelve months of interest on interim finance.
- In case the liquidation process continues for more than twelve months, the interim finance ceases to earn any interest, which acts as a strong disincentive for lenders to provide interim finance during the CIRP

## Proposal:

**The liquidation cost shall include the interest on interim finance till the same is repaid.**





# Treatment of Avoidance Applications

## Existing Laws:

- **Regulation 44** of the Liquidation Regulations provides that the liquidator shall liquidate the corporate debtor notwithstanding pendency of any application for avoidance of transactions.
- The liquidation proceeding, or dissolution of the CD or closure of the process should not be held up even if the matters relating to avoidance transactions are yet to be disposed of.

## Issue:

- There is a need for clarity on treatment of such proceedings after the dissolution of the CD / closure of the process

## Proposal:

**Before filing of an application of dissolution or closure of the process by liquidator, SCC shall decide the manner in which proceedings in respect of avoidance transactions or fraudulent or wrongful trading, if any, will be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from such proceedings shall be distributed. This decision shall be part of the final report filed before the AA.**



# Claims

## Existing Laws:

- **Section 38(1)** of the Code provides that, “The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.”
- Regulation 12 of the Liquidation Regulations provides that the liquidator shall make a public announcement calling upon stakeholders to submit their claims or update 9 their claims submitted during the CIRP, as on the LCD

## Issue:

- Under the present dispensation, there is duplication of effort in terms of invitation of fresh claims during the liquidation process.

## Proposal:

The liquidator shall consider the claims collated during the CIRP in respect of claimant who have not submitted their claim during liquidation.



# Proposed Amendments

## In Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)(Fourth Amendment) Regulations, 2022

- In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as 'the principal regulations'), in **regulation 31, after clause (e)**, the following clause shall be inserted, namely:-  
    **“(f) regulation fee payable to the Board, under clause (d) of sub-regulation (2) of regulation 38.”**
- In the principal regulations, in **Regulation 38**, in sub-regulation (2), after clause (c), the following clause shall be inserted, namely:-  
    **“(d) payment of regulation fee to the Board, calculated at the rate of 0.25 per cent on the aggregate amounts or its equivalent provided in the resolution plan, where such amount is more than the liquidation value.”**



# Proposed Amendments

## **In Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)(Fourth Amendment) Regulations, 2022**

- In the principal regulations, in **regulation 39**, the following sub-regulation (4) shall be substituted, namely:-

**“The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B, and provision for payment of regulation fee to the Board as required under clause (d) of sub-regulation (2) of regulation 38.”**



# Proposed Amendments

## **In Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)(Fourth Amendment) Regulations, 2022**

- In the principal regulations, in **regulation 39, after sub-regulation (5A)** the following subregulation shall be inserted, namely:-  
    **“(5B) The resolution professional shall, within fifteen days of the order of the Adjudicating Authority approving a resolution plan, remit to the Board, the regulation fee as required under clause (d) of sub-regulation (2) of regulation 38. Provided that this sub-regulation shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022.”**



# Proposed Amendments

## In Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)(Fourth Amendment) Regulations, 2022

- In the principal regulations, in the Schedule, in Form H, after Paragraph (7), the following Paragraph shall be inserted, namely:-

**“7A. The regulation fee to the Board, calculated at the rate of 0.25 per cent on the aggregate amounts or its equivalent provided in the resolution plan, where such amount is more than the liquidation value as covered at Paragraph (7) above is as under-**

	[Amounts in Rupees]
<ul style="list-style-type: none"><li>Aggregate amounts or its equivalent provided in the resolution plan, where such amount is more than the liquidation value. and as covered at Paragraph (7)</li></ul>	Amount of regulation fee payable to the Board calculated at the rate of 0.25 per cent on the aggregate amounts or its equivalent provided in the resolution plan, where such amount is more than the liquidation value





# **DISCUSSION PAPER ON CHANGES IN THE**

## **CORPORATE INSOLVENCY RESOLUTION PROCESS**

### **TO REDUCE DELAYS AND IMPROVE THE RESOLUTION VALUE**

27th June, 2022



# Change in Timelines for activities under CIRP

## Introduction of Regulation 40A in CIRP Regulations:

Section/ Regulation	Description of Activity	Existing Timeline	Proposed Timeline
Regulation 35A	RP to form an opinion on preferential and other transactions	T+75	-
	RP to make a determination on preferential and other transactions	T+115	-
	RP to file applications to AA for appropriate relief	T135	T+130
Regulation 36(1)	Submission of IM to CoC	Within 2 weeks of the appointment of RP, not later than 54 <sup>th</sup> Day T+54	Within 95 days of commencement T+95
Regulation 36A	Publish Form G Invitation of EoI	Within 75 days of commencement T+75	Within 60 days of commencement T+60
	Submission of EoI	At least 15 days from issue of EoI (Assume 15 days) T+90	At least 15 days from issue of EoI (Assume 15 days) T+75
	Provisional List of Ras by RP	Within 10 days from the last day of receipt of EoI T+100	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+105	For 5 days of the receipt of provisional list T+90
	Final List of Resolution Applicants	Within 10 days of the receipt of objections T+115	Within 10 days of the receipt of objections T+105



# Marketing of assets by the resolution professional

## Intent for Proposal:

- Maximising the value of CD under CIRP can happen only when there are multiple competing resolution plans and a price discovery takes place through competitive bidding among prospective resolution applicants.
- The information of the asset being available in the market needs to be disseminated to a wider audience to improve interest and encourage participation.



# Marketing of assets by the resolution professional... CONTD...

## ***Proposal:***

***At the stage when the EoI is being finalised and issued, the RP shall prepare a plan / strategy for the marketing of the assets of the CD, in CDs where the total claims exceed Rs. 100 crore. Such a plan may include the details of the advertising platforms proposed to be used, the other platforms/forums in which the EoI can be shared, the need for professional services for this purpose, the costs involved in these efforts etc. The plan shall be finalised by RP in consultation with the CoC. RPs will publish EoI of CDs on various public platforms so that it is visible to many participants. Additionally, CoC member banks may also market the request for resolution plan among their borrowers so that a better market price discovery takes place.***



# Marketing of assets by the resolution professional... CONTD...

## ***Proposed amendment:***

### ***36C Strategy for marketing of assets of the corporate debtor***

- The resolution professional shall prepare a strategy for marketing of the assets of the corporate debtor, where the total claims exceed Rs.100 crore. Such strategy shall consist the measures that would be taken and the cost involved in implementation and shall be prepared in consultation with the committee.*
- The creditors may propose and include measures that they would take in the marketing of assets of the corporate debtor as part of the strategy*



# Efforts for resolution of functional / operating parts of the Corporate Debtor

## Existing Framework:

- Regulation 37 of CIRP Regulation allows transfer of all or part of the assets of the CD to one or more persons.
- Allows sale of all or part of assets whether subject to any security interests or not.
- Allows restructuring of the CD, by way of merger, amalgamation and demerger.

## Issues:

- During liquidation, assets are being sold in various parts but not in CIRP stage. However, in sale during the liquidation stage, there is substantial loss in value.
- Concern that the liabilities of the CD may all be transferred to certain assets/ units while certain assets are kept unencumbered by design and are taken over by a targeted resolution plan will be required to be addressed.





# Efforts for resolution of functional / operating parts of the Corporate Debtor... CONTD...

## **Proposal:**

*Since the CIRP Regulations provides for re-issue of RFRP, the RP and CoC would be enabled to explore resolutions of part assets/ businesses by allowing submission of different resolution plans for these part assets/ businesses, while a revised RFRP is issued. The evaluation matrix can be amended accordingly. Such determination can be made when there was interest expressed by PRAs at the EoI stage but there have been no resolution plans received after the time for submission of resolution plans has lapsed.*

## **Proposed amendment:**

*37A Resolution of assets of the corporate debtor :*

- The resolution professional and the creditor may in cases where there were prospective resolution applicants expressing interest in the corporate debtor but no resolution plan was received after the time for submission of resolution plan has lapsed explore to resolve part of the assets of the corporate debtor.*
- A resolution under this regulation shall be enabled by modification of the request for resolution plan issued as provided in regulation 36B.*



# Guiding factors for the CoC to decide on early liquidation

## **Existing Problem:**

- In cases where the CD is defunct, has no assets or insignificant assets, no office or premises, and CD exists only on paper the RP and the creditors have no option but to liquidate the CD.
- However, in most cases the RP attempts a resolution before filing for liquidation orders. This forces the conduct of the CIRP where the chances of resolution do not exist and imposes a cost on the creditors in paying to the RP and other process costs.
- It delays the liquidation process and leads to loss of value of the assets of the CD



# Guiding factors for the CoC to decide on early liquidation. CONTD...

## ***Proposed amendment:***

### ***40D Decision for liquidation***

- The committee while considering the liquidation of the corporate debtor may consider factors such as non-operational status for preceding 3 years, goods produced or service offered being obsolete, the technology employed being obsolete, lack of intangible assets like brand value, intellectual property, accumulated losses/depreciation, investments that are yet to mature that reflect the viability of the corporate debtor.*
- Such consideration may be recorded and submitted in the application for liquidation order submitted by the resolution professional to the Adjudicating Authority.*



# Exploring compromise arrangement after CoC approves Liquidation

## Existing Framework:

- On initiation of the liquidation process, the Liquidator first attempts to workout a compromise arrangement under section 230 of the Companies Act 2013. For this a period of 90 days from commencement of liquidation is prescribed.

## Issues:

- Once the CoC decides to liquidate the CD and the RP files an application, the approval of AA is required for liquidation. During this period the CIRP is in limbo and the value of assets continues to erode.
- The assets go out of the market and are brought only once liquidation starts.

## Proposal:

***The RP and CoC should begin exploring the option for compromise or arrangement during the period it awaits the AA's approval for liquidation order. If a compromise arrangement is reached before the order is passed, the RP / CoC can file an application seeking approval for the arrangement in place of the liquidation order.***



# Exploring compromise arrangement after CoC approves Liquidation... CONTD...

## ***Proposed amendment:***

### *Regulation 39CA. Assessment of compromise or arrangement*

- Where the committee has decided to liquidate the corporate debtor under Section 33 and the application is pending before the Adjudicating Authority for approval, the committee may recommend that the liquidator may explore proposal of compromise or arrangement under Section 230 of the Companies Act, 2013 (18 of 2013).*
- The resolution professional shall submit the recommendation of the committee under sub- regulation (1) to the Adjudicating Authority while filing the decision of the committee under Section 33.*





# Contents of Information Memorandum (IM)

## Existing Law:

- Section 29 (2) of the Code provides for the preparation of IM by the RP which shall include the financial position of the Corporate Debtor, all information related to disputes by or against the CD and any other matter pertaining to the CD as may be specified.
- Regulation 36 provides the mandatory contents of the IM.

## Issues:

- The IPs and the CoC do not pay enough and close attention to preparation/approval of the IM. This restricts the information available to the resolution applicants and may lead to complete loss of information.
- The IM does not reflect the unique selling proposition of the CD and does not provide a clear picture of the CD's strengths and prospects.





# Contents of Information Memorandum (IM)... CONTD...

## ***Proposal:***

***The RP shall include as part of the IM a clear picture of the CDs business performance, business evolution details, key contracts, industry overview including sector fundamentals, key growth drivers, projected business plan, key investment highlights etc. It should reflect details that would attract/incentivise PRAs such as brought forward losses in the income tax returns, input credit of GST, key employees, key customers, supply chain linkages, utility connections and other infrastructure facilities which will take a lot of time to be set up.***



# Contents of Information Memorandum (IM)... CONTD...

## ***Proposed Amendment:***

**Regulation 36(2)** may be amended to provide for the objective of the IM and the following shall be incorporated which shall read as under:

*The information memorandum shall contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant to enable it to submit a compliant resolution plan and shall contain the following details of the corporate debtor-*

*(a)*

*(b)*

*(ba) Company overview including snapshot of business performance, business evolution details, key contracts, industry overview including sector fundamentals, key growth drivers, projected business plan, key investment highlights etc.*

*(bb) Factors which bring out the value as a going concern over and above the assets of the corporate debtor – brought forward losses in the income tax returns, input credit of GST, key employees, key customers, supply chain linkages, utility connections and other infrastructure facilities which will take a lot of time to be provided etc.*



# Dealing with asset provided through a personal guarantor as part of the CIRP of the Corporate Debtor

## Existing Framework:

- Law enables that land which belong to a third party (on which factory of CD is built) can be transferred to the RA through an approved resolution plan.

## Issues:

- Since the land belongs to a related party of the CD/promoter, the RAs are hesitant to come forward as the right to use may be contested or denied at any time or litigated on frivolous grounds by the third party.
- This has disincentivised several RAs in proposing plans even for viable CDs leading to difficulty in including the land as part of resolution estate.



# Dealing with asset provided through a personal guarantor as part of the CIRP of the Corporate Debtor... CONTD...

## ***Proposal:***

***The assets belonging to promoters/guarantors without which meaningful resolution of CD is not possible, and which are already mortgaged/charged to creditors for securing the loan of the CD can be made part of the resolution estate with the consent of the mortgagee / charge holder (creditor).***

## ***Proposed amendment:***

### ***35AA. Relinquishment by charge holder***

***A mortgagee/charge holder which is part of the committee may choose to relinquish such rights of mortgage or charge on the property if it results in better realisation for the creditors.***

Further, Regulation 36(2)(fa) may be added under CIRP Regulations which shall state the following:

***(fa) details of assets for which assent has been given by the mortgagee/charger holder to make a part of resolution estate.***



# Geo-tagging of immovable assets

## Existing Framework:

- IRP/ RP should make every endeavour to protect and preserve the value of the property of the CD.
- IP is to take control and custody of all the assets of the CD and manage operations as a going concern. The inventory of assets and their details form the basis for further activities like valuation, inclusion of details in the IM, management of these assets and dealing with any litigation on these assets.

## Issues:

- There is lack of complete information about the CDs assets in several cases the IP builds the information after he takes over.



# Geo-tagging of immovable assets... CONTD...

## ***Proposal:***

***The IP shall enable geo-tagging of the immovable assets wherever possible and include such information as part of the IM.***

## ***Proposed amendment:***

**The explanation under Regulation 36(2)(a) may be amended which shall read as follows:**

***Explanation: 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details. Further, such description must include the details of the immovable assets along with geotagging of all places at which such assets are situated.***





# Discussion of valuation report with CoC

## Existing Framework:

- **Regulation 35(2)** : After the receipt of resolution plans in accordance with the Code and these regulations, the RP shall provide the fair value and the liquidation value to every member of the CoC in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29:

## Issue:

- CoC has limited knowledge of the valuations viz. Fair Value and Liquidation Value, basis which they decide on the eligibility criteria of PRA's and the evaluation matrix



# Discussion of valuation report with CoC... CONTD...

## ***Proposal:***

***It shall be provided that along with RP, CoC must be given an opportunity to interact with valuers to understand their valuation methods, underlying assumptions, and justifications so that a veritable valuation is accepted. The confidentiality agreements or disclosures may be taken before such discussion is carried out.***

## ***Proposed Amendment:***

***Regulation 35(2A): The registered valuers appointed under regulation 27 shall present draft valuation report to the resolution professional and committee in a meeting of the committee to brief them about the valuation approach followed and limitations of the reports.***



# Need for repeating the valuation exercise

## Existing Framework:

- The value is determined at the ICD and does not reflect the liquidation value.
- **Regulation 35:** Fair value and liquidation value shall be determined in the following manner:-
  - the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;
  - if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and
  - the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.



# Need for repeating the valuation exercise... CONTD...

## Issues:

- Valuation has eroded over a period of time on account on various reasons like COVID-19 pandemic, obsolescence of plants & machinery, stoppage of CD as a going concern etc.
- The validity of a valuation report extends to 6 - 9 months as beyond that the change in market conditions may not be the same as when the valuation was done.

## Proposal:

- ***The CoC may decide to repeat the valuation exercise in CIRPs where the timeline has extended beyond the mandatory 330 days due to difficult market conditions or force majeure conditions or legal stalemate.***

## Proposed amendment:

**Regulation 35(4)** may be inserted in CIRP Regulations which shall state the following:

***(4) The committee may choose to repeat the valuation exercise undertaken in terms of this Section where the process has extended beyond the time-limit stipulated under Section 12 for completion of insolvency resolution process for reasons to be recorded in writing.***



# Status of the CoC after approval of the resolution plan by the CoC

## Existing Framework:

- Post approval of resolution plan/ decision to liquidate the CD, there is no clarity as to the role of CoC.
- After approval of resolution plan, the role of RP also ceases to exist, and he becomes *functus officio*.

## Issue:

- The lack of clarity on the status of the RP and CoC during the period from submission of approval of resolution plan before AA till approval of resolution plan/ order of liquidation leads to uncertainty.



# Status of the CoC after approval of the resolution plan by the CoC... CONTD...

## ***Proposal:***

***The RP shall continue to conduct the CoC meetings during the period between approval of plan by the CoC and approval by the AA. During such period he shall through the meetings keep the CoC informed on the progress on CIRP, approval of the resolution plan and to confer with the CoC in all matters regarding the operations of the CD.***

## ***Proposed amendment:***

The following clarification may be added under **Regulation 18(2)** of CIRP Regulations:

***Clarification: A meeting may also be convened under this sub-regulation after approval of the resolution plan by the committee or where a decision has been taken to liquidation the corporate debtor by the committee and before the approval by Adjudicating Authority.***





# Minimum entitlement for dissenting financial creditors

## Existing Law:

- **Section 30(2)(b):** The RP shall examine each resolution plan received by him centime that each plan

*‘.....provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.’*

## Issues:

Amount to be paid to dissenting FC as per Sec. 53(1) is a notional amount which is not known as the same can only be determined in the event of liquidation.

The value of assets deteriorates with time, sometimes the liquidation value is higher than the actual realisation upon liquidation, which creates a perverse incentive for creditors to dissent to a resolution plan and receive a higher value.



# Minimum entitlement for dissenting financial creditors. CONTD...

## ***Proposal:***

- The payment to dissenting financial creditors shall be linked to the realisable amount in the event of liquidation when the resolution plan has been approved. This would be instead of the current provision of linking it to the amount due to them in the event of liquidation, which is a notional number. To protect the interest of minority dissenting financial creditors while ensuring that there is no perverse incentive to dissent, dissenting financial creditors should be paid as follows:-***
- Distribution as per 53(1) out of [Resolution plan value – Value given to operational creditors above their entitlement as per section 53 out of Resolution plan Value]***

## ***Proposed Amendment:***

It is proposed that the following definition of ‘**realisable amount** in the event of liquidation when the resolution plan has been approved” under **Regulation 2(1)(k)** of CIRP Regulations:

***(ka) “realisable amount in the event of liquidation when the resolution plan has been approved” means a notional amount which is the difference of amount available for distribution under a resolution plan and the amount distributed to operational creditors under resolution plan above the amount available to operational creditors as per section 53(1) out of the amount distributed as per the resolution plan.***



# Process email

## Existing Framework:

- In Public Announcement, for receiving claims the IRP provides an email address that he operates or uses.

## Issue:

- Claimants continue to submit claims in the said email even after the IRP demits office and the RP takes over.
- This necessitates the IRP to share the information received in a prompt manner to the RP, failing which claims may go unaddressed leading to avoidable correspondence for the claimant and possible litigations.

## Proposal:

***The IRP shall be required to open an email account for conduct of the CIRP and handover credentials of the same to the RP while he demits office. The RP should also handover the credentials to the other RP in the event of replacement or to the Liquidator in the event of liquidation.***



# Need for IRP /RP to communicate to call creditors to submit claims

## Issues:

- The claimant / creditors are unable to file claims due to reasons like lack of information about the CIRP.
- Common occurrence in real estate cases where the allottees are not in touch with the CD on a regular basis.

## Proposal:

***The IRP shall communicate the initiation of CIRP and the details of the public announcement including the last date for submission of claims to all creditors of the CD.***



# Need for IRP /RP to communicate to call creditors to submit claims... CONTD...

## ***Proposed Amendment:***

It is proposed that Regulation 6A may be added under CIRP Regulations, 2016:

### ***6A. Notice to known creditors***

*The interim resolution professional shall send notice to all the known creditors of the Corporate Debtor which shall contain a copy of the public announcement made under Regulation 6. The notice may be sent through post or through electronic means to such creditors.*

*Explanation: Known creditors of the Corporate Debtor shall mean the creditors reflected in the books of accounts of the Corporate Debtor available with the interim resolution professional or information received from any other source as the case maybe.*







# Thank

# You

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