

Amendments to the Corporate Insolvency Resolution Process

On September 18, 2023, the Insolvency and Bankruptcy Board of India (“**IBBI**”) notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 (“**CIRP Amendment Regulations**”)¹ amending the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) under the Insolvency & Bankruptcy Code, 2016 (“**IBC**”).

In a nutshell, the CIRP Amendment Regulations:

1. introduces relaxations for stakeholders by extending the timeline for submitting claims;
2. assists the National Company Law Tribunals (“**NCLTs**”) by requiring additional details in a corporate insolvency resolution process (“**CIRP**”) application (such as various details and evidence pertaining to the chronology of debt, defaults and limitation);
3. increases the obligations of the resolution professionals (“**RP**”) to verify the asset list of the corporate debtor with the financials of the company, and also the onus of condoning the delay in filing of stakeholder claims also now lies upon the RP (instead of the creditor itself);
4. allows members of the committee of creditors (“**CoC**”) to call for an audit of the corporate debtor at a cost included in the CIRP costs (if approved by the CoC); and
5. Increase the role and responsibilities of authorized representatives of a class of financial creditors, streamlines the CoC meetings, and aligns the timelines for information memoranda and requests for plans.

Salient Features

1. Additional information to be supplied while filing applications under Section 7 and Section 9 of the IBC

Applicant-creditors are now also required to submit (along with evidence) the following details while filing their respective applications under Section 7 and 9 of the IBC:

- a) chronology of debt and default (including the date when the debt became due);
- b) date of default;
- c) date of part payments (if any); and
- d) date of last acknowledgment of debt and the applicable limitation.

¹ Gazette Notification No. IBBI/2023-24/GN/REG106 dated September 18, 2023.

2. Increased timelines for submission of claims

Creditors who fail to submit their claim before the last date specified in the public announcement, may submit its claim within 90 (ninety) days from the Insolvency Commencement Date or by the date of issue of request for resolution plans – whichever is later.

If a claim is received after this period, but up to 7 (seven) days before the date of the CoC meeting to vote on the resolution plan or initiation of liquidation, then the RP is required to verify the claim and categorise it as 'acceptable' or 'non-acceptable':

- a) 'Non acceptable': If the RP categorises the claim as 'non-acceptable', then the RP is required to intimate the creditor within 7 (seven) days of such categorisation along with reasons for such non-acceptance.
- b) 'Acceptable': If the RP categorises the claim as 'acceptable', then the RP is required to:
 - i) put the claim up in the next CoC meeting for its recommendation on inclusion of this acceptable claim in the list of creditors and the treatment of such claim in the resolution plan; and
 - ii) submit the claim before the NCLT for condonation of delay and adjudication.

3. CoC may propose audit of the corporate debtor

The amendments now provide for any member of the CoC to propose an audit of the Corporate Debtor. This proposal will then be placed before the CoC for a decision on the objectives, scope, costs, timeframe, and name of the proposed auditor. If approved, the cost of the audit will be a part of the CIRP costs.

4. Duty to intimate the RP about the assignment or transfer of debt

In case of any assignment or transfer of debt during CIRP, the creditor will provide the RP with the details thereof (such as the terms of assignment and the identity of the assignee) within 7 (seven) days of such assignment or transfer.

5. Corporate debtor handing over custody of information of records and assets to the RP

While Regulation 4 of the CIRP Regulations already provides for cooperation from the corporate debtor, the amendment details the procedure for handing over of custody and control of (a) records of information relating to assets, finances and operations of the corporate debtor; and (b) assets recorded in the balance sheet or other records of the corporate debtor to the RP.

The corporate debtor is required to provide the RP with a list of assets and records that are being handed over (Regulation 3A). If such a list is not provided:

- a) The RP is required to prepare a list of assets and records while taking custody. Such a list prepared by the RP has been verified by the signature of all the parties present and at least 2 (two) individuals who have witnessed the handing over of custody of the assets and records.
- b) The RP can also requisition any records (which are required to be maintained but have not been handed over to the RP) or assets (which are recorded in the balance sheet but have not been handed over) from the corporate debtor.
- c) In the event the information is still not handed over, the RP can prefer an application under Section 19(2) before the NCLT for necessary order.

6. Authorised representatives of (a class of) financial creditors

A class of financial creditors (holding not less than 10% voting share) can request the RP to replace their authorised representative with an insolvency professional of their choice. The mode and manner of this nomination and voting is prescribed. Once a insolvency professional receives the highest percentage of voting share of financial creditors in that class, the RP is required to apply to the NCLT for the appointment of the authorised representative.

These amendments prescribe the fee for authorized representatives and impose additional duties and responsibilities on the authorised representative which include a requirement to assist the creditors in understanding the discussions of CoC meetings and evaluating the resolution plan, to regularly update the creditors on the progress of the CIRP, etc.

7. **Revised Form G (Expression of Interest) gives the prospective resolution applicants with direct access to the corporate debtor's financials**

The original Form G has been substituted. The new form requires the RP to supply prospective resolution applicants with direct access to the corporate debtor's last available financial statements (with schedules) of 2 (two) years and the list of creditors in a URL-format. The new form also includes, *inter alia*, details such as the date on which the final list of prospective resolution applicants is to be published, date of issue of information memorandum, evaluation matrix, request for resolution plan and last date of submission of resolution plans.

JSA Analysis

The CIRP Amendment Regulations have been brought with the intent to streamline the insolvency process and plug in the existing gaps highlighted by stakeholders by striking a balance between the ground realities and mandate of the IBC.

The increased checks and balances introduced by these amendments are a step in the right direction and a welcome change to the existing framework. Amendments such as those regarding audits of the Corporate Debtor and cross verification of the asset list with the financials of a company are welcome reforms to the existing framework.

These amendments also address many practical issues before the NCLTs and remedy them by incorporating significant tools to aid and expedite the adjudication process, like:

1. The stipulation of providing evidence pertaining to the chronology of debt, defaults and limitation will expedite decision on maintainability (on limitation, threshold, admissibility, etc.) at the threshold and facilitate time bound decision making in such applications.
2. The inclusion of CoC minutes in Form H will help NCLTs have a ready reference of the CoC's rationale for approving a resolution plan and expedite the NCLT's own decisions on plan approvals.
3. Once the RP issues the requisition notices under Regulation 3A and annexes those notices to an application under Section 19(2) before the NCLT, it will make the corporate debtor's non-compliance/default apparent to the NCLT as and the information sought therein will not be found in the list of Corporate Debtor's assets / records.

This slew of amendments comes in light of the IBBI discussion paper published on June 7, 2023 which dealt with the measures for increasing the possibility of resolution, value of resolution plan and enabling timely resolution under the IBC ("**Discussion Paper**"). This is the second amendment to the CIRP Regulations in a span of less than 3 (three) months², demonstrating the IBBI's proactiveness in working towards a more efficient and workable CIRP process. Many of these amendments are intended to fill in the gaps in the insolvency resolution process across the country, which only goes to show that the IBBI is keeping an eye on the ground realities and is remedying any issues that impede the efficiency of CIRPs in India.

² The previous amendment being IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2023 published vide notification No. IBBI/2023-24/GN/REG102, dated July 20, 2023 in the Gazette of India, Extraordinary, Part III, Section 4, No. 506 on July 20, 2023

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