

**Discussion paper on amendments to Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Process) Regulations, 2016**

This discussion paper solicits comments on following issues, namely: -

- (a) Registered valuer to submit valuation report for the Corporate Debtor (CD) as a whole.
- (b) One valuation estimate for companies up to a certain asset size and for micro, small and medium enterprises (MSME) companies.
- (c) Voting by authorised representative (AR) before appointment by Adjudicating Authority (AA).
- (d) Release of guarantees in the resolution plan.

1. Registered valuer to submit valuation report for the Corporate Debtor (CD) as a whole.

1.1. Valuation under the Code focuses on determining notional value to nudge market to discover of value of such assets through competitive bids. Assets of the CD plays a critical role in the Corporate Insolvency Resolution Process (CIRP); hence, accurate valuation is a significant determinant of the outcome of the process. It helps maximize recoveries for creditors, facilitates informed decision-making throughout the resolution process, and ensures fairness for all stakeholders involved.

1.2. To determine the fair value and liquidation value of the CD, the regulations require the resolution professional (RP) to appoint two registered valuers (RVs). Both the RVs carryout the valuation process in accordance with internationally accepted valuation standards and submit an estimate of fair value and liquidation value to the RP.

1.3. Further, regulation 35(1)(b) provides that *“if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value...”* Where the two estimates in an asset class are significantly different, i.e., 25 per cent., the RP appoints a third RV for the asset

class. The average of the two closest estimates of a value is considered the fair value or liquidation value of the CD.

1.4. However, in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules), in discharge of his professional duty, the valuer, under Rule 8(2) of the Valuation Rules is empowered to obtain inputs for his valuation report or get a separate valuation for any asset class conducted from another registered valuer, if required. The provision is reproduced as under:

“(2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.”

1.5. Thus, while the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Process) Regulations, 2016 (CIRP Regulations) point towards appointment of separate registered valuer in each asset class, the Valuation Rules point toward valuation to be carried out by a single valuer as a whole. Due to inconsistency in the provisions of Valuation Rules and CIRP Regulations, divergent practices are being observed in the market. This apparent anomaly needs to be corrected and regulations are needed to be made consistent with the Valuation Rules. Hence with the approval of the proposal instead of possible appointment of six registered valuers (2x 3 asset class) two valuers may be appointed for the valuation of the CD as a whole.

1.6. **Proposal:** In order to streamline the process and remove ambiguities around the present framework of appointment of valuers for the purpose of valuation of the CD and to align the regulations with the valuation rules, it is proposed that the CIRP Regulations may be amended to specify that the RP shall assign for carrying out the valuations of the CD as a whole to the RV. The RV may conduct the valuation as per rule 8(2) of the Valuation Rules taking inputs for other asset classes or get the valuation for an asset class conducted from another registered valuer, if required.

2. One valuation estimate for companies up to a certain asset size and for MSME companies.

2.1. Regulation 27 of the CIRP Regulations requires that the resolution professional shall, within seven days of his appointment but not later than forty seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35. Even where an estimate of value is significantly different, then there is a requirement of appointment of a third valuer. The cost of appointment of such valuers is a part of insolvency resolution process cost.

2.2. The CIRPs of companies up to a certain asset size and MSMEs in particular are very cost sensitive owing to their size. Any measure to reduce to the CIRP cost and delay in the process will be certainly helpful in the resolution of those CDs. Provision of two or three valuation estimates escalates the CIRP cost substantially and may contribute to delay in the process.

2.3. **Proposal:** In view of the above, it is proposed that in the CIRP of CDs having asset size up to Rs. 1000 crore and in CIRP of CDs classified as MSME, as a default position, RP to appoint only one registered valuer for providing the estimates of the fair value and the liquidation value. However, keeping in view the complexities so involved, if CoC so decides to have two valuers, it has to record the reasons for the same before RP takes steps for such appointments.

3. Voting by authorised representative before appointment by Adjudicating Authority.

3.1. The interim resolution professional (IRP) examines the books of accounts and other relevant records of the CD to ascertain the class of creditors of the CD, if any. If there are creditors in a class, the IRP obtains consent of three insolvency professionals (IP) to act as AR under regulation 4A(3) of the CIRP Regulations, and indicates their names in the public announcement. The creditor in a class indicates its choice of an IP to act as its AR. The IRP selects the IP, who is the choice of highest number of FCs in the class and make an application before the AA for his appointment as the AR. The AA appoints the AR before the first meeting of the CoC under section 21(6A)(b).

3.2. It has come to our notice that in some cases, the appointment of the AR gets delayed, and as a consequence, the AR is not able to attend the meeting(s) of the CoC till his appointment. Though as per regulation 16A(3) the delay in appointment of the AR does not affect the validity

of any decision taken by the CoC, non-representation of the creditors in class from the CoC hinders their ability to exercise their rights as financial creditors in the CoC.

3.3. **Proposal:** In view of the above, it is proposed that the IP, who is the choice of highest number of FCs in the class, shall be allowed to attend the meeting of the CoC after the IRP submits the application for his appointment before the AA. Along with request for his appointment as AR, RP shall also intimate AA for his continuation *in-interim*. In such cases, he will be required to perform the duties provided under section 25A read with regulation 16A of the CIRP Regulations in the intermediate period till decision of AA is available on his appointment or otherwise.

4. **Release of guarantees in the resolution plan.**

4.1. It has been seen that there have been multiple orders of various judicial authorities delving upon the diverse facets of the issue regarding the treatment of guarantees in a resolution plan, sometimes even in a contradictory manner. In order to have clarity in this regard, it is proposed to follow the approach of the Hon'ble Apex Court in the matter of *Lalit Kumar Jain v. Union of India*, wherein it was clarified that approval of a resolution plan of a CD does not automatically release its guarantors from their liability.

4.2. **Proposal:** To ensure that there is clarity on the rights of the financial creditor to enforce recovery under guarantee agreements, it is proposed that CIRP Regulations to be amended to clarify that the resolution plan submitted by the resolution applicant shall not extinguish the rights of the creditors to proceed against guarantors and enforce realization of guarantees governed through various guarantee agreements.

5. **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 proposes to make regulations under clauses (aa) and (t) of subsection (1) of section 196 of the Code.

6. **Submission of comments:** Comments may be submitted electronically by 10th July, 2024. 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 2024'

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.

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

8. You can make comments on more than one para, by clicking on more comments and repeating the process outlined above from point 6 (vi) onwards.

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

GAZETTE OF INDIA
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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION

New Delhi, the _____, 2024

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024.

No. IBBI/2024-25/GN/REGxxx.— In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely:-

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024.

(2) They shall come into force on the date declared by the Board by way of circular issued under clause (t) of sub-section (1) of section 196.

2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), under regulation 16A (1), the following proviso shall be inserted, namely: -

Provided that the insolvency professional selected under sub-regulation (1) to act as the authorised representative for a class of creditors shall be entitled to attend the meetings of the committee of creditors and perform such duties as provided under Section 25A from

the date of submission of the application for his appointment as authorised representative to the Adjudicating Authority till such date of his confirmation by Adjudicating Authority.

3. In the principal regulations, sub-regulation (1) of regulation 27 shall be substituted as under:

27. Appointment of Professionals.

(1) The resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35, as under:

(a) One registered valuer in case the corporate debtor is a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) or its asset size is up to Rs. 1000 crore as per the latest available balance sheet:

Provided that the committee may decide with reasons to be recorded to appoint two registered valuers.

(b) Two registered valuers in cases other than those covered under sub-regulation (1)(a).

4. In the principal regulations, sub-regulation (1)(a), (1)(b) and (1)(c) of regulation 35 shall be substituted as under:

35. Fair value and Liquidation value.

(1) Fair value and liquidation value shall be determined in the following manner:-

(a) the registered valuer(s) appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value of the corporate debtor computed in accordance with terms of Companies (Registered Valuers and Valuation) Rules, 2017 after physical verification of the inventory and fixed assets of the corporate debtor;

Provided that the resolution professional shall facilitate a meeting wherein registered valuer(s) shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates.

(b) where two registered valuers have been appointed and the estimates of values are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors in cases under sub-regulation (1)(b) of Regulation 27, the resolution professional may appoint a third registered valuer for submitting an estimate of the value computed in the manner provided in clause (a).

(c) where more than one registered valuer has been appointed, 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.

Explanation.- For the purpose of clause (b), “significantly different” means a difference of twenty-five per cent. in liquidation value and the same shall be calculated as $(L1-L2)/L1$, where, $L1$ = higher valuation of liquidation value $L2$ = lower valuation of liquidation value.

5. In the principal regulations, under sub-regulation (f) of regulation 37, the following proviso shall be inserted, namely:-

Provided that a resolution plan shall not prevent the creditors from enforcing their rights against the guarantors of the corporate debtor.

Mr. Ravi Mital, Chairperson

[ADVT.- _____]

Note: The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were published vide notification No. IBBI/2016-17/GN/REG004, dated 30th November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 432 on 30th November, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024 published vide notification No. IBBI/2023-24/GN/REG113, dated the 15th February, 2024 in the Gazette of India, Extraordinary, Part III, Section 4, No. 284 on 15th February, 2024.
