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# SUPPLEMENT PROFESSIONAL PROGRAMME

*for*

*June, 2023 Examination*

**INSOLVENCY-LAW AND PRACTICE**

**MODULE 3**

**PAPER 9.8**

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## Lesson 4

# Insolvency Resolution of Corporate Persons

### **The salient features of the amendment to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016(CIRP Regulations)**

- With the objective to maximise value in resolution, the amendment to the CIRP Regulations enables the resolution professional (RP) and the Committee of creditors (CoC) to issue request for resolution plan a second time for sale of one or more of assets of the corporate debtor (CD) in cases where no resolution plan has been received for the corporate debtor as a whole. It enables for a resolution plan to include sale of one or more assets of CD to one or more successful resolution applicants submitting resolution plans for such assets and providing for appropriate treatment of the remaining assets.
- To improve the value received in the resolution plan, the amendment to the CIRP Regulations enables marketing of assets of the CD. It provides for formulating a strategy for marketing of assets of CD in consultation with the CoC to disseminate information about the asset to a wider and targeted audience of potential resolution applicants. The amendment also enables a longer time for the asset in the market as the invitation for expression of interest in Form G has been advanced to 60th day from insolvency commencement date (ICD). Changes have also been made to Form G to provide more relevant information to persons for expressing interest.
- To improve information availability to stakeholders, the amendment provides for the following changes to:
  - Changes timeline for filing application for preferential and other transactions on or before 130 th day of ICD. It provides that a copy of application made regarding preferential and other transactions be shared with the prospective resolution applicants to enable them to account for such information while proposing the resolution plan.
  - Changes the timeline for submission of information memorandum to on or before 95th day from the ICD from 54th day. It also mandates that information memorandum should also include further relevant information such as operations of CD, financial statements, contingent liabilities, geographical coordinates of fixed assets, company overview. It also includes details of business evolution for CDs with asset size of more than Rs.100 crore.

- With the aim to reduce delays in the process and enhance efficiency of available time the amendment enables the CoC to examine whether it wants to explore option of compromise or arrangement and file such recommendation with AA while applying to AA for liquidation order. In cases where it decides to explore, it should explore the option during the period, order for liquidation is awaited from the AA. The amendment also introduces guiding factors that may be considered by CoC while making an early decision to liquidate the CD. It also provides that the reasons be recorded based on these factors and presented to AA as part of the application for liquidation.
- To make the resolution process more transparent and robust the amendment provides for:
  - A common email address be used throughout the CIRP, and Liquidation of a CD and this email needs to be handed over to the succeeding IP conducting the process.
  - The IRP/RP to communicate to the creditors of corporate debtor (CD), as per the last available books of accounts, the public announcement and invite claims through post or electronic means.
  - It has been clarified that a meeting of COC can be convened till resolution plan is approved or an order for liquidation is passed and matters which do not affect the resolution plan can be decided upon.
- The fee of the interim resolution professional or the resolution professional, appointed on or after 1 st October 2022 shall be decided by the applicant or committee in accordance with the said amendment regulations.
- An insolvency professional shall be paid minimum fixed fee in the range of one lakh rupee to five lakh rupees, per month, depending on the quantum of claims admitted, as specified under Table-1 of Schedule-II of the said amendment regulations. However, the applicant or committee may decide to fix higher amount of fees than the said minimum fixed fee, after taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.
- For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide to pay, after approval of such resolution plan by the Adjudicating Authority on commencement of payment to creditors by the resolution applicant, performance-linked incentive fee, not exceeding a total of five crores of rupees;
  - for timely submission of resolution plan to the Adjudicating Authority, as specified under Table-2 of Schedule-II to the said amendment regulations, and/or
  - for value maximisation, at the rate of one per cent of the amount by which the realisable value is higher than the liquidation value, or
  - other than a. or b. above, as the committee may deem necessary.
- The fee may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way

of interim finance and the same shall be included in the insolvency resolution process cost.

- Regulatory Fee: (1) A regulatory fee calculated at the rate of 0.25 per cent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Board, where such realisable value is more than the liquidation value: Provided that this sub-regulation shall be applicable where resolution plan is approved under section 31, on or after 1st October 2022.
- A regulatory fee calculated at the rate of one per cent of the cost being booked in insolvency resolution process costs in respect of hiring any professional or other services by the interim resolution professional or resolution professional, as the case may be, for assistance in a corporate insolvency resolution process, shall be payable to the Board, in the manner as specified in clause (cb) of sub-regulation (2) of regulation (7) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

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## Lesson 8

## Voluntary Liquidation of Companies

To enable better participation of stakeholders and streamline the liquidation process to reduce delays and realise better value, Insolvency and Bankruptcy Board of India amended the Liquidation Regulations make the following major modifications:

- The Committee of Creditors (CoC) constituted during Corporate Insolvency Resolution Process (CIRP) shall function as Stakeholders Consultation Committee (SCC) in the first 60 days. After adjudication of claims and within 60 days of initiation of process, the SCC shall be reconstituted based upon admitted claims.
- The liquidator has been mandated to conduct the meetings of SCC in a structured and time bound manner with better participation of stakeholders.
- The scope of mandatory consultation by liquidator, with SCC has been enlarged. Now, SCC may even propose replacement of liquidator to the Adjudicating Authority (AA) and fix the fees of liquidator, if the CoC did not fix the same during CIRP.
- If any claim is not filed during liquidation process, then the amount of claim collated during CIRP shall be verified by the liquidator.
- Wherever the CoC decides that the process of compromise or arrangement may be explored during liquidation process, the liquidator shall file application only in such cases before Adjudicating Authority for considering the proposal of compromise or arrangement, if any, within thirty days of the order of liquidation.
- Specific event-based timelines have been stipulated for auction process.
- Before filing of an application for dissolution or closure of the process, SCC shall advise the liquidator, the manner in which proceedings in respect of avoidance transactions or fraudulent or wrongful trading, shall be pursued after closure of liquidation proceedings.
- The Amendment Liquidation Regulations and Amendment Voluntary Liquidation Regulations further lay down the manner and period of retention of records relating to liquidation and voluntary liquidation of a corporate debtor or corporate person, respectively.

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