



Info Capsule

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI) STRENGTHENS ITS DUE DILIGENCE FRAMEWORK UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016¹

Now prior to approval of a Resolution Plan, the Resolution Applicants, including promoters, will be put to a stringent test with respect to their credit worthiness and credibility; Amendments to the IBBI (Insolvency Resolution Process for Corporate Persons) Resolution Process, 2016 impose a greater responsibility on the Resolution Professionals and the Committee of Creditors in discharging their duties.

Insolvency and Bankruptcy Board of India (IBBI) has amended its Corporate Insolvency Resolution Process Regulations to ensure that as part of due diligence, prior to approval of a Resolution Plan, the antecedents, credit worthiness and credibility of a Resolution Applicant, including promoters, are taken into account by the Committee of Creditors.

With a view to ensure that the Corporate Insolvency Resolution Process results in a credible and viable Resolution Plan, the Insolvency and Bankruptcy Board of India (IBBI) has carried-out amendments to the IBBI (Insolvency Resolution Process for Corporate Persons) Resolution Process, 2016 (CIRP Regulations).

The Revised Regulations make it incumbent upon the Resolution Professional to ensure that the Resolution Plan presented to the Committee of Creditors contains relevant details to assess the credibility of the Resolution Applicants. The details to be provided would include details with respect to the Resolution Applicant in terms of convictions, disqualifications, criminal proceedings, categorization as wilful defaulter as per RBI guidelines, debarment imposed by SEBI, if any, and transaction, if any, with the Corporate Debtor in the last two years.

Apart from the above, the Resolution Professional has to also submit details in respect of transactions observed or determined, if any, covered under Section 43 (Preferential Transactions); Section 45 (Undervalued Transactions); Section 50 (Extortionate Credit Transactions); Section 66 (Fraudulent Transactions) under Insolvency and Bankruptcy Code, 2016.

By virtue of the above mentioned changes in the Regulations, the Resolution Applicants, including promoters, are put to a stringent test with respect to their credit worthiness and credibility. Further, it also imposes greater responsibility on the Resolution Professionals and the Committee of Creditors in discharging their duties.

The amendments are available at www.mca.gov.in and www.ibbi.gov.in.

¹ Available at: <http://pib.gov.in/newsite/erelease.aspx>

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (THIRD AMENDMENT) REGULATIONS, 2017²

Through No. IBBI/2017-18/GN/REG019, dated November 7, 2017 and 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) (Third Amendment) Regulations, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.
2. 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 38, after sub-regulation (2), the following sub-regulation shall be inserted, namely: -

“(3) A resolution plan shall contain details of the resolution applicant and other connected persons to enable the committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval.

Explanation: For the purposes of this sub-regulation,-

- (i) ‘Details’ shall include the following in respect of the resolution applicant and other connected person, namely:-
 - (a) Identity;
 - (b) Conviction for any offence, if any, during the preceding five years;
 - (c) Criminal proceedings pending, if any;
 - (d) Disqualification, if any, under Companies Act, 2013, to act as a director;
 - (e) Identification as a wilful defaulter, if any, by any bank or financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India;
 - (f) Debarment, if any, from accessing to, or trading in, securities markets under any order or directions of the Securities and Exchange Board of India; and
 - (g) Transactions, if any, with the corporate debtor in the preceding two years.”
- (ii) The expression ‘connected persons’ means-
 - (a) Persons who are promoters or in the management or control of the resolution applicant;
 - (b) Persons who will be promoters or in management or control of the business the corporate debtor during the implementation of the resolution plan;
 - (c) Holding company, subsidiary company, associate company and related party of the persons referred to in items (a) and (b) .”.

3. In the principal regulations, in regulation 39, for sub-regulation (2), the following sub-regulation shall be substituted, namely:-

“(2) The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-

- (a) Preferential transactions under section 43;
- (b) Undervalued transactions under section 45;
- (c) Extortionate credit transactions under section 50; and
- (d) Fraudulent transactions under section 66,

and the orders, if any, of the adjudicating authority in respect of such transactions.”.

THIRD PROTOCOL TO THE CONVENTION BETWEEN GOVERNMENT OF INDIA AND NEW ZEALAND NOTIFIED

The Third Protocol for amendment of the Convention between the Government of the Republic of India and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed by both countries on 26th October 2016. The Protocol entered into force in India on 7th September 2017 and has been notified in the Official Gazette on November 2, 2017.

The Protocol updates the existing framework of exchange of tax related information to latest international standard which will help curb tax evasion and tax avoidance between the two countries and will also enable mutual assistance in collection of taxes.

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