

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION
PROCESS FOR CORPORATE PERSONS) (SECOND AMENDMENT) REGULATIONS,
2023.**

I. INTRODUCTION

In exercise of the powers granted under section 240 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”), the Insolvency and Bankruptcy Board of India (“**IBBI**”) formulated Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”). The CIRP Regulations were notified with a view to streamline the insolvency resolution framework and govern the mechanisms triggered after a corporate debtor is admitted into corporate insolvency resolution process (“**CIRP**”).

Vide notification dated 18th September 2023, the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 (“**Amendment Regulations**”) were notified with effect from 18th September 2023. The amendment evidently seeks to strike a balance between practicality and the legislative mandate thereby seeking to streamline the entire process.

The Amendment Regulations have introduced new measures as well as amended the existing CIRP Regulations. In a major relaxation for creditors, the Amendment Regulations provide for flexibility in the timelines stipulated under the Code and CIRP Regulations for filing claims upon admission of a corporate debtor in CIRP. In addition to this, the Amendment Regulations mandate creditors filing applications under section 7 and section 9 of the Code to provide a chronology along with their applications to identify key details necessary for adjudication of these applications. In a welcome move for a specific class of creditors viz. homebuyers, the Amendment Regulations define the key responsibilities of Authorised Representatives. The Amendment Regulations also provide for an enhanced role of Resolution Professionals, duties of suspended management of corporate debtors and powers of the committee of creditors to ensure accountability, transparency and efficacy of CIRP. In this news alert we have discussed the key amendments and their effect on stakeholders.

II. KEY FEATURES

A. Insertion of new regulations-

i. *2D. Details of debt, default and limitation in respect of applications under section 7 or section 9.*

a) Regulation 2D has been introduced by the Amendment Regulations and contemplates the mandatory disclosure of the following details and documents by the Financial Creditor and Operational Creditor in applications under section 7 and section 9 of the Code respectively:

- chronology of the debt and default,
- date when the debt became due,
- date of default,
- dates of part payments,
- date of last acknowledgment of debt, and
- limitation applicable.

b) The intent of the introduction of Regulation 2D to the CIRP Regulations is essentially to enable the Adjudicating Authority to decide at the very threshold the admissibility of the applications filed under section 7 and section 9 of the Code. Keeping with the spirit of the Code, the introduction of Regulation 2D will ensure that defences of limitation and admissibility of applications are decided at the outset and will therefore ensure time bound decisions in such applications.

ii. *3A. Assistance and cooperation by the personnel of the corporate debtor.*

a) Regulation 3A is an addition to the CIRP Regulations and casts an obligation on the management/promoters/anyone related to management of the corporate debtor to prepare a list of assets and records while handing over their custody and

control. In the event such list is not handed over by the identified personnel, the Resolution Professional/Interim Resolution Professional is empowered to issue notice seeking such information.

- b) Under Regulation 3A(5), the resolution professional/interim resolution professional may also call upon the corporate debtor's personnel to provide information relating to the assets, finances and operations of the corporate debtor referred in clause (a) of section 18 of the Code and such information required under regulation 36 of the CIRP Regulations which were required to be maintained by the corporate debtor but have not yet been handed over. Notably, where any asset or record has not been handed over, Regulation 3A(3) provides that the interim resolution professional or resolution professional, as the case may be, shall himself prepare a list of assets and records while taking custody and control of assets and records, and the interim resolution professional or resolution professional may, after taking such custody and control, if deemed necessary, identify person(s) in whose possession these assets and records will be held. Each list of assets and records shall be signed by the parties present and at least two witnesses who were present when the assets and records were taken into custody by the interim resolution professional/resolution professional.
- c) Ultimately, in the event this information is not handed over, an application under section 19(2) (*Personnel to extend cooperation to interim resolution professional*) can be preferred by the resolution professional which will necessarily show presence of such asset or record in the notice of requisition under Regulation 3A and absence of such asset or record in the list of assets and records taken in control and custody under sub regulation (2) and (3).
- d) Whilst Regulation 4(2) of the CIRP Regulations already provided for cooperation from the corporate debtor's personnel, the Amended Regulations and the introduction of Regulation 3A provides for specific details and the form and manner in which this information is to be provided. The list of documents and information to be provided are to be signed by all witnesses ensuring a proper record of information with the resolution professional/interim resolution professional. Ultimately, the lists contemplated under Regulation 3A(4) and the notice for requisition as contemplated under Regulation 3A (5) have to be

annexed with any application preferred under section 19(2) of the Code, thereby making the defaults and non-compliance of Regulation 3A apparent before the Adjudicating Authority.

iii. Regulation 13 (1A) to 13(1C)- Verification of Claims

- a) In accordance with the amendment to timelines stipulated under Regulation 12 (discussed hereunder), Regulations 13 (1) (A) to 13(1)(C) have been introduced to govern the role of the resolution professional in the collation and verification of claims.
- b) These Amended Regulations provide for the manner in which the resolution professional is to give reasons for non-collation of claims received after the period stipulated in Regulation 12 (1) of the CIRP Regulations and up to 7 days prior to the meeting of the committee of creditors for approval of resolution plan.
- c) The resolution professional is mandated to verify and categorise belated claims as acceptable or non-acceptable and intimate such categorisation to the concerned creditor within 7 days from such categorisation and specify reasons where the claims has not been accepted.
- d) The resolution professional is also mandated to provide a list of claims collated and categorised as acceptable as per Regulation 13(1B) before the committee of creditors for its recommendation and inclusion in the list of creditors and treatment in the resolution plan and submit such claims to the adjudicating authority for condonation of delay and adjudication where required.

iv. 16A. Authorised representative

- a) The Amendment Regulations also provide for an authorised representative for a class of financial creditors, replacement of authorised representative and the procedure for such replacement.
- b) Regulation 16A(10) provides for the duties of such Authorised Representative

and contemplates an extensive role for such Authorised Representative to facilitate the class of creditors in a better manner to enable expeditious and informed decision making by the financial creditors.

v. 30B. Audit of corporate debtor

- a) This regulation has been introduced to empower any member of the committee of creditors to call for an audit of the corporate debtor. The member seeking such audit must submit a proposal containing the scope, time frame, objective, and estimated costs for such an audit. Once approved, the costs of the audit shall be considered as CIRP costs.
- b) The auditor apart from being a qualified professional must also be an insolvency professional. The audit report as prepared must be placed for consideration before the committee of creditors. The resolution professional is mandated to provide his recommendations on the report as prepared.
- c) This regulation has been introduced with a view to boost stakeholders' confidence and ensure clarity in the CIRP. Notably, the regulation is not preconditioned with requirements for certain size of the corporate debtor for conduct of the audit. It is to be seen how the committee of creditors utilise this regulation, either in addition to forensic audits or simply to audit and account for the conduct of CIRP itself.

vi. Substitution of Schedule I to Form G (Invitation for Expression of Interest)

- a) Form G to the CIRP Regulations has been substituted and now provides that the resolution professional shall provide to prospective resolution applicants direct access to the financial information of the corporate debtor in the form of URL.
- b) Notably, Form G will now include 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 plan.

- c) The introduction of these details to Form G, will improve the value received in the resolution plan due to the readily accessible and available information to prospective resolution applicants.

vii. Amendment of Schedule I to Form H (Compliance Certificate)

- a) Regulation 39(4) of the CIRP Regulations mandates the RP to submit the resolution plan approved by the CoC to the AA along with the compliance certificate in Form H and the evidence of receipt of performance security.
- b) Form H serves as the compliance certificate which includes details of the resolution plan and CIRP. Vide the Amendment Regulations, the minutes of the committee of creditors meeting is also to be included in the Compliance Certificate.
- c) As a result of this introduction, the Adjudicating Authority whilst dealing with applications for approval of resolution plans will have easy access to a comprehensive record of the deliberations leading to the decision on the resolution plan thereby accelerating the adjudication of such applications.

III. Amendments to the existing Regulations:

Sr. No.	Regulation	Pre-Amendment Provisions	Post-Amendment Provisions	Effect
1.	Regulation 12 (Submission of Proof of Claim)	<i>Subject to sub-regulation (2), a creditor shall submit claim with proof on or before</i>	<i>1) A creditor shall submit claim with proof on or before the last date mentioned in the public</i>	Prior to the Amendment Regulations, creditors were provided with a period of 90 days to submit their claims from the insolvency

		<p><i>the last date mentioned in the public announcement.</i></p>	<p><i>announcement</i></p> <p><i>Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later:</i></p> <p><i>Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement.</i></p>	<p>commencement date.</p> <p>As a result of the amendment, by virtue of Regulation 12(1), creditors now have time to file their claims up to 90 days or up to the date of issue of request for resolution plans whichever is later.</p>
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2.	Regulation 28 (Transfer of debt due to creditors.)	<i>1) In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the identity of the assignee or transferee.”</i>	<i>In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall, within seven days of such assignment or transfer, provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the identity of the assignee or transferee</i>	The amendment provides for a specific time period i.e. 7 days of the transfer of debt within which the creditor is mandated to inform the insolvency resolution professional of such transfer including the terms thereof.
3.	Regulation 36B (Request for resolution plans) and consequent modification to Regulation	<i>(1) The resolution professional shall issue the information memorandum, evaluation matrix and a request for</i>	<i>(1) The resolution professional shall, within five days of the date of issue of the final list under sub-regulation (12) of regulation 36A, issue</i>	Pursuant to this amendment, the resolution professional is now mandated to provide the information memorandum (IM), evaluation matrix and request for resolution plan

	40A (model timelines for CIRP)	<p><i>resolution plans, within five days of the date of issue of the provisional list under sub-regulation (10) of regulation 36A to -</i></p> <p><i>(a) every prospective resolution applicant in the provisional list; and</i></p> <p><i>(b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list."</i></p>	<p><i>the information memorandum, evaluation matrix and a request for resolution plans to every resolution applicant in the final list: Provided that where such documents are available, the same may also be provided to every prospective resolution applicant in the provisional list.</i></p>	<p>within 5 days of preparation of final list of prospective resolution applicants.</p> <p>Consequently, the model timeline in Regulation 40A has been updated to reflect as follows:</p> <ul style="list-style-type: none"> • Issue of RFRP, including Evaluation Matrix and IM within 5 days of the issue of the final list of prospective applicants. • Receipt of Resolution Plans at least 30 days from issue of RFRP
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IV. CONCLUSION

The Amendment Regulations are a welcome move towards better functioning of the insolvency resolution framework envisioned under the Code and to combat the current delays faced in timely completion of processes under the Code. An appreciation of the Amendment Regulations as a whole reveal that vital steps have been taken to ensure that there is flexibility for all stakeholders whilst balancing accountability and transparency in CIRP. Certain

introductions pertaining to disclosures of chronologies will ensure that the Adjudicating Authority can decide applications under section 7 and section 9 of the Code expeditiously, even at an admission stage. Further, the relaxation of timelines for filing of claims will also lessen the already growing workload of Adjudicating Authorities that arises from deciding claim applications which were originally rejected by the resolution professional or interim resolution professions solely on account of delays. In our view, the amendment will ensure that the entire adjudication process becomes more crystallised and focussed. Ultimately, the Amendment Regulations timelines therein will collectively have to be implemented effectively by all stakeholders concerned to achieve their intended purpose.

DISCLAIMER

This alert has been written for general information of our clients and should not be treated as a substitute for legal advice. We recommend that you seek proper legal advice prior to taking any action pursuant to this alert. We disclaim all liability for any errors or omissions. For further clarifications, you may write to Pooja Tidke (pooja.tidke@parinamlaw.com), Krushi N Barfiwala (krushi.barfiwala@parinamlaw.com) and Rima Desai (rima.desai@parinamlaw.com).

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