

DECEMBER 2016

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1. Introduction

On December 1, the Ministry of Corporate Affairs notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the “**Regulations**”) to govern the corporate insolvency resolution process under the new Insolvency & Bankruptcy Code (2016) (the “**Code**”).

Consisting of ten chapters and five schedules, the Regulations lay down an extensive procedure to be followed by a corporate person and insolvency professionals in a corporate insolvency resolution process.

2. Eligibility, rights and obligations of insolvency professionals

The Regulations list the *eligibility criteria* for a person to be appointed as an insolvency professional for a corporate insolvency resolution process. Under the Regulations, a person who by himself or through an entity that he is a part of, is ‘independent’ of the corporate debtor, may be appointed as an insolvency professional. An explanation to the term ‘independent’ has been provided in the Regulations. To avoid conflict of interests, the Regulations *prohibit* one insolvency professional entity (including any partner or director) to act on behalf of *different* stakeholders in a corporate insolvency resolution process.

Without prejudice to the rights granted to an interim resolution professional under the Code, the Regulations permit such interim resolution professionals appointed by the adjudicating authority to access the books of account, records and other relevant documents and information (to the extent relevant for discharging his duties under the Code) of the corporate debtor.

On appointment of an interim resolution professional, the insolvency professional shall be required to make a public announcement within 3 (three) days of appointment in a form and manner prescribed in the Regulations. The expenses on the public announcement shall not form part of the insolvency resolution process costs.

3. Extortionate transactions

Section 50 of the Code empowers the liquidator or the insolvency resolution professional to make an application to the adjudicating authority to avoid extortionate credit transactions that incur an operational or financial debt within 2 (two) years of the date of commencement of insolvency resolution process.

In light of the above and in exercise of the powers conferred on the Insolvency and Bankruptcy Board of India (the “**Board**”), the Board has classified the following transactions in the Regulations that would be considered extortionate credit transactions:

- (a) those which requires the corporate debtor to make *exorbitant payments* in respect of the credit provided; or
- (b) those which are *unconscionable* under the principles of law relating to contracts.

4. Proof of claims

Any person claiming to be an operational creditor, financial creditor, workman or employee shall be required to submit proof (in specified formats) of their respective claim to the interim resolution professional. Further, such person may submit supplementary documents or clarifications in support of their claims before the constitution of the committee (discussed below).

The Regulations include an indicative list of documents that may be submitted by these parties to the resolution professional. The interim resolution professional or the resolution professional may also call for such other evidence or clarification as they deem fit from a creditor for substantiating the whole or part of its claim.

On receipt of the claim, the insolvency resolution professional is required to verify the claims raised within 7 (seven) days from the last date of receipt of claims and also maintain a list of creditors with relevant details such as amount claimed by creditors, security interest and other related matters. Further, such list shall be available to the adjudicating authority, members, and directors of the corporate debtor. The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the insolvency commencement date.

5. Committee of creditors, meeting of committee and voting by the committee

Pursuant to the Regulations, a committee of operational creditors shall be set up *inter alia* where the corporate debtor does not have any financial debt. The members of the committee (specified in Regulation 16(2) of the Regulations) shall have voting rights in proportion to the debt due to such creditor or debt represented by such representative (as the case may be) in context of the total debt.

A committee formed under this Regulation and its members shall have the same rights, powers, duties and obligations as a committee comprising financial creditors and its members (as the case may be).

The first meeting of the committee has to be convened within 7 (seven) days of filing a report by the insolvency resolution professional to the adjudicating authority.

The Regulations empower the insolvency resolution professional to convene a meeting of creditors as and when it considers necessary or when a request is made by the members of the committee representing 33% of the voting rights.

Notice of the meetings of the committee shall be given at least 7 (seven) days prior to the date of the meeting and the same may be delivered by hand, post or electronic means. Amongst other things, such notice shall contain the agenda of the meeting and state the process and manner of voting by electronic means. The quorum of the meeting of the committee shall be members representing at least 33% of the voting rights who are present either in person or by video conferencing or other audio and visual.

However, the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee. Regulations 24 and 25 also lay down the process of conducting meetings of the committee by the insolvency resolution professional and the manner in which the committee is required to vote.

6. Conduct of Corporate Insolvency Resolution Process

The interim resolution professional is required within 7 (seven) days of his appointment to appoint two registered valuers to determine the liquidation value of the corporate debtor. The Regulations also list certain categories of persons who may not be appointed as the registered valuer.

A creditor is permitted to assign or transfer any debt due to such creditor to any other person, subject to both parties providing 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.

7. Insolvency Resolution Process Costs

The applicant is required to fix expenses to be incurred on or by the interim resolution professional. The applicant shall bear these expenses, which shall be reimbursed by the committee to the extent it ratifies. The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

8. Resolution Plan

A resolution applicant shall submit a resolution plan prepared in accordance with the Code and the Regulations to the resolution professional, 30 (thirty) days before expiry of the maximum period permitted under the Code for the completion of the corporate insolvency resolution process.

The resolution plan shall contain measures required for its implementation, the specific sources of funds that will be used to pay the insolvency resolution process costs and other related details. On being approved by the committee, the resolution plan is required to be submitted to the adjudicating authority by the insolvency resolution professional with a certification that: (i) the contents of the resolution plan meet all the requirements of the Code and the Regulations; and (ii) the resolution plan has been approved by the committee.

All proceedings under the plan may be initiated from the insolvency commencement date, however, the committee may instruct the resolution professional to make an application to the adjudicating authority under Section 12 of the Code to extend the insolvency resolution process period.

IndusLaw View:

The Regulations are necessary to provide additional detail to the mechanics of the new insolvency process outlined in the Code. They intend to rationalize the process and procedures for corporate insolvencies. Although the process highlighted in the Regulations appear to be clear, paving the way for an efficient resolution process, its implementation, without established infrastructure and trained insolvency resolution professionals is bound to lead to initial questions of procedure before competent authorities.

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