

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

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PRESS RELEASE

The IBBI notifies Regulations for Insolvency Resolution and Bankruptcy Proceedings of Personal Guarantors to Corporate Debtors.

The Insolvency and Bankruptcy Code, 2016 (Code) envisages reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all stakeholders. The provisions of the Code relating to corporate processes (insolvency resolution, fast track resolution, liquidation and voluntary liquidation) have since been operationalised.

2. There are occasions when a corporate debtor (CD) takes a loan guaranteed by another corporate person (corporate guarantor to the CD) or an individual (personal guarantor to the CD). The lender may pursue a remedy against the guarantor or the CD, being principal borrower, when there is a default in repayment of the loan. The insolvency resolution of corporate guarantors to the CD and of personal guarantors to the CD complement insolvency resolution of the CD. Accordingly, the Code provides that where an application for insolvency resolution or liquidation proceeding of a CD is pending before a National Company Law Tribunal (NCLT), an application relating to insolvency resolution or liquidation or bankruptcy of a corporate guarantor or a personal guarantor shall be filed before the NCLT. It further provides that insolvency resolution, liquidation or bankruptcy proceeding of a corporate guarantor or a personal guarantor of the CD pending in any court or tribunal shall stand transferred to the NCLT dealing with insolvency resolution or liquidation proceeding of such CD.

3. The Code classifies individuals into three classes, namely, personal guarantors to CDs, partnership firms and proprietorship firms, and other individuals, to enable implementation of individual insolvency in a phased manner. The Central Government, vide a notification dated 15th November, 2019, appointed 1st December, 2019 as the date for commencement of the provisions of the Code relating to personal guarantors to CDs. It also notified the following on the same day-

(i) the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019; and

(ii) the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

These Rules provide for the process and forms of making applications for initiating insolvency resolution and bankruptcy proceedings against personal guarantors to CDs, withdrawal of such applications, forms for public notice for inviting claims from the creditors, etc.

4. The Insolvency and Bankruptcy Board of India (IBBI) notified the following Regulations today:

(i) the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, specifying the details of the insolvency resolution process for personal guarantors to CDs, inter-alia, including:

- (a) eligibility to act as a resolution professional for an insolvency resolution process;
- (b) manner of receipt and verification of claims of creditors;
- (c) manner of preparation of list of creditors, holding the meetings of the creditors and voting in the meeting;
- (d) contents of the repayment plan; and
- (e) procedure of filing of application for issuance of discharge order, etc.

(ii) the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 specifying the details of the bankruptcy process for personal guarantors to CDs, inter-alia, including:

- (a) eligibility to act as a bankruptcy trustee for the bankruptcy process;
- (b) manner of preparation of reports and timeline for submission by the bankruptcy trustee;
- (c) manner of collating claims and formation of committee of creditors, holding meetings of the committee and voting in the meeting; and
- (d) manner of realisation of assets of the bankrupt and its distribution, etc.

5. These Regulations will come into force on 1st December, 2019. They are available at www.mca.gov.in and www.ibbi.gov.in.