

Press Release

Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2016 on 29th September, 2021.

2. The amendment regulations enhance the conduct, timeliness, and value maximization in corporate insolvency proceedings:

(a) The Code puts in place a creditor-in-control process under corporate insolvency resolution process (CIRP). The committee of creditors (CoC) has a statutory role and it discharges a sort of public function. Judicial pronouncements have clarified the role and responsibilities of the CoC and established the primacy of ‘commercial wisdom of CoC’ in deciding the fate of the corporate debtor (CD) undergoing corporate insolvency resolution process (CIRP). With this empowerment, comes the responsibility to achieve the goals envisaged under the Code. Accordingly, the regulations provide that the committee and members of the committee in discharge of its functions and exercise powers under the Code and regulations in respect of corporate insolvency resolution process, shall be in compliance with the guidelines as may be issued by the Board.

(b) The significance of timeline cannot be stressed enough, and it is the distinguishing factor under the Code from erstwhile insolvency regimes. There are large costs associated with delay in insolvency process and it causes the erosion of confidence of stakeholders in the process. The amendment seeks to address delays in CIRP such as repeated issue of expression of interest, numerous modifications in request for resolution plans and iterations of modifications in the resolution plan and even consideration of unsolicited resolution plans. It places a cap on the number of times such modifications may be made. This will ensure adherence of timeline envisaged under the Code.

(c) One of the cardinal objectives of the Code is ‘value maximisation’. To achieve such an objective and to arrive at resolution of a firm it is understood that sufficient freedom to choose an option must be provided to the stakeholders wherever required. The challenge process in conducting auctions is a time-tested mechanism and has proven largely effective in public procurement. It has also been introduced in pre-packaged insolvency resolution process vide an amendment made to the Code. The challenge mechanism can be an additional option available with the stakeholders under the CIRP and will improve transparency and drive maximization of value.

3. The amended regulations are effective from 30th September, 2021. These are available at www.mca.gov.in and www.ibbi.gov.in.