

Legal Framework

Here are some important amendments, rules, regulations, circulars, notifications and press releases related to IBC Ecosystem.

ACTS

Insolvency and Bankruptcy Code (Amendment) Act, 2021

The Insolvency and Bankruptcy Code (Amendment) Act, 2021, was enacted vide notification of the Central Government dated August 12, 2021. One of the key changes incorporated was to bring in Pre-packaged Insolvency Resolution Process for MSMEs along with definition of “Pre-Packaged Insolvency”. The Amended Act modifies the provisions of the Insolvency and Bankruptcy Code Act of 2016 and repeals the Insolvency and Bankruptcy Code (Amendment) Ordinance of 2021.

Source: *Gazette Notification CG-DL-E-12082021-228942 dated August 12, 2021.*

REGULATIONS

IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2016

Insolvency and Bankruptcy Board of India (IBBI) has notified IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2016 w.e.f. September 30, 2021. The amendment is aimed at minimizing period of CIRP and value maximization by streamlining the procedure of receiving and finalizing resolution plans.

Sub-regulation 4 (A) has been inserted after Sub-regulation (4) of Regulation 36 A which reads “Any modification in the invitation for expression of interest may be made in the manner as the initial invitation for expression of interest was made: Provided that such modification shall not be made more than once.” Similar provisions have been inserted in Regulation 36 B (5). Sub-regulation 1 (A) of Regulation 39 has been substituted with Sub-regulation 1 (A) and 1(B) which make provisions to allow one modification of resolution plan, use of a challenge mechanism to enable resolution applicants to improve their plans, and restricting CoC from considering any resolution plan after the time as



specified by the CoC under regulation 36B, received from a person who does not appear in the final list of prospective resolution applicants or does not comply with the provisions of sub-section (2) of section 30 and sub-regulation (1).

Source: *CG-DL-E-30092021-230085, No. IBBI/2021-22/GN/REG078 dated September 30, 2021.*

Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2021

IBBI Exempts Fee and Caps Earnest Money in Liquidation Process to ensure large number of buyers The amended Schedule I, in paragraph 1, (i) in clause (3) of IBBI (Liquidation Process) 2016 prohibits requirement of any non-refundable deposit or fee for participation in an auction under the liquidation process and a cap pf maximum 10% to the Earnest Money Deposit. Further, the amended regulation provides for the Liquidator to intimate the reasons for rejection of the highest bid to the highest bidder and report the same in the next progress report. Besides, IBBI has provided an electronic platform on its website for hosting public notices of auctions of liquidation assets and directed Liquidators to upload the public notice of every auction of any liquidation asset, w.e.f. October 01, 2021, at IBBI website on the day of its publication in newspapers, through their designated login page.

Source: *CG-DL-E-30092021-230083, No. IBBI/2021-22/GN/REG079, September 30, 2021.*

CIRCULARS

IBBI's Electronic Platform for hosting Public Notices of Auctions of Liquidation Assets under the IBBI (Liquidation Process) Regulations, 2016.

IBBI has provided an electronic platform on its website for hosting public notices of auctions of liquidation assets and directed Liquidators to upload the public notice of every auction of any liquidation asset, w.e.f. October 01, 2021, at IBBI website on the day of its publication in newspapers, through their designated login page.

Source: *IBBI Circular No. IBBI/LIQ/44/2021*

IBBI Prescribes Monetary Penalty for 'Minor Non-Compliances' by IPs

Insolvency and Bankruptcy Board of India (IBBI) has prescribed maximum and minimum monetary penalties for 'minor non-compliances' by Insolvency Professionals (IPs) while discharging their responsibilities under the IBC.

“IPAs will have the flexibility to impose a graduated system of penalties, where minor non-compliances will result in monetary fines, and major violations will result in expulsion from the agency,” clarified IBBI in a circular dated July 28, 2021. Though this circular, IBBI has specified penalties for 14 specified breaches, including any violation of the charter of the concerned Insolvency Professional Agency. The minimum amount of penalty prescribed in the circular will either be Rs. 50,000/- or Rs. 100,000/- depending on case to case. Though this provision, IBBI aims to ensure 'objectivity and uniformity' in disciplinary actions against IPs across IPAs. The breaches such as accepting an assignment having conflict of interests with the stakeholders, failure to comply with directions issued by NCLT/NCLAT, failure to appoint Registered Valuers, failure to reject Resolution Plan from ineligible applicants, failure to make public announcements in the manner provided in the relevant Regulations, outsources his duties and obligations, fails to take action in respect of Preferential etc. will attract maximum penalties.

Source: *Circular No. No. IBBI/IPA/43/2021, dated July 28, 2021.*

IBBI introduces CIRP Form 8

Through a circular on July 20, 2021, the Insolvency and Bankruptcy Board of India (IBBI) has made it mandatory for the IRPs/RPs to file a new form - CIRP Form 8.

“The CIRP Form 8 is required to be filed for all CIRPs

ongoing or commencing on or after 14th July 2021,” reads the Circular. “It is directed that the Form CIRP 8 shall be filed in accordance with regulation 40B of the CIRP Regulations on the Board's website, like other CIRP Forms,” it added. The CIRP Form 8 has been introduced in pursuance to the Regulation 35A of the IBBI (IRPCP) Regulations, 2016 which requires an RP to form an opinion on transactions covered under sections 43, 45, 50 and 66 by 75th day, make determination on such transactions by 115th day, and file an application before the Adjudicating Authority by 135th day of the insolvency commencement date. Further, Regulation 40 B (1B) requires the RP to file Form CIRP 8 intimating details of his opinion and determination under regulation 35A, by 140th day of the insolvency commencement date.

Source: *Circular No. No.: IBBI/CIRP/42/2021 dated July 20, 2021.*

NOTIFICATIONS

IBBI Tweaks Min. Experience Criteria for IPs

IBBI via a Notification titled “IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2021” has substituted subclause (iii) of Regulation 5 (c), namely, “(iii) experience of - (a) ten years in the field of law, after receiving a Bachelor's degree in law; (b) ten years in management, after receiving a Master's degree in Management or two-year full time Post Graduate Diploma in Management; or (c) fifteen years in management, after receiving a Bachelor's degree”. However, for the purposes of this regulation, only professional and managerial experience shall be considered, reads Explanation 1.

Source: *No. IBBI/2021-22/GN/REG077 dated July 22, 2021.*

GUIDELINES

IBBI Extends validity of online courses till December 31, 2021

The Insolvency and Bankruptcy Board of India (IBBI), through a Guideline dated 03rd September 2021 has extended the validity of the IBBI (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organizations) Guidelines, 2020 till 31st December 2021. This has been done in the wake of the ensuing Covid-19 pandemic.

Source: *Amendment to the Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organizations) Guidelines, 2020 dated September 03, 2021.*

Amendment to the guidelines for technical standards for the performance of core services and other services under the IBBI (IU) Regulations, 2017

In exercise of the powers conferred by section 196 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India (IBBI) vide its Guideline dated July 26, 2021, made certain amendments to guidelines for technical standards for the performance of core services and other services under the IBBI (Information Utilities) Regulations, 2017.

The key changes include mandatory registration with PAN or C-KYC, mandatory assignment of a Unique Identification Number (UIN) by the IU to all the registered users in accordance with these Guidelines and a process for assignment of UIN among others.

Source: *Guidelines for Technical Standards for the Performance of Core Services and Other Services (Amendment), 2021 under the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 dated July 26, 2021.*

REPORT

'Report of The Insolvency Law Committee on Pre-Packaged Insolvency Resolution Process'

'Report of The Insolvency Law Committee on Pre-Packaged Insolvency Resolution Process' was published by the Ministry of Corporate affairs on July 16, 2021.

The 125-page report aimed at providing a comprehensive framework for effective and speedy insolvency resolution mechanism for MSMEs in order to make the process less disruptive for MSME Corporate Debtors in challenging times especially given the distressful situation during the COVID-19 pandemic. The Committee recommended a pre-pack process for corporate MSMEs on voluntary basis which includes a hybrid model involving 'creditor-in-control' and 'debtor-in-possession' features. The recommendations of the committee proved to be vital to the much-needed structural reforms concerning MSMEs in need of robust mechanism at times of financial crisis.

Source: *Report Of The Insolvency Law Committee On Pre-Packaged Insolvency Resolution Process, Ministry of Corporate affairs, Government of India dated July 16, 2021.*

<https://mca.gov.in/bin/dms/getdocument?mids=RFjZ0L9xYyx1jkhf%252BogMGA%253D%253D&type=open>

PRESS RELEASES

IBBI signs MoU with IGNOU to utilize tele-lecturing facility for Gyan Darshan Channel

The IBBI on Thursday entered into a MoU with Indira Gandhi National Open University (IGNOU) with an objective to increase its advocacy initiative through tele-running initiatives to help learners who aim to educate themselves through distance learning.

Dr. M S Sahoo, Chairperson, IBBI appraised IGNOU's efforts of emerging as a "front runner people's university extending cost-effective solutions." He mentioned that IGNOU had seamlessly provided access to sustainable and learner centric quality learning initiatives and awareness programmes through innovative technologies. He emphasized upon the synergies between IBBI's mandate and that of IGNOU, to be realised through this initiative. This MoU was signed by Shri Santosh Kumar Shukla, Executive Director, IBBI and Shir Banmali Singh, Registrar, IGNOU in the presence of Dr. Sahoo, Prof. Rajendra Prasad Das, Officiating Vice-Chancellor, IGNOU, Shir Sudhaker Shukla, WTM, IBBI, Dr. Srikanth Mohapatra, Director, IGNOU among others.

Source: *No. IBBI/PR/2021/18 dated September 16, 2021.*

IBBI sings MoU with NSE for Research Collaboration

IBBI and NSE inked a Memorandum of Understanding (MoU) on August 06, 2021, for a research partnership. The collaboration's goal is to establish a robust research environment in the field of Insolvency and Bankruptcy in India.

"Evidentiary or research-based foundations for policy making, devoid of discretion, fosters transparency and help in bringing complete harmony between policy initiatives and market expectations," said Shri Sudhaker Shukla, WTM highlighting the relevance of research for developing IBC regime. "The synergy between IBBI and NSE will harness the research potential of both the organizations, aiding and improving evidence-based policy discourse in the country," he added. Speaking on this occasion, Shri Vikram Limaye, MD & CEO, NSE said, "Insolvency and bankruptcy laws play an important role in an economy as they enable efficient and orderly allocation of productive resources and provide an effective resolution mechanism for debtors and creditors. We are happy to collaborate with IBBI for developing an extensive research framework in the field of insolvency and bankruptcy in India".