

## Legal Framework

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

### CIRCULARS

#### **Proforma for reporting liquidator's decision(s) different from the advice of Stakeholders' Consultation Committee (SCC)**

Pursuant to the sub-regulation 10 of Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016 that provides the Liquidator to record the reason for taking a decision different from the advice given by the consultation committee, the IBBI vide Circular dated December 21, 2022, has made available an electronic platform at [www.ibbi.gov.in](http://www.ibbi.gov.in), for reporting the liquidator's decisions different from the advice given by the SCC. The proforma for such reporting is also specified in the Circular.

**Source:** <https://ibbi.gov.in/uploads/legalframework/2d5613091cded4721f7f0297f4416a8e.pdf>

#### **IBBI Circular regarding payment of revised fee by IPs, and IPEs**

Though a Circular dated November 24, 2022, the IBBI has directed the IPs and IPEs to pay the revised fee in the bank account of the Board as the online payment module is not yet implemented. As per the Circular, the 'one-time application fee' for IPs has been revised from ₹10,000 to ₹20,000 w.e.f. October 01, 2022. The 'one-time application fee' for IPEs has been revised from ₹50,000 to ₹2,00,000. Similarly, the 'five years fee for IPs' have been increased from ₹10,000 to ₹20,000 and the 'Annual Fee' is revised from 0.25% to 1.00% of professional fee earned for the services rendered as an IP in the preceding financial year.

The IPEs IPE applying for registration as an IP will be required to pay ₹2,00,000 as 'Application Fee' and IPE registered as an IP will be charged ₹2,00,000 in the form of '5 yearly fee'. The 'Annual Fee' for IPEs has been revised to 1% of turnover (excluding professional fee) in the preceding financial year.

The Board has also introduced two new categories of fee – (i) Related to resolution plans and (ii) Related to hiring any professional or other services. Under first category (I), the IP will be required to pay 0.25% of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Board, where such realisable value is more than the liquidation value. Under the



category (ii) 1.00% of the cost being booked in insolvency resolution process costs in respect of hiring any professional or other services by IRP or RP.

**Source:** <https://ibbi.gov.in/uploads/legalframework/ae2fd93db7a96c6c8eb65aa02dc03217.pdf>

#### **IBBI rescinded 11 Circulars which were no longer required**

According to a Circular issued by IBBI on November 09, 2022, an exercise was conducted for review of regulations, circulars based on experience gained. It was observed that certain circulars are no longer required on account of being already provided in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 [IP Regulation] or the Insolvency and Bankruptcy Board of India (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 [Model Bye Laws Regulations] or the IBBI (Information Utilities) Regulations, 2017 [IU Regulations], as the case may be. Subsequently, 11 regulations were repealed, which were issued from 2018 to 2019.

**Source:** Circular No. No. IBBI/IP/55/2022 dated November 09, 2022.

### FACILITATIONS

#### **In case of assignment of debt during Section 7 application pending before the AA, there is no prohibition in the IBC, 2016 from continuing the proceeding by an Assignee**

NCLAT, in the matter of Siti Networks Ltd. Vs. Assets Care and Reconstruction Enterprises Ltd. & Anr. [Company Appeal (AT) (Ins.) No. 1449 of 2022], has observed that section 5(4) of the SARFAESI Act does contemplate continuation of all proceedings after acquisition of financial assets by an assignee. There is no dispute that ACREL was assigned the debt by original FC

during pendency of section 7 proceedings. Further, Order XXII Rule 10 of Civil Procedure Code, 1908 contemplates continuance of proceeding on the basis of devolution of rights with the leave of the Court, which is applied generally in civil proceedings and suit. It held that there is no prohibition in the Code or the Regulations from continuing the proceeding by an assignee. 'Financial Creditor' as defined under section 5(7) also includes a person to whom such debt has been legally assigned or transferred to. By virtue of the assignment, ACREL become the Financial Creditor and having stepped in the shoes of "Housing Development Finance Corporation Limited", it has every right to continue the proceeding which was initiated by the FC.

**Source:** *IBBI-Analysis, dated December 16, 2022*  
(<https://ibbi.gov.in/uploads/legalframework/6a7e19c0e2491d15aecc2c17d68e2c28.pdf>).

**NCLAT made it clear that the only question to be looked into while adjudicating upon section 9 application by the AA is whether the objection raised by the CD opposing claim of the OC is not a moonshine defense**

NCLAT, in the matter of Krishna Hi-Tech Infrastructure Pvt. Ltd. Vs. Bengal Shelter Housing Development Pvt. Ltd. [Company Appeal (AT) (Ins) No. 1375 of 2022& I.A. No. 4297, 4296 of 2022] dated December 06, 2022, has held that NCLAT held that the Contract Act provides for dispute resolution mechanism for contractual disputes arising between the parties during the contract period. The dispute between the parties is not supposed to be decided, examined, and adjudicated in the IBC proceeding. The

only question to be looked in section 9 petition of the Code is whether the objection raised by the CD opposing claim of the OC is not a moonshine defense. The Court further held that the issues raised in the emails sent by CD to the OC were not moonshine defence in the instant matter. The issues regarding quality of work were raised by the CD much prior to the issuance of section 8 notice. The AA has to examine the defence of the CD to find out if there is pre-existing dispute. If AA is satisfied on those emails of CD, it is not necessary to refer to explanation given by the OC.

**Source:** *IBBI-Analysis, dated December 15, 2022.*  
(<https://ibbi.gov.in/uploads/legalframework/9db0a8d779f0410b33804eb89e3d745a.pdf>).

### GUIDELINE

**IBBI released final Panel of IPs for January to June 2023**

IBBI on January 03, 2023, released the final 'Final Panel of IPs' prepared in accordance with 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2022' for the period January 01, 2023, to June 30, 2023. The Panel of IPs will be used for appointment of IPs as Interim Resolution Professional (IRP), Resolution Professional (RP), Liquidator, and Bankruptcy Trustee (BT) by NCLTs and DRTs in accordance with Guidelines. The Panel has Zone wise list of IPs based on the registered office (address as registered with the Board) of the IP. This process will be repeated during May-June 2023 for the next Panel.

**Source:** <https://ibbi.gov.in/uploads/legalframework/15fd41484696472007c3bf90e8f76e45.pdf>

