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# Insolvency and Bankruptcy Code

## ...Being agile to be relevant

The Insolvency and Bankruptcy Code is gearing up for yet another set of changes to the Insolvency Resolution Process Regulations for Corporate Persons to meet the ever-changing market dynamics. The Insolvency and Bankruptcy Board of India has placed the discussion paper on proposed changes for public comments on 27th June 2022.

*The proposed changes are set out hereinunder:*

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### 1. Timelines for certain activities

**a. Seeking Expressions of Interest (EOI) (reduced from 75 days to 60 days)** given the fact that at EOI stage only basic information of the corporate debtor is required to be given while inviting seeking participation from prospective resolution applicants.

**b. Issue of Information Memorandum timeline (increased from 54 days to 90 days)** considering the delay in compiling this critical document due to reasons such as lack of information, incomplete books of accounts, non-cooperation from promoters etc.

**c. Filing of avoidance transaction related matters (reduced from 135 days to 130 days)** to enable the resolution applicant/(s) decide on any changes warranted to the resolution plan having regard to the avoidance transactions and possible outcome thereto.

The proposed timelines are well thought through and a step towards harmonizing the interim activities within the Corporate Insolvency Resolution Process (CIRP) with the underlying objectives/ impact without breaching the overall timelines.

### 2. Marketing of assets by the resolution professional

It is critical for the information of the asset/ corporate debtor to be made available and further having



a strategy in place for targeted resolution applicants to ensure wider participation and better prospects of resolution.

It is proposed that the Resolution Professional (RP) and the Committee of Creditors (CoC) take an informed decision on the need to have marketing strategy and use professional assistance in this regard to achieve the above objective for such cases where total claims exceed Rs. 100 Crores.

Having a marketing strategy to ensure wider participation and maximization of value of the corporate debtor is a welcome step. However, the need for having a marketing strategy based on outstanding claims as against the assets/credentials of the corporate debtor seems misplaced since participation in the opportunity is driven by the synergies to be created and not the quantum of subsisting liabilities. The net assets coupled with unique business models and credentials of the corporate debtor

could be a better determinant for the need to have a marketing strategy.

### 3. Efforts for resolution of functional / operating parts of the Corporate Debtor

It is proposed to permit the RP and the CoC to explore resolution of part assets/ businesses by allowing submission of different resolution plans for these part assets/ businesses. The evaluation matrix can be amended accordingly to give an opportunity to the prospective resolution applicants who stepped aside in view of obsolete technology and assets/ legacy issues.

### 4. Guiding factors for the CoC to decide on early liquidation

Where the corporate debtor is/has been de-funct or non-operational for 3-5 years, product/service offered or technology used is obsolete, there is a lack of intangible assets like brand value, intellectual property,

accumulated losses/depreciation etc., the decision to liquidate the corporate debtor should be taken by the CoC at the initial stages of insolvency resolution process thus ensuring that further deletion of assets and loss of time to explore the possibility of resolution under CIRP is avoided.

## **5.Exploring compromise arrangement after CoC approves liquidation**

In order to make efficient use of the time and to keep the assets in the market, it is envisaged that the CoC and RP should explore the option of compromise or arrangement during the period between the making of an application for liquidation to the receipt of approval thereof by the Adjudicating Authority ('AA'). In the event, a compromise or arrangement is worked out, the liquidator can, on passing of the order approving liquidation, immediately file for compromise or arrangement.

## **6.Contents of Information Memorandum (IM)**

It is proposed to mandate inclusion of certain details in the IM which would bring to the fore the value of the corporate debtor apart from details of the assets, such as brought forward losses in the income tax returns, input credit of GST, key employees, key customers, supply chain linkages, utility connections and other infrastructure facilities.

## **7.Dealing with asset provided through a personal guarantor as part of the CIRP of the Corporate Debtor**

The assets belonging to promoters/guarantors without which meaningful resolution of Corporate Debtor is not possible, and which are already mortgaged/charged to creditors for securing the loan of the Corporate Debtor can be made part of the resolution estate with the consent of the mortgagee / charge holder (creditor).

Though a welcome step to enhance

the possibilities of resolution, the nature of charge created in favour of the creditors and status as regards its enforcement; consideration proposed against transfer of such asset or interest thereto. The consideration shall in most cases be a contentious issue having regard to the fact that corporate insolvency proceedings are followed by personal insolvency proceedings of the personal guarantors sooner or later.

## **8.Others:**

- a. Geo-tagging of immovable assets - The RP shall enable geo-tagging of the immovable assets wherever possible and include such information as part of the IM.
- b. Discussion of valuation report with CoC - Along with the RP, CoC must be given an opportunity to interact with valuers to understand their valuation methods, underlying assumptions, and justifications so that a veritable valuation is accepted. The confidentiality agreements or disclosures may be taken before such discussion is carried out.
- c. Need for repeating the valuation exercise - The CoC may decide to repeat the valuation exercise in CIRPs where the timeline has extended beyond the mandatory 330 days due to difficult market conditions or force majeure conditions or legal stalemate.
- d. Status of the CoC after approval of the resolution plan by the CoC - The RP shall continue to conduct the CoC meetings during the period between approval of plan by the CoC and approval by the AA. During such period he shall, through the meetings, keep the CoC informed on the progress on CIRP, approval of the resolution plan and to consult with the CoC in all matters regarding the operations of the CD.
- e. Minimum entitlement for dissenting financial creditors - The payment to dissenting financial creditors shall be linked to the realizable amount, (being a notional amount which is the difference of amount

available for distribution under a resolution plan and the amount distributed to operational creditors under resolution plan above the amount available to operational creditors as per section 53(1) out of the amount distributed as per the resolution plan), in the event of liquidation when the resolution plan has been approved instead of the current provision of linking it to the amount due to them in the event of liquidation, which is a notional number.

This change is significant in so far as it would discourage dissent in view of higher payout on the basis of entitlement under liquidation process.

- f. Process email - The IRP shall be required to open an email account for conduct of the CIRP and handover credentials of the same to the RP while he demits office. The RP should also handover the credentials to the other RP in the event of replacement or to the Liquidator in the event of liquidation.
- g. Need for IRP /RP to communicate to call creditors to submit claims - The interim resolution professional shall send notice to all the creditors whose name is recorded in the books of accounts of the Corporate Debtor together with a copy of the public announcement.

Broadly, the proposed changes are intended to achieve timely resolution/ maximization of value of the corporate debtor by removing ambiguity as regards certain aspects of the Code and regulations framed thereunder, stipulating effective dissemination of relevant information for wider participation and in turn, maximization of value of the underlying asset in the insolvency resolution process and balancing the interests of various stakeholders.

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The views expressed herein are his personal views.

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