

**KEY AMENDMENTS INTRODUCED BY THE IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (THIRD AMENDMENT) REGULATIONS, 2018, DATED 3 JULY 2018 (“CIRP AMENDMENT”)**

Sr. No.	Topic	Summary of the Amendment
1.	<b>Applicability and effect on existing CIRPs</b>	<ul style="list-style-type: none"> <li>The CIRP Amendment is effective from 3 July 2018;</li> <li>It will apply to CIRPs commencing on or after 3 July 2018</li> </ul>
2.	<b>Authorised representative for “class of creditors” for creditors other than creditors in relation to consortium arrangements, syndicate facility, where financial debt is in form of securities / deposit</b>	<ul style="list-style-type: none"> <li>At least 10 of such financial creditors will constitute a class;</li> <li>Interim resolution professional (“IRP”) to ascertain such class of creditors;</li> <li>IRP to further identify 3 insolvency professionals (“IP”) amongst whom the one who gets maximum votes from the members of such class, will be appointed as authorised representative of such class of creditors for voting at Committee of Creditors (“COC”);</li> <li>Each of such IP to give their consent in Form AB to act as authorised representative;</li> <li>IRP to submit the highest voted choice IP to the National Company Law Tribunal (“NCLT”) within 2 days of verification of claims and any delay in appointment of the authorised representative for any class of creditors will not affect the validity of any decision taken by the COC;</li> <li>Authorised representative will have no role in receipt or verification of claims of creditors of the class he represents;</li> <li>Voting share of a creditor in a class will be in proportion to the financial debt which includes an interest at the rate of 8% percent per annum unless a different rate has been agreed to between the parties;</li> <li>Authorised representative is entitled to fees for every COC meeting attended by him depending upon the number of creditors he is representing</li> </ul>
3.	<b>New disclosures in public announcement (“PA”)</b>	<p>Now, PA to also provide for following:</p> <ul style="list-style-type: none"> <li>State where claim forms can be downloaded or obtained from, as the case may be;</li> <li>Offer choice of 3 IPs to act as the authorised representative of creditors in each class</li> </ul>
4.	<b>Submission of claims by creditors in a class</b>	<ul style="list-style-type: none"> <li>To submit claim with proof in newly introduced Form CA;</li> <li>Existence of debt may be proved by documents like agreement for sale, letter of allotment, receipts of payment made, etc.;</li> <li>Each creditor in a class to indicate its choice of IP from 3 mentioned in PA</li> </ul>
5.	<b>Outer timelines provided for submission of claims</b>	<ul style="list-style-type: none"> <li>Earlier, a creditor, who had failed to submit proof of claim within the time stipulated in the PA, could have submitted such proof to the IRP or the RP, as the case may be, till the approval of a resolution plan by the COC;</li> <li>Now the aforementioned flexibility has been withdrawn and now a creditor, who has failed to submit claim with proof within the time stipulated in the PA, could submit the claim with proof to the IRP or the RP, as the case may be, on or before the 90<sup>th</sup> day of the insolvency commencement date;</li> <li>A delayed submission by a creditor in class will render his choice of authorised representative as null, and his vote will not be counted for appointment of authorised representative for such class of creditors</li> </ul>

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6.	<b>New regulations provided for constitution of COC</b>	<p><u>Where no financial creditors except creditors in a class</u></p> <ul style="list-style-type: none"> <li>In such situations, COC will consist of only authorised representative(s)</li> </ul> <p><u>New timelines</u></p> <ul style="list-style-type: none"> <li>Earlier, IRP was required to file a report certifying constitution of the COC to the NCLT on or before the expiry of 30 days from the date of his appointment. This timeline has now been linked with verification of claims, and the IRP is now required to file a report certifying constitution of the COC to the NCLT within 2 days of the verification of claims received</li> </ul>
7.	<b>Shorter timelines for COC meetings</b>	<ul style="list-style-type: none"> <li>Earlier, not less than 7 days' notice was required to be given for a COC meeting. This period is now reduced to 5 days;</li> <li>Ability of COC to reduce the time period for COC meeting is now dependent upon whether there exists creditors in class for whom an authorised representative is appointed;</li> <li>The COC could reduce the notice period from 5 days to such other period of not less than 24 hours, as it deems fit, but not less than 48 hours if there is any authorised representative</li> </ul>
8.	<b>Voting at COC meetings</b>	<ul style="list-style-type: none"> <li>Earlier regulation suggested that a voting at COC meeting could be conducted if all members of COC are present. This has been clarified to state that members who are present will vote at the COC meeting;</li> <li>However, this does not take away the right of members who were not present at the meeting, as minutes of the meeting will be circulated to all members and they will be given a voting window which shall remain open for at least twelve hours</li> </ul>
9.	<b>Change of vote by a COC member</b>	<ul style="list-style-type: none"> <li>Earlier regulation provided that once a vote on a resolution is cast by a member of the COC, such member shall not be allowed to change it subsequently. This regulation has been omitted</li> </ul>
10.	<b>Resolution plan/ its requirements</b>	<ul style="list-style-type: none"> <li>A resolution plan to include provisions for cancellation or delisting of any shares of the CD, if applicable;</li> <li>Earlier, a resolution plan was required to contain details of the resolution applicant and other connected persons to enable the COC to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval. This has been substituted with following requirement, and requires a resolution plan to demonstrate that:                         <ul style="list-style-type: none"> <li>✓ It addresses the cause of default;</li> <li>✓ It is feasible and viable;</li> <li>✓ It has provisions for its effective implementation;</li> <li>✓ It has provisions for approvals required and the timeline for the same; and</li> <li>✓ The resolution applicant has the capability to implement the resolution plan</li> </ul> </li> </ul>
11.	<b>Submission of resolution plan and approval</b>	<ul style="list-style-type: none"> <li>A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code to the RP electronically within the time given in the RFRP, along with following:                         <ul style="list-style-type: none"> <li>✓ An affidavit stating that it is eligible under section 29A to submit resolution plans;</li> <li>✓ An undertaking that it will provide for additional funds to the extent required for the insolvency resolution process cost; and</li> <li>✓ An undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render</li> </ul> </li> </ul>

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		<p>the applicant ineligible to continue in the CIRP, forfeit any refundable deposit, and attract penal action under the Code;</p> <ul style="list-style-type: none"> <li>• A resolution plan which does not comply with the aforementioned will be rejected;</li> <li>• COC to evaluate the resolution plans strictly as per the EM to identify the best resolution plan and may approve it with such modifications as it deems fit, and shall record the reasons for approving or rejecting a resolution plan.</li> <li>• RP to endeavour to submit the resolution plan approved by the COC to the NCLT at least 15 days before the maximum period for completion of CIRP, along with a compliance certificate in Form H</li> </ul>
12.	<p><b>New timelines / process / disclosures for IM, Invitation for EOI, EOI, RFRP</b></p>	<p><b><u>IM</u></b></p> <ul style="list-style-type: none"> <li>• RP to submit the IM in electronic form to each member of the COC within 2 weeks of his appointment, but not later than 54<sup>th</sup> day from the insolvency commencement date, whichever is earlier;</li> </ul> <p><b><u>Invitation for EOI and submission of EOI</u></b></p> <ul style="list-style-type: none"> <li>• Invitation for EOI to be published by RP in Form G (including specifications for detailed invitation) at the earliest, not later than 75<sup>th</sup> day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans;</li> <li>• Last date for submission of EOI shall not be less than 15 days from the date of issue of detailed invitation. Any EOI submitted beyond the specified timeline, will be rejected;</li> <li>• EOI to provide for: <ul style="list-style-type: none"> <li>✓ An undertaking by the prospective resolution applicant that it meets the criteria specified by the COC and relevant records in evidence of meeting the said criteria;</li> <li>✓ An undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable, along with relevant information and records to enable an assessment of ineligibility under section 29A</li> <li>✓ An undertaking by the prospective resolution applicant that it shall intimate the RP forthwith if it becomes ineligible at any time during the CIRP;</li> <li>✓ An undertaking by the prospective resolution applicant that every information and records provided in EOI is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and</li> <li>✓ An undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person, and comply with section 29 of the Code;</li> </ul> </li> <li>• RP to share provisional list of eligible prospective resolution applicants within 10 days of the last date for submission of EOI to the COC and to all prospective resolution applicants who submitted the EOI, which list can be objected within 5 days of issue of such list;</li> </ul>

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		<ul style="list-style-type: none"> <li>• RP to share with the COC the final list of prospective resolution applicants within 10 days of the last date for receipt of objections;</li> </ul> <p><b>RFRP</b></p> <ul style="list-style-type: none"> <li>• RP to issue the IM, EM and a RFRP, within 5 days of the date of issue of the provisional list to:                             <ul style="list-style-type: none"> <li>✓ Every prospective resolution applicant in the provisional list; and</li> <li>✓ Every prospective resolution applicant who has contested the decision of the RP against its non-inclusion in the provisional list.</li> </ul> </li> <li>• RFRP to provide in detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines;</li> <li>• Minimum of 30 days to submit the resolution plan;</li> <li>• No requirement for non-refundable deposit for submission of or along with resolution plan;</li> <li>• Any modification to RFRP or EM, will be deemed as fresh issue and subject to fresh timelines;</li> <li>• Approval of COC required for extension of timelines for submission of resolution plans</li> </ul>
13.	<b>Process for withdrawal of application</b>	<ul style="list-style-type: none"> <li>• Once an application has been admitted, the same can be withdrawn by filing an application to the IRP or RP, as the case may be, in newly introduced Form FA, before issue of invitation for EOI;</li> <li>• The application needs to be accompanied with a bank guarantee for costs incurred for CIRP as per Regulation 31(c) and 31(d) of CIRP Regulations until the application;</li> <li>• COC to consider the application within 7 days of its constitution or 7 days of receipt of the application, whichever is later;</li> <li>• Where the application is approved by the COC with 90% voting share, the RP shall submit the application to the NCLT on behalf of the applicant, within 3 days of such approval;</li> <li>• The NCLT may, by order, approve the application for withdrawal</li> </ul>
14.	<b>Timelines prescribed for identification and determination of preferential, undervalued, extortionate or fraudulent transactions (collectively referred to as “Preferential Transactions”)</b>	<p>Following are the obligations imposed on RP:</p> <ul style="list-style-type: none"> <li>• To form an opinion whether the CD has been subjected to any Preferential Transactions, on or before the 75<sup>th</sup> day of the insolvency commencement date;</li> <li>• If yes, to make a determination on or before the 115<sup>th</sup> day of the insolvency commencement date, under intimation to the IBBI;</li> <li>• Further to the determination, to apply to the NCLT for appropriate relief on or before the 135<sup>th</sup> day of the insolvency commencement date</li> </ul>
15.	<b>New additions to insolvency resolution process cost</b>	<ul style="list-style-type: none"> <li>• Expenses for PA;</li> <li>• Fee payable to authorised representative;</li> <li>• Out of pocket expenses of authorised representative for discharge of his functions</li> </ul>
16.	<b>Pecuniary threshold for</b>	<ul style="list-style-type: none"> <li>• As per the regulation, an IP is eligible to be appointed as a RP for a CIRP of a corporate debtor (“CD”) if he, and all partners</li> </ul>

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	<b>determining independence of IP made stricter for appointment of an IP as resolution professional ("RP")</b>	and directors of the insolvency professional entity of which he is a partner or director, are independent of the CD; <ul style="list-style-type: none"> <li>• One of such criteria to determine independence was that he should not be an employee or proprietor or a partner of a legal or a consulting firm, that has or had any transaction with the CD amounting to 10% or more of the gross turnover of such firm, in the last 3 financial years;</li> <li>• The criteria of 10% is now lowered to 5%</li> </ul>
17.	<b>Written consent requirement for acting as RP</b>	<ul style="list-style-type: none"> <li>• New form AA is introduced for an IP to act as RP whether by way of transition from IRP to RP, or replace IRP with new RP or replace existing RP with another RP</li> </ul>
18.	<b>Delayed appointment of RP</b>	<ul style="list-style-type: none"> <li>• Where the appointment of RP is delayed, the IRP is required to perform the functions of the RP from the 40<sup>th</sup> day of the insolvency commencement date till a RP is appointed</li> </ul>
19.	<b>Model timelines for CIRP</b>	<ul style="list-style-type: none"> <li>• The Table (attached as a separate file) presents a model timeline of CIRP on the assumption that the IRP is appointed on the date of commencement of the process and the time available is 180 days</li> </ul>