

## ERGO

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### IBBI'S ATTEMPT TO FORMALISE THE FEE STRUCTURE FOR RESOLUTION PROFESSIONALS

16 September 2022 **Introduction**

The Insolvency and Bankruptcy Board of India (IBBI) on 13 September published the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022 (CIRP Amendment Regulations) amending the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), and Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2022 (IP Amendment Regulation) amending the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations).

The key changes brought about by the CIRP Amendment Regulations and the IP Amendment Regulations are as follows:

#### **i CIRP Amendment Regulations**

- a. Vide the CIRP Amendment Regulations, regulation 34B (Fee to be paid to interim resolution professional and resolution professional) has been added to Chapter IX (Insolvency Resolution Process Cost) of the CIRP Regulations along with a corresponding Schedule II.
- b. Regulation 34B states that the interim resolution professional (IRP) or the resolution professional (RP), appointed on or after 1 October 2022 shall be paid a monthly minimum fee on the basis of the quantum of admitted claims.
- c. The above stated quantification shall be in accordance with the newly appended Schedule II wherein the fee payable is directly proportional to the claim amount, as follows:

	<b>Quantum of Claims Admitted</b>	<b>Minimum Fee Per Month (Rs. lakh)</b>
(i)	Less than or equal to Rs. 50 crore	1.00

(ii)	More than Rs. 50 crore but less than or equal to Rs. 500 crore	2.00
(iii)	More than Rs. 500 crore but less than or equal to Rs. 2,500 crore	3.00
(iv)	More than Rs. 2,500 crore but less than or equal to Rs. 10,000 crore	4.00
(v)	More than Rs. 10,000 crore	5.00

- d. Pertinently, the CIRP Amendment Regulations provide discretion to the applicant or the committee of creditors (**CoC**) to fix a higher amount of fees after considering the size and scale of business operations of the corporate debtor, the business sector, level and complexity of operating economic activity, etc and recording their reasons for fixing such higher fees.
- e. The CIRP Amendment Regulations also formalises the existing practice of performance linked incentive payable to a resolution professional after approval of the resolution plan by the Adjudicating Authority. The realisable value of such incentive is inversely proportional to the time taken for resolution, as shown below-

#	Time period from insolvency commencement date	Fee as % of Realisable Value
(i)	Less than or equal to 165 days	1.00
(ii)	More than 165 days but less than or equal to 270 days	0.75
(iii)	More than 270 days but less than or equal to 330 days	0.50
(iv)	More than 330 days	0.00

- f. Similar to a resolution process, the CIRP Amendment Regulations also propose a performance linked incentive for liquidation process which fees may be paid to the liquidator at the rate of one per cent of the amount by which the realisable value of the assets of the corporate debtor shall be higher than the liquidation value.

**ii IP Amendment Regulations**

The IP Amendment Regulation introduces regulation 26A which states that the RPs cannot share or accept any fees or charges from professional and/or support service providers appointed under the CIRP/ liquidation process.

**Comment**

The CIRP Amendment Regulations are a step in the right direction because an objective mechanism for determination of fees of a resolution professional would be beneficial to all stakeholders and would also protect resolution professionals from disciplinary proceedings. Another important aspect is that necessary leeway has been provided to committee of creditors to determine the fees of a resolution professional by taking into account the complexity of the resolution process proposed to be undertaken by such professional. Further, with the rise in inordinate delays in the CIRP process, the performance linked fees for the resolution professional/liquidator shall act as an incentive for timely resolution and is sure to promote value maximization for the corporate debtor.

The issue of coupling of fees payable to the RP with that of the service provider has been a matter of constant debate among industry stakeholders. The amendment proposed by the IP Amendment Regulations have the dual effect of standardizing the fee payable to the RP which is subsequently deducted as the CIRP cost and delineating the role of a resolution professional as an 'individual appointee' of the corporate debtor. Hence, now a clear distinction has been created between the RP and professional/support service provider irrespective of their affiliation.

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