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IBBI PROPOSES FOR STREAMLINING OF RESOLUTION PROCESS

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BACKGROUND

Since its inception the Insolvency and Bankruptcy Code, 2016 (Code) has been an evolving legislation with regular updation(s) being brought about in the form of rules and regulations with a view of streamlining the corporate insolvency resolution process (CIRP).

In this context, the Insolvency and Bankruptcy Board of India (IBBI) has recently issued a discussion paper suggesting various reforms to the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 (CIRP Regulations) in order to address the gaps in running of a CIRP process and increase the viability and effectiveness of the Code (Discussion Paper).

In this Ergo, we shall set out the key amendments proposed to be introduced into the CIRP Regulations *vide* the Discussion Paper.

KEY CHANGES PROPOSED TO BE INTRODUCED IN THE CIRP REGULATIONS:

a **Submission of valuation report as a whole:**

Currently as per Regulation 35(1) of the CIRP Regulations, the resolution professional appoints two registered valuers for estimating the asset-wise fair and liquidation value of the corporate debtor as per internationally accepted valuation standards which are then considered for establishing the average fair and liquidation value of the corporate debtor. The resolution professional may appoint a third valuer for an asset class in the event the value in an asset class differs by a margin of at least 25% (twenty five percent) or on receipt of request for such appointment from the committee of creditors (CoC) of the corporate debtor. Thereafter, the average of the two close valuation is considered for determination of fair value and liquidation value. It may be noted that 'asset class' herein means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation as defined in the Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules).

The Discussion Paper however notes that the above methodology is not consistent with the Valuation Rules which already provide for the valuer to obtain inputs on his valuation report or get a separate valuation conducted for any assets from any other registered valuer, if required. The same may be recorded in the report submitted by the said valuer. Accordingly, to align the CIRP Regulations with the Valuation Rules, the Discussion Paper proposes substitution of sub-regulation 1(a), 1(b) and 1(c) of Regulation 35 to state that the registered valuer(s) appointed by the resolution professional shall submit the valuation report for the corporate debtor as a whole in accordance with the terms of the Valuation Rules. Such valuers may incorporate the inputs of another registered valuer for other asset classes or may get separate valuation of an asset class conducted by them.

b **Single valuation estimate for MSMEs and for companies with a pre-determined asset size:**

The CIRP Regulations require the resolution professional to appoint two registered valuers within forty seven days from the CIRP commencement date. Thereafter a third valuer may be appointed as per the requirements of Regulation 35 of the CIRP Regulations.

The Discussion Paper notes that the cost of appointment of such valuers are included in the CIRP cost. Higher CIRP cost for MSMEs or corporate debtors having a relatively smaller asset size may negatively affect and delay such CIRP(s) for need of fund. Accordingly, in order to reduce the delays caused by submission of multiple reports and to address the cost sensitive nature of the CIRP of certain corporate debtors, the Discussion Paper proposes amendments to sub-regulation (1) of Regulation 27 of CIRP Regulations to state, that the Resolution Professional shall appoint only 1 (one) registered valuer in case of corporate debtor which is classified as micro, small or medium enterprise under sub-section (1) of Section 7 of the MSME Development Act, 2006 or is having an asset size of up to INR 1,000 crores as per the latest available balance sheet. The CoC may, however, with reasons, decide to appoint two registered valuers. Further, two registered valuers shall ordinarily be appointed in the CIRP of all corporate debtor(s) except as stated above.

c **'In interim' appointment of Authorized Representative:**

Under Section 21(6A)(b), the application for appointment of an authorized representative (AR) representing a class of creditors is required to be moved by the interim resolution professional and the appointment of such AR is thereafter required to be confirmed by the adjudicating authority before the first meeting of the CoC.

It has been noted that in certain circumstances, the appointment of AR gets delayed due to which the interest of the class of creditors are not represented in the CoCs. In order to remove such hindrance, the Discussion Paper stipulates inclusion of a proviso to Regulation 16(1) of CIRP Regulations permitting an AR to attend the meetings of the CoC and perform such duties as contemplated under Section 25A of the Code from the date of submission of the application for his appointment to adjudicating authority till the date of his confirmation.

d **Release of guarantees in the resolution plan:**

In order to provide clarity with respect of continuance of guarantees post approval of the resolution plan and with the aim to follow the statutory approach as laid down by the Hon'ble Supreme Court in *Lalit Kumar Jain v. Union of India (2021) 9 SCC 321*, the Discussion Paper proposes inclusion of a proviso to sub-regulation (f) of Regulation 37 of CIRP Regulations. Pursuant to the same, the resolution plan shall explicitly state that it's approval shall not prevent the creditor from enforcing their rights against the guarantor(s) of the corporate debtor.

COMMENTS

The IBBI via the Discussion Paper has aimed to resolve multiple bottlenecks which are faced while running of a CIRP. The introduction of a single valuation report for MSME(s) and companies having net worth of INR 1,000 crores shall drive the pace of such CIRP(s) which are otherwise delayed due to unavailability of funds. The same shall also lead to a reduction of CIRP cost thereby contributing to value maximization for the financial creditors. However, the IBBI may also consider similar amendments for requirement of a single valuation report under the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 which envisage pre-packaged insolvency (PPIRP) for MSME(s), so as to decrease the cost burden in the PPIRP of MSME(s) therein. We feel that the alignment of valuation procedure under the CIRP Regulations with that stipulated under the Valuation Rules would sanitise the compliance procedure(s).

In respect of appointment of ARs, it may be noted that they have to be appointed before the 1st CoC meeting of the corporate debtor which in turn has to be held within 30 (thirty) days of CIRP commencement. In experience, such appointments are delayed since they require selection of the AR by a class of creditor(s) along with approval from the adjudicating authority which may get delayed due to reasons such as non-collation or delayed collation of claims especially in cases where multiple allottees are involved, delay in listing of the appointment application(s), adjournment by the adjudicating authority etc. This may also lead to delay in conducting meetings of the CoC thereby leading to a subsequent delay in the CIRP of the

corporate debtor. Accordingly, the proposed amendment for 'in interim' appointment of the AR will have the effect of plugging the above gaps. However, it may be seen that revisions in Regulations will not have the effect of altering the position under Section 21(6A)(b) of the Code and a statutory amendment of Code should be envisaged to fully streamline this position.

We also note that clarification on continuation of guarantees given on behalf of the corporate debtor, while a standard market practice shall bring about a much need statutory conclusion to the said position.

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