

## ERGO

*Analysing developments impacting business*

### IBBI'S CLARIFICATION EMPOWERS THE ROLE OF AUTHORIZED REPRESENTATIVE

14 October 2024

#### **Background**

The Insolvency and Bankruptcy Board of India (IBBI) has on 24 September 2024 published the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024 (Amendment Regulations) with the primary aim to streamline and reduce the delays faced in insolvencies containing class of creditors.

#### **Amendments Introduced**

- a. Substitution of proviso to Regulation 16A(1): The substituted proviso provides that the choice of authorized representative shall not be considered for those financial creditors in a class who shall submit the Form CA after the time stipulated in the public announcement.
- b. Addition of proviso to Regulation 16A(2): The proviso entitles the authorized representative (AR) of the class of financial creditors to attend the meetings of the committee of creditors (CoC) as an interim representative while the application for his appointment is pending for consideration before the adjudicating authority.
- c. Amendments to Regulation 40A: Relevant provisions in regard to Regulation 12(2) have been deleted to align with the omission of the said regulation by Notification No. IBBI/2023-24/GN/REG106, dated 18 September 2023.

#### **COMMENTS**

The appointment of an AR requires selection of the relevant insolvency professional by the class of creditors under Form CA and thereafter the approval by the adjudicating authority. It has been long observed that such appointment has been delayed either due to delay in submission of claim forms by the financial creditors in class or delay in adjudication of the appointment application due to procedural hiccups experienced at the level of adjudicating authority. Since long there has been a grey area regarding the right of the AR to attend the meetings of the CoC during the delay faced in his/her appointment.

To curb these, the essential clarification brought about by the Amendment Regulations is the addition of proviso to Regulation 16A(2) which now entitles the AR of the class of financial creditors to attend the meetings of the CoC as an interim representative while the application for his/her appointment is pending for consideration before the adjudicating authority. The inclusion of this proviso shall now put to rest the conundrum faced due to procedural delays in appointment of the AR which in turn either delays the first CoC meeting

or prevents the presentation of interest of such financial creditors in the CoC till the AR appointment is confirmed by the adjudicating authority.

The amendment in Regulation 16(A)(1) is also clarificatory in nature and is intended to reduce the delay in AR appointment due to non-submission or delayed submission of claim forms. Regulation 40(A) has been amended to delete the rows with respect to submission of claims within 90 days and their verification within 7 days since the parent regulation 12(2) was omitted previously vide IBBI's notification dated 18 September 2023.

- *Dr. Siddharth Srivastava (Partner), Mohit Kishore (Counsel) and Shikha Mohini (Associate)*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)