

**GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, 25TH JULY, 2019**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, the 25th July, 2019**

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019

No. IBBI/2019-20/GN/REG048.- In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations), for regulation 30A, the following regulation shall be substituted, namely: -

“30A. Withdrawal of application.

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority -

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

(6) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code. ”.

3. In the principal regulations, in regulation 31,-

(i) in clause (aa), for “sub-regulation (7)”, “sub-regulation (8)” shall be substituted;

(ii) in clause (ab), for “section 25”, “section 25A” shall be substituted.

4. In the principal regulations, in regulation 39, in sub-regulation (3), for the proviso, the following proviso shall be substituted, namely: -

“Provided that the committee shall record its deliberations on the feasibility and viability of the resolution plans.”.

5. In the principal regulations, after regulation 39A, the following regulations shall be inserted, namely: -

“39B. Meeting liquidation cost.

(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.

(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

Explanation.- For the purposes of this regulation, ‘liquidation costs’ shall have the same meaning as assigned to it in clause (ea) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

39C. Assessment of sale as a going concern.

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.”.

39D. Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for -

- (a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;
- (b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and
- (c) the balance period of liquidation.”.

6. In the principal regulations, in regulation 40A, in the Table,-

(i) for the entries relating to ‘Regulation 13(1)’ and ‘Regulation 13(2)’, the following entries shall respectively be substituted, namely:-

“Regulation 13(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
	Verification of claims received under regulation 12(2)		T+97”;

(ii) for the entries relating to ‘Section 22(1)/Regulation 19(1)’, the following entries shall be substituted, namely: -

“Section 22 /Regulation 19(2)	1 st meeting of the CoC	Within 7 days of filing of the report certifying constitution of the CoC, but with five days’ notice.	T+30”
-------------------------------	------------------------------------	---	-------

(iii) for the entries relating to ‘Regulation 27’, the following entries shall be substituted, namely: -

“Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 47 th day of commencement.	T+47”.
----------------	-----------------------	--	--------

7. In the principal regulations, in the Schedule, -

(a) for Form FA, the following Form shall be substituted, namely:-

“FORM FA

**APPLICATION FOR WITHDRAWAL OF CORPORATE INSOLVENCY
RESOLUTION PROCESS**

[Under Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

[Date]

To
The Adjudicating Authority

[Through the Interim Resolution Professional / Resolution Professional]
[Name of corporate debtor]

Subject: Withdrawal of Application admitted for corporate insolvency resolution process of [Name of corporate debtor]

I, [Name of applicant], had filed an application bearing [particulars of application, i.e, diary number/ case number] on [Date of filing] before the Adjudicating Authority under [Section 7 / Section 9/ Section 10] of the Insolvency and Bankruptcy Code, 2016. The said application was admitted by the Adjudicating Authority on [date] bearing [case number].

2. I hereby withdraw the application bearing [particulars of application, i.e, diary number/ case number] filed by me before the Adjudicating Authority under [Section 7 / Section 9/Section 10] of the Insolvency and Bankruptcy Code, 2016.

3. I attach the required bank guarantee as per sub-regulation (2) of regulation 30A.

(Signature of the applicant)

Date:

Place:

[Note: In the case of company or limited liability partnership, the declaration and verification shall be made by the director/manager/secretary/designated partner and in the case of other entities, an officer authorised for the purpose by the entity]”.

(b) in Form H,-

(i) in paragraph 9, for the entries relating to Regulation 38(1), the following entries shall be substituted, namely: -

“Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?”;		
--------------------	--	--	--

(ii) in paragraph 10, for the entries relating to Regulation 36(1), the following entries shall be substituted, namely: -

“Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54”.	
--------------------	---	--------	--

(iii) after paragraph 15, the following shall be inserted, namely:-

“15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- a. Estimated liquidation cost: Rs.....
- b. Estimated liquid assets available: Rs.....
- c. Contributions required to be made: Rs.....
- d. Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1		
2		
..		
Total		

15B. The committee has recommended under regulation 39C as under:

- a. Sale of corporate debtor as a going concern: Yes / No
- b. Sale of business of corporate debtor as a going concern: Yes / No

The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.”.

Dr. M. S. Sahoo
Chairperson
[ADVT . - _____]

Note: The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were published *vide* notification No. IBBI/2016-17/GN/REG004, dated 30th November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 432 on 30th November, 2016 and was subsequently amended by-

1) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017 published *vide* notification No. IBBI/2017-18/GN/REG013, dated the 16th August, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 318 on 16th August, 2017;

2) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2017 published *vide* notification No. IBBI/2017-18/GN/REG018, dated the 5th October, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 386 on 5th October, 2017;

3) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017 published *vide* notification No. IBBI/2017-18/GN/REG019 dated the 7th November, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 432 on 7th November, 2017;

- 4) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2017 published *vide* notification No. IBBI/2017-18/GN/REG022, dated the 31st December, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 01 on 1st January, 2018;
- 5) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018 published *vide* notification No. IBBI/2017-18/GN/REG024, dated the 6th February, 2018 in the Gazette of India, Extraordinary, Part III, Section 4, No. 49 on 6th February, 2018;
- (6) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018 published *vide* notification No. IBBI/2017-18/GN/REG030, dated the 27th March, 2018 in the Gazette of India, Extraordinary, Part III, Section 4, No. 124 on 28th March, 2018;
- 7) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018 published *vide* notification No. IBBI/2018-19/GN/REG031, dated the 3rd July, 2018 in the Gazette of India, Extraordinary, Part III, Section 4, No. 253 on 4th July, 2018;
- 8) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2018 published *vide* notification No. IBBI/2018-19/GN/REG032, dated the 5th October, 2018 in the Gazette of India, Extraordinary, Part III, Section 4, No. 372 on 5th October, 2018; and
- 9) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019 published *vide* notification No. IBBI/2019-20/GN/REG040, dated the 24th January, 2019 in the Gazette of India, Extraordinary, Part III, Section 4, No. 21 on 24th January, 2019.