

Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2019

28th November, 2019

Corporate Insolvency

The Insolvency and Bankruptcy Board of India (Board) is required under the Insolvency and Bankruptcy Code, 2016 (Code) to recommend name of an insolvency professional (IP) for appointment as interim resolution professional (IRP) or liquidator as under:

(a) Section 16(3)(a) of the Code requires the Adjudicating Authority (AA) to make a reference to the Board for recommendation of an IP, who may act as an IRP in case an operational creditor has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP. The Board is required under section 16(4) of the Code to recommend the name of an IP against whom no disciplinary proceedings are pending, within ten days of the receipt of the reference from the AA.

(b) Section 34(4) of the Code requires the AA to replace the resolution professional, if (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or (b) the Board recommends the replacement of a resolution professional to the AA for reasons to be recorded in writing; or (c) the resolution professional fails to submit written consent under section 34(1). For the purposes of clause (a) and clause (c) of section 34(4), the AA may direct the Board under section 34(5) of the Code to propose the name of another IP to be appointed as a liquidator. The Board is required under section 34(6) to propose the name of another IP along with written consent from him, within ten days of the direction issued by the AA.

2. The Board has been making available panels of IPs to the AA for appointment as IRP or Liquidator, as the case may be. It made available the last panel for appointments of IP as IRPs and Liquidators during the period July, 2019 to December, 2019 in accordance with the Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019. Making available panel in advance by the Board has been found useful:

(a) The AA in its order dated 8th January 2018 in the matter of Innovsource Private Limited Vs. Getit Grocery Private Ltd., observed: *“The Insolvency and Bankruptcy Board of India vide its letter dated 01.01.2018 has recommended a panel of Insolvency Professionals for appointment of Insolvency Resolution Professional in compliance with Section 16 (3) (a) of the Code in order to cut delay. The list of recommended Insolvency Professionals provides instant solution to the Adjudicating Authority to pick up the name and make appointment. It helps in meeting the time line given in the Code and the unnecessary time wasted firstly in asking the Insolvency and Bankruptcy Board of India to recommend the name and then to appoint such Interim Resolution Professional by the Adjudicating Authority”*.

(b) Hon’ble National Company Law Appellate Tribunal in its order dated 28th February, 2019 in the matter of Sandeep Kumar Gupta, Resolution Professional Vs. Stewarts & Lloyds of India Ltd. & Anr. Observed: *“ .. Further, the list of ‘Resolution Professionals’ being made available by the ‘Board’ to the Adjudicating Authorities, any person is appointed out of the said list submitted by the ‘Board’, it should be treated to be an appointment of ‘Resolution Professional’/‘Liquidator’ on the recommendation of the ‘Board’.”*

Individual Insolvency

3. The Board is also required under the Code to recommend the name of an IP for appointment as resolution professional (RP) or bankruptcy trustee (BT) as under:

(a) Section 97(3) of the Code requires the AA to direct the Board to nominate a resolution professional (RP) for an insolvency resolution process, where an application under section 94 or 95 is filed by the debtor or the creditor, as the case may be, and not through a RP. The Board

is required under section 97(4) to nominate a RP within ten days of the receiving the direction from the AA.

(b) Section 98(2) of the Code requires the AA to make a reference to the Board for replacement of a RP in an insolvency resolution process, where the debtor or the creditor is of the opinion that the RP appointed under section 97 is required to be replaced. The Board is required under section 98(3) to recommend the name of a RP, against whom no disciplinary proceedings are pending, within ten days of the receipt of the reference from the AA.

(c) Section 125(3) of the Code requires the AA to direct the Board to nominate a bankruptcy trustee (BT) for the bankruptcy process, where a BT is not proposed by the debtor or creditor under section 122 or 123. The Board is required under section 125(4) to nominate a BT, within ten days of receiving the direction of the AA.

(d) Section 146(2) of the Code requires the AA to direct the Board for replacement of the BT on his resignation in a bankruptcy process. The Board is required under section 146(3) to recommend another BT as a replacement, within ten days of the direction of the AA.

(e) Section 147(2) of the Code requires the AA to direct the Board for replacement of a BT in a bankruptcy process in the event of occurrence of a vacancy in the office of the BT for any reason other than his/her replacement or resignation. The Board is required under section 147(3) to recommend a BT as a replacement, within ten days of the direction of the AA.

4. The Rules provide as under:

(a) Rule 8 of The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 enables the Board to share a panel of insolvency professionals, who may be appointed as resolution professionals, with the Adjudicating Authority for the purposes of section 97(4) and section 98(3).

(b) Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 enables the Board to share a panel of insolvency professionals, who may be appointed as bankruptcy trustee, with the Adjudicating Authority for the purposes of section 125(4) and section 146(3) and section 147(3) of the Code.

Guidelines

5. When a reference or direction is received from the AA for recommending / proposing the name of an IP, the Board has no information about the volume, nature and complexity of the process and the resources available at the disposal of an IP. In such a situation, the Board is unlikely to add much value by recommending an IP for a process. Further, it takes some time for a reference or a direction from the AA to reach the Board. The Board may take up to ten days to identify an IP for the purpose. It takes also some time for the recommendation of the Board to reach the AA, after which the AA could appoint the recommended IP. The process of appointment may entail 2-3 weeks, which could be saved if the AA has a ready panel of IPs recommended by the Board and it can pick up any name from the Panel for appointment while issuing the Order.

6. Given that every IP is equally qualified to be appointed as the IRP, Liquidator, RP or BT of any corporate or individual insolvency process, as the case may be, if otherwise not disqualified, and in the interest of avoiding administrative delays, it is necessary to have guidelines to prepare a Panel of IPs for the purpose of section 16(4), 34(6), 97(4), 98(3), 125(4), 146(3) and 147(3) from amongst the IPs.

Panel of IPs

7.1 The Board will prepare a common Panel of IPs for appointment as IRP, Liquidator, RP and BT and share the same with the AA (Hon'ble NCLT and Hon'ble DRT) in accordance with these Guidelines.

7.2 The Panel will have Zone wise list of IPs based on the registered office of the IP.

7.3 The Panel will have a validity of six months and a new Panel will replace the earlier Panel every six months. For example, the first panel under these Guidelines will be valid for appointments during January - June, 2020, the next panel will be valid for July – December, 2020 and so on.

7.4 The NCLT may pick up any name from the Panel for appointment of IRP ,Liquidator, RP or BT , for a CIRP or Liquidation process relating to a corporate or individual debtor, as the case may be.

7.5 The DRT may pick up any name from the Panel for appointment as RP or BT, as the case may be, for an insolvency resolution or bankruptcy process for individuals and partnership firms, respectively.

Inclusion of IPs in the Panel

8. An IP will be eligible to be in the Panel of IPs if -

- (a) there is no disciplinary proceeding, whether initiated by the Board or the IPA of which he/she is a member, pending against him;
- (b) he has not been convicted at any time in the last three years by a court of competent jurisdiction;
- (c) he expresses his/her interest to be included in the Panel for the relevant period;
- (d) he undertakes to discharge the responsibility as IRP, Liquidator, RP or BT, as he may be appointed by the AA; and
- (e) he holds an Authorisation for Assignment (AFA), which is valid on the date of expression of interest and remains valid at least till 30th June, 2020.

9. An IP will be included in the Panel against the Zone where his registered office (address as registered with the IBBI) is located. For example, an IP located in the city of Surat (Gujarat) will be included in Ahmedabad Zone, which covers the State of Gujarat. He shall be eligible for appointment by any bench of NCLT or DRT located in the State of Gujrat, State of Madhya Pradesh, Union Territory of Dadra and Nagar Haveli, and Union Territory of Daman and Diu. The areas covered in different Zones are as under

Zone	Areas Covered (The IPs having registered office in these areas shall be eligible for appointment by benches of NCLT and DRT located in these areas)
New Delhi	1 Union territory of Delhi
Ahmedabad	1 State of Gujarat 2 State of Madhya Pradesh 3 Union territory of Dadra and Nagar Haveli 4 Union territory of Daman and Diu
Allahabad	1 State of Uttar Pradesh 2 State of Uttarakhand
Amravati	1 State of Andhra Pradesh
Bengaluru	1 State of Karnataka
Chandigarh	1 State of Himachal Pradesh 2 State of Punjab 3 State of Haryana 4 Union Territory of Chandigarh 5 Union Territory of Jammu and Kashmir 6 Union Territory of Ladakh
Cuttack	1 State of Chhattisgarh. 2 State of Odisha

Chennai	1 State of Tamil Nadu 2 Union territory of Puducherry
Guwahati	1 State of Arunachal Pradesh 2 State of Assam 3 State of Manipur 4 State of Mizoram 5 State of Meghalaya 6 State of Nagaland 7 State of Sikkim 8 State of Tripura
Hyderabad	1 State of Telangana
Jaipur	1 State of Rajasthan
Kochi	1 State of Kerala 2 Union territory of Lakshadweep
Kolkata	1 State of Bihar 2 State of Jharkhand 3 State of West Bengal 4 Union territory of Andaman and Nicobar Islands
Mumbai	1 State of Goa 2 State of Maharashtra

Expression of Interest

10. The Board shall invite expression of interest from IPs in Form A by sending an e-mail to IPs at their email addresses registered with the Board. The expression of interest must be received by the Board in Form A by the specified date. For example, the Board shall invite expression of interest by 10th December, 2019 from IPs for inclusion in the Panel for January – June, 2020. The interested IPs shall express their interest by 25th December, 2019. The Board will send the Panel to the AA by 30th December, 2019. This process will repeated every six months.

Ongoing Assignments

11. The eligible IPs will be included in the Panel in order of the volume of ongoing processes they have in hand. The IP who has the lowest volume of ongoing processes will get a score of 100 and will be at the top of the Panel. The IP who has the highest volume of ongoing processes will get a score of 0. The difference between the highest volume and the lowest volume will be equated to 100 and other IPs will get scores between 0 and 100 depending on volume of their ongoing assignments.

Take an example:

IP	Volume of ongoing assignments	Difference between the highest volume and the volume of ongoing assignments of the IP	Formula	Score
1	20	100	$100 / 100 * 100$	100
2	40	80	$80 / 100 * 100$	80
3	60	60	$60 / 100 * 100$	60
4	80	40	$40 / 100 * 100$	40
5	100	20	$20 / 100 * 100$	20
6	120	00	$00 / 100 * 100$	00

12. An ongoing assignment shall be valued as under:

Ongoing assignments	Volume
IRP of a Corporate Insolvency Resolution Process	05
RP of a Corporate Insolvency Resolution Process	10
IRP of a Fast Track Process	03
RP of a Fast Track Process	06
Liquidation / Voluntary Liquidation	05
Individual Insolvency	01
Bankruptcy Trustee	01

13. Where two or more IPs get the same score, they will be placed in the Panel in order of the date of their registration with the Board. The IP registered earlier will be placed above the IP registered later.

14. The process for preparation of Panel of IPs will be undertaken by a team of officers of the Board, as may be identified by a Whole-Time Member.

Obligations of IPs in the Panel

15. It must be explicitly understood that an IP, who is included in the Panel based on his/her expression of interest, must not:

- (a) withdraw his/her interest to act as IRP, Liquidator, RP or BT, as the case may be;
- (b) decline to act as IRPs, Liquidator, RP or BT, as the case may be, if appointed by the AA; or
- (c) surrender his registration to the Board or membership or authorisation of assignment to his IPA during the validity of the Panel.

16. It must be explicitly understood that:

- (a) the AA may require the Board to recommend an IP from or outside the Panel and in such cases, the Board shall accordingly recommend an IP;
- (b) an IP in the Panel can be appointed as IRP, Liquidator, RP or BT, at the sole discretion of the AA;
- (c) the submission of expression of interest is an unconditional consent by the IP to act as an IRP, Liquidator, RP or BT of any process relating to a corporate or individual debtor, as the case may be;
- (d) an IP who declines to act as IRP, Liquidator, RP or BT, as the case may be, on being appointed by the AA, shall not be included in the Panel for the next five years, without prejudice to any other action that may be taken by the Board.

Applicability

17. These Guidelines shall come into effect for preparation of panels of IPs to facilitate appointments as IRPs, Liquidators, RPs and BTs with effect from 1st January, 2020.

18. These Guidelines replace the Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019 of 14th May, 2019, except as respects things done or omitted to be done before such replacement.

Form A
EXPRESSION OF INTEREST TO ACT AS
AN IRP, LIQUIDATOR, RP AND BT IN ANY PROCESS RELATING TO ANY
CORPORATE OR INDIVIDUAL DEBTOR

1	Name of Insolvency Professional		
2	Registration Number		
3	a. No and Date of Issue / Renewal of AFA b. Date of Expiry of AFA c. Name of IPA which has issued AFA		
4	Address and contact details, as registered with the IBBI: a. E-mail b. Mobile c. Address		
5	Number of Processes as on date:		Ongoing
	a.	As IRP of CIR Process	
	b.	As RP of CIR Process	
	c.	As IRP of Fast Track Process	
	d.	As RP of Fast Track Process	
	e.	As Liquidator of Liquidation/Voluntary Liquidation Process	
	f.	As RP of Individual Insolvency Resolution Process	
	g.	As Bankruptcy Trustee	
6	Whether IP has been convicted at any time in the last three years by a court of competent jurisdiction? (Give details)		
7	Whether IP is serving a suspension or debarment from serving as an IP? (Give details)		
8	Whether any disciplinary proceeding, whether initiated by the IBBI or the IPA, is pending against the IP? (Give details)		

Declaration: I hereby: -

- a. confirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and express my interest to act as IRP, Liquidator, RP and BT, as the case may be, if appointed by the Adjudicating Authority.
- b. undertake that if my name is included in the Panel, I shall abide by the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2019
- c. undertake that submission of this form is my unconditional consent to act as an IRP, Liquidator, RP and BT, at the sole discretion of the Adjudicating Authority during the validity period of the Panel under the Guidelines (1st January, 2020 – 30th June, 2020).
- d. undertake that I shall not decline to act as IRP, Liquidator, RP or BT, as the case may be, on being appointed by the Adjudicating Authority.

Signature of Insolvency Professional

Place:

Date: