

IBBI UPDATES

1. IBC Guidelines for appointing IP as IRP, Liquidators, RP and BT:

On **June 02, 2020**, Insolvency and Bankruptcy Board of India (IBBI) issued *Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2020* for setting up a panel of insolvency professionals (IP) for appointment as Interim Resolution Professionals (IRP), Liquidators, Resolution Professionals (RP) and Bankruptcy Trustees (BT) by the Adjudicating Authority (AA) (NCLT or DRTs) with effect from July 01, 2020, detailed as under:

Guidelines to be followed:

- a) The Board may take up to **10 days to identify an IP** for the purpose. It also takes some time for the recommendation of the Board to reach the AA, after which the AA could appoint the recommended IP.
- b) 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 itself.
- c) Given that every IP is equally qualified to be appointed as the IRP, Liquidator, RP or BT of any corporate or individual insolvency resolution, liquidation or bankruptcy process, as the case may be, if otherwise not disqualified, and in the interest of avoiding administrative delays, the Board considers necessary to have these 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) of Insolvency and Bankruptcy Code, 2016 ('IBC, 2016').

Panel of IPs

- a) Instead of two six monthly panels for 2020-21, it has now been decided to have two panels with varying dates. The **first panel** under the new guidelines will have validity of **4 months and 25 days** and upon its expiry, a **new panel** having validity of **7 months and 5 days** will replace it.

For example: the first Panel under the Guidelines will be valid for consideration for appointment during 1st July, 2020 – 25th November, 2020, and the next Panel will be valid for being considered for appointment during 26th November, 2020 – 30th June, 2021.

- b) The **NCLT may pick up any name** from the Panel for appointment of IRP, Liquidator, RP or BT, for a CIRP, Liquidation Process, Insolvency Resolution or Bankruptcy Process relating to a corporate debtors and personal guarantors to corporate debtors, as the case may be.

- c) The **DRT may pick up any name** from the Panel for appointment as RP or BT, for an Insolvency Resolution or Bankruptcy Process for personal guarantors to corporate debtors, as the case may be.

Obligations of IPs in the Panel

- a) It must be explicitly understood that an IP, who is included in the Panel based on his expression of interest, **shall not**:
- i. **withdraw** his interest to act as IRP, Liquidator, RP or BT, as the case may be;
 - ii. **decline** to act as IRPs, Liquidator, RP or BT, as the case may be, if appointed by the AA; or
 - iii. **surrender** his registration to the Board or membership or Authorization for Assignment (AFA) to his IPA during the validity of the Panel.
- b) It must be explicitly understood that:
- i. 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;
 - ii. an IP in the Panel can be appointed as IRP, Liquidator, RP or BT, at the sole **discretion** of the AA;
 - iii. 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;
 - iv. 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 **5 years**, without prejudice to any other action that may be taken by the Board.

Inclusion of IPs in the Panel

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 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 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;
- e) He **holds an AFA**, which is valid on the date of expression of interest and remains valid till the validity of Panel. For example, the IP included in the Panel for appointments during July 1, 2020 –November25, 2020 should have AFA valid up to November 25, 2020.

The link of aforesaid Guidelines is as mentioned below:

<https://ibbi.gov.in/uploads/legalframework/71d50e11656190259af4e3fe5427d943.pdf>

2. Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

On **June 05, 2020** the Hon'ble President of India has promulgated the *Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020* to effectively **suspend the operation** of Sections 7, 9 & 10 of the IBC, 2016 with respect to defaults arising on or after March 25, 2020 for a period of **6 months**, extendable up to a maximum of **one year** from such date as may be notified. The promulgation of this Ordinance has resulted in the **insertion** of new clauses, i.e., **Section 10A and Section 66(3)** in to the IBC, 2016.

The Ordinance also **suspends filing of an application** by the resolution professional under Section 66(2) of the IBC, 2016 against directors or partners of corporate debtors in respect of such default against which initiation of corporate insolvency resolution process would be suspended by virtue of the Ordinance.

The link of aforesaid Ordinance is as mentioned below:

<https://www.ibbi.gov.in/uploads/legalframwork/741059f0d8777f311ec76332ced1e9cf.pdf>