

**IBBI UPDATES**

**1. Insolvency And Bankruptcy Code (Amendment) Ordinance, 2021**

On **April 04, 2021** President promulgated an Ordinance the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 [IBC (Amdt) 2021] amending the Insolvency and Bankruptcy Code, 2016 (IBC).

This Ordinance provides for one new mechanism for Micro, Small and Medium Enterprises (MSME) to come out from the stress asset, which is Pre-packaged Insolvency Resolution Process (**PPIRP**). The name suggest it is pre-packaged and Debtor driven with Creditors approval and in short time on 120 days to resolve the stress of MSME.

Last year at the beginning of Pandemic, the Government took several measures to mitigate the distress caused by the Pandemic, including increasing the minimum amount of default for initiation of Corporate Insolvency Resolution Process (CIRP) to Rs.1 Crore and suspending filing of applications for initiation of CIRP in respect of the defaults arising during the period of one year beginning from 25th March 2020 to 24<sup>th</sup> March 2021;

Currently after March 24, 2021 also the country is facing second wave of Pandemic and MSME are badly affected. Government acknowledged that MSME are critical for economy as they contribute significantly to country's GDR (Gross Domestic Product) and provide employment to a sizeable population and hence the Government to urgently address the specific requirements of MSME for the resolution of their insolvency, due to the unique nature of their businesses and simpler corporate structures provide an efficient alternative Insolvency Resolution Process under IBC, ensuring quicker, cost-effective and value maximizing outcomes for all the stakeholders, in manner which is least disruptive to the continuity of their businesses and which preserves jobs;

The link for the aforesaid Ordinance is as mentioned below:

<https://ibbi.gov.in/uploads/legalframework/04af067c22275dd1538ab2b1383b0050.pdf>

**2. Insolvency And Bankruptcy (Pre- Packaged Insolvency Resolution Process) Rules, 2021**

On **April 09, 2021** the Ministry of Corporate Affairs (MCA) notified the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021 effective from April 09, 2021

These rules shall apply to the matters relating to the Pre-Packaged Insolvency Resolution Process. Various forms and Affidavits etc for filing PPIRP.

The link for the aforesaid Notification is as mentioned below:

<https://ibbi.gov.in/uploads/legalframework/f75906d8657a51f214785c697d9bb296.pdf>

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### 3. Insolvency And Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021

On **April 09, 2021** The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 which shall be effective from April 09, 2021.

These PPIRP regulation helps in operationalization of the entire process. The Regulation provides details of Forms that stakeholders are required to use, and the manner of carrying out various tasks by them as part of the PPIRP. It provide details and manner relating to:

- a. Eligibility to act as Resolution Professional and his terms of appointment;
- b. Eligibility of Registered Valuers and other professionals;
- c. Identification and selection of Authorized Representative;
- d. Initiation of PPIRP process
- e. Public Announcement and claims of stakeholders;
- f. Committee of Creditors (CoC) and Meeting of CoC
- g. Valuation and Information Memorandum;
- h. Resolution Plans;
- i. Competition between the Base Resolution Plan and the Best Resolution Plan;
- j. Evaluation and consideration of Resolution Plans;
- k. Vesting management of Corporate Debtor with the Resolution Professional;
- l. Termination of PPIRP.

Under the Schedule of these Regulations Formats from P1 to P14 has been prescribed for PPIRP

The link for the aforesaid Notification is as mentioned below:

<https://ibbi.gov.in/uploads/legalframework/2021-04-10-182311-5ngd9-0dd40b82af7a770d5e89c0d9e37bdb45.pdf>

### 4. Insolvency And Bankruptcy Code (Amendment) Ordinance, 2021

On **April 09, 2021** The Ministry of Corporate Affairs (MCA) notified that the Central Government has specified **Rs.10 Lakhs as the minimum amount of default** for matters relating under Pre-Packaged Insolvency Resolution Process (PPIRP) of Corporate Debtor under Chapter III-A of IBC 2016. There is no maximum limit prescribed which is misunderstood by many.

The link for the aforesaid Notification is as mentioned below:

<https://ibbi.gov.in/uploads/legalframework/f75906d8657a51f214785c697d9bb296.pdf>

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### **5. Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021**

On **April 13, 2021** The Insolvency and Bankruptcy Board of India (IBBI) vide Notification No. **IBBI/2021-22/GN/REG072** had made amendment to the principal regulation IBBI (Information Utilities) Regulations, 2017:

These Regulations is called the IBBI (Information Utilities) (Amendment) Regulations, 2021

- The bye laws of Information Utility (IU) should be consistent with Code and should provide for Minimum Service Quality Standards with timeliness for registration of users, issuance of record of default and annual statement to registered users. The bye laws should also provide for timeliness for adoption of quality standards and its certificates.
- A user who has availed the service of IU and has submitted the information in Form C (new format of the Form is substituted in the said notification) of the Schedule, should submit the information updated as on last day of every month in the first week of the following month. Also information of default should be updated within 7 days of default.
- A new Regulation has been inserted for Publication of Statistical Information wherein an IU should publish statistics quarterly relating to debt related information in its possession. The statistics should provide distribution of debts in terms of currency, geography, sector, size, tenor, type, lending arrangement, and incidence of default.

The link for the aforesaid Notification is as mentioned below:

<https://ibbi.gov.in/uploads/legalframework/b6df3c1f34f0f1e021d286664b41d2f7.pdf>

### **6. Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors.**

On **April 13, 2021**, the Hon'ble Supreme Court of India gave a Judgement which states that the claims of parties not included in the Resolution Plan could not be agitated by them before other fora as observed by Appellate Authority.

The Supreme Court observed that as per the Code, once a Resolution Plan is duly approved by the Adjudicating Authority, the claims as provided in the Resolution Plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders.

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The Supreme Court stated that the provisions of the Code will have an overriding effect, if there is any inconsistency with any of the provisions of the law for the time being in force or any instrument having effect by virtue of any such law.

The Code is a complete Code in itself. All the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the Resolution Plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval.

The respondents are not entitled to recover any claims or claim any debts owed to them from the CD accruing prior to the transfer to Resolution Applicant.

The link to the aforesaid judgement is mentioned below:

<https://ibbi.gov.in/uploads/legalframework/e4abe155c7c4a5e6eb66291650fdee24.pdf>

### **7. Insolvency Professional: A Key To Resolution Information Brochure**

IBBI has designed a brochure for Insolvency Professional. This brochure gives a gist on following matters:

- (a) the criteria's needed to become an Insolvency Professional (IP),
- (b) the regulatory framework governing IP,
- (c) their Code of Conduct,
- (d) scope of Insolvency Professional (IP)
- (e) role of IP in the CIRP,
- (f) role of IP in Liquidation Process,
- (g) role of IP in Fresh Start and Individual Insolvency Resolution and
- (h) role of IP in Bankruptcy Process.

The link to the aforesaid Brochure is mentioned below:

<https://www.ibbi.gov.in/uploads/whatsnew/2021-04-13-163323-pt2ei-a56e6e185a5c5b7e8c7355f7a68f612f.pdf>

### **8. Asset Reconstruction Company (India) Limited v/s Bishal Jaiswal &Anr.**

On **April 15, 2021** The Hon'ble Supreme Court of India in the matter of Asset Reconstruction Company (India) Limited v/s Bishal Jaiswal held that the entries in Balance Sheets can amount to acknowledgement of debt for the purpose of extending limitation under Section 18 of the Limitation Act.

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The three judge Bench headed by Justice RF Nariman set aside the judgment of Full Bench of National Company Law Appellate Tribunal (NCLAT) in the case of V Padma Kumar v/s Stressed Assets Stabilization Fund in which it was held otherwise. The 3 judge bench explained that filing of a balance sheet in accordance with the provisions of the Companies Act, 2013 is mandatory and the notes forming part of such financial statements are expressly recognized by Section 134(7) of the Companies Act, 2013. The financial statements are to be approved by the Board of Directors and hence are an acknowledgement of debt, thereby extending limitation under Section 18 of Limitation Act.

The link to the aforesaid judgement is mentioned below:

<https://ibbi.gov.in/uploads/order/6f46d35423eabba10c230c216c6c78d9.pdf>

### **9. IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016- CIRP Regulation**

On **April 16, 2021** IBBI has issued a clarification letter under CIRP Regulations for consideration of matters / issues by the Committee of Creditors (CoC) on request by members of the committee.

- (a) Joint reading of Regulations 18, 19 and 21 of CIRP Regulation states that members of the CoC having 33% of the voting rights may request the RP to convene a meeting of the CoC.
- (b) Such request shall include a note proposing the matters to be discussed or issues to be voted upon, along with relevant documents, if any.
- (c) On receipt of the request, the RP shall convene a meeting of the CoC for consideration of the note

The Circular clarifies action of RP on following 4 situations

1. Members of the CoC having at least 33% of the voting rights request the RP, along with a note, to convene a meeting of the CoC  
The RP to forthwith convene a meeting of the CoC for consideration of the note, or place the note for consideration in a meeting of the CoC, if it is already scheduled.
2. Members of the CoC having at least 33% of the voting rights request the RP, along with a note, to place the note for consideration in a meeting of the CoC.  
The RP to place the note for consideration in the ensuing meeting of the CoC.

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3. Members of the CoC having less than 33% of the voting rights request the RP, along with a note, to convene a meeting of the CoC

The RP shall consider the request expeditiously on merits. If he considers it necessary, he shall convene a meeting of the CoC for consideration of the note, or place the note for consideration in a meeting of the CoC, if it is already scheduled.

4. Members of the CoC having less than 33% of the voting rights request the RP, along with a note, to place the note for consideration in a meeting of the CoC.

The RP shall consider the request expeditiously on merits. If he considers it necessary, he shall place the note for consideration in the ensuing meeting of the CoC.

The link to the aforesaid Clarification Letter is mentioned below:

<https://www.ibbi.gov.in/uploads/legalframework/c829e44873898f6f8bd534454c351710.pdf>

### 10. Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021

On **April 27, 2021** IBBI through notification No. **IBBI/2021-22/GN/REG074** notified the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021 which shall be effective from April 27, 2021.

1. In clause 12A (5) proviso has been added stating that an application received on and from the date of commencement of the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021 i.e. **April 27, 2021** and ending on the **October 31, 2021**, if the Authorization For Assignment (AFA) is not issued, renewed or rejected by the Agency within **30 days** of the date of receipt of the Application, the authorization shall be deemed to have been issued or renewed by the Agency.
2. In clause 12A(7) alteration is made: An applicant aggrieved of an order of rejection of his application by the Agency may appeal to the Membership Committee within **15 days** from the date of receipt of the order instead of **7 days** from the date of receipt of the order.
3. In clause 12A(7) a proviso has been added stating that where an application for issue of authorization for assignment has been rejected by an IPA, on and from April 27, 2021 and ending on the 31st October, 2021, the applicant aggrieved of an order of rejection may appeal to the Membership Committee within **30 days** from the date of receipt of order.

The link to the aforesaid Notification is mentioned below:

<https://www.ibbi.gov.in/uploads/legalframework/cc46284330f773a4c2e4515c03d78d6d.pdf>

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### 11. Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2021

On **April 27, 2021** IBBI through notification No. **IBBI/2021-22/GN/REG073** notified the IBBI (Insolvency Professionals) (Amendment) Regulations, 2021 which shall be effective from April 27, 2021.

1. In Regulation 7(2) clause (ca) a new proviso has been added stating that for the FY 2020-21, an IP shall pay the fee, calculated at the rate of 0.25 percent of the professional fee earned for the services rendered by him as an insolvency professional in the preceding financial year on or before the **June 30, 2021** instead of **April 30, 2021**.
2. In Regulation 13(2)(b) new proviso has been added stating that when an individual ceases to be Director or Partner, on and from April 27, 2021 and ending on the December 31, 2021, the IPE (Insolvency Professional Entity) shall inform IBBI within **30 days** of such cessation instead of **7 days**.
3. In Regulation 13(2)(c) new proviso has been added stating that when an individual joins as Director or Partner, on and from April 27, 2021 and ending on the December 31, 2021, the IPE (Insolvency Professional Entity) shall inform IBBI within **30 days** of such joining instead of **7 days**.
4. In Regulation 13(2)(ca) new proviso has been added stating that for the financial year 2020-21, an IPE (Insolvency Professional Entity) shall pay the fee calculated at the rate of 0.25 percent of the professional fee earned for the services rendered by it in the preceding financial year on or before the **June 30, 2021** instead of **April 30, 2021**.

The link to the aforesaid Notification is mentioned below:

<https://www.ibbi.gov.in/uploads/legalframework/c91c364ba5f65d67f1fd3c1e8e3cf4df.pdf>

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