

DISCUSSION PAPER MONITORING COMMITTEE UNDER CIRP

19th November, 2024

1. ISSUE: The discussion paper deals with the following issues faced in implementation of resolution plans under the Insolvency and Bankruptcy Code, 2016 (Code).

1.1 The Hon'ble Supreme Court in its judgment dated 7th November 2024 in the matter of ***State Bank of India & Ors v. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr*** emphasized the need for statutory recognition of monitoring committees and made several key recommendations regarding their constitution and functioning. The Court observed:

“181. As regards the implementation of the approved resolution plan, it is suggested that the IBC, 2016 statutorily provide for the constitution of a Monitoring Committee once the plan has been approved...

Presently, such a provision is absent in the Code and it is the Adjudicating Authority that orders for the constitution of a Monitoring Committee to ensure smooth implementation of the Plan.

The CoC must be empowered to constitute the Monitoring Committee which may, by default, include the Resolution Professional and also include other nominees from the CoC and the resolution applicant respectively. Such a Monitoring Committee would be entrusted with the powers of monitoring and supervising the resolution plan till the expiry of the term of the resolution plan.

The Committee shall also be required to ensure all statutory compliances during the implementation of the plan along with updating the Adjudicating Authorities, Financial and other Creditors about the status of implementation of the resolution plan, on a quarterly basis.”

1.2 Regulation 38 of CIRP Regulations was amended on February 15, 2023, to empower the Committee of Creditors (CoC) to consider the requirement of a monitoring committee for implementation of the resolution plan. Where such a committee is considered necessary, the CoC may, while approving the resolution plan, decide to constitute it with the resolution professional or propose another insolvency professional, or any other person as its members. The regulations also stipulate that where the resolution professional is proposed to be part of the monitoring committee, their monthly fee shall not exceed the monthly fee received during the corporate insolvency resolution process.

2. Proposal

2.1 In light of the observations made by the Hon'ble Supreme Court in the aforesaid judgement, it is proposed to strengthen the regulatory framework governing monitoring committees under the Code. While the current framework under Regulation 38 of the CIRP Regulations provide certain basic recognition to monitoring committees, the proposed amendments aim to make their constitution mandatory for implementation of all resolution plans. Since the CoC is vested

with commercial wisdom and is the primary decision-making body during CIRP, the proposed framework empowers the CoC to take the final decision on the constitution, composition, and functioning period of the monitoring committee, as part of the resolution plan. The CoC shall retain the flexibility to decide for constitution of monitoring committee with lesser period if the resolution plan provides for substantial implementation during such tenure with recorded reasons.

2.2 The monitoring committee shall consist of members who have a direct stake in the successful implementation of the resolution plan. The committee shall be chaired by either the resolution professional who handled the CIRP or another insolvency professional as proposed by the CoC. To ensure balanced representation of interests, the committee shall include nominee(s) from the CoC and an equal number of nominee(s) from the successful resolution applicant. This composition structure ensures that both the creditors' interests and the implementation capabilities of the resolution applicant are adequately represented in the monitoring process. The framework also provides flexibility to exclude existing members in case of changes or include additional persons as deemed appropriate by the committee. To maintain operational efficiency and accountability, it has been provided that the successful resolution applicant shall bear all expenses of the monitoring committee, while retaining the existing provision that the IP's monthly fee is capped at the amount received by the resolution professional during the CIRP period.

2.3 The monitoring committee is empowered with comprehensive supervision and monitoring functions, including oversight of plan implementation, ensuring statutory compliance, and facilitating smooth transfer of assets and control to the successful resolution applicant. To ensure transparency and accountability, the committee shall submit quarterly progress reports to the Adjudicating Authority and the Board regarding the implementation status. The committee shall continue to function until the completion of all implementation activities, with clear provisions for seeking appropriate directions from the Adjudicating Authority in cases where implementation is not in accordance with the terms and conditions of the resolution plan.

3. Public comments

The Board accordingly solicits comments on the proposal discussed above and the draft regulations placed in the **Annexure**. After considering the comments, the Board proposes to make regulations under clauses (aa) and (t) of subsection (1) of section 196 of the Code.

4. Submission of comments

4.1 Comments may be submitted electronically by 9th December, 2024. For providing comments, please follow the process as under:

- i. Visit IBBI website, www.ibbi.gov.in;
- ii. Select 'Public Comments';
- iii. Select 'Discussion paper – Monitoring Committee under CIRP'
- iv. Provide your Name, and Email id;

v. Select the stakeholder category, namely, - a) Corporate Debtor; b) Personal Guarantor to a Corporate Debtor; c) Proprietorship firms; d) Partnership firms; e) Creditor to a Corporate Debtor; f) Insolvency Professional; g) Insolvency Professional Agency; h) Insolvency Professional Entity; i) Academics; j) Investor; or k) Others.

vi. Select the kind of comments you wish to make, namely, a) General Comments; or b) Specific Comments.

vii. If you have selected 'General Comments', please select one of the following options:

a. Inconsistency, if any, between the provisions within the regulations (intra regulations);

b. Inconsistency, if any, between the provisions in different regulations (inter regulations);

c. Inconsistency, if any, between the provisions in the regulations with those in the rules;

d. Inconsistency, if any, between the provisions in the regulations with those in the Code;

e. Inconsistency, if any, between the provisions in the regulations with those in any other law;

f. Any difficulty in implementation of any of the provisions in the regulations;

g. Any provision that should have been provided in the regulations, but has not been provided;
or

h. Any provision that has been provided in the regulations but should not have been provided.

viii. And then write comments under the selected option.

4.2. If you have selected 'Specific Comments', please select para number and write comments under the selected para number.

4.3. You can make comments on more than one para, by clicking on more comments and repeating the process outlined above from point 4.1 (vi) onwards.

4.4. Click 'Submit' if you have no more comments to make.

**GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, xxxxDAY, xxxx xx, 2024**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi, the _____, 2024

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Sixth Amendment) Regulations, 2024.

No. IBBI/2024-25/GN/REGxxx.— 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 to further 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) (Sixth Amendment) Regulations, 2024.

(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, the sub-regulations (4) and (5) of regulation 38 are to be substituted and the following is proposed to be inserted:

38. Mandatory contents of resolution plan

(4) The plan shall provide for constitution of a monitoring committee having such tenure, composition and functions as specified in this sub-regulation:

(i) The monitoring committee shall function till the completion of implementation of the resolution plan.

Provided that the committee may, for reasons to be recorded in writing, decide for lesser tenure for the monitoring committee if the resolution plan provides for substantial implementation during such tenure.

(ii) The monitoring committee shall consist of the following members:

(a) the resolution professional or another insolvency professional proposed by the committee who shall act as the chairperson of the monitoring committee;

(b) nominee(s) of the committee of creditors; and

(c) nominee(s) of the successful resolution applicant equal to the number of nominee(s) of the committee of creditors.

Provided that the plan may also enable exclusion of an existing member or inclusion of any other person in the monitoring committee, as considered appropriate by the monitoring committee.

(iii) The monitoring committee shall monitor and supervise:

(a) implementation of the resolution plan;

(b) distribution of resolution proceeds in accordance with the resolution plan;

(c) transfer of assets and control of the corporate debtor to the successful resolution applicant in accordance with the terms and conditions of the resolution plan; and

(d) compliance of all statutory requirements during implementation of the resolution plan by the successful resolution applicant or any other person in control of the corporate debtor, as the case may be.

(iv) The monitoring committee, through its chairperson, shall submit quarterly reports to the Adjudicating Authority and the Board regarding the status of implementation of resolution plan in the format, as may be notified by the Board by a circular.

(v) The monitoring committee shall seek appropriate directions from the Adjudicating Authority, where implementation is not in accordance with the terms and conditions of the resolution plan.

(vi) The successful resolution applicant shall bear the expenses of the monitoring committee. Provided that the monthly fee payable to the insolvency professional, acting as the chairperson of the monitoring committee shall not exceed the monthly fee received by resolution professional during the corporate insolvency resolution process.

Mr. Ravi Mital, 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 were last amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024 published vide notification No. IBBI/2023-24/GN/REG113, dated the 15th February, 2024 in the Gazette of India, Extraordinary, Part III, Section 4, No. 284 on 15th February, 2024.
